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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA17-303

Filed: 3 October 2017

Catawba County, No. 16 SPC 50903

IN THE MATTER OF: T.R.K.

Appeal by Respondent from order entered 15 September 2016 by Judge Wesley W. Barkley in Catawba County District Court. Heard in the Court of Appeals 25 September 2017.

*Young, Morphis, Bach & Taylor, LLP, by Paul E. Culpepper, for Frye Regional Medical Center, Petitioner-Appellee.*

*Attorney General Joshua H. Stein, by Assistant Attorney General Charlene Richardson, for the State of North Carolina, Appellee.*

*Appellate Defender Glenn Gerding, by Assistant Appellate Defender Nicholas C. Woomer-Deters, for Respondent-Appellant.*

MURPHY, Judge.

Respondent appeals from an involuntary commitment order. On appeal, Respondent argues the trial court erred in allowing her to represent herself at the involuntary commitment hearing without complying with the applicable statutes and Rules of the Office of Indigent Defense Services. We agree and vacate and remand the order for further proceedings.

**Background**

On 5 August 2016, Respondent's nephew filed an affidavit and petition seeking petitioner's involuntary commitment. The trial court found there were reasonable grounds to believe the facts alleged in the petition, and Respondent was taken into custody for examination. On 11 August 2016, Respondent, through counsel, consented to an "Involuntary Commitment Order-Mentally Ill." (all caps in original) Thereafter, Respondent consented to further commitment on 18 August 2016, 25 August 2016, and 1 September 2016. On 8 September 2016, Respondent's counsel stipulated that there was sufficient evidence for commitment, and the court continued Respondent's commitment.

On 15 September 2016, the trial court held another commitment hearing. At the beginning of the hearing, the trial court conducted the following inquiry:

THE COURT: My name is Wes Barkley, and I'm a [D]istrict [C]ourt judge. First of all, are you asking to represent yourself today?

[RESPONDENT]: I am.

THE COURT: You understand you can have Ms. Barron [phonetic] or any attorney represent you, but you're choosing to represent yourself, is that correct?

[RESPONDENT]: Yes, Your Honor.

THE COURT: Okay, ma'am. Thank you. All right. We'll proceed, then.

At the conclusion of the hearing, the trial court found that Respondent met the criteria for further inpatient commitment and continued her inpatient commitment. Respondent filed a handwritten notice of appeal on 15 September 2016. The trial court made appellate entries on 19 September and appointed counsel to represent Respondent on appeal.

**Analysis**

Respondent contends that the trial court erred by allowing her to waive counsel and represent herself without complying with the requirements of N.C.G.S. § 15A-1242, N.C.G.S. § 122C-268(d), and Indigent Defense Services Rule 1.6. Respondent argues the order must be vacated and the matter remanded for a new hearing. *See In re Watson*, 209 N.C. App. 507, 516, 706 S.E.2d 296, 302 (2011). We agree.

N.C.G.S. § 122C-268 (2016) governs inpatient commitments and states:

(d) The respondent shall be represented by counsel of his choice; or if he is indigent within the meaning of G.S. 7A-450 or refuses to retain counsel if financially able to do so, he shall be represented by counsel appointed in accordance with rules adopted by the Office of Indigent Defense Services.

N.C.G.S. § 122C-268(d). However, N.C.G.S. § 15A-1242 (2015) allows waiver of counsel when:

A defendant may be permitted at his election to proceed in the trial of his case without the assistance of counsel only after the trial judge makes thorough inquiry and is satisfied that the defendant:

- (1) Has been clearly advised of his right to the assistance of counsel, including his right to the assignment of counsel when he is so entitled;
- (2) Understands and appreciates the consequences of this decision; and
- (3) Comprehends the nature of the charges and proceedings and the range of permissible punishments.

*Id.* The Rules of Indigent Defenses Services further requires:

An indigent person who has been informed of his or her right to be represented by counsel at any in-court-proceeding may, in writing, waive the right to in-court representation by counsel. Any such waiver of counsel shall be effective only if the court finds of record that at the time of waiver the indigent person acted with full awareness of his or her rights and of the consequences of the waiver. In making such a finding, the court shall follow the requirements of G.S. 15A-1242 and shall consider, among other things, such matters as the person's age, education, familiarity with the English language, mental condition, and the complexity of the matter.

IDS Rule 1.6 (2016)

We agree with Respondent that the trial court erred by failing to make adequate inquiry into Respondent's understanding and appreciation of the consequences of her decision to waive counsel and of her comprehension of the nature of the proceedings. *See Watson*, 209 N.C. at 516, 706 S.E.2d at 302. Both appellees concede that the trial court erred and concur with vacating the order and remanding the matter for appropriate proceedings. We, accordingly, hold the trial court erred,

IN RE: T.R.K.

*Opinion of the Court*

vacate the order, and remand the matter to Catawba County District Court for further proceedings as appropriate. We need not reach the remaining issues raised in Respondent's brief.

**Conclusion**

For the reasons stated above, we vacate the order and remand.

VACATED AND REMANDED.

Judges CALABRIA and TYSON concur.

Report per Rule 30(e).