

IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA18-639

Filed: 3 September 2019

Granville County, No. 17 SPC 50833

IN THE MATTER OF: K.J.

Appeal by Respondent from Order entered 2 November 2017 by Judge Adam S. Keith in Granville County District Court. Heard in the Court of Appeals 12 February 2019.

Appellate Defender Glenn Gerding, by Assistant Appellate Defender Aaron Thomas Johnson, for respondent-appellant.

Attorney General Joshua H. Stein, by Assistant Attorney General John Tillery, for the State.

MURPHY, Judge.

Respondent's (K.J.) sole argument on appeal is that the *Affidavit and Petition for Involuntary Commitment* ("Petition") supporting the trial court's involuntary commitment order was insufficient. Respondent failed to challenge the sufficiency of the affidavit during the hearing before the District Court, and our binding precedent mandates that the argument is waived. We dismiss Respondent's appeal.

BACKGROUND

This action commenced when Richard Benson II, M.D. ("Dr. Benson"), signed a petition requesting that Respondent be involuntarily committed. Dr. Benson's Petition alleged Respondent was mentally ill and a danger to herself and others. Dr.

Benson stated his conclusion was based upon the following facts: “Aggressive behavior/HI/psychosis[.]” An involuntary commitment hearing was held in Granville County District Court, and Respondent was subsequently committed for a period not to exceed 45 days, followed by outpatient commitment for a period not to exceed 45 days. At that hearing, Respondent did not object to the Petition or argue it did not present a valid factual basis to support an involuntary commitment. Respondent timely appeals.

ANALYSIS

Respondent’s only argument on appeal is that Dr. Benson’s Petition lacked sufficient facts to show reasonable grounds for involuntary commitment. Indeed, before a trial court may enter a commitment order, there must be an underlying petition that alleges facts sufficient to show reasonable grounds that the person is mentally ill and a danger to himself or others. N.C.G.S. § 122C-261(a) (2017); *In re Reed*, 39 N.C. App. 227, 227-29, 249 S.E.2d 864, 865-66 (1978). However, our caselaw requires respondents to “raise issues with the affidavit, petition, or custody order in the first involuntary commitment hearing” *In re Moore*, 234 N.C. App. 37, 42, 758 S.E.2d 33, 37 (2014). Otherwise, we must hold that “respondent has waived any challenge to the sufficiency of the affidavit to support the magistrate’s original custody order.” *Id.* Here, it is undisputed that Respondent did not challenge the sufficiency of the Petition during the initial involuntary commitment hearing. This

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issue, which is Respondent's only argument on appeal, is deemed waived, and this appeal is dismissed.

CONCLUSION

Respondent's only argument on appeal is waived because it was not raised during Respondent's initial involuntary commitment hearing.

DISMISSED.

Judges BRYANT and DIETZ concur.