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IN THE COURT OF APPEALS OF NORTH CAROLINA

2021-NCCOA-365

No. COA20-685

Filed 20 July 2021

Durham County, No. 20 SPC 746

IN THE MATTER OF: E.M.D.Y.

Appeal by Respondent from order entered 19 May 2019 by Judge Patricia Evans in Durham County District Court. Heard in the Court of Appeals 10 March 2021.

Attorney General Joshua H. Stein, by Assistant Attorney General Erin E. McKee, for the State.

Appellate Defender Glenn Gerding, by Assistant Appellate Defender Jillian C. Katz, for Respondent-Appellant.

DILLON, Judge.

Respondent appeals from an involuntary commitment order committing him to an inpatient facility for a period not to exceed thirty (30) days.

I. Background

¶ 1

Respondent is a young man who presented himself at Duke University Medical Center (the “hospital”) on a number of occasions with what appeared to be self-

inflicted injuries. Respondent has a history of bipolar disorder. A doctor at the hospital examined Respondent, opining that he was responding to internal stimuli, that his thoughts were disorganized, and that he had difficulty advocating for himself. The doctor filed a petition to have Respondent involuntarily committed.

¶ 2 Four days before the hearing, another doctor at the hospital examined Respondent and opined that he suffered from “bipolar mania 1 mania.” The doctor noted that Respondent had engaged in behavior that may lead to violence.

¶ 3 On 15 May 2020, the trial court held Respondent’s involuntary commitment hearing. Neither the State nor the hospital was represented by counsel. A psychiatrist from the hospital did appear. The trial court called the psychiatrist to testify, telling him to “let [the court] know what it is that [she] want[ed] [the court] to know about this matter.” The psychiatrist proceeded to give a detailed account of Respondent’s medical history. Respondent’s counsel was allowed to cross-examine the psychiatrist. Respondent was also allowed to testify.

¶ 4 Following the hearing, the trial court entered an order directing that Respondent be involuntarily committed for a period not to exceed 30 days. Respondent appeals.¹

¹ Respondent’s appeal is not moot even though his period of involuntary commitment has expired. *See In re Hatley*, 291 N.C. 693, 695, 231 S.E.2d 633, 635 (1977) (“The possibility that respondent’s commitment in this case might likewise form the basis for a future

II. Analysis

¶ 5 On appeal, Respondent essentially makes two arguments.² First, Respondent argues that his due process rights were violated because the trial court took on the role of the State by calling the psychiatrist as a witness, as neither the State nor the hospital were represented by counsel.

¶ 6 For the reasons stated in the majority opinion and concurring opinion addressing the “Due Process Concerns” issue in *In re C.G.*, ___ N.C. App. ___, 2021-NCCOA-344, one of the other cases heard by this panel on 10 March 2021, we disagree.

¶ 7 Second, Respondent argues that the trial court erred by making findings that would suggest that Respondent would be a danger to himself or others *going forward*. Indeed, many of the findings concern Respondent’s past behavior. We have reviewed the findings and believe it is a close case. However, we note that the trial court failed to check the box on the order that it was relying in part on a certain medical report by the doctor who had filed the petition, though the order does recite the report. In other words, the order identifies the petitioner’s report; however, it appears that the trial court erred in failing to check the box on the form order indicating that the trial

commitment, along with other obvious collateral consequences, convinces us that this appeal is not moot.”).

² We grant Respondent’s Petition for Writ of Certiorari to consider these issues.

court was relying on that report to reach its determination.

¶ 8

Accordingly, we remand the matter to the trial court to clarify that it was relying on that report (if true) by checking the appropriate box and to make one or more additional findings as to whether the trial court believed that Respondent would be a danger to himself in the future as of the date of the original order.

REMANDED FOR ADDITIONAL FINDINGS.

Judge HAMPSON concurs.

Judge GRIFFIN dissents.

Report per Rule 30(e).

No. COA20-685 – *In re E.D.Y.*

GRIFFIN, Judge, dissenting.

¶ 9

I dissent from the majority opinion for the reasons stated in my dissenting opinion in *In re C.G.*, ___ N.C. App. ___, 2021-NCCOA-344, a companion case heard by this panel on 10 March 2021.