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IN THE COURT OF APPEALS OF NORTH CAROLINA

2021-NCCOA-366

No. COA20-457

Filed 20 July 2021

Durham County, No. 19 SPC 2379

IN THE MATTER OF: J.R.

Appeal by Respondent from order entered 3 January 2020 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 Elizabeth Forrest, for the State.*

*Appellate Defender Glenn Gerding, by Assistant Appellate Defender Wyatt Orsbon, for Respondent-Appellant.*

DILLON, Judge.

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

I. Background

¶ 2 On 9 December 2019, Respondent J.R.’s interim guardian filed an affidavit and petition for involuntary commitment alleging that J.R. was mentally ill and

dangerous to self or others. He was taken into custody the same day. J.R.’s involuntary commitment hearing was conducted on 3 January 2020 in Durham County by Judge Patricia Evans.

¶ 3 When J.R.’s case was called by the trial judge, no attorney appeared to represent the State’s interest in the matter. A doctor who had been subpoenaed by the State was present, along with J.R., his counsel, and the trial judge. J.R.’s counsel objected at the beginning of the hearing, arguing that the hearing could not proceed without a representative from the State. The judge proceeded, implicitly rejecting the objection.

¶ 4 The trial judge called the State’s sole witness, a doctor who had not evaluated J.R., and asked open-ended questions. J.R.’s attorney had the opportunity to cross-examine the doctor. J.R. was also called as a witness by his own attorney. At the conclusion of the hearing, the judge concluded that J.R. was mentally ill and dangerous to self, involuntarily committing him to thirty (30) days of inpatient treatment. J.R. appealed from the trial judge’s involuntary commitment order.<sup>1</sup>

## II. Analysis

¶ 5 J.R. argues that “the trial judge violated his right to an impartial tribunal by

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<sup>1</sup> J.R.’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 commitment, along with other obvious collateral consequences, convinces us that this appeal is not moot.”).

assuming the role of prosecutor by presenting the State’s case” when the State failed to appear at his involuntary commitment hearing.

¶ 6

This appeal and five others from Durham County involving involuntary commitments were heard by this panel on 10 March 2021. In each case, the State did not send a representative to the hearing, apparently as part of a new policy in Durham County.<sup>2</sup> In each matter, the respondents have raised the issue presented by J.R. in this appeal.

¶ 7

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 involuntary commitment cases heard by this panel on 10 March 2021, we affirm the trial court’s order.

AFFIRMED.

Judge HAMPSON concurs.

Judge GRIFFIN dissents.

Report per Rule 30(e).

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<sup>2</sup> The trial judge responded to J.R.’s counsel’s objection to proceeding without a State representative by stating: “The District Attorney’s Office of Durham County has notified this Court that they will not be participating in these hearings as in prior years, and this Court intends to go forward with this hearing, and the Respondent is more than welcome to appeal this Court’s decision.”

No. COA20-457 – *In re J.R.*

GRIFFIN, Judge, dissenting.

¶ 8

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.