An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority. Citation is disfavored, but may be permitted in accordance with the provisions of Rule 30(e)(3) of the North Carolina Rules of Appellate Procedure.

IN THE COURT OF APPEALS OF NORTH CAROLINA

2022-NCCOA-386

No. COA21-624

Filed 7 June 2022

Durham County, No. 21 SPC 593

IN THE MATTER OF: D.G.

Appeal by respondent from order entered 16 April 2021 by Judge Pat Evans in Durham County District Court. Heard in the Court of Appeals 27 April 2022.

Attorney General Joshua H. Stein, by Assistant Attorney General Elizabeth P. Forrest and Special Deputy Attorney General Scott T. Stroud, for the State.

No brief filed for Petitioner-Appellee United States Department of Veterans Affairs.

Appellate Defender Glenn Gerding, by Assistant Appellate Defenders Hannah H. Love and Jillian C. Katz, for Respondent-Appellant.

CARPENTER, Judge.

¶ 1 D.G. ("Respondent") appeals from an involuntary commitment order (the "Order"), declaring her mentally ill and dangerous to herself and others and committing her to an inpatient facility for up to thirty days. On appeal, Respondent argues the trial court's evidentiary findings of fact were insufficient to support the

ultimate finding that Respondent was dangerous to herself or others. Respondent further argues the "trial court violated [her] right to an impartial tribunal by assuming the role of prosecutor and presenting the State's case" after a State representative did not appear at the commitment hearing. After careful review, we vacate and remand the Order to allow for entry of additional evidentiary findings of fact.

I. Factual & Procedural Background

¶ 2 The record reveals the following: Respondent's involuntary commitment arises from an incident on 7 April 2021, in which Respondent caused law enforcement to initiate a high-speed chase to pursue her. Respondent was headed from her home state of Texas to New York. While in North Carolina, Respondent hit two vehicles, attempted to ram the law enforcement vehicle that pulled her over, and had to be tased after resisting arrest. Respondent was brought to the Duke University Hospital Emergency Department by the Durham Police Department.

¶ 3 On 8 April 2021, Dr. Takahiro Soda of Duke University Hospital executed an affidavit and petition for the involuntary commitment of Respondent on the basis Respondent has a mental illness and is dangerous to herself and others. The petition was filed on 9 April 2021 and alleged Respondent hit two vehicles on a highway, almost hit two officers on foot, and threatened to shoot officers. The petition also stated:

> Apparently [Respondent] believes her children are trying to put her in a mental hospital and take all her money. On evaluation[,] she reiterates this idea, also that she was running from the police because it was her son that sent them. She then notes that she is calm and not a threat to anyone. She does not reconcile her actions when asked about them and how this would demonstrate that she was calm. Collateral information suggests that she has had several inpatient stays for paranoia. She is at acutely elevated risk of harm to self, others and further decompensation and requires inpatient hospitalization for the stabilization and management of her psychosis.

¶ 4 At 1:30 p.m. on 8 April 2021, Dr. Soda conducted an initial examination and evaluation of Respondent, following Respondent's admission. During Dr. Soda's evaluation of Respondent, Respondent expressed her beliefs that her family is trying to admit her to a mental hospital to take her money, her son sent the police to pursue her, and she is calm despite the recent traffic incident. Dr. Soda found Respondent was "at [an] acutely elevated risk of harm to self, others and further decompensation and requires inpatient hospitalization for the stabilization and management of her psychosis." In light of these findings, Dr. Soda opined Respondent has a mental illness and is dangerous to herself and others.

¶ 5 On 9 April 2021, a Durham County magistrate judge entered a custody order for involuntary commitment, in which the magistrate found there were reasonable grounds to believe that the facts alleged in the petition are true and that Respondent probably has a mental illness and is dangerous to herself or others. The magistrate

ordered Respondent into the custody of a twenty-four-hour facility, pending a district court hearing.

¶ 6 On the same date, a notice of commitment change was filed with the Clerk of Superior Court of Durham County, indicating Respondent's inpatient commitment was transferred from Duke University Hospital to the Durham Veterans Affairs Medical Center ("Durham VAMC").

¶ 7 At 10:00 a.m. on 10 April 2021, Respondent received a second examination and twenty-four-hour facility examination for involuntary commitment, which was conducted by Dr. Henry Melvin of the Durham VAMC. Dr. Melvin found Respondent "presents with paranoid delusions" based on her belief that her children are stealing from her. She lacks insight into having mental illness and believes she did nothing wrong with respect to the vehicle incident. Based on his findings, Dr. Melvin was of the opinion Respondent has a mental illness and is dangerous to herself and others.

¶ 8 At 9:10 p.m. on the same date, Respondent received a third evaluation, which was conducted by Dr. Andrew Tuck of the Durham VAMC. Dr. Tuck found Respondent to be "emotionally labile and psychotic." He further found Respondent: (1) "[t]hinks her family is stealing from her, [and is] trying to contact famous figures to help her out"; (2) "[b]rushes aside concerns about her driving incident"; and (3) "[h]as [a] complex medical history but [is] not taking any medications." Dr. Tuck opined Respondent has a mental illness and poses a danger to herself and others.

¶ 9 On 12 April 2021, the trial court entered a second custody order, authorizing the custody of Respondent to a twenty-four-hour facility, pending a district court hearing.

¶ 10 On 16 April 2021, the trial court held a hearing on the involuntary commitment petition pursuant to N.C. Gen. Stat. § 122C-268. At the beginning of the hearing, counsel for Respondent moved to dismiss the case on the ground a representative of the State was not present:

> So, as you know, here in Durham County our district attorney's office has taken the position that their office is not required to and will not participate in [involuntary commitment] hearings, and that it is the attorney general's responsibility to come and represent the State in these matters. The attorney general's office has indicated to us that they do not have that responsibility, nor do they have the manpower to do so. I would move this court to dismiss this case for failure of the State to participate as it would violate [Respondent's] both constitutional and statutory rights.

¶ 11 Counsel also moved to dismiss the matter based on an alleged date discrepancy in the medical facility's examination documentation and under Rule 41 of the North Carolina Rules of Civil Procedure for the State's failure to prosecute. The trial court took judicial notice of counsel's objection as to the issue of the State's lack of representation in commitment proceedings and stated the issue was "up on appeal right now with the Court of Appeals." The trial court denied all motions to dismiss.

¶ 12 The trial court then called to the witness stand Dr. Leah Fryml, Respondent's

primary inpatient psychiatrist at the Durham VAMC. The trial court asked Dr. Fryml to spell her name for the record and to tell the court "what it is that you want [it] to know about this matter."

¶ 13 Dr. Fryml first testified as to the circumstances which led to Respondent's involuntary commitment: "she was driving to another state to seek help from some . . . celebrity individuals based on her feeling that her family is persecuting her, stealing her inheritance." Moreover, "she hit two additional—two cars on the interstate before she was pulled over, tried to ram the sheriff's car, and resisted arrest, and ended up needing to be tased . . . ."

¶ 14 According to Dr. Fryml, Respondent was previously admitted to two "inpatient facilities in the past few years for similar presentation," although Dr. Fryml was unaware of Respondent having "any formal psychiatric history of psychosis." Respondent's family reported to medical providers Respondent had "a decline in function, more isolation, [and] fail[ed] to take care of herself medically . . . ." Furthermore, Respondent has brought multiple lawsuits against family members alleging they stole her property; all of these cases were dismissed.

¶ 15 Dr. Fryml further testified Respondent resisted interviews with, and treatment from, the Durham VAMC psychiatric team, and she refused to take the recommended antipsychotic medication, Risperdal. Dr. Fryml suspected the paranoid behaviors Respondent was portraying could be related to substance abuse

because Respondent tested positive for amphetamine upon admission, despite not having an active prescription for Adderall since November 2020. Based on the positive drug screen, the Durham VAMC did not "force[ ] medications" on Respondent in "the hope . . . the cognitive issues and behaviors could clear with additional time away from the stimulant."

¶ 16 Respondent "call[ed] on multiple levels of administrative support" to report she was unable to speak with medical providers but refused to speak with them when they became available. Respondent's lack of insight into the behaviors that led to her arrest and subsequent commitment to the hospital and her resistance to treatment "raise[d] significant concern for [Respondent's] ongoing risky behavior . . . ." Further, Respondent's behavior prior to admission demonstrated she "could ultimately create significant harm for her and for those around her."

¶ 17 The trial court asked Dr. Fryml, "would you say that [Respondent] is a danger to herself?" Dr. Fryml responded, "[y]es, I believe so." The trial court then asked Dr. Fryml if she "would . . . say [Respondent] is a danger to others?" Dr. Fryml responded in the affirmative.

¶ 18 On cross-examination, Dr. Fryml reiterated her opinion that Respondent was a danger to herself and others, although she admitted Respondent had not demonstrated an intent to harm herself or others during her admission to the Durham VAMC.

¶ 19 Following Dr. Fryml's testimony, Respondent took the stand. Respondent testified at the hearing she is sixty-four-years-old and lives in Grand Prairie, Texas. Respondent understood she was in court for being involuntarily admitted to the Durham VAMC psychiatric ward. She retired from the New York City Police Department and served in the United States Air Force. She holds a master's degree in counseling for grief and loss and is a licensed Federal Emergency Management Agency ("FEMA") director in Texas and Mississippi. She does not work but continues providing help in her neighborhood through community service. Respondent makes regular mortgage, vehicle, and insurance payments.

¶ 20 Respondent further testified her only mental illness diagnosis was adult attention deficit disorder. Respondent knows her doctors at the inpatient facility recommend Risperdal, but she refuses to take it because "[i]t does not provide the help that [she] need[s] at this time." She also described having three strokes and three stents put in her heart since the start of the COVID-19 pandemic.

¶ 21 When asked on direct examination whether she had "other medical issues," Respondent explained the highway incident was caused by "a diabetes condition." She did not have any thoughts of harming herself or others within the past month. According to Respondent, her family used to help her until they began "embezzling [her] retirement funds[and] trying to have [her] committed." She believes her family is trying to have her committed so they can take her earnings and possessions.

Moreover, Respondent believes her son re-mortgaged her home and was giving one of her vehicles to her grandson.

¶ 22 At the end of the hearing, the trial court announced its conclusion "the Respondent has a mental illness [and s]he's a danger to herself and others." The trial court ordered Respondent "be committed for a[n additional] period not to exceed 30 days."

¶ 23 On 16 April 2021, the trial court entered its written Order, in which it found by clear, cogent, and convincing evidence that the following facts supported Respondent's involuntary commitment:

> (1) Respondent continues to suffer from paranoid ideation;
>
> (2) No clear insight to why she was admitted;
>
> (3) Continues to display paranoid behavior;
>
> (4) Not medication compliant;
>
> (5) Refuses treatment;
>
> (6) Ongoing risky behavior;
>
> (7) Unclear [with] cognitive issues/behavior;
>
> (8) Treatment plan in place for stabilization; [and]
>
> (9) Mixed insight into medical condition

¶ 24 The Order also identified the last commitment examiner's report performed by Dr. Tuck on 10 April 2021; however, the trial court did not check the box expressly

incorporating the report as findings found by clear, cogent, and convincing evidence.

¶ 25 Respondent gave written notice of appeal. Respondent's notice of appeal does not include a date stamp; nonetheless, the State concedes in its brief Respondent filed the notice on 23 April 2021.

II. Jurisdiction

¶ 26 This Court has jurisdiction to address Respondent's appeal from an involuntary commitment order pursuant to N.C. Gen. Stat. § 7A-27(b)(2) (2021) and N.C. Gen. Stat. § 122C-272 (2021).

¶ 27 At the outset, we note Texas, Respondent's state of domicile, and North Carolina are both party states to the Interstate Compact on Mental Health (the "Act"). N.C. Gen. Stat. § 122C-361 (2021); Tex. Health & Safety Code Ann. § 612.001 (West 2021). Article III of the Act provides, in pertinent part, "[w]henever a person physically present in any party state shall be in need of institutionalization by reason of mental illness or mental deficiency, [s]he shall be eligible for care and treatment in an institution in that state irrespective of h[er] residence, settlement or citizenship qualifications." N.C. Gen. Stat. § 122C-361; Tex. Health & Safety Code Ann. § 612.001. Thus, Respondent was eligible to receive care and treatment in North Carolina institutions by being "physically present" in the state. *See* N.C. Gen. Stat. § 122C-361; Tex. Health & Safety Code Ann. § 612.001.

¶ 28 Additionally, we note the case is not moot on the ground Respondent's period

of commitment has expired. It is well-established "[t]he possibility that [a] respondent's commitment . . . might likewise form the basis for a future commitment, along with other obvious collateral legal consequences," preserves a respondent's right to appeal from a commitment order despite the expiration of the commitment period. *In re Hatley*, 291 N.C. 693, 695, 231 S.E.2d 633, 635 (1977). Therefore, we turn to the merits of Respondent's appeal.

III. Issues

¶ 29 The issues before this Court are whether: (1) the trial court erred by making the ultimate finding Respondent is dangerous to herself or others; and (2) the trial judge violated Respondent's right to an impartial tribunal by calling the State's witness to the stand to testify and by questioning the witness where the State was not present at the commitment hearing.

IV. Analysis

A. Right to an Impartial Tribunal

¶ 30 Respondent asserts the trial court failed to act impartially by introducing the State's evidence and deciding the case based on the evidence the trial court elicited after "the State failed to appear to prosecute" the matter at the hearing. Respondent maintains this error requires automatic reversal of the Order. She acknowledges this issue has been previously decided by this Court and is currently pending on appeal with the North Carolina Supreme Court. Respondent notes she "raises this argument

primarily in the interest of preservation." The State argues Respondent did not preserve the issue for appellate review because "Respondent did not raise a *specific* constitutional issue at the trial hearing." (Emphasis added). Even if the issue was properly preserved, the State contends there was no error committed by the trial court at the hearing. We conclude Respondent preserved the constitutional issue for our review, but we find no error in light of our binding case precedent and the absence of a ruling by our Supreme Court to the contrary.

¶ 31 As a preliminary matter, we address the State's contention Respondent failed to properly preserve her constitutional argument. "In order to preserve an issue for appellate review, a party must have presented to the trial court a timely request, objection, or motion, stating the specific grounds for the ruling the party desired the court to make if the specific grounds are not apparent from the context." N.C. R. App. P. 10(a)(1); *see State v. Ashe*, 314 N.C. 28, 39, 331 S.E.2d 652, 659 (1985) ("As a general rule, [a party's] failure to object to alleged errors by the trial court operates to preclude raising the error on appeal.").

¶ 32 We considered a nearly identical preservation issue in *In re C.G.*, 278 N.C. App. 416, 2021-NCCOA-344, ¶ 20. There, counsel for Respondent "objected to the proceedings because there was no representative for the State present," but did not indicate the objection was based on a constitutional violation. *Id.* ¶ 4. We held "it [was] apparent from the context [the r]espondent objected on due process grounds as

counsel objected to the nature of the proceedings where there was no counsel for the State present and where the trial court was the only entity to elicit evidence on direct examination." *Id.* ¶ 20.

¶ 33 Here, unlike the respondent in *In re C.G.*, Respondent's counsel expressly stated an objection on constitutional grounds. *See id.* Additionally, she specified it was based on the State's failure to participate in the proceeding. Similar to the factual scenario in *In re C.G.*, it is "apparent from the context" that Respondent was moving to dismiss based on due process grounds where a representative of the State was not present at the hearing, and the trial court noted the issue was on appeal with the Supreme Court. *See id.*; *see also* N.C. R. App. P. 10(a)(1). Thus, the State's preservation argument is without merit.

¶ 34 "The due process right to an impartial tribunal raises questions of constitutional law that we review *de novo*." *In re C.G.*, 278 N.C. App. 416, 2021-NCCOA-344, ¶ 20 (emphasis added). "Under a *de novo* review, the court considers the matter anew and freely substitutes its own judgment for that of the lower tribunal." *Craig v. New Hanover Cnty. Bd. of Educ.*, 363 N.C. 334, 337, 678 S.E.2d 351, 354 (2009) (citations and quotation marks omitted).

¶ 35 This Court has previously held that a respondent's constitutional rights are not violated where the petitioner in a commitment proceeding does not appear for the hearing, and the trial court calls the State's witness to the stand, questions the

witness, and elicits evidence. *See In re Perkins*, 60 N.C. App. 592, 594, 299 S.E.2d 675, 677 (1983); *In re C.G.*, 278 N.C. App. 416, 2021-NCCOA-344, ¶ 25.

¶ 36 In *In re Perkins*, we reasoned:

> We are aware of no *per se* constitutional right to opposing counsel. Nothing in the record indicates language or conduct by the court which conceivably could be construed as advocacy in relation to petitioner or as adversative in relation to respondent. Respondent thus fails to show that he has been adversely affected by the involuntary commitment statutes as applied, and he therefore has no standing to challenge their constitutionality.

In re Perkins, 60 N.C. App. at 594, 299 S.E.2d at 677.

¶ 37 Similarly, in *In re C.G.*, we affirmed a commitment order where the respondent argued his due process rights were violated where "the State was not represented by counsel and the trial court elicited evidence in favor of committing [the r]espondent." *In re C.G.*, 278 N.C. App. 416, 2021-NCCOA-344, ¶ 20. We explained the trial court did not "evince language or conduct . . . that could be construed as advocacy" for either party. *Id.* ¶ 24. Additionally, it "did not ask questions meant to prejudice either party or impeach any witness." *Id.* ¶ 25.

¶ 38 In this case, the trial court first asked the State's witness, Dr. Fryml, to spell her name for the record, and then state what she wanted the trial court to know about the matter. The trial court asked Dr. Fryml to slow down during her testimony and explained it had to take notes. At the close of Dr. Fryml's testimony, the trial court

asked whether Respondent "is a danger to herself" and whether she "is a danger to others." Finally, the trial court asked Dr. Fryml how long she was requesting Respondent to remain at the Durham VAMC.

¶ 39 As in *In re C.G.* and *In re Perkins*, the trial court's questions and conduct did not demonstrate it was acting as an advocate for either Petitioner or Respondent. *See id.* ¶ 24; *In re Perkins*, 60 N.C. App. at 594, 299 S.E.2d at 677. Furthermore, the trial court's questions to the State's witness did not appear to "prejudice either party or impeach any witness." *See In re C.G.*, 278 N.C. App. 416, 2021-NCCOA-344, ¶ 25.

¶ 40 "Where a panel of the Court of Appeals has decided the same issues, albeit in a different case, a subsequent panel of the same court is bound by that precedent, unless it has been overturned by a higher court." *In re Civil Penalty*, 324 N.C. 373, 384, 379 S.E.2d 30, 37 (1989). Because this Court has already decided this issue in multiple cases and our Supreme Court has not overturned our decisions, we are bound by this precedent. *See id.* at 384, 379 S.E.2d at 37; *see, e.g.*, *In re Perkins*, 60 N.C. App. at 594, 299 S.E.2d at 677; *In re C.G.*, 278 N.C. App. 416, 2021-NCCOA-344, ¶ 25. Accordingly, we reject Respondent's arguments the trial court violated her right to an impartial tribunal.

B. Finding of Ongoing Risky Behavior

¶ 41 Respondent contends "[t]he trial court's finding of fact that '[o]ngoing risky behavior' supports [her] involuntary commitment, is not supported by competent

evidence." Respondent further contends there is "no evidence that [she] engaged in 'ongoing risky behavior' during treatment." For the reasons explained below, we agree with Respondent that competent evidence does not support the finding of "ongoing risky behavior."

¶ 42 In entering a commitment order, the trial court must make two ultimate findings: (1) the respondent is mentally ill, and (2) the respondent is dangerous to herself or others. *In re Doty*, 38 N.C. App. 233, 234, 247 S.E.2d 628, 639 (1978) (citations omitted); *see also* N.C. Gen. Stat. § 122C-268(j) (2021) ("To support an inpatient commitment order, the court shall find by clear, cogent, and convincing evidence that the respondent is mentally ill and dangerous to self, as defined in [N.C. Gen. Stat. §] 122C-3(11)a, or dangerous to others, as defined in [N.C. Gen. Stat. §] 122C-3(11)b. The court shall record the facts that support its findings.").

¶ 43 We review a commitment order to "determine whether there was *any* competent evidence to support the 'facts' recorded in the commitment order and whether the trial court's ultimate findings of mental illness and dangerous to self or others were supported by the 'facts' recorded in the order." *In re Collins*, 49 N.C. App. 243, 246, 271 S.E.2d 72, 74 (1980) (citations omitted). When findings are supported by competent evidence, they are "conclusive on appeal even though the evidence might support a finding to the contrary." *In re McCabe*, 157 N.C. App. 673, 679, 580 S.E.2d 69, 73 (2003) (citation omitted). Additionally, "[i]f a respondent does not

challenge a finding of fact, . . . it is presumed to be supported by competent evidence and [is] binding on appeal." *In re Moore*, 234 N.C. App. 37, 43, 758 S.E.2d 33, 37 (citation and quotation marks omitted), *disc. rev. denied*, 367 N.C. 527, 762 S.E.2d 202 (2014).

¶ 44 "It is for the trier of fact to determine whether evidence offered in a particular case is clear, cogent, and convincing." *In re Underwood*, 38 N.C. App. 344, 347, 247 S.E.2d 778, 781 (1978) (citations omitted). Thus, this Court need "not consider whether the evidence of [the] respondent's mental illness and dangerousness was clear, cogent and convincing." *In re Collins*, 49 N.C. App. at 246, 271 S.E.2d at 74.

¶ 45 Here, the trial court found as fact Respondent's "[o]ngoing risky behavior" supported her involuntary commitment. The language of this finding was taken verbatim from Dr. Fryml's testimony. Nevertheless, Dr. Fryml did not testify Respondent *participated* in "risky behavior" after she was committed; rather, Dr. Fryml testified Respondent's lack of insight and resistance to treatment "*raise[d] significant concern* for ongoing risky behavior such as she displayed prior to [her] admission . . . ." (Emphasis added). Based on the limited details included in this finding, we cannot conclude it referred to "significant concerns" regarding Respondent's "ongoing risky behavior"; therefore, we hold there is no "competent evidence to support the 'fact[ ]' recorded in the commitment order" concerning Respondent's "[o]ngoing risky behavior." *See In re Collins*, 49 N.C. App. at 246, 271

S.E.2d at 74.

C. Dangerous to Self

¶ 46 Respondent does not contest the trial court's ultimate finding that she "has a mental illness," but challenges the ultimate finding she "is dangerous to self" by arguing the trial court made no findings to demonstrate Respondent "would be unable to 'exercise self-control, judgment, and discretion in the conduct of h[er] daily responsibilities and social relations, or to satisfy h[er] need for nourishment, personal or medical care, shelter or self-protection and safety.'" She further argues the trial court made no findings "address[ing] a present or future risk of self-harm."

¶ 47 N.C. Gen. Stat. § 122C-3 provides, in pertinent part, an individual is considered "dangerous to self," if within the relevant past, the individual has acted in such a way as to demonstrate:

> I. The individual would be unable, without care, supervision, and the continued assistance of others not otherwise available, to exercise self-control, judgment, and discretion in the conduct of the individual's daily responsibilities and social relations, or to satisfy the individual's daily responsibilities and social relations, or to satisfy the individual's need for nourishment, personal or medical care, shelter, or self-protection and safety[; and]
>
> II. There is a reasonable probability of the individual's suffering serious physical debilitation with the near future unless adequate treatment is given pursuant to this Chapter. A

> showing of behavior that is grossly irrational, of actions that the individual is unable to control, of behavior that is grossly inappropriate to the situation, or of other evidence of severely impaired insight and judgment shall create a prima facie inference that the individual is unable to care for himself or herself.

N.C. Gen. Stat. § 122C-3(11)(a)(I)–(II) (2021). Our Court has interpreted this statute as requiring both prongs be met. *In re Whatley*, 224 N.C. App. 267, 272, 736 S.E.2d 527, 530 (2012). "Although the trial court need not say the magic words 'reasonable probability of future harm[' to satisfy the second prong,] it must draw a nexus between past conduct and future danger." *In re J.P.S.*, 264 N.C. App. 58, 63, 823 S.E.2d 917, 921 (2019) (citation omitted).

¶ 48 Respondent challenges only the finding of "ongoing risky behavior"; therefore, the remaining findings are "presumed to be supported by competent evidence and [are] binding on appeal." *See In re Moore*, 234 N.C. App. at 43, 758 S.E.2d at 37. The remaining relevant findings include Respondent:

> [ ] continues to suffer from paranoid ideation[;]
>
> [has n]o clear insight to why she was admitted[;]
>
> [c]ontinues to display paranoid behavior[;]
>
> is n]ot medication compliant[;]
>
> [r]efuses treatment[;]
>
> [is u]nclear [with] cognitive issues/behavior[; and]

> . . . .
>
> has m]ixed insight into [her] medical condition.

The trial court did not check the box to incorporate the last commitment examiner's report, and the report was not admitted into evidence during the hearing. Thus, we conclude the report was not incorporated into the Order, so we need not consider the findings set out in the report. *See In re A.S.*, 280 N.C. App. 149, 2021-NCCOA-585, ¶ 24 (refusing to address the respondent's remaining arguments regarding the trial court's reference to the final examination report where the trial court did not incorporate the report as finding in its commitment order).

¶ 49 Respondent cites to *In re Whatley* to argue the trial court erred in relying on Respondent's past behavior as the basis of her involuntary commitment and in failing to make findings of fact to "establish[ ] a 'reasonable probability that [Respondent's] conduct will be repeated[,]' as required by [N.C. Gen. Stat.] § 122C-3(11)(b)."

¶ 50 In *In re Whatley*, the trial court made the following pertinent findings:

> Respondent was exhibiting psychotic behavior that endangered her and her newborn child. She is bipolar and was experiencing a manic stage. She was initially noncompliant in taking her medications but has been compliant over the past 7 days. Respondent continues to exhibit disorganized thinking that causes her not to be able to properly care for herself. She continues to need medication monitoring. Respondent has been previously involuntarily committed.

224 N.C. App. at 271, 736 S.E.2d at 530.

¶ 51 In concluding the second prong of N.C. Gen. Stat. § 122C-3(11)(a) was not satisfied to support the ultimate finding the respondent was dangerous to self, the *Whatley* Court reasoned:

> In short, none of the court's findings demonstrate that there was "a reasonable probability of [the r]espondent suffering serious physical debilitation within the near future" absent her commitment. Each of the trial court's findings pertain to either [the r]espondent's history of mental illness or her behavior prior to and leading up to the commitment hearing, but they do not indicate that these circumstances rendered [the r]espondent a danger to herself in the future. For instance, the court's findings concerning [the r]espondent's psychotic behavior, history of bipolar disorder, and "manic stage" reflect only the court's ultimate finding of mental illness, which [the r]espondent does not contest. Similarly, the findings that [the r]espondent "remained paranoid," "exhibit[ed] disorganized thinking," and demonstrated "very poor insight [and] judgment" describe [the r]espondent's condition at the time of the hearing, but do not in themselves indicate that [the r]respondent presented a threat of "serious physical debilitation" to herself within the near future. The trial court also found that [the r]espondent needed medication monitoring and that she did not plan to follow up as an outpatient, but, again, there is no finding that connects these concerns with the court's ultimate finding of "dangerous to self" as defined in N.C. Gen. Stat. § 122C-3(11)(a)(1). Simply put, the trial court's findings reflect [the r]espondent's mental illness, but they do not indicate [the r]espondent's illness or any of her aforementioned symptoms will persist and endanger her within the near future.

Id. at 273, 736 S.E.2d at 531.

¶ 52 The State argues this case is distinguishable from *In re Whatley* because Dr. Fryml's testimony showed Respondent "continued to display paranoid behaviors and resisted medication." Further, Dr. Fryml testified that without treatment and medication, Respondent could cause "significant harm" to herself or others. We reject this argument because the trial court was required to make findings of fact, supported by competent evidence, which in turn support its ultimate finding that Respondent was dangerous to self. *See* N.C. Gen. Stat. § 122C-268(j); *see also In re Collins*, 49 N.C. App. at 246, 271 S.E.2d at 74.

¶ 53 We conclude the trial court failed to make sufficient findings of fact to support its conclusion Respondent was dangerous to herself. Similar to the findings we analyzed in *In re Whatley*, the trial court's findings that Respondent "[c]ontinues to suffer from paranoid ideation," has "[n]o clear insight as to why she was admitted," "[c]ontinues to display paranoid behavior," is "unclear [with] cognitive issues/behavior," and has "[m]ixed insight into [her] medical condition," tend to, at best, describe symptoms of Respondent's mental illness and relate to "Respondent's condition at the time of the hearing." *See id.* at 273, 736 S.E.2d at 531. These findings do not demonstrate a "reasonable probability of [Respondent] suffering serious physical debilitation within the near future." *See* N.C. Gen. Stat. § 122C-3(11)(a)(11); *see also In re Whatley*, 224 N.C. App. at 273, 736 S.E.2d at 531. Additionally, the findings Respondent was not compliant with her doctor's recommended medication,

refused to be treated, and had a treatment plan for stabilization, fail to "draw a nexus" between Respondent's previous vehicle incident or other "past conduct," and any "future danger" she presents to herself. *See In re J.P.S.*, 264 N.C. App. at 63, 823 S.E.2d at 921. Therefore, we hold the trial court's findings are insufficient to support its ultimate finding Respondent was "dangerous to self." *See In re Collins*, 49 N.C. App. at 246, 271 S.E.2d at 74; *see also* N.C. Gen. Stat. § 122C-3(11)(a).

D. Dangerous to Others

¶ 54 In her next argument, Respondent contends the trial court made insufficient findings to support its conclusion she is dangerous to others. We agree.

¶ 55 A respondent is considered "dangerous to others" if within the relevant past, the individual

> has inflicted or attempted to inflict or threatened to inflict serious bodily harm on another, or has acted in such a way as to create a substantial risk of serious bodily harm to another, or has engaged in extreme destruction of property; and that there is a reasonable probability that this conduct will be repeated. Previous episodes of dangerousness to others, when applicable, may be considered when determining reasonable probability of future dangerous conduct. Clear, cogent, and convincing evidence that an individual has committed a homicide in the relevant past is prima facie evidence of dangerousness to others.

N.C. Gen. Stat. § 122C-3(11)(b) (2021).

¶ 56 Here, the trial court made no findings of fact indicating that Respondent inflicted, attempted to inflict, or threatened to inflict serious bodily harm on another

or that she created a substantial risk of serious bodily harm to others. *See* N.C. Gen. Stat. § 122C-3(11)(b). Thus, the trial court's ultimate finding Respondent was dangerous to others is not supported by evidentiary findings, and the Order cannot be upheld. *See In re Collins*, 49 N.C. App. at 246, 271 S.E.2d at 74; *In re Whatley*, 224 N.C. App. at 274, 736 S.E.2d at 531–32.

E. Appropriate Remedy

¶ 57 Respondent contends the Order "must be reversed" because the trial court's findings of fact do not support its conclusions of law. The State argues the trial court's evidentiary findings support its ultimate finding that Respondent was dangerous to herself and others. Nevertheless, the State maintains if this Court finds an ultimate fact is not supported by the evidence, the proper remedy is to remand the matter to the trial court for entry of additional evidentiary findings as opposed to solely reversing the Order.

¶ 58 Our Court has consistently remanded cases involving commitment orders where the record supports a finding the respondent was a danger to self or others, and the trial court's commitment order lacked the required findings. *See In re Caver*, 40 N.C. App. 264, 266, 252 S.E.2d 284, 286 (1979); *In re J.P.S.*, 264 N.C. App. at 59, 823 S.E.2d at 919; *In re Whatley*, 224 N.C. App. at 274, 736 S.E.2d at 532.

¶ 59 In the instant case, the record contains evidence that would allow a reasonable trier of fact to find Respondent was a danger to herself or others. Dr. Fryml's

testimony provided evidence to show Respondent's symptoms would continue into the "near future" and could cause Respondent to "suffer[ ] serious physical debilitation." *See* N.C. Gen. Stat. § 122C-3(11)(a)(II); *see also In re Whatley*, 224 N.C. App. at 273, 736 S.E.2d at 531.

¶ 60 Dr. Fryml testified Respondent's paranoid ideation was the cause for her "impulsive trip across the country," in which she caused property damage and presented harm to herself and others. Further, two of Respondent's family members reported to the Durham VAMC that Respondent had "a decline in function" and "fail[ed] to take care of herself medically . . . since 2014." Following the vehicle incident, Respondent refused to take the recommended medication to treat her paranoia. Dr. Frmyl voiced her concern that Respondent's paranoid behaviors would continue without treatment and medication and had the potential to "create significant harm" for Respondent and those around her. Thus, the evidence tends to show Respondent is dangerous to herself or others. *See* N.C. Gen. Stat. § 122C-3(11)(a).

¶ 61 Accordingly, we vacate the Order and remand the matter to the trial court to allow for entry of appropriate findings of fact that support this ultimate finding. *See In re J.P.S.*, 264 N.C. App. at 59, 823 S.E.2d at 919.

V. Conclusion

¶ 62 The trial court's findings of fact were insufficient to warrant Respondent's

involuntary commitment. The trial court failed to make findings that a reasonable probability of some future harm existed to Respondent or others, absent Respondent's commitment. The trial court did not violate Respondent's due process rights to an impartial tribunal. Accordingly, we vacate the Order and remand the matter to the trial court to allow for entry of additional findings of fact to support its ultimate findings, without the need to take additional evidence or hold additional hearings.

VACATED AND REMANDED.

Judges DILLON and ZACHARY concur.

Report per Rule 30(e).