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IN THE COURT OF APPEALS OF NORTH CAROLINA

2022-NCCOA-505

No. COA21-710

Filed 19 July 2022

Mecklenburg County, No. 21 SPC 4141

IN THE MATTER OF: T.S.

Appeal by Respondent from order entered 28 May 2021 by Judge Faith Fickling-Alvarez in Mecklenburg County District Court. Heard in the Court of Appeals 24 May 2022.

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

Appellate Defender Glenn Gerding, by Assistant Appellate Defender Sterling P. Rozear, for Respondent-Appellant.

JACKSON, Judge.

¶ 1 Respondent T.S.[1] appeals from an Involuntary Commitment Order entered in Mecklenburg County District Court declaring her mentally ill, dangerous to herself and others, and ordering her to be committed to an inpatient facility. On appeal, Respondent argues the trial court's evidentiary findings of fact were insufficient to

[1] Initials are used to protect Respondent's right to confidentiality pursuant to N.C. Gen. Stat. § 122C-52 (2021).

support the ultimate finding that she was a danger to herself or others, or alternatively that the trial court erroneously relied on hearsay evidence to find she was a danger 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," and that she received ineffective assistance of counsel because her trial counsel did not object to the judge's role in the proceedings. After careful review, we reject Respondent's arguments and affirm the trial court's involuntary commitment order.

I. Background

¶ 2 The Record reflects the following: On 17 May 2021, Dr. Omar Rana signed an affidavit and petition for involuntary commitment on the basis that Respondent had a mental illness and was dangerous to herself and others. The petition was filed on 18 May 2021 and included the following observations: Respondent was "threatening to kill [and] kick a baby out of a doctor's stomach[,] paranoid staff [was] sexually assaulting her[,] paranoid doctors ha[d] bad intentions towards [her,] verbally aggressive, requiring chemical restraints[,] delusional she shot her parents, refusing meds[,] refusing assessment[, and] danger to self [and] others."

¶ 3 On 16 May 2021, at 11:30 a.m., Dr. Rana completed a First Examination for Involuntary Commitment at Atrium Behavioral Health Charlotte. The report included the same findings as the petition for involuntary commitment. Dr. Rana

diagnosed Respondent with "schizoaffective [disorder]–bipolar type," and he recommended inpatient commitment for 14 days followed by outpatient commitment for 90 days.

¶ 4 On 17 May 2021, a Mecklenburg County magistrate signed a custody order, finding reasonable grounds from the petition to believe the facts alleged were true and that Respondent probably had a mental illness and was dangerous to herself or others.

¶ 5 That same day, Dr. David Litchford at Atrium Behavioral Health Charlotte examined Respondent's suitability for involuntary commitment. Dr. Litchford opined that Respondent met the criteria for inpatient commitment and that she was dangerous to herself and others. Dr. Litchford's diagnosis was schizoaffective disorder, and he recommended 30 days inpatient commitment. His report included the following findings:

> Patient has schizophrenia, multiple prior admissions. Admitted due to medication noncompliance, brought to the [Emergency Department] by [Charlotte Mecklenburg Police Department] stating she killed her parents, cursing, yelling, threatened to harm ED staff. During this admission she was [being] uncooperative, refusing to engage in treatment, yelling/insulting other patients, defensive, frequent verbal altercations with others. Denies needing to be in the hospital. Largely refuses to talk to me, refuses to come into the interview room. Hyperverbal, frustrated.

The magistrate's order was received by the Charlotte Mecklenburg Police

Department, and Respondent was served and taken into custody on 18 May 2021 at 1:12 a.m. Respondent was temporarily detained at Atrium Health Randolph because a bed in an inpatient mental health facility was not immediately available. Respondent was served with a notice of a hearing for involuntary commitment on 26 May 2021. Respondent was admitted to Behavioral Health Charlotte at some point prior to the commitment hearing.

¶ 6 Pursuant to N.C. Gen. Stat § 122C-268, Respondent's case was heard on 28 May 2021. Respondent was represented by counsel, but neither the State nor the inpatient facility were represented by counsel. Dr. Rana and Respondent were the only two witnesses. After the witnesses were sworn, the court began the proceeding by asking Dr. Rana if 30 days inpatient was his current recommendation. Dr. Rana confirmed that it was, and the court asked him to provide the basis for his recommendation.

¶ 7 Dr. Rana began his testimony by referring to a psychological evaluation made by the physician who admitted Respondent to the hospital, and trial counsel objected to "any hearsay evidence being accepted." The court sustained this objection but allowed Dr. Rana's testimony to be heard for the limited purpose of providing the basis for his expert opinion.

¶ 8 Dr. Rana then testified that, according to the initial report, Charlotte Police escorted Respondent to the Emergency Department at Atrium Behavioral Health in

Charlotte. The police had been called because Respondent stated she killed her parents. According to an officer, Respondent claimed she shot them because they were mistreating her kids. When the police informed her that her parents were alive, she responded, "I know. I should have killed them."

¶ 9 Dr. Rana also stated that this report, which he did not prepare, described that Respondent was screaming, cussing, and threatening to kick a baby out of a doctor's stomach when she arrived at the Emergency Department. While there, she "required chemical restraints due to agitation," "refused to cooperate with [an] interview," and her "drug screen was positive for cannabis use."

¶ 10 Dr. Rana further testified that this was Respondent's fourth hospitalization in the last six months for mood instability and psychosis, and that during the most recent hospitalization, Respondent "refused to speak with him." Additionally, she refused to take a prescribed mood stabilizer. According to Dr. Rana, "non-compliance with medicines has been an issue, and that's also what's led to three hospitalizations due to a lack of insight." Dr. Rana then described that Respondent experienced "a paranoid delusion that I'm trying to torture her, and this is called . . . revenge therapy." He added that Respondent "thinks I'm doing illegal things and violating HIPAA. That's all illogical."

¶ 11 Next, Dr. Rana described past observations of Respondent "with mood instability with multiple symptoms of mania including pressured speech, flight of

ideas, racing thoughts, increased energy, decreased need for sleep, grandiosity." He further described "elaborate delusional systems," including that Respondent "thought her brother stole her eggs and was selling them for money," believed she worked for ten different companies, that "she threatened to kill her family," and "at one point she didn't think her family was really her family." Further, he stated Respondent has had at least three documented "run-ins" with police.

¶ 12 At the end of his testimony, Dr. Rana summarized the basis for his recommendation. In addition to "refusing medications currently and refusing [to participate in] any conversation with [him]," Dr. Rana stated:

> [T]here's legal consequences for her psychosis and instability. There's potential danger to others considering the death threats. Inability to care for one's self due to medication non-compliance. There's certainly social dysfunction with screaming and cussing at others, and paranoia is fueling that. She refuses to even help us– let us help her get Medicaid so she'll have easier access to the mental health system or just overall health, medical health too. She does not believe she has a mental illness.

¶ 13 The trial judge then asked Respondent's counsel if he had any questions for Dr. Rana. In response, trial counsel asked to hear from his client to explain her position. Respondent began by stating, "I have PTSD which is not a mental illness that I need to be inpatient anywhere." She claimed to have a doctor who prescribed cannabis to treat the PTSD. **(Tr. at 9:2-5.)** She further denied ever making any threats towards her family, stating "there are some details that are being terribly

misconstrued."

¶ 14 Regarding her behavior towards Dr. Rana, Respondent stated, "I am actually scared to speak to him like because I do feel like past treatment has been a form of torture . . . you're not supposed to be kept in these temporary facilities like to a point where it's a detriment to everything you had worked for to establish stability outside of here." Respondent went on to describe that she supported her family during the pandemic, and that she was taking courses as a senior at UNC-Charlotte. She expressed frustration that her commitment was impeding with her ability to complete her assignments.

¶ 15 When asked about the alleged threat to kick a baby out of a doctor's stomach, Respondent claimed she "never said anything like that." She stated "I do recall like actually– no. I'm trying to figure out when did this occur, like you're saying *(inaudible)*, but all of my doctors are male, so that's not a rational– that's not a rational thought, and I can't make those threats against somebody who doesn't exist." She further stated, "I don't understand why [Dr. Rana] would lie in open court like about that . . . I don't have a reason to make those type of threats."

¶ 16 Respondent then described that her family picture was not perfect, but that they supported her and appreciated her efforts to continue her education. She claimed she was "puzzled" about "why [she was] here today or why [Dr. Rana] would try to request that [she] stay here longer knowing that [she was] on the right track"

with completing her education and working full-time. She also claimed there was back and forth between her doctors regarding her medication, which explained why she stopped taking her mood stabilizer. Respondent concluded her testimony by stating:

> I don't feel that it has been in my best interest like to communicate with [Dr. Rana.] It seems like everything is taken the wrong way. And for him to sit here and say these things about me, and then he hasn't even formally evaluated me like as well. Like it's hard to– it's hard for me . . . not to feel that it's not personal on some level now.

Having no further questions, trial counsel then requested the matter be dismissed for "lack of showing clear, cogent, and convincing evidence that [Respondent was] a danger to herself or others." He added, "I would just say there's a good bit of hearsay evidence in there, and my client would like to be discharged."

¶ 17 Following this request, the trial court found:

> [A]t this time, the non-compliance with meds as it relates to the inability to care for herself as well as the . . . possible future harm to self or others without further treatment exists, that there's a reasonable probability that Respondent will cause that future harm to self or others. Based on the non-compliance with meds, the behavior while in– directed towards Dr. Rana, her beliefs around her– or disbeliefs around her mental illness for which she has a history of being treated for, that all of those I would find have been show[n] by clear and convincing evidence.

¶ 18 On 28 May 2021, the trial court entered a written order for involuntary commitment for thirty days. The facts supporting this commitment were as follows:

> Dr. Rana provided testimony. Resp.'s diagnos[is] is schizoaffective disorder. Resp. has been hospitalized 3 times prior to this current hospitalization. This current one was because CMPD brought her in after she told them she killed her parents & when she was told they were alive, she said "I know, I should have killed them." @ the ED, Resp. was agitated & aggressive, threatening staff including to kick a baby outside of a doctor's stomach. Resp. believed staff @ ED were harming her. On the unit, Resp. is paranoid of Dr. Rana, believing that he is torturing her & and she refuses to speak to him & says he is committing "revenge therapy" on her. Resp. does not believe her diagnos[is] despite her prior treatment for it & says she has PTSD & and that she uses marijuana via prescription for it which she says is legal. Resp. has been yelling & cursing at staff on the unit & refusing to take her medicine. Resp. has refused help with Medicaid enrollment which she needs to maintain medication & therapeutic management. There is a reasonable probability that Resp. will cause future harm to self or others without further treatment. Dr. Rana also recommended 90 days of outpatient @ Daymark after inpatient however he did not know if Daymark had availability or whether they had agreed to accept Resp. as a client.

¶ 19 Respondent gave timely written notice of appeal.

II. Analysis

¶ 20 The issues on appeal are (1) whether the trial court erred by finding facts based on evidence admitted for a limited purpose; (2) whether the trial court's written findings of fact were supported by competent evidence and sufficient to support Respondent's involuntary commitment; (3) whether the trial judge violated Respondent's right to an impartial tribunal; and (4) whether Respondent received

ineffective assistance of counsel.

¶ 21 As a preliminary matter, we note Respondent's appeal is not moot despite the expiration of her commitment period, because "[t]he possibility that Respondent's commitment might 'form the basis for future commitment, along with obvious collateral legal consequences,' preserves [her] right to appellate review[.]" *In re W.R.D.*, 248 N.C. App. 512, 515, 790 S.E.2d 344, 347 (2016) (quoting *In re Hatley*, 291 N.C. 693, 695, 231 S.E.2d 633, 635 (1977)).

A. Standard of Review

¶ 22 To justify an involuntary commitment order, the trial court must "find by clear, cogent, and convincing evidence that the respondent is mentally ill and dangerous to self, . . . or dangerous to others[.]" N.C. Gen. Stat. § 122C-268(j) (2021). "The trial court must also record the facts that support its 'ultimate findings,' i.e., conclusions of law, that the respondent is mentally ill and dangerous to [her]self or others." *In re Whatley*, 224 N.C. App. 267, 271, 736 S.E.2d 527, 530 (2012). Recording these facts is mandatory. *Id.* (citing *In re Booker*, 193 N.C. App. 433, 436, 667 S.E.2d 302, 304 (2008)).

¶ 23 On appeal, we review "an involuntary commitment order to determine whether the ultimate findings of fact are supported by the trial court's underlying findings of fact and whether those underlying findings, in turn, are supported by competent evidence." *In re C.G.*, 278 N.C. App. 416, 430, 2021-NCCOA-344, ¶ 32 (internal

quotation and citation omitted). Findings of fact unchallenged by Respondent are presumed to be supported by competent evidence and are binding on appeal. *Id.*

B. Hearsay Evidence

¶ 24 We first address Respondent's argument that the trial court erred by making findings of fact based on hearsay evidence, which was admitted for only a limited purpose. We disagree with the State that this issue was not preserved on appeal, since trial counsel appropriately objected to hearsay evidence from Dr. Rana's testimony being admitted. Further, we agree with Respondent that while the court appropriately allowed Dr. Rana's testimony to be heard for the limited purpose of providing the basis for his expert opinion, the trial court erred by incorporating inadmissible hearsay from the testimony into its written findings. But notwithstanding the disputed findings, the remaining written findings, as well as the trial court's oral findings, support the ultimate finding that Respondent was a danger to herself. Therefore, we hold that despite the trial court's reference to incompetent evidence in the written order, there is still ample competent evidence to support the trial court's order.

¶ 25 While there are some circumstances in which a discrepancy between an orally rendered judgment and a written order necessitates remand, *see In re O.D.S.*, 247 N.C. App. 711, 721, 786 S.E.2d 410, 417 (2016) (explaining that "when it is apparent from the transcript that a clerical error has been committed on the written order,

remand is appropriate so that the trial court can correct the clerical error"), this Court is unlikely to invalidate judgments that generally conform with each other, *id.* at 718, 786 S.E.2d at 415; *see also In re J.C.*, 236 N.C. App. 558, 562-63, 783 S.E.2d 202, 205 (2014) (vacating a written order's visitation provisions that "directly contradict[ed]" the order rendered from the bench and remanding for entry of an amended order that "accurately reflect[ed] the trial court's disposition").

¶ 26 Further, for involuntary commitment orders, reliance on incompetent evidence is harmless if the remaining findings, absent the errors, are nonetheless sufficient to support the order and themselves supported by competent evidence. *See C.G.*, 278 N.C. App. at 428, 2021-NCCOA-344, ¶ 29 (affirming an inpatient commitment order despite the trial court erroneously incorporating a non-testifying doctor's report as findings of fact). *See also In re Benton*, 26 N.C. App. 294, 296, 215 S.E.2d 792, 793 (1975) (reversing an involuntary commitment order where the trial court erroneously incorporated a non-testifying doctor's affidavit because "no evidence, except for the [improperly admitted] affidavit, was adduced to show that the respondent was immensely dangerous to herself or others").

¶ 27 Here, the written order generally conformed with the orally rendered judgment; the effect of each judgment was the same. Additionally, while a clerical error would be grounds for remand to correct such error, there does not appear to be a clerical error in this case since the written order is in accord with the orally

announced judgment and with the record.

¶ 28 The hearsay in question involves statements in Dr. Rana's testimony from the initial evaluation, which he did not prepare, that Respondent claimed to have shot her parents, that she stated, "I know. I should have killed them" after being told they were alive, and that she threatened to "kick a baby out of a doctor's belly." Trial counsel objected to any hearsay being admitted, and Respondent acknowledges that the trial court properly admitted the evidence for the limited purpose of providing a basis for Dr. Rana's testimony. *See* N.C. Gen Stat. § 8C-1, Rule 703. The trial court did not refer to these statements when announcing its oral findings, and Respondent raised no issue with the oral findings. But the trial court's written order included the following:

> This current [hospitalization] was because CMPD brought her in after she told them she killed her parents, and when she was told they were alive she said "I know, I should have killed them." At the [emergency department], Respondent was agitated and aggressive, threatening staff including to kick a baby outside of a doctor's stomach.

¶ 29 We agree with Respondent that including these statements in the written order effectively incorporated the inadmissible hearsay, and therefore the trial court improperly found as fact that Respondent made the statements. However, we disagree that this requires reversal.

¶ 30 Even if the hearsay in the written record is disregarded, there still is more

than sufficient evidence remaining to support the trial court's ultimate finding that Respondent was a danger to herself. Therefore, the trial court's reference to incompetent evidence in the written order was harmless. Further, since the trial court reached this ultimate finding at trial without referencing the incompetent evidence, we reject Respondent's argument that the judge improperly relied on the statements for an inadmissible purpose.

C. Danger to Self

¶ 31 "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, . . . or dangerous to others." N.C. Gen. Stat. § 122C-268(j) (2021). "Findings of mental illness and dangerousness to self are ultimate findings of fact." *In re B.S.*, 270 N.C. App. 414, 417, 840 S.E.2d 308, 310 (2020) (citation omitted). We review "an involuntary commitment order to determine whether the ultimate findings of fact are supported by the trial court's underlying findings of fact and whether those underlying findings, in turn, are supported by competent evidence." *Id.* (citations omitted).

¶ 32 Respondent does not challenge the ultimate finding that she suffers from a mental illness. Rather, Respondent argues that the evidence did not support the ultimate finding that she was a danger to herself or others. We disagree and hold that the trial court recorded sufficient underlying findings of fact to support the

ultimate finding that Respondent was a danger to herself, and that these underlying findings are supported by competent evidence from the record.

¶ 33 Under our General Statutes, an individual is dangerous to self if, within the relevant past, the individual has acted in such a way as to show all of the following:

> 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 need for nourishment, personal or medical care, shelter, or self-protection and safety.
>
> II. There is a reasonable probability of the individual's suffering serious physical debilitation within 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)(1)(I)-(II). Under this statutory scheme, an ultimate finding that an individual is dangerous to self must include "findings of a reasonable probability of some future harm absent treatment." *In re C.G.*, 278 N.C. App. at 429-30, 2021-NCCOA-344, ¶ 31. An involuntary commitment order cannot be based solely on findings of a patient's history of mental illness or behavior prior to the hearing. *Id.*

¶ 34 Evidence of mental illness, such as delusional behavior, agitation, or

medication non-compliance, may not be sufficient on its own to support an ultimate finding of dangerousness to self, *see id.,* unless the court "draw[s] a nexus" between this past behavior and the likelihood that it will result in "physical debilitation" in the near future. *In re J.P.S.*, 264 N.C. App 58, 63, 823 S.E.2d 917, 921 (2019). For example, in *In re J.P.S.*, the trial court relied on the following evidence to support the ultimate finding that the respondent was dangerous to himself:

> (1) Respondent maintained grandiose thoughts that he had a military staff providing him with intelligence information; (2) Respondent ingested a large number of pills in an apparent suicide attempt; (3) Respondent had "a high dose of Adderall [and] Valium meds"; (4) Respondent presented with an agitated manner and required forced medication and restraints; (5) Respondent refused medication for mania and psychosis; and (6) Respondent suffered from post-traumatic stress disorder as a result of prior military service.

Id. at 63, 823 S.E.2d at 921. However, this Court held that this evidence merely demonstrated that the respondent had a mental illness, and the trial court failed to make any finding that there was "a reasonable probability of Respondent suffering serious physical debilitation within the near future" and failed to "draw a nexus between past conduct and future danger." *Id.*

¶ 35 Yet in some cases, delusions, medication non-compliance, and failure to cooperate with treatment can rise to the level of dangerousness to self where a probability of future harm is shown. *See In re B.S.*, 270 N.C. App. at 419-20, 840

S.E.2d at 312 (holding that the respondent who was grossly delusional, unable to exercise self-control, and unwilling to cooperate with treatment providers was dangerous to himself and that that there was a reasonable probability that he would suffer imminent harm absent commitment); *In re Zollicoffer*, 165 N.C. App 462, 469, 598 S.E.2d 696, 700 (2004) (holding that the "'failure of a person to properly care for his/her medical needs, diet, grooming and general affairs meets the test of dangerousness to self,'" and that the respondent was dangerous to himself because he had a history of chronic paranoid schizophrenia, admitted to medicinal noncompliance, did not cooperate with his treatment team, and required rehabilitation to educate him about his illness).

¶ 36 Respondent argues that her case is similar to those where the underlying findings supported only an ultimate finding of mental illness, but not one of future danger. *See In re Whatley*, 224 N.C. App. at 273, 73 S.E.2d at 531 ("[T]he trial court's findings reflect Respondent's mental illness, but they do not indicate that Respondent's illness or any of her aforementioned symptoms will persist and endanger her within the near future."); *In re W.R.D.*, 248 N.C. App. at 516, 790 S.E.2d at 348 (concluding that Respondent's refusal to acknowledge his mental illness and refusal to take his prescription medication did not demonstrate "'a reasonable probability of his suffering serious physical debilitation within the near future'").

¶ 37 Respondent correctly points out that there are many cases where this Court

has reversed or remanded involuntary commitment orders because the trial court failed to find a reasonable probability of future harm. When making this finding, "'[a]lthough the trial court need not say the magic words 'reasonable probability of future harm,' it must draw a nexus between past conduct and future danger.'" *In re C.G.*, 278 N.C. App. at 430, 2021-NCCOA-344,¶ 31 (quoting *J.P.S.*, 264 N.C. App at 63, 823 S.E.2d at 921).

¶ 38 However, here, the trial court *did in fact* find that "[t]here is a reasonable probability that Respondent will cause future harm to self." Consequently, this is not a case where the trial court neglected to find a reasonable probability of future harm, nor did it fail to record the facts upon which this conclusion was based. Therefore, the only questions on appeal are whether the underlying factual findings support this ultimate finding, and whether there is competent evidence on the record to support those findings.

¶ 39 The following facts from the trial court's written order—none of which involves disputed hearsay—support the trial court's ultimate finding of a reasonable probability of future harm: (1) Respondent is diagnosed with schizoaffective disorder; (2) Respondent had been refusing to take her medication; (3) Respondent believed staff at the Emergency Department were harming her; (4) Respondent is paranoid of Dr. Rana and refused to speak to him, believing that he was torturing her and committing "revenge therapy"; (5) Respondent does not believe her diagnosis, despite

her history of prior treatment, and instead claims to have PTSD for which she uses prescribed marijuana; and (6) Respondent has refused help with Medicaid enrollment, which she needs to maintain medication and therapeutic management.

¶ 40 These findings are supported by competent evidence in the form of Dr. Rana's testimony and reports from the record. Both Dr. Rana and Dr. Litchford, who executed the 24-hour facility examination for involuntary commitment, diagnosed Respondent with schizoaffective disorder, but Respondent still does not believe she suffers from this mental illness. Dr. Rana testified, and Respondent confirmed, that she refused her mood stabilizer. Dr. Rana confirmed that medication non-compliance had been an issue in the past, which led to "run-ins" with the police and hospitalizations. Dr. Rana described that Respondent's delusions prohibited her from cooperating with her treatment team, and Respondent explained that she believed "past treatment was a form of torture." Further, Respondent's drug screen reflected cannabis use, and Respondent admitted to using cannabis, which she claimed was prescribed, to "treat" her PTSD.

¶ 41 Therefore, we hold that the trial court's factual and ultimate findings support the involuntary commitment order. First, the trial court's supported underlying findings—including the continuous pattern of medication non-compliance, the failure to acknowledge her diagnosis, the refusal to access medical care, and the choice to self-medicate with marijuana—support the ultimate finding that Respondent is

unable to exercise self-control or satisfy the need for personal and medical care pursuant to N.C. Gen Stat. § 122C-3(11)(1)(I).

¶ 42 The trial court's findings are further supported by evidence of Respondent's complex delusional system, including the belief that Dr. Rana was torturing her, and the record provides evidence that Respondent believed her treatment team was harming her. Additionally, during her testimony, Respondent accused Dr. Rana of lying about her behavior in open court. This evidence reflected conduct that was "grossly irrational," "grossly inappropriate to the situation," and demonstrated "impaired insight and judgment," creating a "*prima facie* inference that [she] is unable to care for herself." N.C. Gen. Stat. § 122C-3(11)(1)(II).

¶ 43 To put it simply, competent evidence that Respondent does not acknowledge her diagnosis and that her delusions cause her to self-medicate and refuse appropriate medical treatment supports the trial court's finding that "Resp[ondent] will cause future harm to self . . . without further treatment." We therefore conclude that the trial court properly recognized a probability of future harm and did not err by finding that Respondent was a danger to herself.

D. Danger to Others

¶ 44 Respondent argues, excluding the inadmissible hearsay evidence regarding the threats to harm her parents or doctors, that the trial court made no written findings to support the conclusion that she was a danger to others. However, to support an

involuntary commitment order, a trial court must determine the respondent is dangerous to self *or* others but need not find both. N.C. Gen. Stat. § 122C-268(j). Here, "[b]ecause we conclude the trial court properly found Respondent was a danger to [herself], we do not reach the issue of whether [she] was a danger to others." *In re C.G.*, 278 N.C. App. at 430, 2021-NCCOA 344, ¶ 33.

E. Impartial Tribunal

¶ 45 Respondent next argues the trial judge violated Respondent's due process right to an impartial tribunal by assuming the role of prosecutor, eliciting evidence, and presenting the State's case. However, trial counsel did not object to the absence of opposing counsel, and therefore failed to preserve this issue for appellate review. N.C. R. App. P. 10. Respondent argues that declining to review the issue on its merits would be manifest injustice, and requests that we invoke Rule 2 to suspend the preservation requirements of Rule 10. N.C. R. App. P. 2. But even assuming *arguendo* that this issue had been properly preserved, we would nonetheless reject this argument, as described below.

¶ 46 We review impartial tribunal issues *de novo*. *In re C.G.*, 278 N.C. App. at 424, 2021-NCCOA-344, ¶ 20 ("The due process right to an impartial tribunal raises questions of constitutional law that we review de novo."). In recent split decisions, this Court held that an individual's due process right to an impartial tribunal is not violated by the State's failure to send representation to an involuntary commitment

hearing. *In re C.G.*, 278 N.C. App. at 425-26, 2021-NCCOA-344, ¶ 22; *see also In re Q.J.*, 278 N.C. App. 452, 459-60, 2021-NCCOA-346, ¶ 22; *In re A.S.*, 280 N.C. App. 149, 155, 2021-NCCOA-585, ¶ 15. Respondent primarily raised this issue for preservation purposes as it currently awaits review by the North Carolina Supreme Court. But until otherwise overturned by our Supreme Court, we are bound by our own precedent. *See In re Civil Penalty,* 324 N.C. 373, 384, 379 S.E.2d 30, 27 (1989) ("Where a panel of the Court of Appeals has decided the same issue, 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.").

¶ 47 There is no constitutional right to opposing counsel. *In re C.G.*, 278 N.C. App. at 425-26, 2021-NCCOA-344, ¶ 22 (citing *In Re Perkins*, 60 N.C. App. 592, 594, 299 S.E.2d 675, 677 (1983)). Moreover, a judge may "'preside at an involuntary commitment hearing and question witnesses at the same proceeding'" without violating a respondent's due process rights. *Id.* (quoting *In re Jackson*, 60 N.C. App. 581, 584, 299 S.E.2d 677, 679 (1983)). As active administrators of justice, it may be "entirely proper, and sometimes necessary" for judges to question witnesses, but they must "avoid prejudice to the parties and may not impeach a witness's credibility." *Id.* at 426, 2021-NCCOA-344, ¶ 23 (internal marks and citations omitted).

¶ 48 For example, in *In re C.G.*, this Court determined the trial court did not violate a respondent's right to an impartial tribunal by questioning witnesses and eliciting

evidence. *In re C.G.*, 278 N.C. App. at 427, 2021-NCCOA-344, ¶ 25. In that case, the judge asked the testifying doctor, "you or someone in your organization has indicated that [the respondent] has a mental illness and is a danger to himself and others, and I will leave you to tell me whether or not you can give me enough evidence on this to go forward." *Id.* at 427, 2021-NCCOA-344, ¶ 24. Over the course of the hearing, the judge asked the respondent the following questions:

> "Your ACT team, tell me about what they do to help you;" "So right before they took you to the hospital, what was going on?"; "so you don't know why they took you there?"; whether Respondent experienced hallucinations and saw angels; whether Respondent felt better when he was in the hospital or in the community; and "tell me about Respondent's bad habits."

Id. at 427, 2021-NCCOA-344, ¶ 25 (cleaned up). This Court held "the trial court only elicited evidence that would otherwise be overlooked . . . . The trial court did not ask questions meant to prejudice either party or to impeach any witness." *Id.*

¶ 49 Here, like in *In re C.G.*, nothing in the transcript suggests that the trial judge's questioning prejudiced either party. On direct examination, the trial judge asked Dr. Rana the following questions:

> Q: Is that your current recommendation?
>
> . . .
>
> Q: And has she been – has Daymark agreed to accept her?
>
> . . .

> Q: Oh, he documented that they did agree?
>
> . . .
>
> Q: Dr. Rana, if you would provide the basis for your recommendations?

¶ 50 Other than sustaining counsel's hearsay objection, asking if counsel had any questions for Dr. Rana, and opening and closing the proceeding, these four questions comprised the trial judge's entire role in the hearing. In this case, as in *In re C.G.*, *In re Q.J.*, and *In re A.S.*, "the Record does not evince language or conduct by the trial court that could be construed as advocacy for or against either petitioner or [the r]espondent." *In re C.G.*, 278 N.C. App. at 427, 2021-NCCOA-344, ¶ 24; *In re Q.J.*, 278 N.C. App. at 460, 2021-NCCOA-346, ¶ 23; *In re A.S.*, 280 N.C. App. at 157, 2021-NCCOA-585, ¶ 18. Accordingly, the trial court did not violate Respondent's right to an impartial tribunal.

F. Ineffective Assistance of Counsel

¶ 51 Respondent argues that trial counsel's failure to object to the "trial judge's assuming the role of prosecutor" constituted ineffective assistance of counsel. "However, no prior case has determined that [] *Strickland v. Washington*, 466 U.S. 668, 104 S. Ct. 2052, 80 L. Ed. 2d 674 (1984) (finding a criminal ineffective assistance of counsel claim to require deficient performance and prejudice), . . . [is] applicable to an involuntary commitment hearing." *In re J.C.D.*, 265 N.C. App. 441, 452-53, 828 S.E.2d 186, 194 (2019). Even assuming that an ineffective assistance of counsel claim

is available to a respondent denied their liberty in an involuntary commitment case, it is difficult to imagine that failing to object to the trial judge's role in the proceedings could constitute deficient performance here where, as discussed *supra*, the trial judge's language and conduct could not be construed as advocacy for either party.[2] Moreover, even if we held that the failure to object was an unreasonable error, we are not persuaded by Respondent's contention that the result would have been different because "[h]ad the trial judge not acted as prosecutor, no witnesses would have been called[,] . . . no evidence would have been received[,]" and the "petition would have been required to be dismissed." Therefore, Respondent has not adequately demonstrated any deficient performance or prejudicial error of her legal counsel pursuant to *Strickland*.

III. Conclusion

¶ 52 For the foregoing reasons, the trial court's involuntary commitment order is affirmed.

AFFIRMED.

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[2] For similar reasons, we would reject Respondent's argument that the failure to object was "per se" ineffective assistance of counsel under *United States v. Cronic*, where the trial court's role did not represent an adversarial breakdown justifying a presumption of ineffectiveness. *See United States v. Cronic*, 466 U.S. 648, 657, 659-61 (1984) (holding that if there is a "breakdown of the adversarial process[,]" such as when counsel "entirely fails to subject the prosecution's case to meaningful adversarial testing," when a defendant is denied the presence of counsel at a key stage of the prosecution, or when any reasonably competent lawyer would be unable to provide effective assistance under the circumstances, it may be appropriate to presume prejudice without assessing actual conduct at trial).

Judges INMAN and ZACHARY concur.

Report per Rule 30(e).