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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA 23-985

Filed 21 May 2024

Johnston County, No. 23 SPC 1331-500

IN THE MATTER OF: D.B.R.

Appeal by Respondent from Order entered 16 March 2023 by Judge Resson O. Faircloth in Johnston County District Court. Heard in the Court of Appeals 2 April 2024.

*Attorney General Joshua H. Stein, by Assistant Attorney General Elizabeth G. Arnette, for the State.*

*Appellate Defender Glenn Gerding, by Assistant Appellate Defender James R. Grant, for Respondent-Appellant.*

HAMPSON, Judge.

**Factual and Procedural Background**

Respondent appeals from an Involuntary Commitment Order imposing outpatient commitment. The Record below tends to reflect the following:

On 12 March 2023, Respondent's daughter filed an Affidavit and Petition seeking Respondent's involuntary commitment. In her affidavit she stated Respondent was hallucinating, using drugs and alcohol, threatening his family, displaying paranoid thoughts, and had not slept in five days. She also stated that he

was unwilling to seek mental health treatment. Respondent was taken into custody and transported to a 24-hour facility upon a magistrate order that same day. There he was examined by Dr. Michelle Bakardjier, who made a diagnosis of “paranoia” and recommended a 7-day inpatient commitment.

Respondent’s involuntary commitment hearing pursuant to N.C. Gen. Stat. § 122C-268 was held on 16 March 2023. Respondent was represented by counsel and no attorney appeared for the State. The trial court examined the State’s sole witness, Dr. Hasan Baloch. Dr. Baloch testified that Respondent had begun acting paranoid and agitated at home, believing his wife was cheating on him and spending hours watching cameras that were placed on the property. He also testified that Respondent had struck his wife, resulting in injury, and had firearms hidden around the home. Upon admission to the facility, Respondent tested positive for amphetamines consistent with the use of methamphetamine. Respondent was prescribed antipsychotic medication and in Dr. Baloch’s opinion was safe to discharge home. However, he requested the court order 180 days of outpatient commitment to ensure he was taking his medication and did not become a danger to himself or others.

Respondent testified that he had not done hard drugs in years and theorized that he had smoked a marijuana joint that had been laced with methamphetamine. He stated that he had never threatened to kill himself or anyone else.

The trial court found orally that Respondent was “mentally ill, suffering from paranoid delusional ideas,” and that “if he does not maintain his medications, he can

be dangerous to self or others.” The trial court’s written Order found only “Paranoid, dillusional [sic] ideas” as the facts underlying the commitment, failed to specify any examiner’s report upon which it relied, and found that respondent did *not* meet the criteria for commitment. Despite concluding Respondent has a mental illness and is dangerous to self and others, a portion of the form ordered Respondent discharged and the matter dismissed. Despite this, the written Order—consistent with the orally rendered ruling—committed Respondent to 180 days of outpatient commitment. On 27 March 2023, Respondent filed written notice of appeal.

### **Issues**

The sole issue on appeal is whether the trial court made sufficient written findings of fact in its Order to support ordering Respondent’s outpatient commitment.

### **Analysis**

As an initial matter, we note that this appeal is not moot even though Respondent’s commitment period has ended. “The possibility that Respondent’s commitment might ‘form the basis for a future commitment, along with other obvious collateral legal consequences,’ preserves his right to appellate review despite the expiration of his commitment period.” *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)).

On appeal from a commitment order, “we must determine whether there is competent evidence to support the trial court’s factual findings and whether these

findings support the court's ultimate conclusion[.]” *In re Hayes*, 151 N.C. App. 27, 29-30, 564 S.E.2d 305, 307 (2002). “To support an outpatient commitment order, the court is required to find by clear, cogent, and convincing evidence that the respondent meets the criteria specified in G.S. 122C-263(d)(1).” N.C. Gen. Stat. § 122C-267(h) (2023). These criteria are that:

- a. The respondent has a mental illness.
- b. The respondent is capable of surviving safely in the community with available supervision from family, friends, or others.
- c. Based on the respondent's psychiatric history, the respondent is in need of treatment in order to prevent further disability or deterioration that would predictably result in dangerousness as defined by G.S. 122C-3(11).
- d. The respondent's current mental status or the nature of respondent's illness limits or negates the respondent's ability to make an informed decision to seek voluntarily or comply with recommended treatment.

N.C. Gen. Stat. § 122C-263(d)(1). These criteria are distinct from those required to order inpatient commitment, where the trial court must find that the respondent is mentally ill and is dangerous to himself or others. N.C. Gen. Stat. § 122C-268(j). The trial court must “record the facts which support its findings.” N.C. Gen. Stat. § 122C-267(h).

The trial court entered its Order using a pre-printed form, AOC-SP-203. The sole written finding of fact outside of form statements are the three words “Paranoid, dillusional [sic] ideas.” The remainder of the form is rife with errors betraying a lack

of care in its preparation: (1) a box is checked incorporating by reference “the commitment examiner’s report specified below,” but the field specifying the report is left blank; (2) a box is checked finding that Respondent “does not meet the criteria for commitment” despite commitment being ordered; (3) boxes are checked concluding Respondent is dangerous to himself and others, as required for an order of *inpatient* commitment, despite outpatient commitment requiring a finding that the patient “is capable of surviving safely in the community with available supervision;” (4) the box indicating the court has concluded the criteria for outpatient commitment under section 122C-263(d)(1) are satisfied is left *unchecked*; (5) a box is checked indicating “It is ordered that the respondent be discharged and this matter dismissed,” rather than the box indicating outpatient commitment, but the 180-day outpatient commitment is noted separately below that.

We examined a similar commitment order in *In re Ramirez*, 212 N.C. App. 235, 713 S.E.2d 251, 2011 N.C. App. LEXIS 980 (N.C. Ct. App. May 16, 2011) (unpublished). While *Ramirez* is unpublished and therefore does not control our decision in this case, N.C. R. App. P. 30(e), we find its reasoning persuasive. In both *Ramirez* and this case the trial court, using the same AOC-SP-203 form order, failed to check box number 6 to conclude that the respondent:

is capable of surviving safely in the community with available supervision from family, friends, or others; and based on respondent’s psychiatric history, the respondent is in need of treatment in order to prevent further disability or deterioration which would predictably result in

dangerousness to self or others; and, that the respondent's inability to make an informed decision to voluntarily seek and comply with recommended treatment is caused by: the respondent's current mental status [or] the nature of the respondent's mental illness.

This box summarizes the findings required by statute to order involuntary commitment. N.C. Gen. Stat. § 122C-263(d)(1). We rejected the State's argument that the failure to check the box was a clerical error because our review of the transcript revealed that, although the trial court made oral findings of fact, it did not make the required conclusions at the commitment hearing. *Ramirez*, 2011 N.C. App. LEXIS 980, slip op. at 4. Likewise, the trial court in this case found orally only that "Respondent is mentally ill, suffering from paranoid delusional ideas. It's ordered—if he does not maintain his medications, he can be dangerous to self or others, so it's ordered he be committed outpatient for up to 180 days to the Carter Clinic." There is no indication from either the written Order or the transcript that the trial court made the findings required under statute to order outpatient commitment.

Even if the trial court had found these facts, simply checking the box finding the four statutory criteria of Section 122C-263(d)(1) have been met would not fulfill the trial court's responsibility. These criteria are commonly known as "ultimate facts:" the "final facts" required to establish a cause of action or support the trial court's conclusions of law. *See In re Moore*, 234 N.C. App. 37, 43, 758 S.E.2d 33, 37. Ultimate facts are supported by evidentiary facts, *id.*, and, in the case of involuntary commitment, these evidentiary facts must be recorded in the trial court's written

order: “unlike many other orders from the trial court, these ‘ultimate findings,’ standing alone, are insufficient to support the order; the involuntary commitment statute expressly requires the trial court also to ‘record the facts upon which its ultimate findings are based.’” *W.R.D.*, 248 N.C. App. at 515, 790 S.E.2d at 347 (2016) (quoting *In re Collins*, 49 N.C. App. 243, 246, 271 S.E.2d 72, 74 (1980)); N.C. Gen.Stat. § 122C–268(j). “Merely placing an ‘X’ in the boxes on the commitment order form does not comply with the statute.” *In re Jacobs*, 38 N.C. App. 573, 575, 248 S.E.2d 448, 449 (1978).<sup>1</sup>

The extent of the trial court’s written evidentiary findings are the three words “Paranoid, dillusional (sic) ideas.” There are no findings whatsoever to support the required ultimate findings that Respondent is capable of surviving safely within the community, that he is in need of treatment to prevent deterioration that would result in dangerousness, or that he is unable to make an informed decision to voluntarily seek and comply with recommended treatment. N.C. Gen. Stat. § 122C-263(d)(1).

The State argues that the trial court’s incorporation of the commitment examiner’s report fulfills the trial court’s obligation to include written evidentiary

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<sup>1</sup> We recognize that a panel of this Court interpreted this statement as dictum. *In re Crouse*, 65 N.C. App. 696, 698, 309 S.E.2d 568, 569 (1983). However, *Crouse* has not been referenced in subsequent opinions and we have consistently recognized that district courts must, as explicitly required by the statute, record evidentiary findings in addition to checking boxes indicating ultimate findings. See, e.g., *In re J.C.D.*, 265 N.C. App. 441, 447-48, 828 S.E.2d 186, 191 (2019); *In re Guffey*, 54 N.C. App. 462, 463-64, 283 S.E.2d 534, 535 (1981). “[T]hese ultimate findings, standing alone, are insufficient to support the trial court’s order, since the trial court must also record the facts upon which its ultimate findings are based.” *In re C.G.*, 383 N.C. 224, 240-41, 881 S.E.2d 534, 546 (2022) (citations and quotation marks omitted).

findings. A trial court may incorporate a physician's report "as at least a portion of the findings of fact in the order." *In re J.C.D.*, 265 N.C. App. 441, 448, 828 S.E.2d 186, 191 (2019). Where there is "directly conflicting evidence on key issues," the trial court's incorporation of a report does not allow us to determine if the trial court resolved the conflicts in evidence. *Id.*

The findings in this report are limited: it includes the examiner's opinion that Respondent has a mental illness and, at the time Respondent's initial commitment, was dangerous to himself and others, a recitation that Respondent's daughter reported that he threatened himself and others and was having hallucinations, and an "Impression/Diagnosis" of paranoia. While these facts support the required ultimate finding that Respondent suffers from a mental illness, they do not support a finding of the other statutory criteria, in particular that Respondent's illness "limits or negates [his] ability to make an informed decision to seek voluntarily or comply with the recommended treatment." N.C. Gen. Stat. § 122C-263(d)(1)(d). We cannot on appellate review assume that Respondent's past behavior fulfilled the criteria because Dr. Baloch at the hearing testified that Respondent's symptoms were consistent with methamphetamine use and that, after treatment he was "much better" and "back to his usual self." The trial court was required to make evidentiary findings supporting its conclusions and failed to do so.

We also note that the evidence before the trial court does not appear to be sufficient to support such findings even if the trial court had made them. The



evidence, in its entirety, consists of the commitment examiner's report noted above and the testimony of Respondent and Dr. Baloch. Dr. Baloch appears to have treated Respondent during his 7-day inpatient commitment, though no foundation was laid as to his knowledge of Respondent or the expert nature of his testimony. The bulk of his testimony narrates Respondent's behavior that led to his inpatient commitment. Beyond that, he states "We feel like he'd be a danger to himself or others if he didn't maintain his treatment on an outpatient basis, and that's why we're recommending the outpatient commitment." But his testimony does not provide evidence that supports this recommendation or the required findings for outpatient commitment. Specifically, while the testimony supports a finding that Respondent is in need of treatment to prevent him from becoming dangerous, there is no evidence that Respondent is likely to refuse to take his medications or otherwise fail to follow his recommended treatment plan: that his mental state or illness "limits or negates the respondent's ability to make an informed decision to seek voluntarily or comply with recommended treatment." N.C. Gen. Stat. § 122C-263(d)(1)(a).

As the trial court's findings of fact were insufficient to support its Order, we must determine the proper remedy. The State argues the proper remedy is remand to the trial court for further proceedings to make new findings of fact, while Respondent argues that we are required to reverse the Order. We have noted previously the apparent split in our judicial history as to how we have disposed of involuntary commitment cases in which the trial court made insufficient findings of

fact. *In re B.S.*, 286 N.C. App. 419, 426, 881 S.E.2d 721, 725-26 (2022).

In older cases, we tended to reverse the decision of the trial court without remanding the case. *See, e.g., In re Neatherly*, 28 N.C. App. 659, 661, 222 S.E.2d 486, 487 (1976); *In re Hogan*, 32 N.C. App. 429, 434, 22 S.E.2d 492, 495 (1977); *In re Koyi*, 34 N.C. App. 320, 321, 238 S.E.2d 153, 154 (1977); *but see In re Caver*, 30 N.C. App. 264, 266, 252 S.E.2d 284, 286 (1979) (vacating and remanding the case). Some more recent opinions, however, have remanded the case to the trial court for further findings. *See, e.g., In re Allison*, 216 N.C. App. 297, 300, 715 S.E.2d 912, 915 (2011) (reversed and remanded); *In re Whatley*, 224 N.C. App. 267, 274, 736 S.E.2d 527, 532 (2012) (reversed and remanded); *In re J.C.D.*, 265 N.C. App. 441, 453, 828 S.E.2d 186, 194 (2019) (vacated and remanded); *In re J.P.S.*, 264 N.C. App. 512, 516, 790 S.E.2d 344 (2016); *but see In re Ramirez*, 212 N.C. App. 235, 713 S.E.2d 251, 2011 N.C. App. LEXIS 980 (unpublished). We did not resolve this conflict in *B.S.* because the only issue we reached in that case was inadequate waiver of counsel, which requires remand. 286 N.C. App. at 426, 881 S.E.2d at 721.

Respondent argues that *In re Civil Penalty*, 324 N.C. 373, 384, 379 S.E.2d 30, 37 (1989), which holds that a panel of the Court of Appeals may not overrule the decision of a previous panel, requires that we follow the earlier line of cases. The State cites to our recent decisions in *Whatley* and *J.P.S.*, which remand for further findings. The State also cites a recent decision of our Supreme Court in *In re C.G.*, 383 N.C. 224, 881 S.E.2d 534 (2022).

In *C.G.*, the Supreme Court reversed a decision of the Court of Appeals, holding that the trial court's findings and record evidence were insufficient to support the involuntary commitment order. 383 N.C. at 250, 881 S.E.2d at 552. The Supreme Court remanded the case to the Court of Appeals with instructions to remand to the trial court for "further proceedings not inconsistent with this opinion." *Id.* However, the Court made a point of noting:

We take this action with the understanding that, as the Court of Appeals observed in *W.R.D.*, our decision "does not mean that [r]espondent is competent, or that he cannot properly be committed at some future hearing." 248 N.C. App. at 513, 790 S.E.2d 344. Instead, "[w]e simply hold that the trial court's findings and the evidence in the record are insufficient to satisfy the statutory criteria for involuntary commitment," *id.*, with a firm adherence to the relevant statutory requirements in these cases being essential given the "massive curtailment of liberty" and "stigmatizing consequences" that accompany involuntary commitment.

*Id.* at 249-50, 881 S.E.2d at 551-52.

Here, the trial court's findings and evidence in the Record are insufficient to support the outpatient commitment Order. Given the absence of any evidence supporting the trial court's Order, the significant defects in the Order, and the nature of Respondent being committed to 180 days of outpatient treatment, we conclude in this case the appropriate disposition is to reverse the trial court's Order, as remand on the existing record would be futile. In so doing, we observe our decision does not mean that Respondent is competent, or that he cannot properly be committed—including to outpatient treatment—at some future hearing upon proper allegations,

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proof, and on entry of a valid order. *Id.*

**Conclusion**

For the foregoing reasons, we reverse the trial court's 16 March 2023 Order committing Respondent to 180 days of outpatient treatment.

REVERSED.

Judges ZACHARY and THOMPSON concur.

Report per Rule 30(e).