IN THE

Indiana Supreme Court

Supreme Court Case No. 22S-MH-408

In the Matter of the Civil Commitment of B.N.,
Appellant

–v–

Health and Hospital Corporation d/b/a Sandra Eskenazi Mental Health Center,
Appellee

Argued: October 11, 2022 | Decided: December 16, 2022

Appeal from the Marion Superior Court
No. 49D08-2110-MH-35009
The Honorable Melanie Kendrick, Magistrate

On Petition to Transfer from the Indiana Court of Appeals
No. 21A-MH-2525

Opinion by Chief Justice Rush

Justices Massa, Slaughter, Goff, and Molter concur.

Rush, Chief Justice.

Responding to the COVID-19 pandemic, this Court issued an order in May 2020—later extended through 2022—that amended Indiana Administrative Rule 14 to expand trial courts' ability to conduct remote proceedings through audiovisual communication, often called "remote" or "virtual" hearings. Central to this case is the court's burden under Rule 14 to find good cause for proceeding remotely when a party objects. We conclude that good cause requires particularized and specific factual support. Here, the trial court's bare mention of "the COVID-19 pandemic" failed to meet that standard when it conducted a party's commitment hearing virtually over her timely objection. But because we ultimately conclude that the error was harmless, we affirm.

Facts and Procedural History

B.N. has suffered from schizophrenia for many years. On October 15, 2021, medical professionals sought an emergency detention, noting that her significant delusional thought processes resulted in her causing a car accident the previous day. B.N. was then admitted to Eskenazi for inpatient treatment. After evaluating B.N., who was unable "to differentiate reality from her paranoid delusions," her physician petitioned the court for a temporary or regular commitment.

B.N. was notified on October 21 that her commitment hearing would be held in person on October 25. Although the record does not reflect when or how B.N. was notified that her hearing would instead be held remotely, her counsel filed a motion objecting to the virtual hearing. The motion indicated B.N.'s desire to have an in-person hearing and cited this Court's emergency orders modifying Administrative Rule 14. Later that same day, the trial court simply stamped the motion "DENIED."

Three days later, at the beginning of the remote hearing, counsel renewed the objection, reiterating B.N.'s desire to appear in person. The court denied the request, stating, "we're proceeding remotely due to the COVID-19 pandemic," and directed Eskenazi to call its first witness. Eskenazi called B.N.'s attending psychiatrist and B.N.'s daughter, each of

whom testified about the severity of B.N.'s mental illness. They described her delusional thinking, indicated her refusal to take prescribed medication when not hospitalized, and provided examples of her alarming behavior—including reckless driving and throwing scalding water around her home to fend off imagined threats.

B.N.'s counsel cross-examined each witness, highlighting the psychiatrist's limited contact with B.N. and B.N.'s ability to take care of her basic needs while in the inpatient unit. Counsel also called B.N., who stated that she would continue to take her medication if permitted to return home. At the conclusion of the hearing, the trial court ordered a regular commitment, finding B.N. to be suffering from schizophrenia, gravely disabled, and in need of extended custody, care, and treatment.

B.N. appealed, arguing that the denial of her request for an in-person hearing violated Administrative Rule 14, as well as constitutional and statutory provisions. In a memorandum decision, our Court of Appeals affirmed, finding B.N.'s arguments were waived. *B.N. v. Health and Hosp. Corp.*, No. 21A-MH-2525, 2022 WL 1153358, at *1 (Ind. Ct. App. Apr. 19, 2022). B.N. then sought transfer, which we now grant, vacating the Court of Appeals' opinion. Ind. Appellate Rule 58(A).

Standard of Review

This case implicates two standards of review. First, we interpret de novo what constitutes good cause under Administrative Rule 14. *See C.S. v. State*, 131 N.E.3d 592, 595 (Ind. 2019). And second, we review a trial court's good-cause determination for an abuse of discretion. *See Campbell v. State*, 161 N.E.3d 371, 375–76 (Ind. Ct. App. 2020); *J.P. v. G.M.*, 14 N.E.3d 786, 789–90 (Ind. Ct. App. 2014).

Discussion and Decision

Indiana Administrative Rule 14 explains when and how trial courts may conduct remote proceedings using telephone or audiovisual telecommunication. On May 13, 2020, in recognition of the ongoing

statewide COVID-19 emergency, this Court issued an order modifying Rule 14 to afford trial courts "broader authority to conduct court business remotely." *In re Admin. Rule 17 Emergency Relief for Ind. Trial Cts. Relating to the 2019 Novel Coronavirus*, 144 N.E.3d 197, 197 (Ind. 2020). Specifically, the order—later extended through 2022—authorizes courts to use "audiovisual communication to conduct proceedings whenever possible to ensure all matters proceed expeditiously and fairly under the circumstances." *Id.*

This authority, however, is not absolute. On a party's objection "at the outset of the proceeding, on the record," the trial court "must make findings of good cause to conduct the remote proceeding." *Id.* at 198. Though modified Rule 14 will be replaced by Interim Rule 14 on January 1, 2023, the interim rule similarly requires "good cause shown" to conduct testimonial proceedings—such as commitment hearings—virtually. Interim Admin. Rule 14 for Remote Proc., 22S-MS-1 (Ind. Sept. 30, 2022).

Here, B.N. argues that the trial court failed to make the requisite findings of good cause to proceed remotely, entitling her to reversal of her commitment order and to an in-person hearing. Eskenazi counters that the trial court satisfied modified Rule 14 and that even if the court erred, any error was harmless.[1] We hold that the trial court abused its discretion by proceeding with the virtual hearing without articulating any particular and specific facts supporting its decision—referring solely to COVID-19 is not enough. But, on this record, we hold that the error was harmless.

[1] Eskenazi also contends—for the first time on transfer—that B.N. waived her Rule 14 challenge by failing to respond to the trial court's justification for proceeding remotely. But it is well settled that parties cannot raise an issue for the first time on transfer. *See, e.g., Reiswerg v. Statom*, 926 N.E.2d 26, 30 n.3 (Ind. 2010). Nevertheless, we disagree with Eskenazi, as B.N. requested an in-person hearing by written motion that cited modified Rule 14 in support, and she also complied with the rule by objecting "at the outset of the proceeding, on the record." *In re Admin. Rule 17*, 144 N.E.3d at 198. We agree, however, with Eskenazi that B.N. waived her constitutional and statutory claims, as those were not "[q]uestions within the issues and before the trial court." *Moryl v. Ransone*, 4 N.E.3d 1133, 1136 (Ind. 2014) (citations omitted).

I. The trial court did not make the requisite findings of good cause to conduct B.N.'s commitment hearing virtually.

B.N. argues that the trial court, by simply referring to the COVID-19 pandemic, failed to comply with modified Administrative Rule 14's requirement that "the court must make findings of good cause to conduct the remote proceeding" over a party's timely objection. *In re Admin. Rule 17*, 144 N.E.3d at 198. Eskenazi disagrees, asserting that referring to "the national health crisis was sufficient good cause." We agree with B.N.

Though this is our first opportunity to articulate what constitutes "findings of good cause" for purposes of modified Rule 14, the good-cause metric is utilized to assess the propriety of a trial court's determination in various contexts. And, consistently, good cause requires a "particular and specific demonstration of fact." *Ramirez v. State*, 186 N.E.3d 89, 95 (Ind. 2022) (quoting *Ledden v. Kuzma*, 858 N.E.2d 186, 192 (Ind. Ct. App. 2006)); *see also*, *e.g.*, *Campbell*, 161 N.E.3d at 377; *In re F.S.*, 53 N.E.3d 582, 597 (Ind. Ct. App. 2016); *Stuff v. Simmons*, 838 N.E.2d 1096, 1103–04 (Ind. Ct. App. 2005), *trans. denied*.

For example, to establish good cause to protect a high-level official from being deposed under Trial Rule 26(C), there must be "specific factual support" that the executive lacks personal knowledge of the matter, the information sought is obtainable through less-burdensome discovery methods, the deposition would be cumulative, or the benefit of deposing the official is outweighed by any specified hardship. *NCAA v. Finnerty*, 191 N.E.3d 211, 221–22 (Ind. 2022). A specific and particularized demonstration of fact is also required when a trial court finds good cause to issue a continuance under Trial Rule 53.5, *In re R.A.M.O.*, 190 N.E.3d 385, 389–92 (Ind. Ct. App. 2022), or when a court grants a party's belated motion for interlocutory appeal under Appellate Rule 14(B)(1)(a), *Buchanan ex rel. Buchanan v. Vowell*, 926 N.E.2d 515, 518–19 (Ind. Ct. App. 2010). Indeed, in *Buchanan*, it was the specific "confluence of events"—particular facts related to the movant's circumstances—that constituted good cause. 926 N.E.2d at 518–19.

We adopt the same good-cause standard for a trial court's decision to conduct a remote proceeding under modified Administrative Rule 14 as well as the forthcoming Interim Rule 14. Findings of good cause under the modified rule or a showing of good cause under the interim rule require particularized and specific factual support.

Applying that standard here, recall that the court decided to proceed remotely "due to the COVID-19 pandemic." But this generic reference does not amount to findings of good cause—especially when the pandemic was the impetus for modifying Rule 14. This is not to say that COVID-19-related concerns or constraints cannot satisfy the rule's requisite findings. Indeed, in *In re I.L.*, a trial court found good cause to hold a termination-of-parental-rights hearing remotely, citing several specific considerations: the pandemic was severe at that time, the courtroom would not allow for social distancing, and the litigants would still receive a full and fair hearing. 177 N.E.3d 864, 869 (Ind. Ct. App. 2021), *adopted in part and summarily aff'd in part by* 181 N.E.3d 974, 976 (Ind. 2022). By contrast, here, the only "finding" is the court's general reference to the pandemic. Simply put, this record is devoid of any COVID-19-related concerns or constraints specific to the moment, the region, the courtroom, the parties, the type of proceeding, or any other circumstances that justified conducting the commitment hearing remotely over B.N.'s timely objection.

We emphasize that trial courts retain significant discretion to conduct remote proceedings over objection when there is good cause to do so. But they must offer something more than a one-size-fits-all, boilerplate pronouncement; good cause requires something specific to the moment, the case, the court, the parties, the subject matter, or other relevant considerations. To be sure, remote proceedings are here to stay and may be more efficient in various circumstances. But in-person evidentiary hearings are vital in certain proceedings, such as involuntary civil commitment hearings, where a party's liberty interests are at stake. *See A.A. v. Eskenazi Health/Midtown CMHC*, 97 N.E.3d 606, 611 (Ind. 2018); *cf. Warren v. State*, 182 N.E.3d 925, 936 (Ind. Ct. App. 2022) (recognizing that a trial court can conduct a remote sentencing hearing under modified Rule

14 "*only* where a defendant waived his right to be physically present in the courtroom"). And thus, to proceed with a virtual hearing, good cause requires particularized and specific factual support.

Because the trial court did not satisfy this standard when it conducted B.N.'s commitment hearing remotely over her objection, the court abused its discretion. We now determine whether that error was harmless.

II. The trial court's error was harmless.

A trial court's error is harmless when "its probable impact, in light of all the evidence in the case, is sufficiently minor so as not to affect the substantial rights of the parties." Ind. App. R. 66(A). B.N. argues that the court's "failure to make any finding of good cause . . . warrants reversal." Eskenazi, however, contends the error was harmless, asserting that "[t]here is nothing in the record to indicate that there were prejudicial issues with the remote proceeding that would have been cured by an in-person one." We agree with Eskenazi.

Two recent decisions support our conclusion that the error here was harmless. In *A.A.*, 97 N.E.3d at 618, we held that the trial court's error was not harmless because it resulted in A.A.'s complete exclusion from his commitment hearing. Conversely, in *I.L.*, 181 N.E.3d at 975–76, we expressly adopted our Court of Appeals' finding that multiple, but quickly remedied, technological and logistical errors in a remote termination-of-parental-rights hearing did not deprive the mother of her "opportunity to be heard in a meaningful time and manner."

Here, unlike in *A.A.*, B.N. was present throughout her commitment hearing and actively participated by testifying and by conferring with counsel in a separate virtual room. And unlike in *I.L.*, B.N.'s virtual proceeding included only one minor, quickly resolved technical difficulty. Additionally, the record reveals that B.N.'s counsel skillfully objected to witness testimony and vigorously cross-examined each of Eskenazi's witnesses. And those witnesses provided ample evidence supporting the trial court's decision to impose a regular commitment. Nevertheless, B.N.'s counsel emphatically argued in closing that Eskenazi failed to meet

its burden of proof or, in the alternative, that only a temporary commitment was necessary. In sum, the probable impact of the court's error—in light of B.N.'s active participation during the virtual hearing, the lack of technological issues which may have adversely impacted her, and counsel's zealous advocacy—was sufficiently minor such that we conclude it did not affect B.N.'s substantial rights.

At the same time, we recognize that an involuntary civil commitment represents "a significant deprivation of liberty." *A.A.*, 97 N.E.3d at 611. And we also recognize that those facing civil commitment may be particularly sensitive to a virtual environment, where technological issues can arise that might acutely impact the individual. In-person commitment hearings should thus be the norm, not the exception. So, while we can certainly envision a scenario in which a trial court's decision to proceed remotely in a commitment hearing without making the requisite findings of good cause results in reversible error, it does not here.

Conclusion

The trial court abused its discretion by failing to provide particularized and specific factual support to conduct B.N.'s commitment hearing remotely over her timely objection. But because we ultimately find that the error was harmless, we affirm.

Massa, Slaughter, Goff, and Molter, JJ., concur.

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