NO. COA08-365

NORTH CAROLINA COURT OF APPEALS

Filed: 6 January 2009

IN THE MATTER OF:

PATRICIA GAIL SWAIN

Mecklenburg County
No. 07 SPC 3464

Appeal by respondent from order entered 17 August 2007 by Judge Reagan A. Miller in Mecklenburg County District Court. Heard in the Court of Appeals 23 September 2008.

Attorney General Roy Cooper, by Assistant Attorney General M. Elizabeth Guzman, for the State.

Appellate Defender Staples Hughes, by Assistant Appellate Defender Kristen L. Todd, for respondent-appellant.

BRYANT, Judge.

Patricia Gail Swain (respondent) appeals from an order entered 17 August 2007 involuntarily committing her to the care of mental health authorities for a period not to exceed 180 days. We reverse.

On 11 August 2007, April Bennett, respondent's daughter, petitioned for an involuntary commitment of respondent. Ms. Bennett alleged that respondent had been diagnosed with Borderline Personality Disorder and Schizophrenia, and that respondent abused alcohol and prescription drugs. Ms. Bennett also alleged

respondent had made recent threats of suicide, recently lost her job, and had access to firearms. Based upon the allegations, the magistrate issued a "Findings and Custody Order" for involuntary commitment and ordered law enforcement officers to take respondent into custody for an evaluation at the Charlotte Medical Center (CMC).

Dr. D.P. Morris examined respondent on 11 August and 12 August 2007. Dr. Morris reported that respondent was drinking four to five times per day, had multiple blackouts and was experiencing trembling as a result of alcohol withdrawal. During the second evaluation, Dr. Morris noted respondent indicated a desire to receive help, and Dr. Morris recommended commitment for a period up to 180 days.

A hearing was conducted on 17 August 2007 regarding respondent's commitment. During the hearing, the court announced Dr. Morris' recommendation that respondent receive 180 days of substance abuse treatment and asked respondent's counsel whether she objected to the recommendation. Respondent's counsel indicated respondent did not object to Dr. Morris' recommendation. The trial court entered an order concluding respondent was a substance abuser and ordering respondent be committed for a period not to exceed 180 days. Respondent appeals.

On appeal, respondent raises two issues: (I) Whether the trial court erred by involuntarily committing respondent without finding respondent was a danger to herself or others; and (II) Whether the

trial court erred by incorporating Dr. Morris' report into the order when respondent did not have an opportunity to cross-examine Dr. Morris.

At the outset, we note that respondent's appeal is not moot, although the 180-day commitment period has expired. An appeal is not moot "if collateral legal consequences of an adverse nature can reasonably be expected to result therefrom[.]" *In re Hatley*, 291 N.C. 693, 694, 231 S.E.2d 633, 634 (1977); *see also In re Collins*, 49 N.C. App. 243, 246, 271 S.E.2d 72, 74 (1980); *In re Mackie*, 36 N.C. App. 638, 639, 244 S.E.2d 450, 451 (1978). Because a prior involuntary commitment can be used to damage the credibility of a respondent in future trials, and records of a prior commitment may be used in subsequent civil commitment proceedings, negative collateral legal consequences can be expected. *Hatley*, 291 N.C. at 695, 231 S.E.2d at 634-35. Therefore, this appeal is properly before our Court.

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Respondent argues the trial court erred by entering an order of commitment because it failed to conclude that respondent was dangerous to herself or others. We agree.

On appeal from an order of commitment, "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). Pursuant to N.C. Gen. Stat. § 122C-287, a court may order a respondent to be involuntarily committed to, and

treated by, an area authority or physician. N.C. Gen. Stat. § 122C-287(1) (2007). To do so, the court must find by "clear, cogent, and convincing evidence that the respondent is a substance abuser *and* is dangerous to himself or others[.]" *Id.* (Emphasis supplied).

In this case, the trial court entered an order using a preprinted form and incorporated by reference the findings from Dr. Morris' psychological report. Although, Dr. Morris indicated in his report that respondent was dangerous to herself or others, the trial court did not check the box on the preprinted form to indicate that, based on the evidence before it, the trial court concluded respondent was a danger to herself or others. The trial court only checked the box indicating that respondent was a substance abuser.

The State argues the mere fact that the trial court incorporated a report that concluded respondent was a danger to herself or others was sufficient to meet the requirements of N.C. G.S. § 122C-287 that the trial court must not only find that respondent is a substance abuser but also find that respondent is a danger to herself or others. We disagree. The incorporated report may indicate there was evidence before the trial court that respondent was dangerous to herself or others, but without more, there is no clear indication that the trial court actually concluded that respondent was dangerous to herself or others.

The State also argues because respondent did not object to Dr. Morris' recommendation of substance abuse treatment for 180 days,

and the trial court found that respondent consented to treatment, it is "inconsequential" that the trial court did not conclude respondent was a danger to herself or others. However, the State has not presented any authority in support of its argument, and our research has not revealed any authority supporting the State's argument. Because the trial court did not conclude that respondent was a danger to herself or others, the trial court erred by entering an order for involuntary commitment. Therefore, the order of the trial court is reversed.

Because of our holding herein, we need not address respondent's remaining assignment of error.

Reversed.

Judges WYNN and ARROWOOD concur.

Report per Rule 30(e).

Judge ARROWOOD concurred in this opinion prior to 31 December 2008.