IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA 19-366

Filed: 5 November 2019

Mecklenburg County, No. 18 SPC 10013

IN THE MATTER OF:

N.E.P.

Appeal by respondent from order entered 16 November 2018 by Judge Lou Trosch in Mecklenburg County District Court. Heard in the Court of Appeals 16 October 2019.

Attorney General Joshua H. Stein, by Assistant Attorney General Jessica Macari, for the State.

Appellate Defender Glenn Gerding, by Assistant Appellate Defender, Heidi Reiner, for defendant-appellant.

YOUNG, Judge.

This appeal arises out of an involuntary commitment order. The respondent failed to preserve the issues on appeal, and this Court is unpersuaded by her request to review her arguments in our discretion. Accordingly, we dismiss.

I. Factual and Procedural History

On 24 October 2018, N.P.'s son filed a petition seeking involuntary commitment of N.P. because she was making threats to kill others, yelling, was paranoid that her house was bugged, and she thought that her son had been cloned. The son stated that N.P. calls him 40 times a day, and calls police so often that they were considering filing charges against N.P. On 25 October 2018, N.P. went to the hospital where the physician found her to be mentally ill and a danger to herself and others. She was then transferred to the 24-hour facility Carolinas HealthCare System Behavioral Health—Davidson ("Behavioral Health"). A second examination on 26 October 2018, approximately 28 hours later, found N.P. "delusional, paranoid, anxious, disorganized [and] refusing medication." N.P. was held at Behavioral Health for 21 days until her initial commitment hearing.

A hearing was noticed for 2 November 2018, and N.P. had counsel; however, the hearing was continued to 9 November 2018 to resolve a communication issue. On 9 November 2018, N.P.'s attorney and the judge signed a Motion and Order to Continue Commitment Hearing. The hearing was continued to 16 November 2018 because N.P. required a court-appointed interpreter. A hearing was finally held on 16 November 2018, and the court ordered 90 days of outpatient treatment. N.P. gave timely written notice of appeal.

II. Standard of Review

"Issues of statutory construction are questions of law, reviewed *de novo* on appeal." *McKoy v. McKoy*, 202 N.C. App. 509, 511, 689 S.E.2d 590, 592 (2010). "'Under a *de novo* review, the court considers the matter anew and freely substitutes its own judgment' for that of the lower tribunal." *State v. Williams*, 362 N.C. 628, 632-33, 669 S.E.2d 290, 294 (2008) (quoting *In re Greens of Pine Glen, Ltd. P'ship*, 356 N.C. 642, 647, 576 S.E.2d 316, 319 (2003)). Furthermore, failure to object at trial waives the right to appeal. *State v. McNeely*, 314 N.C. 451, 333 S.E.2d 738-39 (1985).

III. Continuance

Defendant contends that the commitment order must be vacated because the trial court continued the hearing for longer than five days, violating N.C. Gen. Stat. § 122C-268(a). Because this issue was not preserved, we dismiss this argument.

Our Supreme Court held that a right to appeal is preserved despite a failure to object when a trial court acts contrary to a statutory mandate. That mandate must be directed to the trial court either: (1) by requiring a specific act by the trial judge; or (2) by requiring specific courtroom proceedings that the trial judge has authority to direct." *In re E.D.*, 372 N.C. 111, 119, 827 S.E.2d 450, 455-56 (2019). However, *E.D.* did not cite to N.C. Gen. Stat. § 122C-268(a) as an example of an implicit statutory mandate. Assuming *arguendo* that N.C. Gen. Stat. § 122C-268(a) is a mandate as identified in *E.D.*, appellate review is still inappropriate because N.P. invited the error by consenting to the continuances. Invited error has been defined

as "a legal error that is not a cause for complaint because the error occurred through the fault of the party now complaining." *Boykin v. Wilson Med. Ctr.*, 201 N.C. App. 559, 563, 686 S.E.2d 913, 916 (2009).

N.P. was represented by counsel during the 2 November 2018 Order to Continue, and there is nothing in the record to indicate that her counsel objected to the continuance. Additionally, N.P.'s counsel signed the 9 November 2018 continuance, which is evidence of his agreement with the continuance. N.P. consented to the two continuances and cannot ask for appellate review. Because this is invited error, we lack the jurisdiction to hear this argument.

N.P. contends that the court should apply N.C. R. App. P. Rule 2 seeking "exceptional" review of her case. While Rule 2 grants appellate courts the authority to suspend the normal rules of appellate procedure and grant discretionary review of an unpreserved issue, it is an "extraordinary step" that "must be applied cautiously." *State v. Hart*, 361 N.C. 309, 315-317, 644 S.E.2d 201, 205-206 (2007). Rule 2 should only be used on rare occasions including: where appellate review is necessary to "prevent manifest injustice to a party," or where appellate review is necessary to "expedite a decision in the public interest." *Id.* at 315-316, 644 S.E.2d at 205. There is nothing exceptional about the facts of the case at issue. Therefore, applying Rule 2 would be inappropriate. N.P. is no longer required to attend inpatient or outpatient treatment and is under no orders of the court in this case. Therefore, N.P. cannot

demonstrate that there is a "manifest injustice" requiring this Court to invoke Rule 2.

IV. Second Exam

Defendant further contends that the commitment order must be vacated because the second exam was not performed within 24 hours of N.P.'s arrival at the facility, violating N.C. Gen. Stat. § 122C-266(a). For the same reasons as above, we dismiss this argument.

This analysis is similar to that above. N.P. failed to preserve the issue for appellate review and argues that Rule 2 should be invoked. However, because N.P. fails to demonstrate that she suffers from a manifest injustice or that expediting the process is in the public interest, we decline to exercise our authority under Rule 2.

DISMISSED.

Judges DIETZ and INMAN concur.

Report per Rule 30(e).