IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA22-738

Filed 15 August 2023

Durham County, No. 22SPC50027

IN THE MATTER OF: K.H.

Appeal by respondent-appellant from order entered 1 April 2022 by Judge Pat Evans in District Court, Durham County. Heard in the Court of Appeals 21 March 2023.

Attorney General Joshua H. Stein, by Assistant Attorney General Farrah R. Raja, for the State.

Appellate Defender Glenn Gerding, by Assistant Appellate Defender Candace Washington, for respondent-appellant.

STROUD, Chief Judge.

Respondent appeals from an order involuntarily committing her to a 24-hour inpatient mental health care facility for 45 days, contending the trial court made inadequate findings to commit her; the trial court violated her right to an impartial tribunal because the trial court presented the State's case; and that she received ineffective assistance of counsel due to her counsel's failure to object to the trial court's procedure. We affirm as to Respondent's constitutional arguments but reverse

and remand as to the trial court's findings.

I. Background

On 21 March 2022, Respondent's psychiatrist at Duke Raleigh Hospital ("DRH") completed an "Affidavit and Petition for Involuntary Commitment" ("Petition"), (capitalization altered), alleging Respondent "has a mental illness and is dangerous to self or others or has a mental illness and is in need of treatment in order to prevent further disability or deterioration that would predictably result in dangerousness." The Petition was filed 30 March 2022. The Petition further alleged:

> [Respondent] is a 63 year old F[emale] with schizoaffective disorder who was petitioned by outpatient therapist after going missing for nearly 2 months in the context of an untreated psychotic episodes [sic]. When found she was noted to be thin, dishev[e]led, carrying her own feces, irritable and very disorganized in her thinking and behavior. While here over the past week she continues [to] be verbally belligerent with staff, paranoid about her outpatient team not wanting to help her, remains preoccupied with delusions but is improving some with medications and time. She is not yet organized to consistently take care of herself and r[emains] pretty paranoid around her outpatient team which suggests she needs ongoing inpatient level psychiatri[c] care for further stabilization and safety.

Respondent was also taken into custody on 21 March 2022. The trial court later entered a "Findings and Custody Order Involuntary Commitment" ("Custody Order") on 24 March 2022. The Custody Order found Respondent "ha[d] a mental illness and [was] dangerous to self or others[.]" The Custody Order also noted a 24-hour inpatient facility was not available or was medically inappropriate and

Respondent was "being temporarily detained under appropriate supervision" at DRH.

Respondent also underwent her first involuntary commitment examination at DRH on 21 March 2022. Respondent's psychiatrist created a "First Examination for Involuntary Commitment" medical report ("First Commitment Report") on 21 March 2022, which the State filed on 30 March 2022. The First Commitment Report was completed by the same psychiatrist who completed the Petition. The First Commitment Report states an examination was conducted at DRH, including a psychiatric examination, and the examining psychiatrist opined Respondent was "[a]n individual with a mental illness" who was dangerous to herself. The First Commitment Report recommended Respondent be committed to an inpatient facility for seven days. The "findings" in the First Commitment Report are the same as the allegations in the Petition.

Before 23 March 2022, Respondent was transferred from DRH to the Duke Behavior Health Center in North Durham ("DBHC"). On 23 March 2022, Respondent underwent a second involuntary commitment examination at DBHC. Dr. Eckstein, the examining psychiatrist, completed a "24 Hour Facility Exam for Involuntary Commitment" report on this examination which the State filed on 24 March 2022 ("Dr. Eckstein's Report"). (Capitalization altered.) Dr. Eckstein opined in her report that Respondent had a mental illness and was dangerous to both herself and others. Dr. Eckstein's Report also found Respondent suffered from schizophrenia and was taken into police custody after she was "found carrying her own feces in a shopping

cart and eating raw meat, with evidence of incontinence and inability to care for self," and that Respondent had not taken her antipsychotic medication for over two months. Dr. Eckstein recommended Respondent be committed to an inpatient facility for 30 days.

The trial court heard the Petition on 1 April 2022. Respondent's attorney was present, no attorney for the State was present, and the record is not clear if an attorney for an inpatient care facility was present. Without counsel for the State present, the trial court called Dr. Fu, Respondent's attending psychiatrist to testify. The trial court's entire examination of Dr. Fu was:

> [The Court]. State your name for the record again and tell me what it is you want me to know about this matter.
>
> [Dr. Fu]. Tommy Fu, T-O-M-M-Y, F-U. I am [Respondent's] attending psychiatrist. [Respondent] is a 63-year-old lady with a history of schizophrenia. She was originally brought to the hospital because she was homeless, eating raw food, and carrying her feces around in a bag. She also presented with persecutory delusions.
>
> [The Court]. I'm sorry, what was the last thing you said? Carrying --
>
> [Dr. Fu]. She was carrying feces around in a plastic bag. She also presented with persecutory delusions and disorganized thoughts and behaviors. In addition, she was malnourished.
>
> She has improved since she's been hospitalized, and she's been compliant so far with her medications. She's had many state hospitalizations in the past, including at least four at Central Regional Hospital. The most recent which was in May to September of 2020.
>
> At present time, I do believe that she is still a danger

> to herself, in the context of not being able to care for herself in the community. Right now, the only feasible plan we have is to put her on the wait list for Butner.
>
> [Pause.]
>
> [The Court]. Would you say she's a danger to herself?
>
> [Dr. Fu]. Yes.
>
> [The Court]. Would you say she's a danger to others?
>
> [Dr. Fu]. Not at this time.
>
> [The Court]. Thank you. And how long are you asking me to commit her?
>
> [Dr. Fu]. Because of the Butner wait list, I'm asking for 45 to 60 days.
>
> [The Court]. All right. Thank you.

Respondent's attorney then cross-examined Dr. Fu. During her examination of Dr. Fu, Respondent interrupted Dr. Fu's testimony. Respondent denied some allegations of the Petition and denied that she was a danger to herself. Respondent then testified on her own behalf. Respondent stated her age and that the hearing was held at DRH. However, when the trial court asked Respondent why she was at DRH, Respondent gave a rambling, non-responsive answer that goes on for about 12 pages of the transcript. The substance of Respondent's testimony is not relevant to this appeal, and we do not discuss it in detail.

The trial court entered a written "Involuntary Commitment Order - Mental Illness" on 1 April 2022 ("Commitment Order"). The trial court first found the State

was not represented by counsel at the hearing. The trial court also incorporated the contents of Dr. Eckstein's Report as findings of fact "by clear, cogent, and convincing evidence." The trial court additionally found, as "facts supporting involuntary commitment" that:

- Respondent suffers from schizophrenia, delusions, malnourishment and schizoaffective disorder
- [Respondent is] [u]nable to care for [her]self in [the] community
- Respondent interrupted Dr. Fu's testimony
- Respondent's testimony was rambling and incoher[en]t

The trial court then concluded Respondent had a mental illness and was dangerous to herself. The trial court ordered Respondent committed to an "inpatient 24-hour facility" for 45 days. Respondent appealed.

II. Involuntary Commitment

As a preliminary matter, although Respondent's 45-day involuntary commitment was ordered over a year ago and has long since expired, we note Respondent's appeal is not moot because of "[t]he possibility that respondent's commitment in this case might likewise form the basis for a future commitment, along with other obvious collateral legal consequences[.]" *In re Hatley*, 291 N.C. 693, 695, 231 S.E.2d 633, 635 (1977).

Respondent asserts the trial court violated Respondent's constitutional right

to an impartial tribunal by acting as a prosecutor at the commitment hearing, Respondent received ineffective assistance of counsel because her counsel did not object to the trial court examining Dr. Fu, and the trial court's findings of fact were insufficient to involuntarily commit her.

We conclude the trial court did not violate Respondent's right to an impartial tribunal and as a result Respondent did not receive ineffective assistance of counsel. We also conclude the trial court made insufficient findings to involuntarily commit Respondent, and reverse and remand on this issue.

A. Impartial Tribunal

Respondent argues the trial court violated her right to an impartial tribunal by "assuming the role of a prosecutor" by examining the State's witness and presenting the State's case. Respondent further argues this error was structural and automatically justifies reversal of the Commitment Order. However, Respondent also acknowledges: her trial counsel did not object to the trial court's procedure; this issue is therefore unpreserved; and Respondent "requests this Court invoke Rule 2 to suspend Rule 10's preservation requirements and review the merits of [Respondent's] claim." The State asserts this exact issue was resolved in *In re J.R.*, 383 N.C. 273, 881 S.E.2d 522 (2022), and Respondent's argument is without merit.[1]

[1] Respondent noted "[i]n a split decision, issued 20 July 2021, this Court rejected a similar argument made by a respondent in a commitment case" and, citing *In re C.G.*, 278 N.C. App. 416, 863 S.E.2d 237 (2021), *aff'd in part, rev'd in part*, 383 N.C. 224, 881 S.E.2d 534 (2022), "raise[d] this argument

Rule of Appellate Procedure 2 allows this Court, "[t]o prevent manifest injustice to a party, . . . [to] suspend or vary the requirements or provisions" of Rule of Appellate Procedure 10, governing the preservation of issues for appellate review. N.C. R. App. P. 2, 10(a).

We decline to invoke Rule 2 because, as noted by the State, the trial court may ask neutral questions and decide based on facts presented at a hearing without conducting the factual and legal investigation himself; the trial court does not "take on the role of a prosecutor merely because counsel [for the petitioner or State] was not present[,]" and the trial court does not "automatically cease to be impartial when it merely calls witnesses and asks questions of witnesses which elicit testimony." *In re J.R.*, 383 N.C. 273, 280, 881 S.E.2d 522, 526 (2022).

Here, like in *In re J.R.*:

> The trial court did not ask questions designed or calculated to impeach any witnesses, the judge merely asked questions based upon the contents of the petition, such as asking whether there was "anything else" that the witness would like to say and asking the witness to "tell [the court] what it is you want [the court] to know about this matter." The most specific questions asked by the trial court were clarifying questions to fulfill the trial court's *duty* to "obtain

primarily in the interest of preservation in the event the Supreme Court of North Carolina grants relief in *In re C.G.* and the related cases, which are currently pending before that Court." Respondent filed her brief in this Court on 14 October 2022. On 16 December 2022, the Supreme Court filed opinions in six cases consolidated for hearing, including both *In re J.R.* that the State relies on and *In re C.G.* which Respondent noted had been docketed for review in the Supreme Court. *See In re C.G.*, 383 N.C. 224, 881 S.E.2d 534 (2022); *In re J.R.*, 383 N.C. 273, 881 S.E.2d 522 (2022); *In re R.S.H.*, 383 N.C. 334, 881 S.E.2d 480 (2022); *In re C.G.F.*, 383 N.C. 260, 880 S.E.2d 674 (2022) (memorandum opinion); *In re E.M.D.Y.*, 383 N.C. 272, 880 S.E.2d 675 (memorandum opinion); *In re Q.J.*, 383 N.C. 333, 880 S.E.2d 675 (2022) (memorandum opinion).

> a proper understanding and clarification of the testimony of the witness" to confirm whether the requirements for involuntary commitment had been met.

Id. (emphasis in original).

During the testimony presented at the commitment hearing, the trial court asked these questions of Dr. Fu:

> [The Court]. State your name for the record again and tell me what it is you want me to know about this matter.
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> . . . .
>
> [The Court]. I'm sorry, what was the last thing you said? Carrying --
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> . . . .
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> [The Court]. Would you say she's a danger to herself?
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> [The Court]. Would you say she's a danger to others?
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> [The Court]. Thank you. And how long are you asking me to commit her?

The trial court did not ask Dr. Fu any questions during Respondent's cross-examination of Dr. Fu. Respondent then testified on her own behalf, and during her testimony the trial court asked Respondent:

> [The Court]. And just state your name for the record for me.
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> . . . .
>
> [The Court]. [Respondent], is it okay if I guide you with a

> few questions?
>
> . . . .
>
> [The Court]. Okay. How old are you [Respondent]?
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> . . . .
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> [The Court]. And do you know where you are right now?
>
> . . . .
>
> [The Court]. Okay. And do you know why you're at Duke Hospital?
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> . . . .
>
> [The Court, in response to Respondent's testimony]. [Respondent]?
>
> . . . .
>
> [The Court, in response to Respondent's testimony]. [Respondent], who's Reggie?
>
> . . . .
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> [The Court, in response to Respondent's testimony]. [Respondent], is Reggie your guardian?
>
> . . . .
>
> [The Court, in response to Respondent's testimony]. [Respondent], would you be open to -- I know you at one point said you lived in a group home.
>
> Is living back in a group home something you would be open to?
>
> . . . .
>
> [The Court, in response to Respondent's testimony]. We're gonna figure it out, [Respondent], okay?

The trial court did not ask Respondent any other questions.

Here, like in *In re J.R.*, "the trial court remained an independent decisionmaker, and the answers to the trial court's questions weighed toward commitment of [R]espondent. . . . . The trial court did not advocate for any particular resolution and did not exceed constitutional bounds with its questions even though the responses supported involuntary commitment." *Id.* at 281, 881 S.E.2d at 527.

> [T]he trial court did not function as an investigator or an accuser. The trial court did not investigate the underlying facts or initiate the filing of the petition to have [R]espondent committed; those functions, i.e., being the investigator and the accuser, were performed by individuals with [DRH]. The trial court simply presided over the hearing and asked questions *to increase understanding and illuminate relevant facts to determine whether respondent met the necessary conditions for commitment.*

Id. (emphasis added).

The exact procedures applied by the trial court do not violate due process, as established in *In re J.R.* *See id.* There is no possibility of a "manifest injustice" toward Respondent, and we do not invoke Rule 2 to review the merits of Respondent's unpreserved arguments. *See* N.C. R. App. P. 2.

B. Ineffective Assistance of Counsel

Respondent next argues that she received ineffective assistance of counsel when her trial counsel failed to object to the trial court's assumption of the role of prosecutor. However, the trial court committed no error. The trial court did not assume the role of prosecutor by asking neutral, non-inquisitorial questions of the

witnesses at the hearing. *In re J.R.*, 383 N.C. at 281, 881 S.E.2d at 527. Therefore, Respondent's trial counsel's performance was not deficient when she did not object to the trial court's procedures, and Respondent was not prejudiced by her counsel's failure to object. *See Strickland v. Washington*, 466 U.S. 668, 687, 80 L.Ed.2d 674, 693 (1984). This argument is overruled.

C. Findings to Support Commitment

Respondent finally argues the trial court made insufficient findings to involuntarily commit her. We agree.

1. Standards of Review and Applicable Law

The trial court must make two ultimate findings "[t]o support an inpatient commitment order[.]" N.C. Gen. Stat. § 122C-268 (2021). "[T]he court shall find by clear, cogent, and convincing evidence that the respondent is [1] mentally ill and [2] dangerous to self, as defined in G.S. 122C-3(11)a. . . . . The court shall record the facts that support its findings." N.C. Gen. Stat. § 122C-268(j). The provision of North Carolina General Statute § 122C-3(11) defining "dangerous to self" relevant to this appeal states:

> a. Dangerous to self. — Within the relevant past . . . . 1. 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.
>
> Previous episodes of dangerousness to self, when applicable, may be considered when determining reasonable probability of physical debilitation[.]

N.C. Gen. Stat. § 122C-3(11) (2021) (formatting altered).

"Upon review of a commitment order, this Court must determine whether there was *any* competent evidence to support the 'facts' recorded in the commitment order and whether the trial court's ultimate findings of mental illness and dangerous to self or others were supported by the 'facts' recorded in the order." *In re J.P.S.*, 264 N.C. App. 58, 61, 823 S.E.2d 917, 920 (2019) (emphasis in original) (citation and quotation marks omitted). "[U]nder the applicable legal standard, we are required to take the trial court's findings as they stand without reference to any other information that might be contained in the record," and we cannot infer findings from the record evidence that the trial court did not actually make. *In re C.G.*, 383 N.C. 224, 240-41,

881 S.E.2d 534, 546-47 (2022).

2. Reasonable Probability of Physical Debilitation

Respondent asserts the trial court failed to make sufficient findings as to the second prong of dangerousness to self, that there was a reasonable probability of serious physical debilitation to Respondent unless she was involuntarily committed. *See* N.C. Gen. Stat. § 122C-3(11)(a)(1)(II). Respondent specifically asserts: (1) the trial court erred by incorporating Dr. Eckstein's Report as Dr. Eckstein was a "non-testifying commitment examiner," (2) findings based on Dr. Eckstein's Report therefore cannot be used to support the Commitment Order, and (3) "[t]he trial court's ultimate finding of danger to self was not supported by the remaining findings of fact because they did not demonstrate there was a reasonable probability of serious physical debilitation absent treatment." The State acknowledges incorporation of Dr. Eckstein's Report was error but contends that admission of the report was not prejudicial because the trial court's remaining findings were based on competent evidence to support Respondent's commitment.

We first note, although "Subsection 122C-268(f) provides that certified copies of reports and findings of commitment examiners and previous and current medical records are admissible in evidence, . . . the *respondent's right to confront and cross-examine witnesses may not be denied*." *In re R.S.H.*, 383 N.C. 334, 339, 881 S.E.2d 480, 483 (2022) (emphasis in original) (citation, quotation marks, and brackets omitted). The present case mirrors the factual background in *In re R.S.H.* *See id.* at

339, 881 S.E.2d at 484. Here, like in *In re R.S.H.*, the examining psychiatrist did not testify at the commitment hearing; the psychiatrist's report was not offered into evidence; and the trial court did not inform Respondent that it would incorporate the psychiatrist's report into the commitment order. *See id.* "The trial court thus violated [R]espondent's confrontation right by incorporating Dr. [Eckstein's] report into its findings of fact." *Id.* As a result, this Court must review the trial court's remaining findings, *i.e.* the findings that did not incorporate the contents of Dr. Eckstein's Report, to determine whether Respondent was prejudiced by this error or whether the trial court's remaining findings support its ultimate finding Respondent was dangerous to herself. *See id.* at 338-39, 881 S.E.2d at 483-84. But, because Respondent does not contest she has a mental illness or that she is unable to care for herself, we only review the Commitment Order for whether the trial court's recorded "facts" support the trial court's ultimate finding there was a reasonable probability of Respondent suffering serious, future physical debilitation. *See* N.C. Gen. Stat. § 122C-268(j); N.C. Gen. Stat. § 122C-3(11).

Aside from incorporating Dr. Eckstein's Report, the trial court made these findings of fact in the Commitment Order:

- Respondent suffers from schizophrenia, delusions, malnourishment and schizoaffective disorder
- Unable to care for self in community
- Respondent interrupted Dr. Fu's testimony

- Respondent's testimony was rambling and incoher[en]t

Respondent does not challenge these four findings, so they are binding on appeal. *See In re Zollicoffer*, 165 N.C. App. 462, 469, 598 S.E.2d 696, 700 (2004).

While "[w]e have held specifically 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[,]" *id.* (citation and quotation marks omitted), and "while the trial court need not say the magic words reasonable probability of future harm," here the trial court's recorded facts do not support the ultimate finding that Respondent was dangerous to herself because the trial court has not drawn the required nexus between Respondent's past conduct and any future danger stemming from this conduct. *In re C.G.*, 383 N.C. at 246, 881 S.E.2d at 549 (citation and quotation marks omitted). The above facts are more like those recorded in *In re Whatley*, where "[e]ach of the trial court's findings pertain to either Respondent's history of mental illness or her behavior prior to and leading up to the commitment hearing, but they do not indicate that these circumstances rendered Respondent a danger to herself in the future." *In re Whatley*, 224 N.C. App. 267, 273, 736 S.E.2d 527, 531 (2012).

In *In re Whatley*, the respondent was involuntarily committed after her physician filed an affidavit and petition alleging the respondent "had been diagnosed with bipolar disorder, that she had been admitted with psychosis while taking care of her two-month-old child, that she remained disorganized and paranoid, that she

was refusing to take her medications, and that she clearly represented a danger to herself or others if not treated." *Id.* at 268, 736 S.E.2d at 528. The respondent was examined three times before the hearing, and the reports of these examinations generally confirmed the allegations of the affidavit and petition and opined the respondent was mentally ill and dangerous to herself. *Id.* at 269, 736 S.E.2d at 529.

The matter of the respondent's involuntary commitment was heard, and the respondent was involuntarily committed after the trial court "concluded that [the] [r]espondent was mentally ill and dangerous to herself and others." *Id.* at 270, 736 S.E.2d at 529. In its order committing the respondent, the trial court found:

> [The] [r]espondent was exhibiting psychotic behavior that endangered her and her newborn child. She is bipolar and was experiencing a manic stage. She was initially noncompliant in taking her medications but has been compliant over the past 7 days. [The] [r]espondent continues to exhibit disorganized thinking that causes her not to be able to properly care for herself. She continues to need medication monitoring. [The] [r]espondent has been previously involuntarily committed.

Id. at 271, 736 S.E.2d at 530. The trial court also incorporated an examining physician's report, which set out additional findings:

> Patient admitted [with] psychosis while taking care of her two month old son. She has a [history of] Bipolar [disorder]. She remains paranoid, disorganized, intrusive. She tells me that she does not plan to follow up as an outpatient. She has very poor insight [and] judgment and needs continued stabilization.

Id. at 272, 736 S.E.2d at 530 (brackets in original).

This Court concluded, after a review of the above findings, that:

> the second prong of the "dangerous to self" inquiry [was] not satisfied. In short, none of the court's findings demonstrate[d] that there was "a reasonable probability of [the] [r]espondent suffering serious physical debilitation within the near future" absent her commitment. Each of the trial court's findings pertain[ed] to either [the] [r]espondent's history of mental illness or her behavior prior to and leading up to the commitment hearing, but they [did] not indicate that these circumstances rendered [the] [r]espondent a danger to herself in the future.

Id. at 272-73, 736 S.E.2d at 531 (original brackets removed and brackets added). While the respondent did not challenge the ultimate finding she had a mental illness, and the trial court's findings were sufficient to support the first prong of dangerousness to self—that the respondent was unable to care for herself without assistance at the time of the hearing—none of the trial court's findings indicated the respondent "presented a threat of 'serious physical debilitation' to herself within the near future." *Id.* at 273, 736 S.E.2d at 531. "Simply put, the trial court's findings reflect[ed] [the] [r]espondent's mental illness, but they [did] not indicate that [the] [r]espondent's illness or any of her aforementioned symptoms [would] persist and endanger her within the near future." *Id.*

Here, the trial court's findings are, compared to the court's findings in *Whatley*, even less detailed. *See id.* at 271-72, 736 S.E.2d at 530. Without Dr. Eckstein's Report, the sum of the trial court's findings are that "Respondent suffers from schizophrenia, delusions, malnourishment and schizoaffective disorder[;]"

Respondent was "[u]nable to care for self in community[;]" "Respondent interrupted Dr. Fu's testimony[;]" and "Respondent's testimony was rambling and incoher[en]t[.]" While the record evidence is sufficient to support each finding, like the findings in *In re Whatley*, as recorded "facts" under Section 122C-268 these findings are only sufficient to support the trial court's ultimate findings that Respondent had a mental illness and Respondent was unable to care for herself. *See id.* at 272-73, 736 S.E.2d at 531; *see also* N.C. Gen. Stat. § 122C-268(j); N.C. Gen. Stat. § 122C-3(11)(a)(1)(II). None of the facts have anything to do with the "probability of [Respondent] suffering serious physical debilitation within the near future unless" Respondent was involuntarily committed, and the trial court did not "draw a nexus between [Respondent's] past conduct and future danger." *In re C.G.*, 383 N.C. at 249, 881 S.E.2d at 551 (citation and quotation marks omitted). None of the trial court's findings are forward-looking, and two of the findings simply recount events that occurred during the hearing. *Compare In re R.S.H.*, 383 N.C. at 341, 881 S.E.2d at 485 ("The trial court's findings of fact, based on Dr. Brown's testimony, indicate that respondent is a danger to herself in the near future. The trial court found that respondent was suicidal, '*continues to hear voices*,' '*shows no signs of improvement*,' and '*requires supervision*.'" (emphasis added)), *and In re Zollicoffer*, 165 N.C. App. at 468-69, 598 S.E.2d at 700 ("Judge Senter's involuntary commitment order incorporates Dr. Soriano's examination and recommendation of 3 June 2003 in his findings of fact. In Dr. Soriano's recommendation she states that respondent has a

history of chronic paranoid schizophrenia, *that respondent admits to medicinal non-compliance which puts him 'at high risk for mental deterioration*,' that respondent does not cooperate with his treatment team, and that he '*requires inpatient rehabilitation to educate him about his illness and prevent mental decline*.'" (emphasis added)), *with In re Whatley*, 224 N.C. App. at 272-73, 736 S.E.2d at 531 (discussing the trial court's lack of findings to support the court's ultimate finding of dangerousness to self). And, although evidence in the record may support an inference that Respondent would suffer serious physical debilitation without involuntary commitment, "under the applicable legal standard, we are required to take the trial court's findings as they stand without reference to any other information that might be contained in the record," and we cannot supplement the trial court's findings with our own inferences. *In re C.G.*, 383 N.C. at 240-41, 881 S.E.2d at 546-47.

Where the trial court's recorded facts are insufficient to support the ultimate finding a respondent was dangerous to themselves, "the appropriate remedy is to remand to the trial court for entry of additional findings–if any can be made–to support its conclusions. Absent additional findings, however, the commitment order cannot be upheld." *In re Whatley*, 224 N.C. App. at 274, 736 S.E.2d at 532. Thus, we reverse the Commitment Order and remand for additional findings of fact indicating Respondent's dangerousness to herself, and the "reasonable probability of [Respondent] suffering serious physical debilitation" unless involuntarily committed.

See N.C. Gen. Stat. § 122C-3(11)(a)(1)(II).

III. Conclusion

We conclude the trial court's procedure of asking neutral questions of Dr. Fu did not violate Respondent's right to an impartial tribunal, and Respondent did not receive ineffective assistance of counsel as a result; we therefore affirm the Commitment Order as to these issues. We also conclude the trial court's ultimate finding that Respondent was dangerous to herself was not supported by the facts recorded on the Commitment Order and remand for additional findings.

AFFIRMED IN PART; REVERSED AND REMANDED IN PART.

Judges HAMPSON and GORE concur.

Report per Rule 30(e).