713 S.E.2d 251 .

IN THE MATTER OF: [redacted]

North Carolina Court of Appeals (1 May, 2011)

DOCKET NO.

No. COA10-1162

ATTORNEY(S)

Roy Cooper, Attorney General, by Lisa G. Corbett, Assistant Attorney General, for the State. Staples Hughes, Appellate Defender, by Andrew DeSimone, Assistant Appellate Defender, for respondent.

JUDGMENT

Mecklenburg County No. 10 SPC 2522.

THIGPEN, Judge.

Respondent [redacted] appeals from an order committing him to outpatient commitment for a period not to exceed 90 days. Because the trial court failed to find that Respondent met the criteria for outpatient commitment pursuant to N.C. Gen. Stat. § 122C-271(a)(1) (2009), we reverse the trial court's involuntary commitment order.

On 20 May 2010, Dr. Dan Cotoman, a psychiatrist at Carolinas Medical Center-Randolph in Charlotte, North Carolina, examined Respondent. Dr. Cotoman filed his examination report on 21 May 2010 and concluded that Respondent was mentally ill, capable of surviving safely in the community with supervision, and in need of treatment to prevent further disability or deterioration which would predictably result in dangerousness. He also concluded that Respondent's mental status or the nature of his illness negated his ability to make an informed decision to seek treatment voluntarily or to comply with recommended treatment. Dr. Cotoman based his opinions on his finding that Respondent had "a poor compliance with taking his medication and follow-up appointments." Dr. Cotoman diagnosed Respondent as having "schizoaffective disorder, bipolar type," and recommended that Respondent receive outpatient commitment for 90 days.

Subsequent to his examination of Respondent, Dr. Cotoman filed an affidavit and petition for involuntary commitment on 20 May 2010. The affidavit and petition alleged that Respondent was "mentally ill and dangerous to self or others or mentally ill and in need of treatment in order to prevent disability or deterioration that would predictably result in dangerousness." Dr. Cotoman based his opinion on the following facts: "Respondent has a poor compliance with taking his medication. He is not able to understand the risks, benefits and side effects of medication. He is not able to understand that not taking his medication would deteriorate his mental illness. He said, I would not come to Dr. Noll's appointment.'"

A hearing for involuntary commitment was held on 28 May 2010. Although Dr. Cotoman filed the petition for involuntary commitment, Dr. Bruce Noll testified at the hearing. When asked to explain the basis of his recommendation of outpatient commitment for up to 90 days, Dr. Noll explained:

The transcriptionist assigned to transcribe the hearing noted that "there apparently is a problem with the recording system used for this hearing. Except for the Court, parties are not situated in front of microphones and . . . the majority of the testimony is too inaudible and/or indiscernible to provide a verbatim transcript." In an attempt to reconstruct the inaudible portions of the transcript, Tammy Kea, the courtroom clerk present at the involuntary commitment hearing, listened to the recording of the hearing and prepared a second verbatim transcript, which is also included in the record on appeal.

I wasn't Respondent's attending during his last stay, Dr. Cotoman was (inaudible). I have known him for over five years now, through AIC clinic. He has had multiple hospitalizations all in which sic have led to noncompliance with medication. The only treatment course that is viable is monthly injections of Haldol echinoid, which when he's on them, he does pretty well. When he is off them, he decompensates and returns to the hospital, and that's what this most recent one was.

Dr. Noll stated that he had examined Respondent the morning of the hearing for about five minutes and had "plenty of discussions" with Dr. Cotoman about Respondent. Respondent disagreed with the recommendation of commitment, stating "I feel that I don't need to take an injection to be functional in society. I don't feel any better when I'm on it. I actually feel worse." Respondent also explained that "the Haldol that I take gives me headaches and I can't think straight. I zone out, like I'm not in my regular state of mind."

At the conclusion of the hearing, the trial court found by clear, cogent, and convincing evidence the facts

set out in Dr. Cotoman's 21 May 2010 report. The trial court also made the following findings of fact in the involuntary commitment order filed 28 May 2010:

> Dr. Noll has known respondent for five years and he has been hospitalized several times for non-compliance with medications. When on injections he remains out of the hospital. Dr. Noll consulted with Dr. Cotoman who made the recommendation for outpatient commitment. Respondent doesn't believe he needs medicine to function in society. Medicine makes him sick, headaches, lethargic sic.

Based on its findings of fact, the trial court concluded in the involuntary commitment order that Respondent "is mentally ill." The trial court did not, however, check box number 6 to conclude that 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 and 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.

The trial court ordered Respondent committed to outpatient commitment for a period not to exceed 90 days. Respondent appeals.

On appeal, Respondent argues (I) the trial court erred by involuntarily committing him without concluding that he met the criteria for outpatient commitment in violation of N.C. Gen. Stat. § 122C-271; (II) the trial court lacked jurisdiction to involuntarily commit him because the affidavit and petition for involuntary commitment did not include the facts upon which Dr. Cotoman's opinion was based in violation of N.C. Gen. Stat. § 122C-261(a); and (III) in the alternative, he is entitled to a new trial because the State failed to provide him with a transcript of the majority of the proceedings in violation of his constitutional and statutory rights.

I. Criteria for Outpatient Commitment

Respondent first argues the trial court erred by involuntarily committing him without concluding that he met the criteria for outpatient commitment in violation of N.C. Gen. Stat. § 122C-271. We agree.

Although neither party raised the issue on appeal, we note that Respondent's appeal is not moot even though the 90-day outpatient commitment period has expired. See In re Booker, 193 N.C. App. 433, 436, 667 S.E.2d 302, 304 (2008) (stating that "a prior discharge will not render questions challenging the involuntary commitment proceeding moot") (citation and quotation marks omitted).

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 (citations omitted), disc. review denied, 356 N.C. 613, 574 S.E.2d 680 (2002). North Carolina General Statutes section 122C-271(a) provides:

(a) If an examining physician or eligible psychologist has recommended outpatient commitment and the respondent has been released pending the district court hearing, the court may make one of the following dispositions:

(1) If the court finds by clear, cogent, and convincing evidence that the respondent is mentally ill; that he is capable of surviving safely in the community with available supervision from family, friends, or others; that based on respondent's treatment history, the respondent is in need of treatment in order to prevent further disability or deterioration that would predictably result in dangerousness as defined in G.S. 122C-3(11); and that the respondent's current mental status or the nature of his illness limits or negates his ability to make an informed decision to seek voluntarily or comply with recommended treatment, it may order outpatient commitment for a period not in excess of 90 days.

(2) If the court does not find that the respondent meets the criteria of commitment set out in subdivision (1) of this subsection, the respondent shall be discharged and the facility at which he was last a client so notified.

In the instant case, the trial court entered an order using a preprinted form and incorporated by reference Dr. Cotoman's psychological report dated 21 May 2010. In the conclusions section of the order, the trial court checked box number 1, concluding that Respondent "is mentally ill." The trial court did not, however, check box number 6 to conclude that Respondent "is capable of surviving safely in the community with available supervision from family, friends, or others"; that "based on respondent's treatment history, the respondent is in need of treatment in order to prevent further disability or deterioration that would predictably result in dangerousness"; and that Respondent's "current mental status or the nature of his

illness limits or negates his ability to make an informed decision to seek voluntarily or comply with recommended treatment" as required by N.C. Gen. Stat. § 122C-271(a)(1). The State admits that the court did not "check block 6 on the preprinted form," but argues that this oversight was an "administrative error" and the appropriate remedy is to remand. We disagree.

A clerical error is "an error resulting from a minor mistake or inadvertence, especially in writing or copying something on the record, and not from judicial reasoning or determination." State v. Taylor, 156 N.C. App. 172, 177, 576 S.E.2d 114, 117-18 (2003) (citations and quotation marks omitted). The State is correct that "when, on appeal, a clerical error is discovered in the trial court's judgment or order, it is appropriate to remand the case to the trial court for correction because of the importance that the record speak the truth." State v. Smith, 188 N.C. App. 842, 845, 656 S.E.2d 695, 696-97 (2008) (citations and internal quotation marks omitted).

In this case, however, neither the transcripts nor the record reveal a clerical error; rather, the trial court did not make the conclusions required by N.C. Gen. Stat. § 122C-271(a)(1) in either the commitment order or at Respondent's involuntary commitment hearing. The transcripts show that although the trial court made findings of fact at Respondent's hearing, it did not make the required conclusions at the hearing before ordering Respondent to outpatient commitment. Accordingly, the transcripts illustrate that the trial court's failure to make the required conclusions in Respondent's involuntary commitment order was not a result of a clerical error.

Pursuant to N.C. Gen. Stat. § 122C-271(a)(1), a court may order outpatient commitment for a period not in excess of 90 days if it "finds by clear, cogent, and convincing evidence" the requirements listed in the statute. Here, the trial court did not check box number 6 on the order, and we have determined that this failure was not a clerical error. Consequently, the court did not find that Respondent met the criteria for outpatient commitment as required by N.C. Gen. Stat. § 122C-271(a)(1). Thus, the trial court erred by committing Respondent to outpatient commitment for a period not to exceed 90 days. Accordingly, we reverse the trial court's involuntary commitment order.

Because we reverse the trial court's involuntary commitment order, we will not address Respondent's remaining arguments on appeal.

REVERSED.

Judges STROUD and HUNTER, JR. concur.

Report per Rule 30(e).