

Evidence (or Not) of Dangerousness: That the Statute Law Requires



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1

Involuntary Commitment

- Criteria—The grounds for court-ordered treatment.
- Procedure—The process for obtaining court-ordered treatment.

Because the commitment statutes provide for a drastic remedy, those that use them must do so with "care and vigilance." *In re Ingram*, 74 N.C.2d 100, 328 S.E.2d 579 (1985), *aff'd*, 478 U.S. 987 (1986); *In re Samons*, 9 NC App. 170 (1970).



2

The Criteria for Commitment

1. **Inpatient commitment**—mentally ill + dangerous to self or others
2. **Substance abuse commitment**—substance abuser + dangerous to self or others
3. **Outpatient commitment**—mentally ill, capable of surviving safely in the community, in need of treatment to prevent dangerousness, and unable to seek treatment voluntarily

1. mental illness
2. substance abuse
3. dangerous to self
4. dangerous to others



3

In re G.G., __ N.C. __, 2022 NCSC 123

Oral Argument
 Assistant Appellate Defender
 Katy Dickinson-Schultz

1. Which kind of commitment is this about?
2. Which form of dangerousness is at play?
3. What is the issue in this case?

(timer 2:30-3:59 minutes)

4

Dangerous to Self

Within the relevant past, the individual has:

- Acted in a way to show unable to care for self + reasonable probability of serious physical debilitation in the near future unless adequated treatment is given
- Attempted or threatened suicide + reasonable probability of suicide unless adequate treatment is given
- Attempted or engaged in self-mutilation + reasonable probability of serious self-mutilation uness adquate treatment is given

5

Dangerous to Others

Within the relevant past, the individual has:

1. Inflicted, attempted, or threatened serious bodily harm + reasonable probability of conduct repeating
2. Created a substantial risk of serious bodily harm + reasonable probability of conduct repeating
3. Engaged in extreme destruction of property + reasonable probability of conduct repeating

6

Dangerous to Self—Lack of Self-Care Ability

A two-prong test that requires a finding of:

- a lack of self-care ability regarding one’s daily affairs, and
- a probability of serious physical debilitation resulting from the more general finding of lack of self-caring ability. In re Monroe, 49 N.C.App. 23 (1980).

7

Magistrate Petition

Respondent is diagnosed with bipolar disorder and schizophrenia. He was prescribed medications for mental illness 10 years ago, which he now refuses to take because he says they take away his special powers. He says his special powers—enhanced by smoking marijuana—include the ability to live without food and the power to control his body temperature in cold weather. Respondent is talking to his deceased father and says he sees lights coming out of people’s heads. He has not eaten anything but M&Ms the last two days. Last night he spent all night on the screen porch, arguing with his deceased father, wearing only his underwear in 40-degree weather.

One year ago, he stopped taking his medication, began to believe he had the special power to live off of air without food and the ability to control his body temperature in cold weather. Soon thereafter, the police found him in a park wearing only underwear and suffering from hypothermia. He was treated for hypothermia at a local hospital and then involuntarily committed.

8

Question

When determining whether there is—for someone who lacks self-care ability—a reasonable probability of serious physical debilitation in the near future unless adequate treatment is given (the second prong of the dangerous-to-self definition) you may take into consideration previous episodes of dangerousness to self when applicable.

- Yes
- No

9

Commitment Criteria

UNC
Commitment Criteria

Criteria for Involuntary Commitment in North Carolina

Mental illness defined
 as illness that so impairs the capacity of the individual to exercise self-determination, and therefore the personal or family and social relations as to make necessary or advisable for him to be taken to treatment, care, supervision, protection, or control.

Mental illness defined
 a mental condition, other than mental retardation, that so impairs the person's capacity to exercise self-determination or judgment as to the conduct of his activities and social relationships that he is in need of treatment.

Self-harm danger
 the probability of loss or abuse of physical members, organs or sense organs, or the probability of impairment or removal, such as amputation, burn injury, mutilation, or disease, as a result of self-harm or self-neglect.

Dangerousness to self
 Within the relevant period the individual has:

- acted in such a manner as to:
 - be in the path of a motor car, airplane, or other means of transportation, or the imminent occurrence of self-harm or physical injury, or exposure to serious injury, or disease, or the conduct of his, their transportation and social relations, or to control his own the transportation, personal or medical care, activities, or self-protection and safety; and
- there is a reasonable probability of his suffering serious physical debilitation; or
- acted in such a manner as to be in the path of a motor car, airplane, or other means of transportation, or the imminent occurrence of self-harm or physical injury, or exposure to serious injury, or disease, or the conduct of his, their transportation and social relations, or to control his own the transportation, personal or medical care, activities, or self-protection and safety; and

Dangerousness to others
 Within the relevant period the individual has:

- acted in such a manner as to:
 - be in the path of a motor car, airplane, or other means of transportation, or the imminent occurrence of self-harm or physical injury, or exposure to serious injury, or disease, or the conduct of his, their transportation and social relations, or to control his own the transportation, personal or medical care, activities, or self-protection and safety; and
- there is a reasonable probability of his suffering serious physical debilitation; or
- acted in such a manner as to be in the path of a motor car, airplane, or other means of transportation, or the imminent occurrence of self-harm or physical injury, or exposure to serious injury, or disease, or the conduct of his, their transportation and social relations, or to control his own the transportation, personal or medical care, activities, or self-protection and safety; and

Person not receiving adequate treatment
 when applicable, may be considered when determining the reasonable probability of serious physical debilitation, suicide, or serious self-harm.

There is a reasonable probability of the individual suffering serious physical debilitation in the near future . . .

Behavior that is so grossly irrational . . . or other evidence of severely impaired insight and judgment creates a prima facie inference . . .

Previous episodes of dangerousness, when applicable, may be considered when determining reasonable probability of physical debilitation . . .

10

In Re C.G.—Commitment Examiner Affidavit and Petition

- Respondent “presents [as] psychotic and disorganized . . . [Respondent’s] ACTT team being unable to stabilize his psychosis in the outpatient treatment.”
- “He is so psychotic he is unable to effectively communicate his symptoms and *appears to have been neglecting his own care.*”
- “Per [Respondent’s] ACTT team he threw away his medications and has not been taking them. He needs hospitalization for safety and stabilization.”

In Re C.G., 278 N.C. App. 416 (2021)

11

In Re Ingram

“Statute requires the affidavit to contain the facts on which the affiant’s opinion is based. **Mere conclusions do not suffice** to establish reasonable grounds for issuance of custody order.” In re Ingram, 74 N.C. App. 579 (1985).

12

Information Must Be Factual

Conclusions (Opinions)	Facts	Descriptive Facts
<ul style="list-style-type: none"> ▪ Violent ▪ Threatening ▪ Aggressive ▪ Assaulted someone 		<ul style="list-style-type: none"> • Hit boss with a wrench • Said he would cut brother while he slept • Pushed Mom off the porch • Held hammer in air saying he was going to bust mother's head

13

In Re C.G.— 24-Hour Facility Exam

“Patient perseverates on being ‘Blessed and highly favored’ . . . Talks to other people in the room during interview . . . States ‘gods people putting voices in my head’ ” and “[s]uddenly begins crying without any precipitant.”

14

In Re C.G.— Testimony at Hearing

- [Respondent] has a longstanding history of mental illness with psychosis . . . Currently diagnosed with schizoaffective disorder.
- Respondent was reporting that thoughts were being inserted into his head and occasionally controlling him, as well as containing derogatory content that was quite disturbing to him.

15

In Re C.G— Testimony at Hearing

- Respondent brought to Duke by “his ACT team” because
 - of “an acute change in his mental status with increasing disorganization, hallucinations, delusions, abnormal psychomotor behavior, wandering around the streets” and
 - “he had not been taking his medications and had thrown them away[.]”
- [Respondent] continued to demonstrate very profound disorganization of thought and behavior responding to hallucinations or internal stimuli”; it was “very difficult to elucidate a narrative from [respondent]”

16

In Re C.G.— Testimony at Hearing

- Testimony that ACT team wanted him to take better care of his teeth and that Respondent “disregarded” that advice. ACT team was unable to “sufficiently” care for Respondent’s “dental and nourishment.”
- Respondent heard voices. Says he does not feel he needs medication.
- “Although he is accepting of help and has improved,” doctor was “still concerned that, if he were to be discharged, that there would be an immediate decompensation, given his . . . hallucinations which are disturbing and to him and, in the past, have led him to have aggressive behaviors in the community.”

17

Trial Court Findings of Fact

R has long-standing mental illness; suffers from hallucinations; did not take his medications when he was not hospitalized

His psychosis caused him to be danger to himself

R’s ACTT team was unable to sufficiently take care of his dental and nourishment needs

He has been the victim of assault and disturbing thoughts which cause deterioration and leaves him unable to perceive dangers to himself

Ultimate conclusion: MI and danger to self and others.

18

In Re C.G—Appellate Decision

- Court acknowledged that the trial court must satisfy two prongs, which includes finding a reasonable probability of future harm absent treatment.
- Sufficiency of Evidence--There was some competent evidence as to Respondent’s inability to care for his own nourishment and dental needs.
- Findings of Fact—The finding that R’s ACT team was unable to sufficiently care for R’s dental and nourishment needs creates the nexus between R’s mental illness and future harm to self. Accordingly, the trial court satisfied the requirement it find a reasonable probability of future harm absent treatment.

19

In Re C.G. Oral Argument

Oral Argument
Assistant Appellate Defender
Katy Dickinson-Schultz

- 9:00-13:45

20

Prima Facie Inference of Probability of Physical Harm

A showing of behavior that is so *grossly* irrational, of actions the individual is unable to control, of behavior that is *grossly* inappropriate to the situation, or of other evidence of evidence of *severely* impaired insight and judgment creates a prima facie inference that the individual is unable to care for himself or herself

21

**In Re C.G., No. COA20-520, 2021 In
In Re C.G., July 20, 2021—Appellate
Decision**

- Doctor testified that hallucinations and disturbing thoughts led to respondent “wandering the streets” and being assaulted in the past.
- He saw “angels” and “black dots” that he thought were hallucinations.
- This showed “a behavior that is so grossly irrational, of actions that the individual is unable to control, . . . or of other evidence of severely impaired insight and judgment [that creates an inference of inability to care for self.]”

22

In Re C.G. Oral Argument

- Prima facie inference of inability to care for self
- 13:45-15:55

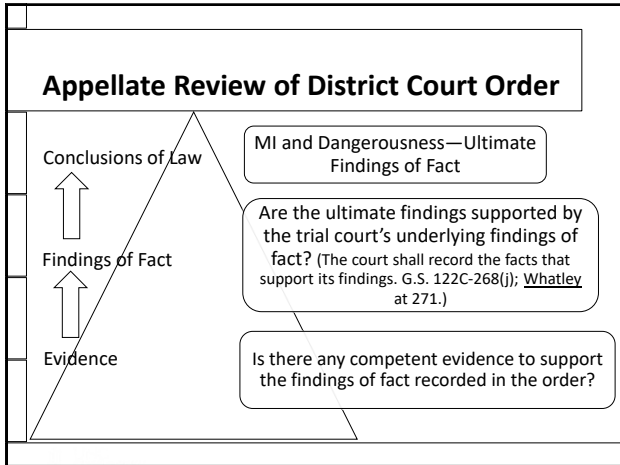
23

In re G.G., __ N.C. __, 2022 NCSC 123

Oral Argument
General Counsel Fellow
South A. Moore

- Prima facie inference
- 48:00-51:14

24



25

In Re Whatley, 224 N.C. App. 267 (2012)

Danger to self—
 Trial court's findings do not demonstrate that there was a "reasonable probability of [respondent] suffering serious debilitation within the near future."

We hold that the trial court's findings of fact are insufficient to support its conclusions that Respondent presented a danger to herself and others

26

In Re Whatley, Trial Court Findings

- Respondent 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 the past 7 days.
- Respondent continues to exhibit disorganized thinking that causes her not to be able to *properly care for herself*. She continues to need medication monitoring.
- Respondent has been *previously* involuntarily committed

27

Physician Report Incorporated By Reference

- 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 has very poor insight [and] judgment and needs continued stabilization.
- Tells me that she does not plan to follow up as an outpatient.

28

In Re C.G. Oral Argument

Appellate Review of Trial Court Order

- Findings of Fact
- Evidence—of physical effects
 - 16:00-17:15
 - 18:45-22:38
- Evidence—general conclusory testimony versus specific factual testimony
 - 22:37 – 25:30 [“What is he doing that is going to put himself in danger?”]

29

In re G.G., __ N.C. __, 2022 NCSC 123

Oral Argument
General Counsel Fellow
South A. Moore

1. Note that the State says the sole question is whether the trial court recorded findings of fact supported its conclusions of law.
2. Note the colloquy between counsel and Justice Ervin regarding what the trial court findings said.

(timer 26:00—29:44, et. seq.)

30

In re G.G., __ N.C. __, 2022 NCSC 123

A critical analysis of [the] findings and the underlying record evidence shows that they “[do] not demonstrate a ‘reasonable probability of [respondent] suffering serious physical debilitation within the near future’ without immediate, involuntary commitment,” W.R.D., 248 N.C. App. at 516, with the trial court having failed to couple its findings concerning respondent’s past and current condition with any findings regarding the extent to which respondent faced a risk of “serious physical debilitation” in the event that he did not remain in inpatient care.

31

Take Aways

1. Always be prepared for an *In re Ingram* motion.
2. Dangerous to self is a two-prong test.
3. Where danger to self is based on lack of self care ability, evidence must show that the inability to care for self, by its nature or degree, *creates or causes* a reasonable probability of *serious physical* debilitation in the *near* future unless adequate treatment given.
4. Be aware of
 - the “grossly irrational-severely impaired” argument
 - The previous episode argument
5. Court must make a specific finding of probability of serious physical debilitation resulting from the more general finding of lack of self caring ability.

32

Questions?

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33
