

Involuntary Commitment

Case Update and Other Issues

Mark F. Botts, UNC School of Government
September 29, 2021

- I. Wynn v. Frederick, No. COA20-472, (Ct. App., July 20, 2021).
 - A. Held:
 1. Sovereign immunity waived for officials covered by statutory bonds. G.S. 58-76-5.
 2. Judicial immunity is an available defense for judicial officers sued as *individuals*. In this case, defendant is sued in his *official* capacity. Judicial immunity does not apply here.
 - B. Today's focus—not the important and heady issue of judicial immunity, but the simpler and, perhaps, more mundane practice issue that gave rise to this case. Sometimes it is the simple things that—because they seem so simple and routine—we forget about until we get into trouble. This case raises two practice issues:
 1. How the order is delivered to the person charged with carrying it out.
 2. To whom the order must be issued.
 - C. Facts:
 1. Robert Morris has a history of mental illness. He has been involuntarily committed 3 times in 2016; becomes violent when not taking medication.
 2. Mr. Morris is under the care of a UNC Assertive Community Treatment team. The team regularly visits Morris at home to monitor conditions and medication compliance. Morris receives care from Dr. Hall, ACT team medical director.
 3. On the morning of December 16, 2016, Robert's mother, Ms. Wynn, informs the ACT team that Mr. Morris is not taking his medication, has not slept for three days, spent the night guarding the house with a crossbow, and has unreasonable fear for mother's safety.
 4. Dr. Hall visits Mr. Morris and mother at their home on the morning of Dec. 16, and determines Morris meets the criteria for involuntary commitment. Hall prepares petition, has it notarized, and sends to magistrate.
 5. The magistrate completes and signs the custody order. Because the facts describing Mr. Morris's condition presumably did not indicate that he was at home when Dr. Hall examined him, and because Dr. Hall identified himself as a UNC physician when signing the form, the magistrate presumed the petition came from UNC Hospital where physician petition's typically emanate from, and probably presumed that Mr. Morris was in the UNC Hospital ED. Thus, magistrate faxes order to UNC Hospital at 2:17 pm, Dec. 16.
 6. Morning of Dec. 17, Dr. Hall calls Ms. Wynn to see if the Sheriff's Office had picked up Robert Morris. Ms. Wynn responded that they had not.
 7. It is not clear who, if anyone, received the custody order at UNC. It is not clear if UNC did anything with the order or otherwise attempted to respond to it.
 8. Dr. Hall calls the magistrate. When magistrate realizes Mr. Morris is not at the hospital, but at home, magistrate asks Dr. Hall to fax the IVC documents back to him so that he could

- reissue the custody order because the magistrate no longer had the petition or the custody order. Dr. Hall did not have the documents immediately accessible, nor did he have access to a fax machine. Eventually, documents were faxed to the magistrate's office at 9:27 a.m., and at 11:20, a Sheriff's Deputy started heading to Mr. Morris' home with custody order.
9. Around 11:00 a.m. that morning, Paul Wynn, Robert's uncle, headed to the residence of Robert and his mother, Ms. Wynn. While Paul Wynn was standing in the kitchen, Mr. Morris used a crossbow to shoot Paul Wynn in the neck, puncturing his cervical spine, spinal cord, and left vertebral artery, instantly paralyzing Mr. Wynn.
 10. Ms. Wynn calls 911 at 11:18 a.m. Deputy arrives to serve the custody order at 11:36 a.m.
 11. On Sept. 17, 2019, Paul Wynn files a complaint against the magistrate seeking damages in the amount of \$100,000.

D. Statutory law.

1. Who must the magistrate issue the order to?
 - a. The clerk or magistrate "shall issue an order to a law enforcement officer to take the respondent into custody . . ." G.S. 122C-261(d)(4).
 - b. "The clerk or magistrate shall issue an order to a law enforcement officer or any other designated person under G.S. 122C-251(g) to take the respondent into custody" G.S. 122C-261(b).
2. A custody order may be delivered to the law enforcement officer or other designated person by electronic or facsimile transmission. G.S. 122C-210.3.
3. "Law enforcement officers" and "designated persons."
 - a. Law-enforcement officer—a sheriff, deputy sheriff, police officer, State highway patrolman, or an officer employed by a city or county under G.S. 122C-302 (officers employed and trained to assist individuals who are intoxicated in public).
 - b. Designated person—a person designated in the transportation plan of a city or county, adopted under G.S. 122C-251(g), to provide a part or all the transportation and custody required by the involuntary commitment process.
4. Transportation plan adopted under G.S. 122C-251(g). Every county must adopt a plan called an "involuntary commitment transportation agreement." This transportation agreement (plan) may designate persons other than law enforcement officers to carry out all or part of the transportation and custody. To the extent a county plan designates such persons, those persons are authorized to carry out custody and transportation as authorized and described in the plan. If a county plan does not designate persons other than law enforcement, then only law enforcement officers are authorized to execute a custody and transportation order.

E. Lessons for Magistrates:

1. Statutory law says you "may" use facsimile transmission to deliver a custody order to law enforcement. Don't do that without having some policy, procedure, or protocol in place to assure that you will receive confirmation of receipt from the receiving entity. If the relevant law enforcement agencies will not engage with the magistrate's office to implement a satisfactory procedure, then don't use facsimile transmission. Require LEOs to come to the magistrate's office to pick up the order.

2. Statutory law says you “shall” issue the order to a law enforcement officer or other designated person. A hospital is not a law enforcement officer or other designated person.
 - a. Law enforcement officer: Unless pursuant to some protocol that the magistrate’s office has agreed to, you know there will be a law enforcement officer or other designated person stationed at the hospital ED to receive and execute faxed custody orders, then don’t fax the order to the hospital.
 - b. Designated person: Unless you have seen a county transportation plan that designates (authorizes) hospital personnel, security officers, or others at the hospital to receive and execute a custody order (take the respondent patient into custody), then you should not be faxing a custody order to non-law enforcement personnel at the hospital.

II. Other practice issues of concern.

- A. Telling commitment examiners that they cannot fax the Petition and Examination forms to the magistrate.
- B. Advising law enforcement officers that they do not need to complete portions of the Return of Service.
- C. Law enforcement directing magistrates that they cannot issue custody orders governing inmates without first consulting with the jail to determine if such orders should be issued.
- D. Detention center saying custody orders cannot be served on a person incarcerated in a jail or detention center.

III. Sufficiency of Facts. During the presentation we will discuss these and additional cases.

- A. In Re M.L., No. COA18-5, Oct. 16, 2018. Facts in petition were insufficient to support the issuance of a custody order.
 1. Petition alleged respondent found outside a tire store in Franklinton, NC, saying he had “plans for Tennessee.” Passively resisting officers. Said he had \$9,000 to pay for his Tennessee plans, but actually on had about \$3 in change Refusing to comply with officers in regards to information, gave officers incorrect information in regards to identity and date of birth.
- B. In Re C.G., No. COA20-520, 2021 N.C. App. LEXIS 369, (Ct. App. July 20, 2021). Trial court overruled objection that petition contained sufficient facts.
 1. Affidavit and Petition: Respondent “presents [as] psychotic and disorganized . . . [Respondent’s] ACT 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] ACT team he “threw away his medications and has not been taking them.” He needs hospitalization for safety and stabilization.”