

Involuntary Commitment Law and Procedure

Magistrates Fall Conference
September 29, 2021

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Topics—Case Law


- Follow the statutory procedure
 - Wynn v. Frederick (2021)
- Apply the statutory criteria
 - In Re M.L. (2018)
 - In Re C.G. (2021)
 - In Re Whatley (2012)

*Note: Wynn is about judicial immunity. In Re C.G. addresses, among other things, whether an attorney for the State must appear at the hearing to represent the State's interests. This presentation will *not* address those issues but will address issues raised by the cases that are directly relevant to magistrate practice.*

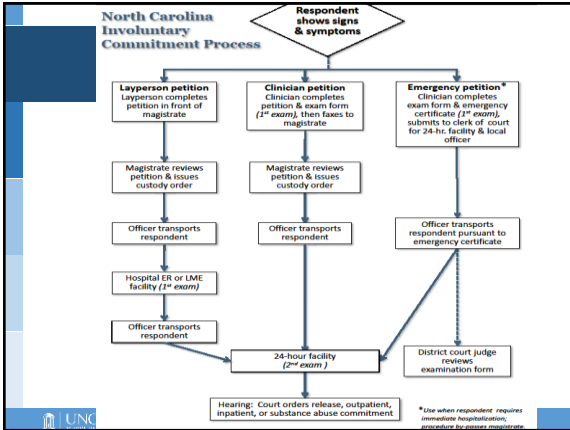


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Procedural Issues



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Wynn v. Frederick (July 20, 2021)

- Individual sues magistrate in his official capacity for injuries caused by an IVC respondent
- Suit alleges injuries to individual were result of magistrate failure to properly issue custody order
- Defendant magistrate moves to dismiss the case based on sovereign and judicial immunity.
- Trial judge denies motions to dismiss

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Wynn v. Frederick (July 20, 2021)

COA upholds trial court saying that

- Magistrates are judicial officers entitled to judicial immunity.
- Judicial immunity is available for actions taken while exercising judicial functions.
- However, judicial immunity is an available defense for judicial officers sued as *individuals*.
- Here magistrate is sued in his *official capacity*. Judicial immunity does not apply.
- Sovereign immunity is waived for officials covered by statutory bond. Here defendant covered by surety bond in the amount of \$100,000.

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Wynn v. Frederick—Case Facts

- Robert Morris has history of serious mental illness
- Involuntarily committed 3 times in 2016; becomes violent when not taking medication
- Under the care of UNC Assertive Community Treatment team
- Team regularly visits Morris at home to monitor conditions and medication compliance
- Morris receives care from Dr. Hall, ACT team medical director

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Wynn v. Frederick —Case Facts

December 16, 2016, morning:

- Ms. Wynn, mother of Mr. Morris, informs ACT team that Morris is not taking medication, has not slept for 3 days, spent night guarding the house with a crossbow, and has unreasonable fear for Mom’s safety.
- Dr. Hall visits Mr. Morris and mother at their home and determines Morris meets the criteria for involuntary commitment
- Hall prepares petition, has it notarized, and sends to magistrate

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Wynn v. Frederick—Facts

- Affidavit and petition indicate that Dr. Hall is affiliated with UNC
- Magistrate faxes custody order to UNC Hospitals on the same day, Dec. 16, 2:17 pm.
- It is not clear who, if anyone, received the custody order at UNC. It is not clear if UNC did anything.
- 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.

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Wynn v. Frederick—Facts

- 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 petition documents immediately accessible, nor did he have access to a fax machine.



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Wynn v. Frederick—Facts

- Dr. Hall faxes documents to the magistrate’s office at 9:27 a.m.
- At 11:20 a.m., a Sheriff’s Deputy receives a faxed custody order and heads to Mr. Morris’ home.
- Morris’ uncle Paul Wynn is visiting that morning.
- Mr. Morris uses a crossbow to shoot Paul Wynn in the neck, puncturing his cervical spine, spinal cord, and left vertebral artery, instantly paralyzing Mr. Wynn.
- Ms. Wynn calls 911 at 11:18 a.m.
- Deputy Hester arrives to serve the custody order at 11:36 a.m.



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2015 Legislation—GS 122C-210.3

▪ A custody order may be delivered to the law enforcement officer or other designated person by electronic or facsimile transmission.



- Applies to all custody orders including
 - Transfer from one 24-hour facility to another
 - Outpatient pick up order



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Statutory Law

The magistrate shall issue the order to

- a law enforcement officer or
- any other person authorized under G.S. 122C-251

to take the respondent into custody . . .


G.S. 122C-261



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Statutory Law


- **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). G.S. 122C-3.
- **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. G.S. 122C-251.



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IVC Transportation Agreement

- Every county must adopt an agreement
- Agreement may designate persons other than law enforcement officers to carry out all or part of the transportation and custody. G.S. 122C-251(g).
- Designated persons must participate in training identified by the LME/MCO that, to the extent feasible, addresses
 - use of de-escalation strategies and techniques
 - safe use of force and restraint
 - respondent rights relative to involuntary commitment
 - location of first examination sites, and
 - completion and return of service. G.S. 122C-202.2.



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Other Practice Issues

- Telling commitment examiners that they cannot fax the Petition and Examination forms to the magistrate.
- Advising law enforcement officers that they do not need to complete portions of the Return of Service.
- 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.
- Detention center saying custody orders cannot be served on a person incarcerated in a jail or detention center.

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Commitment Criteria

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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 adequate 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 unless adequate treatment is given

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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).

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In Re M.L., Oct. 16, 2018

- Petition: 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 request for information, gave officers incorrect information regarding identity and date of birth.
- Facts in petition were insufficient to support the issuance of a custody order.

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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

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Relevant Past

- Acts are within the relevant past if they occur close enough to the present time to have probative value on the question whether the conduct will continue
- Acts that are part of—or connected to—the current or ongoing episode, incident, or situation that help you assess what is happening and what is likely to happen if adequate treatment is not given

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In Re Whatley, Dec. 18, 2012—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

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

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Appellate Court Decision

- 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.”
- Danger to others—Findings that the respondent’s behavior “endangered” her newborn child and that she had been admitted with “psychosis while taking care of her two month old son” are inadequate to demonstrate “a reasonable probability that this conduct will be repeated.”

In Re Whatley, COA 12-716, (N.C App., Dec. 18, 2012)

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In Re C.G., No. COA20-520, July 20, 2021—Petition says:

- 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.”

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Dangerous to Self—Lack of Self-Care Ability

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In Re C.G., July 20, 2021—Evidence at Hearing

- [Respondent] has a longstanding history of mental illness with psychosis.
- “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.”
- 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.” :



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In Re C.G., July 20, 2021—Evidence 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]”



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In Re C.G., July 20, 2021—Evidence 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.”



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In Re C.G., July 20, 2021—Appellate Decision

- There was evidence at the trial level to support the trial court’s finding that respondent was unable to “sufficiently” care for his own “dental and nourishment” needs, even with help of ACT team.
- This satisfied requirement that trial court find a reasonable probability of future harm absent treatment.



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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.
- 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.]



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Dangerous to self

Within the relevant past, the individual has:


1. acted in such a way as to show that
 - a. he 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 his daily responsibilities and social relations, or to satisfy his need for nourishment, personal or medical care, shelter, or self-protection and safety; and
 - b. there is a reasonable probability of his suffering serious physical debilitation within the near future unless adequate treatment is given. Behavior that is grossly irrational, actions that the individual is unable to control, behavior that is grossly inappropriate to the situation, or other evidence of severely impaired insight and judgment creates an inference that the individual is unable to care for himself; or
2. attempted suicide or threatened suicide and there is a reasonable probability of suicide unless adequate treatment is given; or
3. mutilated himself or attempted to mutilate himself and there is a reasonable probability of serious self-mutilation unless adequate treatment is given.

Previous episodes of dangerousness to self, when applicable, may be considered when determining the reasonable probability of serious physical debilitation, suicide, or serious self-mutilation.

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Questions?

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