Vacating an Order for Civil Commitment

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Supreme Court of Montana Will Not Apply the Doctrine of Implied Findings When the Trial Court's Commitment Order Is Prepared Before the Hearing

In *In the Matter of C.C.,* 376 P.3d 105 (Mont. 2016), the Montana Supreme Court declined to expand the doctrine of implied facts to the degree necessary to affirm the district court's order for civil commitment. Because the district court's entry ordering civil commitment had been prepared before the hearing took place, the entry contained no detailed facts and recounted no testimony describing the respondent's condition, symptoms, or actions. The entry therefore did not comply with Mont. Code Ann. § 53-21-127(8)(a) (2003).

Facts of the Case

In September 2014, the Lincoln County Attorney filed a petition alleging that a woman, C.C., had a mental disorder and should be committed. After the initial hearing conducted on October 6, 2014, the District Court concluded that Ms. C. did not have a mental disease and dismissed the petition. At 5 a.m. on October 18, 2014, Officer Chris Pape of the Troy Police Department was dispatched to Ms. C's residence, where he spoke to her for several minutes. Although her behavior was unusual and she was in possession of a loaded shotgun, he concluded that no further action was necessary.

On October 27, Officer Pape responded to a call from Ms. C's neighbor, Sunshine Thill, who reported that Ms. C. was on her front porch at 4:45 a.m. Ms. Thill felt threatened by Ms. C's odd behavior and frightening statements. Officer Pape arrested Ms. C. for disorderly conduct. While transporting her to detention, the officer heard Ms. C. having a conversation with Satan in which she said that some unidentified man, presumably Officer Pape, must be killed before she arrived at the jail. Ms. C. was booked, and the officer discovered ammunition in her pockets but no weapons. While in detention, Ms. C's strange behavior caused the staff concern, so they transported her to the emergency room for a mental health evaluation. Several hours later, Nancy Huus, a clinical social worker, evaluated Ms. C. and found her to be calm and functional.

On October 28, the Lincoln County Attorney's office filed a second petition alleging that Ms. C. had a mental disorder and needed commitment. The district court conducted an initial hearing on the same day, and both Officer Pape and Ms. Huus testified. Officer Pape testified that although he found Ms. C's language in the squad car during transport disturbing, she had never directly threatened him. Ms. Huus testified in some detail that Ms. C. displayed symptoms of paranoid schizophrenia. She recommended that Ms. C. be committed to Montana State Hospital for further observation, assessment, and possible treatment by a psychiatrist.

The district court conducted an adjudicatory hearing on November 3, 2014. Ms. Huus, Officer Pape, Ms. Thill, and Ms. C. testified. In addition, Ms. Thill's sister, Deana Thill, who lived in the same mobile home park as did Sunshine Thill and Ms. C., testified that she was frightened when a confused Ms. C. entered her home without knocking, thinking she was at a laundry facility. At the conclusion of the hearing, the district court orally concluded that Ms. C. should go to the Montana State Hospital, deeming that such placement was the least restrictive treatment. The court ordered that arrangements be made to keep Ms. C's trailer home safe and winterized while she was at the hospital and to ensure that her bills were properly paid.

Following the district court's oral pronouncement and before adjournment, the state produced a document prepared before the hearing, which the court signed, with the headings "Findings of Fact," "Conclusions of Law," and "Order of Commitment." The "Findings of Fact" read as follows:

> 1. Respondent suffers from a mental disorder, Unspecified Schizophrenia Spectrum, as diagnosed by Nancy K. Huus, Mental Health Professional.
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> 2. Because of her mental disorder, Respondent presents an imminent threat of injury to herself and others for the reasons set forth in the testimony and report of Nancy K. Huus, Mental Health Professional.

> 3. Respondent is a person who requires residential treatment and commitment, and the Court finds that there are no services available locally which meet Respondent's needs.
>
> 4. Respondent is a person who is not competent to make decisions regarding her medication and treatment. Involuntary medication is necessary to protect the Respondent and the public and to facilitate effective treatment.
>
> 5. The least restrictive treatment facility available for the Respondent is at the Montana State Hospital at Warm Springs, Montana (*C.C.*, p 107).

On November 5, 2014, Ms. C. (through counsel) moved to amend the written order to conform to the oral pronouncement, noting that the court's oral pronouncement did not include a finding of need nor a hospital authorization for involuntary medication. The district court denied the motion, holding that its omission regarding involuntary medication was inadvertent. Ms. C. appealed the district court's order to the Montana Supreme Court. One of the grounds for appeal was that the order lacked a sufficiently detailed statement of facts to justify her commitment.

Ruling and Reasoning

The Montana Supreme Court referred to Mont. Code Ann. § 53-21-127(8)(a), which requires that a district court's commitment order include "a detailed statement of the facts upon which the court found the respondent to be suffering from a mental disorder and requiring commitment." Ms. C. argued that the district court's preprepared order did not meet this requirement. In response, the state urged the supreme court to invoke the "doctrine of implied findings" and conclude that the commitment order complied with the applicable statute. Under the doctrine of applied findings, the appellate court is asked to presume that the trial court made all findings necessary to support its ruling.

To address Ms. C.'s claim, the Montana Supreme Court examined its recent precedents in civil commitment cases, including *In re L.L.A.*, 267 P.3d 1 (Mont. 2011). In *L.L.A.*, the state's petition had presented detailed evidence of the respondent's schizophrenia-related behavior. The trial court heard additional facts at the district court hearing, at the close of which the state said it would prepare a commitment order in "less than ten minutes" (*L.L.A.*, p 2). The order signed by the trial court ultimately listed seven facts "derived almost exclusively from the language of §53-21-126, MCA" (*L.L.A.*, p 3). The order contained none "of the facts upon which it found that, because of her mental disorder, L.L.A. is substantially unable to protect her life and safety or that imminent threat of injury to herself or others will result if she is left untreated" (*L.L.A.*, p 3). The Montana Supreme Court ruled that "conclusory statements of statutory criteria" like those found in L.L.A.'s order did not constitute adequate compliance with the statute, and it reversed L.L.A.'s commitment.

The Montana Supreme Court considered several other commitment-related cases in which it had applied the doctrine of implied findings. These cases dealt with forced medication, whether a hospital was the least restrictive placement, a follow-up order that supplemented a commitment order prepared three days earlier, and an order of recommitment that was "spartan" but still contained facts from specific witness testimony at the hearing (*C.C.*, pp 109–10). These cases thus dealt with questions distinguishable from *L.L.A.* and *C.C.*, which implicated the express statutory provision in Mont. Code Ann. § 53-21-127(8)(a) requiring "a detailed statement" of the factual basis for commitment. Both *L.L.A.* and *C.C.* involved orders prepared before the evidentiary hearing took place, which meant that the commitment order could contain no facts based on testimony heard. A preprepared order signed by the district court wholly failed to satisfy statutory requirements, the supreme court concluded.

Discussion

On its surface, *C.C.* deals with an arcane area of appellate law that is unrelated to matters over which testifying experts usually have control. Yet the decision deserves the attention of forensic psychiatrists for two reasons: first, better understanding of how legal processes work can help us to be better prepared to provide the specific kinds of mental health input and perspective that legal decision-makers need. This case helps testifying experts understand why it is important to give detailed, specific, fact-focused testimony to support an opinion that a respondent poses a risk to self or others because of a mental illness.

Second, *C.C.* reminds psychiatrists that society views involuntary hospitalization through a special lens: it is not merely an episode of medical treatment, but state-instituted confinement that "can have calamitous effects on an individual . . . includ[ing] loss of liberty and potential damage to a person's reputation" (*C.C.*, p 108). Too much is at stake in civil commitment hearings to apply the doctrine of im-

plied findings to a commitment order that was prepared before the hearing and before the parties could put forth facts and have their positions heard.

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Clinician Immunity Against Claims of Malpractice and Constitutional Violations

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Parameters of Sovereign and Qualified Immunity When Insanity Acquitee Raised Malpractice and Civil Rights Violations on the Basis of His Confinement Against State Hospital Clinicians

In *Montin v. Moore*, 846 F.3d 289 (Eighth Cir. 2017), John Maxwell Montin appealed to the U.S. Court of Appeals for the Eighth Circuit after his claims of medical malpractice and violation of his constitutional rights to be free from unnecessary confinement and free from retaliation for seeking access to courts were dismissed in the district court.

Facts of the Case

Mr. Montin was committed to the Lincoln Regional Center (LRC), a state psychiatric hospital, on August 13, 1993, as an individual who had been found not responsible by reason of insanity on two felony charges. On July 16, 2013, Mr. Montin was released unconditionally after he was found no longer dangerous to himself or others by the state court. In July 2014, Mr. Montin brought a lawsuit in federal district court against employees of the LRC, including psychiatrists, psychologists, and others who rendered professional health care services and forensic services to Mr. Montin, including administering psychological testing, formulating and implementing treatment plans, and providing annual court reports. In his claim, he asserted that the defendants failed to use forensic tools appropriately, failed to score and interpret psychological tests correctly, and submitted misleading reports.

Mr. Montin alleged that LRC employees committed medical malpractice under Nebraska State Law and claimed that the defendants failed to meet the standard of care in their respective disciplines under Nebraska state law by incorrectly labeling Mr. Montin as having a mental illness and subjecting Mr. Montin to unnecessary and inappropriate treatment and confinement. Mr. Montin also asserted under 42 U.S.C. § 1983(1996), that the defendants violated his federal civil right to be free from unnecessary confinement by creating unreliable evaluations and reports and failing to evaluate and treat Mr. Montin properly. Mr. Montin claimed that the failure to evaluate and treat him adequately violated his fundamental right to freedom from physical restraint. Mr. Montin further asserted that the defendants violated his federal civil rights by retaliating against him for seeking relief in state and federal courts. The defendants' motion to dismiss these claims was granted by the district court on various grounds. Under the Nebraska State Tort Claims Act (STCA), the claim was barred by sovereign immunity and it had not been waived by Nebraska. The district court also dismissed Mr. Montin's federal civil rights claims, having determined that qualified immunity applied to the defendants. Mr. Montin appealed the district court's dismissal of his claims.

Ruling and Reasoning

First, the Eighth Circuit addressed the state law malpractice claim, which was reviewed *de novo*. The court re-examined the background of sovereign immunity, which they noted bars any suits against states and their employees in their official capacities. Sovereign immunity can be abrogated by Congress, as is seen in claims filed pursuant to 42 U.S.C. § 1983, or can be waived by states in particular cases. Therefore, without an abrogation or waiver, sovereign immunity bars all suits against state officials acting in their official capacity.

In this case, Mr. Montin asserted that the state claim was against the defendants in their individual capacities (as opposed to their official state capacities) and thus, sovereign immunity did not apply. According to Nebraska law, however, if a state official was acting within the scope of his employment at the time of an alleged tort, then he must be sued in his official capacity. Although Mr. Montin's claims were