had asked neutral questions and "did not take on the role of a prosecutor merely because counsel was not present" (*In re J.R.*, p 4) or merely because the answers to the judge's questions favored J.R.'s being civilly committed. Further, the argument that a court automatically becomes partial simply by asking questions "elevates form over substance and would have potentially far-reaching, negative consequences" for various types of cases beyond civil commitment hearings (e.g., for various *pro se* cases, contempt proceedings, domestic violence actions, and sensitive juvenile hearings) (*In re J.R.*, p 4).

Dissent

The dissent said that the court majority's opinion set up a "straw man" argument by defining J.R.'s position as a request for a blanket rule prohibiting the judge at a commitment hearing from asking questions, owing to this questioning posing a threat to neutrality. Rather, "the problem in these cases is that the trial court elected to proceed to hear a case when one party failed to appear" (*In re J.R.*, p 7). Judges can, of course, ask clarifying questions in a variety of types of hearings when both parties are represented by counsel, but that was not the case here. The trial court had "called the only witness, asked all the questions, and elicited all the evidence used to support J.R.'s commitment," thereby forcing the judge (even if unwillingly) to "act as the prosecuting party by calling all the witnesses and eliciting the testimony and other evidence necessary to commit the respondent" (*In re J.R.*, p 9).

Although the majority did set out some parameters for such questioning, indicating, for example, that a trial judge should not use language that could "conceivably be construed as either advocacy in relation to the petitioner or as adversative in relation to the respondent," this scenario still creates "an unfortunate case-by-case legal standard where due process protections depend not on the adherence to well-established procedures of an adversarial process but rather on the particular questions asked by the judge" (*In re J.R.*, p 10).

Discussion

The holding in this case emphasizes the importance of due process in an involuntary commitment hearing given the significant liberty interests and substantial rights at stake. Due process entitles the respondent to an adversarial process, overseen by an independent decision maker. The majority ruled in this case that civil commitment hearings, at least in North Carolina, do not require the presence of counsel representing the state, and that a judge can conduct such hearings without necessarily losing impartiality, even when that judge directly asks questions of witnesses, provided that these questions are "even-handed." Clinicians must be aware of the commitment laws and procedures and relevant case law in their own jurisdiction. Some states explicitly require state representation at commitment hearings, whereas other states do not.

This case is relevant to all clinicians who work in inpatient settings, given the well-documented tendency for the civil commitment process to shift over time from an adversarial model to a more "common-sense model" (Applebaum P. Almost a Revolution: Mental Health Law and the Limits of Change. New York: Oxford University Press; 1994). In the latter model, the emphasis begins to center on beneficence rather than on the protection of patient rights. All of the major participants in the commitment process (psychiatrists, district attorneys, public defenders, and judges) can end up working collaboratively toward what they view as being in a patient's best interest, rather than explicitly recognizing the risk of such an erosion occurring and working to preserve the adversarial nature of the process. The presence of a representative for the state therefore does not guarantee the protection of the adversarial process, but the absence of such representation arguably increases the risks of this erosion. Clinicians asked to participate in civil commitment hearings should remain mindful of these concerns.

Nexus between Mental Illness and Dangerousness in Civil Commitment

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Mental Illness and Related Symptoms Must Be Explicitly Linked to Future Dangerousness to Support Findings Necessary for Civil Commitment

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In *In re C.G.,* 881 S.E.2d 534 (N.C. 2022), the Supreme Court of North Carolina ruled that the trial court's written findings were inadequate to support its decision to commit the patient civilly. Specifically, the court indicated that there was insufficient evidence showing that the patient was a danger to himself because the state did not link his mental illness with his risk for serious, near-term physical debilitation without commitment.

Facts of the Case

On January 30, 2020, C.G. presented to Duke University Medical Center (DUMC) with psychotic symptoms that his Assertive Community Treatment (ACT) team had difficulty treating in the community. Following North Carolina's statutorily defined process for involuntary commitment, a physician petitioned for C.G.'s involuntary commitment "for safety and stabilization" given that his psychotic symptoms were interfering with his ability to communicate and take medication as prescribed. The magistrate then ordered C.G. to be involuntarily committed and, the following day, a different physician conducted a second examination. This physician also documented several psychotic symptoms and concluded that C.G. was a danger to himself and others. Over the next week, treatment providers noted that C.G. exhibited hallucinations, grandiose delusions, disorganized speech, and unstable mood; he was diagnosed with schizoaffective disorder.

On February 7, 2020, the trial court held a hearing to determine whether C.G. should be released or remain hospitalized for further treatment. No counsel appeared on behalf of the state or DUMC. A physician who had not conducted either commitment examination yet was involved in C.G.'s current treatment testified that C.G. had been the victim of several assaults while at DUMC but had no history of self-harm other than placing himself in dangerous situations. He opined that C.G.'s belief that he did not have a mental illness and did not need treatment, coupled with the continued severity of his symptoms, would lead to "immediate decompensation" on discharge from DUMC. C.G. also testified; he expressed little insight into the reason for his hospitalization and made a number of disorganized and illogical statements. During his testimony, he stated that he did not have thoughts of harming himself or others and indicated that he would continue taking his psychiatric medication if released.

The trial court ordered C.G. to remain involuntarily committed for another 30 days based on the finding that his psychotic symptoms caused him to be a danger to himself and others and interfered with his ability to care for himself, specifically citing dental and nourishment needs. To support its decision, the court noted C.G.'s living arrangement with a person who has "anger issues," his history of being the victim of assaultive behavior, and having "disturbing thoughts" that had led to deterioration and had rendered him unable to perceive dangers to himself. C.G. appealed this decision, arguing that the trial court's written findings were insufficient to support its conclusion that C.G. posed a danger to himself and others and that the trial court had violated C.G.'s due process rights by eliciting evidence when counsel for the state did not appear. The court of appeals affirmed the trial court's holding on both matters.

C.G. appealed to the Supreme Court of North Carolina on the grounds that his due process rights had been violated, that the court of appeals based its decision on current self-care conditions without any evidence of future debilitation, and that mental illness and related symptoms are insufficient by themselves to support a finding of dangerousness.

Ruling and Reasoning

The Supreme Court of North Carolina affirmed the decision of the court of appeals that C.G.'s due process rights were not violated, referencing the holding in a companion case, *In re J.R.*, 2022 WL 177726219 (N.C. 2022).

Regarding the sufficiency of the trial court's written findings supporting commitment, the court reversed. The court found that the trial court's finding regarding C.G.'s mental health lacked a nexus to

risk of dangerousness. The court referenced North Carolina's civil commitment criteria under N.C. Gen. Stat. §122C-261(a) (2021), which allows for commitment based on danger to self, danger to others, or a need for treatment to prevent deterioration likely to result in dangerousness. The court determined that C.G.'s danger to self was in question, specifically the component of the definition regarding whether the individual has "acted in a manner that presents a reasonable probability that he or she will suffer serious physical debilitation in the near future" (N.C. Gen. Stat. § 122C-3(11)(a) (2008)). This determination requires evidence that the individual cannot care for self and a reasonable probability that the individual will experience serious physical debilitation in the absence of continued inpatient treatment. The court also noted that, in determining whether there was sufficient evidence for C.G.'s commitment, it could only review the trial court's written findings rather than the entire record.

The court found that the trial court's findings about C.G.'s diagnosis, symptoms, and circumstances prompting the initial commitment examinations were insufficient to support a reasonable probability of serious physical debilitation in the near future. The court reviewed a series of prior cases, which held that findings related to mental illness, symptoms of mental illness, and an inability to care for one's needs are insufficient to prove that an individual will experience "serious physical debilitation" without further inpatient treatment. Thus, the court indicated that the trial court did not adequately explain how C.G.'s symptoms might lead to future decompensation outside of the hospital. The court also noted that the risk of someone else engaging in unlawful conduct against C.G. could not be used to justify C.G.'s commitment following *In re Hogan*, 232 S.E.2d 492 (N.C. Ct. App. 1977).

Dissent

The dissent said that the trial court did make findings about the potential for future dangerousness. Specifically, the dissent emphasized the trial court's findings about the ongoing nature of C.G.'s symptoms and the likelihood of dangerousness if those symptoms went untreated. The dissent cited expert testimony that included a prediction of "immediate decompensation" if C.G. were discharged, evidence of C.G.'s recent noncompliance with medication as an outpatient, and evidence of insufficient nourishment and dental care before involuntary commitment, as opposed to the majority's strict review of the trial court's written findings. According to the dissenting opinion, based on the entire record, there was sufficient evidence of the likelihood of future harm to justify C.G.'s continued commitment.

Discussion

The holding in this case emphasizes the importance of strict adherence to the specific criteria in civil commitment statutes given the significant liberty interests and rights at stake for individuals with a history of mental illness. In particular, the holding underscores the need to delineate clearly the nexus between psychiatric symptoms and future dangerousness. In this case, the majority held that, to support the civil commitment of an individual, the trial court must make findings about the individual's past and current symptoms of mental illness and link those symptoms to the individual's risk of dangerousness to self or others in the absence of continued inpatient treatment.

Overall, clinicians must be aware of their jurisdiction's specific legal framework for civil commitment, often in state statute, so that they address the appropriate criteria and assist legal decision makers in understanding to what extent an individual's psychiatric symptoms have implications for future dangerousness as defined by statute. An individual may display symptoms of mental illness but still not be considered a danger to self or others. Although the holding in this case was a critique of the trial court's written findings rather than the physicians' reports or expert testimony, clear communication by clinicians about the nexus between psychiatric symptoms and future dangerousness can aid courts in arriving at sound judgments and writing clear opinions. More broadly, the seriousness of involuntary treatment in relation to patient rights and freedoms underscores the need for clinicians to provide clear reasoning that aligns with the legal framework for involuntary commitment. When clinicians match their practice, reports, and testimony with statutory language, they will not only improve the ethics of their practice but also be of greater assistance when communicating with legal actors in civil commitment hearings.