Family law attorney Janet Reed comments on North Carolina case addressing appeal issues in involuntary commitment

When a person is involuntarily committed in North Carolina, the law requires an examination by a second physician within 24 hours of arrival at the facility.


Janet Pittman Reed, lawyer in North Carolina

JACKSONVILLE, NORTH CAROLINA, UNITED STATES, June 15, 2019 /EINPresswire.com/ -- In a recent North Carolina proceeding, the North Carolina Court of Appeals unanimously vacated the trial court's order authorizing continued involuntary commitment of a person. The Court found that respondent need not show that the lack of examination by a second physician resulted in prejudice to the respondent; appellate relief is automatic upon a showing that the statute N.C. Gen. Stat. § 122C-266(a) was violated.

Attorney Janet Reed, based in North Carolina, has published a comment that reviews this case. The complete article will be published on her Blog at https://janetreedesq.blogspot.com/

N.C. Gen. Stat. § 122C-266(a) provides that anyone who is involuntarily committed must receive an examination by a second physician within 24 hours of arrival at the facility. Unfortunately, this did not happen for the respondent in: In the matter of E.D. Therefore, the North Carolina Court of Appeals unanimously vacated the trial court's order authorizing continued commitment. In so ruling, the Court of Appeals held that respondent need not show that the lack of examination by a second physician resulted in prejudice to the respondent, rather the appellate relief is automatic upon showing that the statute was violated. Court of Appeals also held that "N.C. Gen. Stat. § 122C-266(a) was the type of statutory mandate for which the right to appellate review is automatically preserved regardless of a failure to object in the trial court."

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> *Janet Pittman Reed, lawyer in North Carolina*

North Carolina Supreme Court reviewed the Court of Appeals holdings and concluded that as a threshold matter, the assigned error is not automatically preserved. Supreme Court did note that "it is well

established that 'when a trial court acts contrary to a statutory mandate and a defendant is prejudiced thereby, the right to appeal the court's action is preserved, notwithstanding defendant's failure to object at trial.'" The critical issue, however, is that such automatic preservation occurs "when a statute 'is clearly mandatory, and its mandate is directed to the trial court' ..." Here, the State and respondent disagreed as to whether N.C. Gen. Stat. § 122C-266(a) is directed to the trial court. The State argued that any such mandate must be express direct the mandate to the trial court. Respondent argued "that the Court of Appeals was correct to conclude that the issue was automatically preserved because the district court, presumably through its role in conducting hearings, is implicitly called upon to supervise state health care facilities when people are involuntarily committed to those facilities."

Janet Pittman Reed, family lawyer in Jacksonville, North Carolina

Janet Pittman Reed lawyer in North Carolina

The Supreme Court concluded the State's argument was the correct one. The Court noted that prior decisions addressing this issue found such a mandate to exist where "there was a statutory mandate that automatically preserved an issue for appellate review when the mandate was directed to the trial court either: (1) by requiring a specific act by the trial judge, . . . ; or (2) by requiring specific courtroom proceedings that the trial judge has authority to direct . . . ." (internal citations omitted). Here, N.C. Gen. Stat. § 122C-266(a) provides that "within 24 hours of arrival at a 24- hour facility described in G.S. 122C-252, the respondent shall be examined by a physician." Thus, the Court concluded that such mandate was not directed at the trial court and the issue was not automatically preserved for appeal. Having concluded the threshold issue, the Court did not reach the question of whether one must show prejudice from violation of N.C. Gen. Stat. § 122C-266(a)'s mandate to be afforded relief.

The case is In the matter of E.D., No. 125PA18.

About Janet Pittman Reed

Janet P. Reed is an attorney in Jacksonville, North Carolina, and handles Family Law cases such as Divorce & Separation, Personal Injury, Traffic, Criminal Law, Driver's License Restoration Services, and Civil Litigation cases.

Website: https://janetreedlaw.com/
Blog: https://janetreedesq.blogspot.com/
Attorney Profile: https://solomonlawguild.com/janet-p-reed
News: https://hype.news/janet-p-reed-attorney-in-north-carolina/
LinkedIn: https://www.linkedin.com/in/janetpittmanreed/
Twitter: https://twitter.com/leglone?lang=en

Janet P. Reed
The Law Office of Attorney Janet Pittman Reed
+ +1 910-381-1758
email us here
Visit us on social media:
Twitter
LinkedIn

Janet Reed Attorney in North Carolina

Janet P Reed, Attorney in North Carolina