

MEMORANDUM DECISION

Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



ATTORNEY FOR APPELLANT

Charles E. Traylor
Kolb Roellgen & Traylor, LLP
Vincennes, Indiana

IN THE COURT OF APPEALS OF INDIANA

In the Matter of the
Commitment of:

S.D.,

Appellant-Respondent,

v.

Samaritan Center/LaSalle
Behavioral Health,

Appellee-Petitioner.

October 24, 2022

Court of Appeals Case No.
22A-MH-32

Appeal from the Knox Circuit
Court

The Honorable Sherry B. Gregg
Gilmore, Judge

Trial Court Cause No.
42C01-2109-MH-160

Weissmann, Judge.

[1] S.D. seeks reversal of the trial court's order involuntarily committing her to an inpatient mental health program. She alleges due process violations stemming from the trial court's failure to comply with statutory procedures governing the involuntary commitment process. We reverse.

Facts

[2] The Samaritan Center petitioned for the temporary involuntary commitment of S.D. over concerns about her schizoaffective disorder. S.D.'s doctors specifically worried about her independent living skills, such as her abilities to use the restroom, shower, or wash her hands. After an evidentiary hearing, the trial court granted the temporary commitment.

[3] Before the ninety-day temporary commitment period expired, Samaritan Center petitioned to commit S.D. indefinitely. After receiving the petition, the trial court scheduled the mandatory hearing for the next day. At the hearing, conducted virtually, S.D.'s court appointed attorney requested a continuance "to more fully prepare for the hearing," to ensure appropriate witnesses could appear on S.D.'s behalf, and to allow S.D. to explore hiring private counsel to represent her. App. Vol II, p. 31. The trial court denied the continuance.¹ S.D. was indefinitely committed.

¹ The trial court's reasons for denying the continuance are not evident in the record as the hearing was not recorded and therefore, not transcribed. The relevant facts appear in S.D.'s certified Statement of Evidence under Indiana Appellate Rule 31. *See* App. Vol. II, pp 30-33.

- [4] On appeal, S.D argues that the trial court violated her procedural due process rights by giving her notice of the involuntary commitment hearing only one day in advance. We agree and reverse.

Discussion and Decision

- [5] “Individuals involved in regular commitment proceedings are guaranteed certain procedural due process rights.” *In re Turner*, 439 N.E.2d 201, 203 (Ind. Ct. App. 1982). Receiving “effective and timely notice” of these due process protections “is essential.” *Cheek v. State*, 567 N.E.2d 1192, 1195 (Ind. Ct. App. 1991). As relevant here, these protections include receiving notice of the hearing to set an involuntary regular commitment at least five days in advance. Ind. Code § 12-26-7-4(b). S.D. was not given the benefit of this protection. Thus, her involuntary commitment must be vacated. *See, e.g., Melton v. Ind. Athletic Trainers Bd.*, 53 N.E.3d 1210, 1220 (Ind. Ct. App. 2016) (“The failure to properly follow statutory requirements can lead to a violation of a person's procedural due process rights.”); *In re Turner*, 439 N.E.2d at 203 (reversing regular commitment proceeding where there was “little if any compliance with the statutory mandates”).
- [6] Samaritan Center did not file an appellee's brief. Consequently, we review S.D.’s claims for prima facie error and will reverse if error appears “at first sight, on first appearance, or on the face of it.” *Morton v. Ivacic*, 898 N.E.2d 1196, 1199 (Ind. 2008). We will not develop any arguments on Samaritan Center’s behalf. *Id.*

[7] On its face, the record shows that the trial court’s scheduling of a hearing with one day’s notice violated Indiana Code § 12-26-7-4(b), which requires that both the impacted individual and "all other interested persons" receive notice of the hearing at least five days in advance. S.D.’s attorney sought to secure a continuance to alleviate the disadvantages in preparation and witness availability caused by this short notice but was denied. Although the denial of the continuance itself is not necessarily a violation of S.D.’s due process rights, *see Ungar v. Sarafite*, 376 U.S. 575, 589 (1964) (noting “not every denial of a [continuance] violates due process”), its denial here impeded S.D. from utilizing her statutorily guaranteed five days of notice before the hearing.

[8] Accordingly, we reverse.²

May, J., and Crone, J., concur.

² Because we reverse on due process grounds, we do not address S.D.’s argument that insufficient evidence supports her commitment.