

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA  
FIFTH DISTRICT

JANUARY TERM 2007

DEPARTMENT OF CHILDREN  
AND FAMILIES,

Petitioner,

v.

CASE NO. 5D06-3725

SHANNON EDWARD EWELL, ET AL,

Respondent.

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Opinion filed February 23, 2007

Petition for Certiorari Review of  
Order from the Circuit Court for  
Brevard County,  
George W. Maxwell III, Judge.

Charles D. Peters, Orlando, for  
Petitioner.

Robert R. Berry and Gregory W.  
Eisenmenger of Eisenmenger, Berry  
& Peters, P.A., Viera, for Respondent.

PER CURIAM.

Petitioner, the Department of Children and Family Services, ("Department"), seeks a writ of certiorari quashing the trial court's order committing Respondent, Shannon Edward Ewell, to the Florida State Hospital for treatment to restore him to competency.<sup>1</sup> The only medical expert who evaluated Ewell opined that Ewell will not be able to reach competency through any known therapeutic program. Section

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<sup>1</sup> Ewell is charged with one count of burglary and one count of petit theft.

916.13(1)(c), Florida Statutes (2006), requires that before a defendant is committed to the Department for competency restoration, there must be "clear and convincing evidence that . . . [t]here is a substantial probability that the mental illness causing the defendant's incompetence will respond to treatment and the defendant will regain competency to proceed in the reasonably foreseeable future." Because there was no evidence presented below to support Ewell's commitment pursuant to section 916.13(1)(c), we find the trial court departed from the essential requirements of the law by ordering Ewell's commitment for competency restoration. *E.g., M.H. v. State*, 901 So. 2d 197, 200 (Fla. 4th DCA 2005) (recognizing that "[w]here competent, substantial evidence does not support the trial court's finding regarding competency or involuntary commitment, the trial court has departed from the essential requirements of the law"). Therefore, we grant the petition, quash the order below, and remand this matter to the circuit court for further proceedings.

CERTIORARI GRANTED; ORDER QUASHED; REMANDED.

SAWAYA, ORFINGER and LAWSON, concur.