

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

NOT FINAL UNTIL TIME EXPIRES TO
FILE MOTION FOR REHEARING AND
DISPOSITION THEREOF IF FILED

DEPARTMENT OF CHILDREN AND FAMILIES,

Petitioner,

v.

Case No. 5D18-2471

RANDY DOYLE ROSS, JR. AND
STATE OF FLORIDA,

Respondents.

Opinion filed February 1, 2019

Petition for Certiorari Review of Order,
from the Circuit Court for Hernando County,
Daniel B. Merritt, Jr., Judge.

Joyce L. Miller, Assistant Regional
Counsel, of Department of Children and
Families, Tavares, for Petitioner.

Ashley B. Moody, Attorney General,
Tallahassee, and Douglas T. Squire,
Assistant Attorney General, Daytona
Beach, for Respondent, State of Florida.

No Appearance for Respondent,
Randy Doyle Ross, Jr.

PER CURIAM.

The Department of Children and Families (DCF) petitions this Court for certiorari review, challenging the circuit court's order committing Randy Doyle Ross, Jr., to their care. DCF argues the order departs from the essential requirements of law because Ross

does not meet the statutory requirements for commitment. See § 916.13, Fla. Stat. (2018). The State properly concedes error.¹ Accordingly, we grant the writ, quash the order under review, and remand for further proceedings. See Dep't of Child. & Fams. v. Lotton, 172 So. 3d 983, 987 (Fla. 5th DCA 2015) ("[B]ecause there was no evidence presented to the trial court to support the findings it made, the trial court departed from the essential requirements of the law by ordering commitment.").

PETITION GRANTED; ORDER QUASHED.

ORFINGER, BERGER and GROSSHANS, JJ., concur.

¹ After examining Ross, Dr. Bursten concluded that he was not incompetent due to mental illness, but rather was pretending to be incompetent, otherwise known as "malingering."