COURT OF APPEALS
DECISION
DATED AND FILED

August 16, 2017

Diane M. Fremgen
Clerk of Court of Appeals

Appeal No. 2016AP1955 **Cir. Ct. No. 2014ME242**

STATE OF WISCONSIN **IN COURT OF APPEALS**
DISTRICT II

IN THE MATTER OF THE MENTAL COMMITMENT OF C.S.:

WINNEBAGO COUNTY,

PETITIONER-RESPONDENT,

V.

C.S.,

RESPONDENT-APPELLANT.

APPEAL from orders of the circuit court for Winnebago County: BARBARA H. KEY, Judge. *Dismissed*.

¶1 HAGEDORN, J.[1] C.S. appeals from an order extending his involuntary medication under WIS. STAT. § 51.61(1)(g) and an order denying his motion for postcommitment relief. He argues that § 51.61(1)(g) is unconstitutional because it allows prisoners to be involuntarily medicated without a finding of dangerousness. However, C.S. admits that he is no longer incarcerated—and therefore not subject to the challenged application of the statute. He nevertheless contends that we should exercise our discretion to address his claim. We decline and conclude the issue is moot.

¶2 C.S. suffers from schizophrenia. In 2013, while C.S. was serving a sentence for mayhem, the circuit court entered an order for his involuntary commitment and medication. C.S. challenged the court's commitment order on constitutional grounds and challenged the court's involuntary medication order as an erroneous exercise of discretion. Our supreme court affirmed the commitment and involuntary medication order. *See* ***Winnebago Cty. v. Christopher S.***, 2016 WI 1, ¶57, 366 Wis. 2d 1, 878 N.W.2d 109, *cert. denied*, 136 S. Ct. 2464 (2016). C.S. did not, however, challenge the constitutionality of the order for involuntary medication. ***Id.***, ¶¶6, 23.

¶3 In June 2014, the commitment and medication orders were extended for twelve months where, yet again, no finding of dangerousness was made (or, per the statute, required).[2] C.S. moved for postcommitment relief from this order, this time challenging the involuntary medication order on constitutional grounds.

[1] This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(d) (2015-16). All references to the Wisconsin Statutes are to the 2015-16 version unless otherwise noted.

[2] The extensions have now expired, and C.S. does not argue that he is currently subject to any commitment or medication orders.

The circuit court denied the motion on the merits, concluding that the statutory provisions were constitutional.

¶4 On appeal, C.S. claims that the involuntary medication provisions in WIS. STAT. § 51.61(1)(g) are unconstitutional because the statute does not require a finding of dangerousness when applied to prisoners.[3] Although C.S. admits that he is no longer incarcerated—and therefore no longer subject to the allegedly problematic application of § 51.61(1)(g)—he argues that his constitutional claim is not moot because he "could potentially at some point be re-confined and returned to prison if his supervision was revoked and involuntarily ordered to take medication." Even if his claim is moot, C.S. requests that we exercise our discretion to address this issue.

¶5 Whether a legal claim is moot is a question of law we review de novo. ***PRN Assocs. v. DOA***, 2009 WI 53, ¶25, 317 Wis. 2d 656, 766 N.W.2d 559. An issue is moot "when its resolution will have no practical effect on the underlying controversy," and "[a]ppellate courts generally decline to reach the merits of an issue that has become moot." ***Id.***, ¶¶25, 29. If all issues on appeal are moot, the appeal should be dismissed. *See* ***State ex rel. Ellenburg v. Gagnon***, 76 Wis. 2d 532, 535, 251 N.W.2d 773 (1977) (per curiam).

¶6 We may, however, in our discretion, address moot issues in exceptional or compelling circumstances. *See* ***City of Racine v. J-T Enterprises of Am., Inc.***, 64 Wis. 2d 691, 701-02, 221 N.W.2d 869 (1974). One example of

[3] WISCONSIN STAT. § 51.20(1)(ar) allows the State to involuntarily commit a prisoner without a finding of dangerousness, and WIS. STAT. § 51.61(1)(g) provides that such persons may be involuntarily medicated.

an exceptional circumstance is when "a statute's constitutionality is involved." ***State ex rel. Olson v. Litscher,*** 2000 WI App 61, ¶3, 233 Wis. 2d 685, 608 N.W.2d 425 (citation omitted). But "consideration of constitutional issues as they apply to other persons or other situations is guarded and limited." ***Ellenburg***, 76 Wis. 2d at 535. We also may take up a moot issue if it "is 'likely of repetition and yet evades review' because the situation involved is one that typically is resolved before completion of the appellate process."[4] ***Olson***, 233 Wis. 2d 685, ¶3 (citation omitted). C.S. argues both situations are presented here.

¶7 Because C.S. is no longer incarcerated, the statutory provisions allowing prisoners to be involuntarily medicated without a finding of dangerousness no longer apply to him. *See* WIS. STAT. § 51.20(1)(a)2., (ar) (dangerousness must be alleged in a petition for involuntary commitment for treatment unless the subject individual is a prisoner); *see also* ***Winnebago Cty.***, 366 Wis. 2d 1, ¶¶26-27. Therefore, C.S.'s constitutional claim is moot; resolving the claim will have no practical effect on this case.

¶8 We are not persuaded that this case presents the sort of exceptional or compelling circumstances that would—despite mootness—warrant a decision on the merits. Although C.S. challenges the constitutionality of a statute, deciding

[4] The United States Supreme Court has explained that

> [T]he "capable of repetition, yet evading review" doctrine [is] limited to the situation where two elements combined: (1) the challenged action was in its duration too short to be fully litigated prior to its cessation or expiration, and (2) there was a reasonable expectation that the same complaining party would be subjected to the same action again.

Weinstein v. Bradford, 423 U.S. 147, 150 (1975).

his claim would not bring any definitive clarity to the law. This is so because a decision by one judge under WIS. STAT. § 752.31 is not publishable[5] and therefore not citable as binding authority. S*ee* WIS. STAT. § 809.23(1)(b)4., (3).

¶9 This particular issue is also not one reasonably likely to be repeated yet evading review. C.S.'s argument that we should consider his case because he could potentially be reconfined and subjected to forced medication without a finding of dangerousness depends on the premise that there is a "reasonable expectation" that C.S. will violate the terms of his extended supervision, be reincarcerated, and again be subjected to involuntary medication without a finding of dangerousness. *See* ***State ex rel. Clarke v. Carballo***, 83 Wis. 2d 349, 357, 265 N.W.2d 285 (1978) (citation omitted). Although it is possible, it is by no means a "reasonable expectation."

¶10 In short, C.S. presents us an academic question, not a genuine complaint that the state of Wisconsin is violating his constitutional rights. Therefore, we dismiss the appeal as moot.

By the Court.—Appeal dismissed.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)4.

[5] We declined to convert this decision to a three judge panel, which would have rendered the decision publishable under WIS. STAT. § 752.31.