COURT OF APPEALS
DECISION
DATED AND FILED

May 2, 2018

Sheila T. Reiff
Clerk of Court of Appeals

Appeal No. 2017AP1468 **Cir. Ct. No. 2016ME478**

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

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

WAUKESHA COUNTY,

PETITIONER-RESPONDENT,

V.

S.L.L.,

RESPONDENT-APPELLANT.

APPEAL from orders of the circuit court for Waukesha County: WILLIAM DOMINA, Judge. *Dismissed*.

¶1 NEUBAUER, C.J.[1] S.L.L. appeals from orders that extended her involuntary commitment for one year and that continued involuntary medication and treatment. She argues the circuit court lacked personal jurisdiction to hold a hearing and lacked authority to enter a default order in a commitment proceeding, and the orders were based upon reports of doctors who never met her nor testified at the recommitment hearing, rendering the supporting evidence insufficient. Because the action has been dismissed and S.L.L. is no longer subject to those orders, the appeal is moot. The appeal is therefore dismissed.

BACKGROUND

¶2 In August 2016, S.L.L. was committed to the inpatient care of Waukesha County for mental health treatment under WIS. STAT. ch. 51. In September 2016, the County transferred her from inpatient to outpatient care after she agreed, in writing, to several conditions, to include taking medication every three weeks and obtaining permission from the County before she changed addresses.

¶3 In November 2016, S.L.L. received her prescribed medication, but missed the next appointment and made no further contact with the County. The County received no request for or notification of an address change.

¶4 Because of her noncompliance and unreported address change, on February 8, 2017, the County petitioned the court for a one-year extension of S.L.L.'s commitment order. On that date, the court sent notice to S.L.L.'s last-

[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.

known address that a hearing on the petition was set for February 28, requiring examinations beforehand by Drs. Cary Kohlenberg and Roland Manos. The letter was returned as nondeliverable.

¶5 S.L.L. did not appear for her examinations. Because the doctors were unable to examine her, they reviewed the information filed with the County's petition. In their reports, both doctors opined that S.L.L. is mentally ill, potentially dangerous, and a proper subject for treatment, requiring psychotropic medication. The only difference between the reports pertained to the least restrictive level of treatment, with Kohlenberg believing "[o]utpatient treatment" to be appropriate and Manos believing "[l]ocked inpatient treatment" to be necessary.

¶6 At the February 28 hearing, S.L.L. failed to appear. She was represented by counsel, but he had no contact with her. The County conceded it did not know of S.L.L.'s whereabouts and she likely did not receive the hearing notice. The County asked the circuit court to issue a writ of capias for her detention and to schedule a commitment hearing.[2] Her counsel moved to dismiss for lack of personal jurisdiction and for want of authority to issue a writ of capias for her detention.

¶7 Using the petition and doctors' reports as factual grounds, the court found that S.L.L. continues to be mentally ill and a proper subject for treatment. The court entered an order finding her in default for failing to appear, extending her commitment for one year, and requiring her to be treated in a locked inpatient

[2] WISCONSIN STAT. § 51.20(10)(d) provides for the issuance of a capias for the detention of the individual and the rescheduling of the hearing within seven days of the detention.

facility. It entered a second order that authorized the involuntary administration of medication. The court also issued a writ of capias, taking the form of a bench warrant.

¶8 In July 2017, S.L.L. filed a notice of appeal from the two orders. The next month, the County issued a reevaluation report, noting the lack of any contact with S.L.L. despite its efforts and recommending that the court "[d]ischarge patient from commitment." Based on that report, the County moved in September to dismiss the entire matter, citing its belief S.L.L. did not reside in Waukesha County and any residence elsewhere could not be established. On September 7, the court granted the motion, ordered that "this matter is dismissed," and canceled the writ of capias.

DISCUSSION

¶9 Mootness of a legal action or issue presents a question of law for our de novo review. ***PRN Assocs. LLC v. DOA***, 2009 WI 53, ¶25, 317 Wis. 2d 656, 766 N.W.2d 559. An action or issue is moot when its determination "cannot have any practical legal effect upon a then existing controversy." ***Winnebago Cty. v. Christopher S.***, 2016 WI 1, ¶31, 366 Wis. 2d 1, 878 N.W.2d 109 (citation omitted). If circumstances render a legal dispute purely academic, it is moot. *See* ***State ex rel. Olson v. Litscher***, 2000 WI App 61, ¶3, 233 Wis. 2d 685, 608 N.W.2d 425. Absent special exceptions, we decline to decide moot issues. *See* ***State ex rel. Riesch v. Schwarz***, 2005 WI 11, ¶12, 278 Wis. 2d 24, 692 N.W.2d 219.

¶10 We conclude this appeal became moot on September 7, 2017, when the court granted the motion to dismiss and canceled the writ of capias. No one disputes that the County discharged S.L.L. from involuntary commitment and that

the court dismissed the action in its entirety. Nothing is left to dispute. Because the orders for extended commitment and for medication have no effect on S.L.L., vacating them would have no effect as well. Lapsed or dismissed orders like these typically fail to present an actual controversy. *See* ***Christopher S.***, 366 Wis. 2d 1, ¶¶30-31 (action was moot because involuntary commitment order had expired, but the supreme court addressed the issue nonetheless because mootness exceptions applied); ***G.S., Jr. v. State***, 118 Wis. 2d 803, 804, 348 N.W.2d 181 (1984) (per curiam) (order extending involuntary commitment lapsed while case on appeal, rendering the case moot); ***Dane Cty. v. Sheila W.***, 2013 WI 63, ¶4, 348 Wis. 2d 674, 835 N.W.2d 148 (per curiam) (circuit court ordered appointment of a guardian to a minor to decide whether to consent to life-saving medical treatment, but issue became moot on appeal when the order expired); *see also* ***Sauk Cty. v. Aaron J. J.***, 2005 WI 162, ¶3, 286 Wis. 2d 376, 706 N.W.2d 659 (per curiam) (commitment order was no longer in effect, raising the concern of mootness).

¶11 S.L.L. argues the case is not moot as to her. Without explanation, she contends that the doctors' reports and the court's express findings based on those reports—she is mentally ill and potentially dangerous, needs "to be locked up," and so on—are now part of her record and could be used against her in future attempts to commit her.

¶12 We are unpersuaded. The controversy in the circuit court had been whether the commitment order should be extended which then, on appeal, became whether the extended commitment order should be vacated. That controversy plainly ended when the action was dismissed. *See* ***PRN Assocs.***, 317 Wis. 2d 656, ¶49 (because relief or remedy was no longer available, resolution of the issue could not have any practical effect and the issue was moot). Beyond that, S.L.L. does not explain how vacating the orders would affect the evidentiary value of the

doctors' reports going forward, one way or another. More to the point, she does not develop any sort of claim or issue preclusion revolving around commitment and medication orders, entered when she had not been served, did not receive notice, did not appear, and which were subsequently dismissed because her residency in the County could not be established. Further, S.L.L. does not cite any authority for the proposition that a live controversy endures, despite a full dismissal of the action, when an appellant disagrees with particular opinions or documents of record or findings by the court.[3]

¶13 S.L.L. argues that, even if the appeal is moot, we should address the merits nonetheless. Previous courts have addressed moot issues, she points out, for various reasons, two of which apply here. She asserts that how a court may acquire personal jurisdiction over an unserved subject for a recommitment hearing and whether a court may enter a default order for involuntary commitment and medication are issues "of great public importance," and that they "will likely be repeated, but evade[]" review because commitment orders often expire before the appellate process has run.[4] ***Christopher S.***, 366 Wis. 2d 1, ¶32.

[3] We note this appeal arises from the orders *extending* the original commitment and for involuntary medication. Vacating those orders would have no effect on the original August 2016 commitment order, which was based on similar doctors' reports and opinions and on similar court findings, all of which will remain part of the record.

[4] Reasons for a reviewing court to address a moot issue include the following: the issues are of great public importance; a statute's constitutionality is involved; the same situation occurs so frequently that circuit courts need definitive guidance; likely to arise again, the court should resolve the issue to avoid uncertainty; and an issue repeats but evades review because it is of the type that becomes moot during the lengthy appeal process. ***G.S., Jr. v. State***, 118 Wis. 2d 803, 805, 348 N.W.2d 181 (1984) (per curiam).

¶14 Although those are generally valid reasons for a court to address a moot issue, we cannot agree that they apply and warrant our review in this case.[5] Taking on issues over which there is no present and real dispute should only be done "in the most exceptional and compelling circumstances." ***City of Racine v. J-T Enters. of Am., Inc.***, 64 Wis. 2d 691, 702, 221 N.W.2d 869 (1974). We have next to no basis to believe that S.L.L.'s jurisdictional and default order issues frequently arise or cause significant and ongoing confusion or inconsistency in the handling of these cases, elevating the issues to "great public importance."[6] Also, it was the granting of the County's motion to dismiss that rendered the action moot rather than the lapsing of the order during the appeal process.

[5] S.L.L. generally cites to ***Shirley J.C. v. Walworth Cty.***, 172 Wis. 2d 371, 373, 375, 493 N.W.2d 382 (Ct. App. 1992), where, despite the issue becoming moot, we considered whether summary judgment was appropriate in a contested involuntary commitment action because the issue was of great public importance, was likely to arise again, and evaded review because of the lengthy appeal process. But beyond providing its citation, S.L.L. does not offer any analysis of ***Shirley J.C.*** or explain how its rationale and holding apply here. As we discuss above, we cannot see or infer with any level of confidence the great public importance, or the repetitive but evasive nature, of her issues. We generally treat undeveloped arguments as we do moot issues: we decline to address them. *See* ***State v. Pettit***, 171 Wis. 2d 627, 646, 492 N.W.2d 633 (Ct. App. 1992).

[6] Before the County filed its appellate response brief, it moved for dismissal on mootness grounds, which we denied. In S.L.L.'s response to that motion, she identified one Waukesha County case where the court apparently entered a similar default order with similar jurisdictional and evidentiary issues. She also identified one Milwaukee County case where the court apparently dismissed a recommitment petition for lack of jurisdiction, suggesting the counties are handling these cases differently. Even assuming that S.L.L.'s characterization of these cases is accurate, however, one other similar case in populous Waukesha County does not reflect a frequent or repetitive issue that justifies departing from our well-established rule of declining to address moot issues.

In her reply brief, S.L.L. notes the County advances the same mootness argument as it did in its earlier motion and asserts that we, by denying that motion, "already rejected" the County's argument. Not so. The denial of the County's motion does not constitute a decision on the merits. Our denial may simply indicate that, before addressing mootness or any other issue, we want the parties to have the opportunity to fully brief their arguments and want to afford ourselves the opportunity to fully consider those arguments.

By the Court.—Appeal dismissed.

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