COURT OF APPEALS
DECISION
DATED AND FILED

May 15, 2019

Sheila T. Reiff
Clerk of Court of Appeals

Appeal No. 2018AP1486 **Cir. Ct. No. 2018ME31**

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

IN THE MATTER OF THE MENTAL COMMITMENT OF W.E.L.:

WAUKESHA COUNTY,

PETITIONER-RESPONDENT,

V.

W.E.L.,

RESPONDENT-APPELLANT.

APPEAL from orders of the circuit court for Waukesha County: PAUL BUGENHAGEN, JR., Judge. *Dismissed*.

¶1 HAGEDORN, J.[1] Pursuant to WIS. STAT. ch. 51, W.E.L. was committed to the care and custody of Waukesha County and subject to the involuntary administration of medication during commitment. He now appeals from the original commitment and medication orders, as well as an order denying him postdisposition relief. However, W.E.L. later stipulated to an extension of the commitment and medication orders. Because W.E.L. is no longer subject to the original orders and does not challenge the extension orders he stipulated to, we conclude that W.E.L.'s challenges to the original commitment and medication orders are moot. Thus, we dismiss the appeal.

BACKGROUND

¶2 In January 2018, W.E.L.'s brother notified law enforcement that W.E.L. was engaging in threatening behavior and showing signs of escalating mental health issues. W.E.L. had been previously diagnosed with paranoid schizophrenia and bipolar disorder. After further investigation, law enforcement took W.E.L. into custody pursuant to an emergency detention.

¶3 A probable cause hearing was held with W.E.L. appearing by video conferencing from a mental health facility. His treating psychiatrist testified to her opinions that W.E.L. suffered from schizoaffective disorder and that he was in need of inpatient care and incompetent to refuse medication. W.E.L. did not dispute his mental state, but contested his continued detention and any required use of injectable medication. The circuit court found probable cause was established and ordered a final hearing.

[1] This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(d) (2017-18). All references to the Wisconsin Statutes are to the 2017-18 version.

¶4 At the final hearing, W.E.L. was not present. His counsel advised that W.E.L. wished to waive his personal appearance and did not contest the entry of commitment and medication orders. Finding that the County had otherwise met its requisite burdens of proof, the court entered orders committing W.E.L. for six months and for involuntary administration of medication.

¶5 In June 2018, the County petitioned for an extension of W.E.L.'s commitment and medication orders. W.E.L. initially contested the petition and demanded a jury trial be held.

¶6 W.E.L. also moved for postdisposition relief from the original commitment and medication orders, claiming that the circuit court erred in accepting counsel's waiver of his right to be present at the final hearing. In addition, W.E.L. asserted that counsel was ineffective for requesting a waiver of his appearance and for stipulating to the commitment and medication orders, both of which he now wished to contest. At an ensuing evidentiary hearing, W.E.L. and his former counsel testified, and the circuit court denied the motion. Thereafter, W.E.L. reaffirmed his wish for a jury trial on the extension petition.

¶7 However, on the date of trial on the extension petition, W.E.L. withdrew his jury demand and waived his right to contest the petition. In turn, the court entered orders for a year-long extension of W.E.L.'s commitment and involuntary administration of medication. The court also entered a written order denying W.E.L.'s postdisposition motion on the original commitment and medication orders. W.E.L. did not appeal or seek postdisposition relief from his extension orders.

DISCUSSION

¶8 Before us, W.E.L. appeals from the circuit court's original commitment and medication orders as well as the order denying his postdisposition motion for relief from those orders. The County disagrees on the merits and asserts that his entire appeal should be dismissed on mootness grounds.

¶9 According to the County, the circuit court's extension orders—and not its original orders—are the current basis for W.E.L.'s commitment and involuntary administration of medication. The County cites an unpublished decision where this court held as moot a challenge to the timeliness of an original commitment order after the subject individual stipulated to his recommitment. ***Ozaukee Cty. v. Mark T.J.***, No. 2014AP479, unpublished slip op. ¶¶2, 25-26 (WI App Aug. 27, 2014). "Once in place, the recommitment order became the basis for [the individual's] commitment. In this context, [his] voluntary stipulation, under conditions agreed upon by the parties, rendered moot the question whether [his] initial commitment order was void due to untimeliness." ***Id.***, ¶25.

¶10 We find this reasoning persuasive. Like the subject individual in ***Mark T.J.***, W.E.L. stipulated to his recommitment and continued involuntary administration of medication. He has not sought postdisposition relief or appellate review from the extension orders. Accordingly, his challenges to the original

orders—as well as the order denying his postdisposition motion for relief from those orders[2]—are moot.

¶11 W.E.L. requests we decide his appeal notwithstanding its mootness. Among other reasons, we may nonetheless address a moot issue if it:

> (1) is of great public importance; (2) occurs so frequently that a definitive decision is necessary to guide circuit courts; (3) is likely to arise again and a decision of the court would alleviate uncertainty; or (4) will likely be repeated, but evades appellate review because the appellate review process cannot be completed or even undertaken in time to have a practical effect on the parties.

Outagamie Cty. v. Melanie L., 2013 WI 67, ¶80, 349 Wis. 2d 148, 833 N.W.2d 607 (citation omitted).

¶12 W.E.L. argues that his appeal raises an issue of great public importance—namely, whether a court must obtain a personal waiver of the right to be present at a final hearing—that is likely to reoccur yet evade appellate review given the relatively short duration of commitment orders. While describing the underlying issue as one of first impression, W.E.L. also contends that uncertainty lingers because a binding answer was not provided when this issue arose in a previous case.

[2] As noted above, W.E.L.'s postdisposition motion argued circuit court error and counsel ineffectiveness on the basis of the waiver of his appearance at the final hearing and his contest to the entry of the original commitment and medication orders. Thus, these claims are moot for the same reason as his direct challenges to the original orders. To the extent that W.E.L. now raises ineffective assistance claims beyond those bases, his new arguments have been forfeited. *See* ***State v. Ndina***, 2009 WI 21, ¶¶29-30, 315 Wis. 2d 653, 761 N.W.2d 612 (explaining generally that the failure to raise an argument in the circuit court forfeits the argument on appeal).

¶13 This issue is not one of first impression, nor is it likely to evade review. This court addressed and rejected the precise issue W.E.L. now raises in ***Price Cty. DHHS v. Sondra F.***, No. 2013AP2790, unpublished slip op. (WI App May 28, 2014). While unpublished, that decision is persuasive authority. And at the very least, ***Sondra F.*** demonstrates that this issue has come before us, and can again. We see no sufficient justification to depart from our general policy of declining to address issues that "cannot have any practical effect upon an existing controversy." ***State v. Leitner***, 2002 WI 77, ¶13, 253 Wis. 2d 449, 646 N.W.2d 341 (citation omitted). Accordingly, we dismiss the appeal.

By the Court.—Appeal dismissed.

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