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DISTRICT IV

November 14, 2024

To:

Hon. Lisa A Riniker
Circuit Court Judge
Electronic Notice

Abigail Potts
Electronic Notice

Sheila Olson
Clerk of Circuit Court
Vernon County Courthouse
Electronic Notice

Lucas Swank
Electronic Notice

You are hereby notified that the Court has entered the following opinion and order:

2024AP463-CR

State of Wisconsin v. B.L.B. (L.C. # 2021CF7)

Before Graham, Nashold, and Taylor, JJ.

Summary disposition orders may not be cited in any court of this state as precedent or authority, except for the limited purposes specified in WIS. STAT. RULE 809.23(3).

B.L.B., by counsel, appeals the February 26, 2024, circuit court order committing him for treatment and involuntary administration of medication in order to restore competency to stand trial for four counts of failure to pay child support. Based upon our review of the briefs and record, we conclude at conference that this case is appropriate for summary disposition. *See* WIS. STAT. RULE 809.21 (2021-22).¹ We summarily reverse.

¹ All references to the Wisconsin Statutes are to the 2021-22 version.

B.L.B. argues that the circuit court erred when it entered the involuntary medication order despite the State’s failure to prove, by clear and convincing evidence, the four factors set forth in *Sell v. United States*, 539 U.S. 166, 180-81 (2003), as required by our supreme court’s decision in *State v. Fitzgerald*, 2019 WI 69, 387 Wis. 2d 384, 929 N.W.2d 165. In *Fitzgerald*, the court held that a court “may order involuntary medication to restore to trial competency under [Wis. STAT.] § 971.14 only when the order complies with the *Sell* standard.” *Id.*, ¶2. The four *Sell* factors are: “important governmental interests are at stake;” “involuntary medication will significantly further the government’s interest in prosecuting the offense;” “involuntary medication is necessary to further those interests;” and “administration of the drugs is medically appropriate, i.e., in the patient’s best medical interest in light of his medical condition.” *Id.*, ¶¶14-17 (citations omitted).

In the respondent’s brief, the State concedes that it failed to prove the second, third, and fourth *Sell* factors by clear and convincing evidence. Despite this concession, the State argues that the appeal should be dismissed as moot, without reaching the merits, because B.L.B. is no longer subject to the involuntary medication order that he is challenging.

As a general rule, we “will not consider a question the answer to which cannot have any practical effect upon an existing controversy.” *Outagamie County v. Melanie L.*, 2013 WI 67, ¶80, 349 Wis. 2d 148, 833 N.W.2d 607 (citation omitted). However, there are exceptions to the general rule that moot issues will not be decided by this court. *Sandy v. Sandy*, 109 Wis. 2d 564, 565-66, 326 N.W.2d 761 (1982). One such exception, which we conclude applies in this case, is when an issue “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.” *Melanie L.*, 349 Wis. 2d 148, ¶80 (citation omitted).

Turning to the merits of the appeal, we conclude that B.L.B. is entitled to reversal of the involuntary medication order due to the State's concession that it failed to meet its burden of proving the second, third, and fourth *Sell* factors. See *Fitzgerald*, 387 Wis. 2d 384, ¶¶15-17. The State does not concede that it failed to meet its burden as to the first *Sell* factor, which is whether important governmental interests are at stake. See *id.*, ¶14. However, we need not address the first *Sell* factor because involuntary medication is permissible only when each of the four factors is satisfied. See *State v. Green*, 2021 WI App 18, ¶16, 396 Wis. 2d 658, 957 N.W.2d 583, *aff'd in part*, 2022 WI 30, ¶16, 401 Wis. 2d 542, 973 N.W.2d 770. Here, the State concedes that it did not satisfy all four *Sell* factors. We reverse on that basis without remanding the matter to the circuit court, due to the fact that the order for involuntary medication has already expired.

IT IS ORDERED that the order is summarily reversed under WIS. STAT. RULE 809.21(1).

IT IS FURTHER ORDERED that this summary disposition order will not be published.

Samuel A. Christensen
Clerk of Court of Appeals