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DISTRICT III

February 18, 2025

To:

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Circuit Court Judge
Electronic Notice

Kelly Schremp
Clerk of Circuit Court
Marathon County Courthouse
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Kara Lynn Janson
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Kelsey Jarecki Morin Loshaw
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Lucas Swank
Electronic Notice

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

2024AP386-CR State of Wisconsin v. L. A. G. (L. C. No. 2022CF817)

Before Stark, P.J., Hruz and Gill, 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).

Lucy[1] appeals a circuit court order, entered under WIS. STAT. § 971.14(5)(am) (2021-22),[2] permitting the involuntary administration of medication in order to restore her to competency to stand trial in a criminal case. 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. We dismiss the appeal as moot.

[1] On March 14, 2024, we granted the appellant's motion to amend the caption to refer to her by her initials, rather than by her full name. For ease of reading, throughout this summary disposition order, we refer to the appellant using a pseudonym.

[2] All references to the Wisconsin Statutes are to the 2021-22 version unless otherwise noted.

In July 2022, the State filed a criminal complaint charging Lucy with one count of stalking, a Class I felony. *See* WIS. STAT. § 940.32(2). In April 2023, after Lucy's attorney questioned her competency, the circuit court ordered a competency examination. The examiner concluded that Lucy was not competent to proceed but was likely to regain competency within the statutory twelve-month time limit. *See* WIS. STAT. § 971.14(5)(a)1.

On August 2, 2023, the circuit court found that Lucy was incompetent but was likely to regain competency within the statutory time limit. The court therefore entered an order committing Lucy to the Wisconsin Department of Health Services (DHS) for inpatient treatment. The court did not enter an order for the involuntary administration of medication at that time.

Thereafter, in February 2024, the DHS moved for an involuntary medication order to help restore Lucy to competency. In support of its motion, the DHS submitted an individualized treatment plan authored by a psychiatrist. The circuit court held an evidentiary hearing on the DHS's motion, and on February 28, 2024, the court entered an order allowing the DHS to involuntarily administer medication to Lucy. The following day, however, the court issued a fourteen-day stay of the involuntary medication order.

Lucy then filed a notice of appeal from the involuntary medication order, and she also moved this court to continue the stay of that order. On March 14, 2024, we temporarily stayed the involuntary medication order and set deadlines for the parties to order transcripts and file memoranda regarding Lucy's motion to continue the stay.

Just over one month later, on April 18, 2024, the circuit court found Lucy competent to proceed, and she was discharged from her commitment. As a result, Lucy sought to withdraw her motion to continue the stay of the involuntary medication order. On June 19, 2024, we

issued an order granting that request and lifting the temporary stay of the involuntary medication order.

Lucy now appeals, arguing that the circuit court erred by entering the involuntary medication order. More specifically, Lucy argues that the State failed to prove all four of the factors necessary to support an involuntary medication order under ***Sell v. United States***, 539 U.S. 166 (2003). Lucy also argues that the court erred by entering the involuntary medication order without making "findings on the record or in its written order that [Lucy] was incompetent to refuse medication." In response, the State argues that Lucy's appeal of the involuntary medication order is moot because Lucy is no longer subject to that order.

Mootness presents a question of law that we review independently. ***Portage County v. J.W.K.***, 2019 WI 54, ¶10, 386 Wis. 2d 672, 927 N.W.2d 509. "An issue is moot when its resolution will have no practical effect on the underlying controversy." ***Id.***, ¶11 (citation omitted). "Appellate courts generally decline to reach moot issues, and if all issues on appeal are moot, the appeal should be dismissed." ***Id.***, ¶12.

We agree with the State that Lucy's appeal of the involuntary medication order is moot. As both parties acknowledge, Lucy is no longer subject to the involuntary medication order. Under these circumstances, our review of the issues raised on appeal will have no practical effect on the underlying controversy.[3] *See* ***id.***, ¶11; *see also* ***State v. Fitzgerald***, 2019 WI 69, ¶21, 387

[3] Our supreme court has held that an appeal from an involuntary commitment order under WIS. STAT. ch. 51 is not moot after the order has expired because the committed individual remains subject to at least two collateral consequences of the order. *See* ***Sauk County v. S.A.M.***, 2022 WI 46, ¶20, 402 Wis. 2d 379, 975 N.W.2d 162. As relevant here, the individual remains liable for the cost of care provided during the commitment under WIS. STAT. § 46.10(2). *See* ***S.A.M.***, 402 Wis. 2d 379, ¶24.

(continued)

Wis. 2d 384, 929 N.W.2d 165 (concluding that an appeal from an involuntary medication order under WIS. STAT. § 971.14 was moot where the appellant was no longer subject to that order).

Lucy does not dispute that this appeal is moot. She argues, however, that we should exercise our discretion to review the issues raised on appeal under an exception to the mootness doctrine. An appellate court may choose to address a moot issue in "exceptional or compelling circumstances." ***J.W.K.***, 386 Wis. 2d 672, ¶12 (citation omitted). Specifically, we may elect to address a moot issue when: (1) the issue is of great public importance; (2) the issue involves the constitutionality of a statute; (3) the situation arises so often that a definitive decision is necessary to guide the circuit courts; (4) the issue is likely to arise again and should be resolved to avoid uncertainty; or (5) "the issue is 'capable and likely of repetition and yet evades review.'" ***Id.*** (citation omitted).

Here, Lucy relies on the last exception to the mootness doctrine, arguing that we should address the issues raised in her appeal because they are capable and likely of repetition but evade review. *See* ***id.*** The "capable of repetition, yet evading review" exception "is limited to situations involving 'a reasonable expectation that the *same* complaining party would be subjected to the *same action* again.'" ***Id.***, ¶30 (citation omitted). Lucy argues that the exception applies here because there is a reasonable expectation that her competency will be challenged again in this case and that the State will again seek an involuntary medication order to restore her

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Like a person committed under WIS. STAT. ch. 51, a person committed under WIS. STAT. § 971.14(5) is also statutorily liable for the cost of care provided during his or her commitment. *See* WIS. STAT. § 46.10(2). Lucy concedes, however, that because the involuntary medication order in this case was "stayed immediately, there are no costs associated with it." As such, the "cost of care" collateral consequence that our supreme court identified in ***S.A.M.*** is not present here and provides no basis to conclude that Lucy's appeal of the involuntary medication order is not moot.

to competency. In support of this assertion, Lucy notes that: (1) although she is currently competent, there were "multiple opinions" in the instant case that medication would be necessary to restore her to competency, but she never received such medication; (2) her most recent competency examination offered a secondary diagnosis of schizophrenia; and (3) a guardian ad litem (GAL) was appointed for her in a civil case in 2021.

Lucy further argues that any future challenge to an involuntary medication order entered in this case will likely evade review given the statutory deadline to restore her to competency and the time that is typically necessary to complete appellate review. Lucy acknowledges that WIS. STAT. RULE 809.109 was recently enacted to provide a more expedited process for appealing commitment and involuntary medication orders entered under WIS. STAT. § 971.14.[4] She notes that, under the new rule, the court of appeals "has up to 185 days to issue[] a decision, assuming there are no proceedings in the circuit court." She observes, however, that in her case, because the involuntary medication order was not entered until several months after the commitment order, even under the new rule, this court's decision "would have been due on August 30, 2024—twenty-nine days after the expiration" of the commitment order. Lucy further notes that if she is again found to be incompetent in the same underlying circuit court case, "the State [will] have [only] 279 days to restore her to competency," rather than twelve months. *See* WIS. STAT. § 971.14(5)(d). Lucy therefore asserts that, even under the new rule, it is unlikely that appellate review of a future involuntary medication order will be completed before that order expires.

[4] WISCONSIN STAT. RULE 809.109 went into effect on July 1, 2024. *See* S. CT. ORDER 23-05, 2024 WI 20 (eff. July 1, 2024). Lucy filed her notice of appeal in the instant case on March 1, 2024. As such, RULE 809.109 does not apply to Lucy's current appeal.

We are not persuaded that the "capable of repetition, yet evading review" exception to mootness applies in this case. Lucy's argument that the State will likely challenge her competency again in the underlying case and seek to impose another involuntary medication order is purely speculative. Not only has Lucy been found competent to proceed in the circuit court, the court has also permitted Lucy's trial counsel to withdraw and has allowed Lucy to represent herself. "In Wisconsin, there is a higher standard for determining whether a defendant is competent to represent [him- or herself] than for determining whether a defendant is competent to stand trial." ***State v. Klessig***, 211 Wis. 2d 194, 212, 564 N.W.2d 716 (1997). Thus, the circuit court's decision to allow Lucy to represent herself weighs against a reasonable expectation that the State will again challenge Lucy's competency to proceed in the underlying case and seek an involuntary medication order to restore her to competency.

At this point, it has been over nine months since Lucy was found competent to proceed, and she has been representing herself in the circuit court for over seven months. Lucy points to nothing that has occurred during that time to undermine the circuit court's competency finding, and we see nothing in the circuit court's electronic docket that would support a reasonable expectation that Lucy's competency will again be questioned. While Lucy highlights her secondary diagnosis of schizophrenia and the fact that a GAL was appointed for her in 2021 in a civil case, we agree with the State that those factors are insufficient to support a reasonable expectation that Lucy's competency will again be questioned in the instant case and that the State will again seek an involuntary medication order. Moreover, the fact that Lucy was previously restored to competency *without* the involuntary administration of medication tends to suggest that, even if Lucy's competency is challenged in the future, the State will not necessarily seek an involuntary medication order to restore her to competency.

We further agree with the State that the "capable of repetition, yet evading review" exception to mootness does not apply here because Lucy's present appeal merely argues that the evidence to support a particular involuntary medication order "was insufficient during a particular hearing," *see* ***J.W.K.***, 386 Wis. 2d 672, ¶30, but there is "no telling whether the issues that [Lucy] complains of now will arise at a future ***Sell*** hearing." In her reply brief, Lucy asserts that her current arguments regarding the first ***Sell*** factor—i.e., whether the State has an important interest in proceeding to trial, *see* ***Fitzgerald***, 387 Wis. 2d 384, ¶32—will be equally applicable in the future if the State again seeks an involuntary medication order in the underlying case. Whether the facts support the issuance of an involuntary medication order at some point in the future, however, will have to be determined at that time—including the facts relevant to an assessment of the first ***Sell*** factor. Notably, Lucy's behavior during the pendency of the underlying case may affect a future assessment of the first ***Sell*** factor. For instance, if Lucy engages in behavior that constitutes stalking of the alleged victim while the underlying case is pending, the State's interest in proceeding to trial on the current charge could take on increased importance, even absent new charges against Lucy.[5]

In addition, we are not persuaded by Lucy's argument that any future challenge to an involuntary medication order will evade review. While Lucy questions whether the new expedited appeals process in WIS. STAT. RULE 809.109 will actually result in appeals from

[5] In ***Sell v. United States***, 539 U.S. 166, 180 (2003), the United States Supreme Court stated that "the possibility that the defendant has already been confined for a significant amount of time (for which he [or she] would receive credit toward any sentence ultimately imposed …)" "affects, but does not totally undermine, the strength of the need for prosecution." Lucy asserts that by the time she was found to be competent in this case, she had earned 262 days of sentence credit. She emphasizes that she "is not going to earn *less* pretrial credit going forward." Be that as it may, the amount of sentence credit to which a defendant will ultimately be entitled is only one consideration when addressing the first ***Sell*** factor.

involuntary medication orders being completed before becoming moot, her argument in that regard is speculative. Lucy correctly notes that this court has "up to 185 days to issue[] a decision" following the entry of an involuntary medication order. However, that calculation assumes that every step in the appellate process will take the full amount of time permitted by RULE 809.109, which will not always be the case. Consequently, it is not self-evident that, under the new rule, an appeal from a future involuntary medication order in this case could not be completed before becoming moot. As such, it is not clear that the issues raised in this appeal will evade review in the future.

Therefore,

IT IS ORDERED that the appeal is dismissed as moot.

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

Samuel A. Christensen
Clerk of Court of Appeals