COURT OF APPEALS
DECISION
DATED AND FILED

July 23, 2002

Cornelia G. Clark
Clerk of Court of Appeals

Appeal No. 02-0435 **Cir. Ct. No. 01ME1886**

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

IN THE MATTER OF THE MENTAL COMMITMENT OF JACQUALINE S. W.:

MILWAUKEE COUNTY,

PETITIONER-RESPONDENT,

V.

JACQUALINE S. W.,

RESPONDENT-APPELLANT.

APPEAL from a judgment of the circuit court for Milwaukee County: MICHAEL G. MALMSTADT, Judge. *Appeal dismissed.*

¶1 CURLEY, J.[1] Jacqualine S. W. appeals from the judgment entered by the trial court ordering commitment for six months, pursuant to WIS. STAT.

[1] This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2).

§§ 51.42 or 51.437 (1999-2000),[2] and ordering the involuntary administration of medication and treatment, pursuant to WIS. STAT. § 51.61(1)(g). Jacqualine contends: (1) there was insufficient evidence to support the finding that she was dangerous to herself and others; and (2) there was insufficient evidence to support the finding that she was incompetent to refuse medication. Because the orders have lapsed and Jacqualine is no longer being held pursuant to a commitment order, these issues are moot and the appeal is dismissed.

I. BACKGROUND.

¶2 On August 10, 2001, Milwaukee Police Officer Vernon Mosley was dispatched to check on the welfare of a woman who had been reported wandering between Water Street and Market Street on Kilbourn Avenue in an incoherent state. Officer Wells located this woman and asked her if she was all right. Officer Wells later testified that, upon questioning, Jacqualine was incoherent, mumbling, pacing back and forth, and that she failed to produce any form of identification upon his request. He also testified that he did not feel comfortable leaving her alone because it appeared that she was unable to care for her own basic needs or her own safety. Officer Mosley then took Jacqualine into custody.

¶3 On August 13, 2001, Officer Mosley filed a statement of emergency detention that was dated August 10, 2001. The statement indicated that he believed that Jacqualine was mentally ill, drug dependent or developmentally disabled, and that she demonstrated behavior evincing a substantial probability of physical harm to herself or others pursuant to WIS. STAT. § 51.15.

[2] All references to the Wisconsin Statutes are to the 1999-2000 version unless otherwise noted.

¶4 A commitment hearing was held on August 24, 2001. After hearing testimony from Officer Mosley and three clinical psychologists, the trial court determined that Jacqualine was in need of continued inpatient treatment. On August 24, 2001, the trial court ordered Jacqualine's commitment for a period of six months. The trial court also determined that, due to her mental illness, Jacqualine was unable to make an informed choice regarding medications and ordered that medication and treatment could be administered without her consent. On February 23, 2002, the commitment expired and Jacqualine was released.

II. ANALYSIS.

¶5 "An issue is moot when its resolution will have no practical effect on the underlying controversy." *See* ***State ex rel. Olson v. Litscher***, 2000 WI App 61, ¶3, 233 Wis. 2d 685, 608 N.W.2d 425. "In other words, a moot question is one which circumstances have rendered purely academic." ***Id.*** Generally, moot issues will not be considered by an appellate court in the interest of judicial economy to avoid litigating issues that will not affect real parties to an existing controversy. *See* ***State ex rel. La Crosse Tribune v. Circuit Court,*** 115 Wis. 2d 220, 228, 340 N.W.2d 460 (1983). However, there are situations where this court will consider a matter even though the result will have no practical effect upon the parties: the issues are of great public importance; the constitutionality of a statute is involved; the precise situation under consideration arises so frequently that a definitive decision is essential to guide the trial courts; the issue is likely to arise again and should be resolved by the court to avoid uncertainty; or, a question is capable and likely of repetition and yet evades review because the appellate process usually cannot be completed and frequently cannot even be undertaken within a time that would result in a practical effect upon the parties. ***Id.*** at 229.

¶6 Here, the issue is clearly moot because Jacqualine has already been released from inpatient care pursuant to the commitment order in question. *See* ***State ex rel. Hawkins v. DHSS***, 92 Wis. 2d 420, 421, 284 N.W.2d 680 (1979) (determining that an appeal was moot where a convicted individual had already been released from incarceration). However, Jacqualine argues that these issues are capable of repetition but will continually avoid appellate review. In support of her argument, she posits: "Given the length of the appellate process, it was not possible for Jacqualine to have completed an appeal…." Jacqualine concludes that an appeal will not meet meaningful review for at least eight months from the date of the final judgment, and, therefore, an appeal could not have been completed before expiration of the six-month commitment order. This court disagrees and concludes that although this situation is capable of repetition, the issues in question will not always escape meaningful appellate review.

¶7 Jacqualine's estimation of eight months results from allowing every time limit to expire, including those under the appellant's control. For example, in her calculation, Jacqualine allows for the following: (1) "60 days from Receipt of the Transcripts for review of the Transcripts and Filing the Notice of Appeal;" (2) "40 days from Transmittal of the Record for the filing of the Appellant's Brief;" and (3) "15 days from the filing of the [Respondent's] Brief for the filing of the Appellant's Reply Brief." However, if an appellant zealously navigates the appellate process and does not allow these statutory time limits to either reach their absolute limits or expire, meaningful review can be achieved. Namely, working with Jacqualine's estimation of the appellate process, nearly 100 days could be trimmed from the process if the appellant were to file the notice of appeal and briefs without allowing the statutory limits to run.

¶8 Moreover, here Jacqualine did not file her motions and briefs as expeditiously as possible. In fact, on April 17, 2002, she was informed that her main brief was overdue. Then on April 23, 2002, this court received a motion for extension of time to file the appellant's brief. Jacqualine's brief-in-chief was finally received on May 6, 2002. Furthermore, had Jacqualine anticipated that these time-sensitive issues may eventually become moot, she could have alerted this court and attempted to preserve the issues for appeal by filing a motion pursuant to WIS. STAT. § 809.20.[3] No such motion was filed.

¶9 This court concludes that Jacqualine's appeal is moot. She has already served her six-month-term of confinement. Therefore, this court declines to decide the appeal and the appeal is dismissed.

By the Court.—Appeal dismissed.

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

[3] WISCONSIN STAT. RULE 809.20 provides:

> **809.20 Rule (Assignment and advancement of cases).**
> The court may take cases under submission in such order and upon such notice as it determines. A party may file a motion to advance the submission of a case either before or after the briefs have been filed. The motion should recite the nature of the public or private interest involved, the issues in the case and how delay in submission will be prejudicial to the accomplishment of justice.