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DISTRICT III

June 11, 2024

To:

Hon. John P. Zakowski
Circuit Court Judge
Electronic Notice

David J. Susens
Electronic Notice

Whitney J. Davister
Register in Probate
Brown County Courthouse
Electronic Notice

Jonathan Virant
Electronic Notice

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

2023AP1573

Brown County v. I.S.Z. (L. C. No. 2015ME351)

Before Hruz, J.¹

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).

Isaac² appeals from an expired order for his involuntary medication pursuant to WIS. STAT. § 51.61(1)(g). Based upon our review of the briefs and record, we conclude that this case is appropriate for summary disposition. *See* WIS. STAT. RULE 809.21. We dismiss the appeal.

Citing *Outagamie County v. L.X.D.-O.*, 2023 WI App 17, ¶14, 407 Wis. 2d 441, 991 N.W.2d 518, Brown County argues that Isaac's appeal is moot because it will have no practical

¹ This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2) (2021-22). All references to the Wisconsin Statutes are to the 2021-22 version unless otherwise noted.

² For ease of reading, we refer to the appellant in this matter using a pseudonym, rather than his initials.

effect on the collateral consequences of Isaac’s firearm ban or his cost of care, which typically prevent WIS. STAT. ch. 51 appeals from being moot.³ See *Sauk County v. S.A.M.*, 2022 WI 46, ¶¶23, 27, 402 Wis. 2d 379, 975 N.W.2d 162.

“Mootness is a question of law we review de novo.” *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. “[I]f all issues on appeal are moot, the appeal should be dismissed. We may, however, choose to address moot issues in ‘exceptional or compelling circumstances,’” pursuant to “several established exceptions.” *Id.*, ¶12 (citation omitted).

The County argues that no exceptions to the mootness doctrine apply to Isaac’s appeal. According to the County, under one suggested exception, the issue is not “likely to arise again” and need not be resolved to avoid uncertainty because the sufficiency of a medication explanation is fact-specific and has been addressed by this court in *L.X.D.-O*. The County also specifically addresses the “capable and likely of repetition and yet evad[ing] review” exception, noting that Isaac is no longer subject to an involuntary commitment or medication order and there is no evidence to suggest that Isaac will be subject to a future involuntary medication order. Isaac does not argue that any exceptions to mootness are applicable.

³ Isaac does not argue that his appeal is not moot due to the firearm ban, nor does he make any arguments as to how reversing the involuntary medication order alone would affect his firearm rights. We further note that the appellate record shows that Isaac has been subject to an involuntary commitment pursuant to WIS. STAT. § 51.20, and the accompanying firearm ban, since 2015, and Isaac has not provided any evidence that his firearm rights have been restored.

Citing *S.A.M.*, 402 Wis. 2d 379, ¶25, Isaac argues that his appeal is not moot due to the involuntary medication order’s effect on the cost of care for which he is liable under WIS. STAT. § 46.10(2). Isaac generally asserts that the costs of medication are directly tied to his medication order, and he cites a footnote in *L.X.D.-O.*, wherein this court stated, “[W]e acknowledge that an argument could be made that the costs of care may be reduced if a medication order were vacated. However, [L.X.D.-O.] does not develop this argument on appeal.” *L.X.D.-O.*, 407 Wis. 2d 441, ¶14 n.8.

We conclude that Isaac’s appeal is moot. First, we distinguish this appeal from *S.A.M.* by noting that *S.A.M.* concerned an appeal of both an involuntary commitment order, as opposed to only the involuntary medication order being appealed here. *See S.A.M.*, 402 Wis. 2d 379, ¶1. Further, we note that the “court of appeals is a unitary court; published opinions of the court of appeals are precedential; litigants, lawyers and circuit courts should be able to rely on precedent; and law development and law defining rest primarily with the supreme court.” *Cook v. Cook*, 208 Wis. 2d 166, 189, 560 N.W.2d 246 (1997). In *L.X.D.-O.*, a published opinion that is directly on point as to the procedural posture of Isaac’s appeal, this court unequivocally stated that the review of an expired medication order alone does not have a practical effect on the collateral consequences typically associated with an involuntary commitment because “[t]hose collateral consequences will remain in effect under the valid commitment order regardless of our decision on appeal.” *L.X.D.-O.*, 407 Wis. 2d 441, ¶14.

We noted in *L.X.D.-O.* that “an argument could be made that the costs of care may be reduced if a medication order were vacated.” However, we rejected *L.X.D.-O.*’s attempt at making that argument due to the argument being undeveloped. *Id.*, ¶14 n.8. While Isaac cites this footnote from *L.X.D.-O.* and attempts to invoke it, Isaac develops the argument no further

than *L.X.D.-O.* did. Both broadly referenced the general effect of medication on the cost of care, citing WIS. STAT. § 46.10(2), but both failed to provide any evidence of any additional effect that medication actually had on the cost of care. See *L.X.D.-O.*, 407 Wis. 2d 441, ¶14 n.8. Thus, we are left to speculate on the effect of the cost of ordered medication. Seeing no material difference with which to distinguish this appeal from *L.X.D.-O.*, we must conclude that Isaac's appeal is moot. Further, we agree with the County that no exceptions to mootness are applicable.

Upon the foregoing,

IT IS ORDERED that the appeal is dismissed as moot. WIS. STAT. RULE 809.21.

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

Samuel A. Christensen
Clerk of Court of Appeals