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**DISTRICT III**

January 26, 2016

To:

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

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2015AP1592-FT

Marathon County v. S. D. (L. C. No. 2015ME38)

Before Hruz, J.<sup>1</sup>

S.D. appeals an involuntary medication order arising out of a WIS. STAT. ch. 51 proceeding. Pursuant to this court's order of August 24, 2015, and a presubmission conference, the parties have submitted memo briefs. *See* WIS. STAT. RULE 809.17(1). Upon review of those memoranda, supplemental submissions, and the record, we dismiss this appeal as moot.

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<sup>1</sup> This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2). All references to the Wisconsin Statutes are to the 2013-14 version.

During the final fact-finding hearing, the circuit court found S.D. was not competent to refuse medication or treatment pursuant to WIS. STAT. § 51.61(1)(g)4.b.<sup>2</sup> On March 3, 2015, the court entered an order for involuntary medication and treatment, as well as a six-month commitment order against S.D. on other grounds. The court based its findings on the “uncontroverted testimony” of S.D.’s examining doctors, Dr. Sheldon Schooler and Dr. Nicholas Starr. The Order for Involuntary Medication and Treatment authorized medication and treatment to be administered to S.D., regardless of his consent, “during the period of commitment, or until further order of the court.”

On August 3, 2015, S.D. filed a notice of appeal, indicating he was appealing the order for commitment and the order for involuntary medication and treatment. His appellate brief, however, challenges only the involuntary medication order. He argues the record was insufficient to support that order.

Our review of the record disclosed that a recommitment hearing took place on August 25, 2015. The hearing minutes indicated the parties agreed to, and the court possibly ordered, a twelve-month extension of S.D.’s commitment with “no medications.” Although both parties’ briefs in this appeal postdated this recommitment hearing, neither party referenced this hearing or discussed its effect, if any, on the March 3, 2015 Order for Involuntary Medication and Treatment in their briefs. Nonetheless, we questioned whether this appeal was moot, given that

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<sup>2</sup> Under WIS. STAT. § 51.61(1)(g)4.b., an individual is not competent to refuse medication or treatment if, because of mental illness, developmental disability, alcoholism, or drug dependence, and after the advantages and disadvantages of and alternatives to accepting a particular medication or treatment have been explained to the individual, “[t]he individual is substantially incapable of applying an understanding of the advantages, disadvantages and alternatives to his or her mental illness, developmental disability, alcoholism or drug dependence in order to make an informed choice as to whether to accept or refuse medication or treatment.”

only the portion of the circuit court's order permitting involuntary medication was contested. We therefore requested supplemental submissions from the parties, asking each to address (1) the status of the March 3, 2015 Order for Involuntary Medication and Treatment and any other order authorizing S.D. to involuntarily receive medication, and (2) if involuntary medication was not ordered as part of the circuit court's August 25, 2015 recommitment order, why this appeal was not moot.

The County responded first to our request and served a copy of its response on S.D.'s counsel. The County confirmed an order for involuntary medication was not entered at the August 25, 2015 recommitment hearing. The County further indicated, "It is the position of Marathon County that this appeal is moot. Findings of the court in March were based on specific facts. Appeal of this matter is unlikely to yield guidance for future cases."

Approximately two weeks after the County's response, S.D.'s counsel responded with the following statement:

I represent S.D. only at the appellate level in the above matter and only for the original order. I did not represent him at the extension hearing.

I have not seen a copy of any order from the extension hearing nor do I know its contents. [Counsel for the County] probably does and probably can provide the requested documentation.

Because S.D.'s counsel does not directly address whether this appeal is moot as we had specifically requested and, further, given that his counsel's response was sent well after receipt of the County's response contending the appeal is moot, we view S.D.'s response as a concession that this appeal is moot.

We generally do not consider moot issues. *State ex rel. Olson v. Litscher*, 2000 WI App 61, ¶3, 233 Wis. 2d 685, 608 N.W.2d 425. "An issue is moot when its resolution will have no practical effect on the underlying controversy." *Id.* Based upon our review of the record and the

supplemental submissions of the parties, we conclude this appeal is moot. S.D. apparently is no longer the subject of an involuntary medication order, and, therefore, a decision in this appeal will have no practical effect. Additionally, while we can consider a moot issue in certain circumstances, *see Outagamie Cty. v. Melanie L.*, 2013 WI 67, ¶80, 349 Wis. 2d 148, 833 N.W.2d 607, the record and S.D.'s supplemental submission do not contain any indication, and the County does not argue, any of those circumstances apply in this case. Therefore,

IT IS ORDERED that this appeal is dismissed.

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*Diane M. Fremgen*  
*Clerk of Court of Appeals*