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DISTRICT IV

March 31, 2017

To:

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Bradley M. Jones
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You are hereby notified that the Court has entered the following opinion and order:

2015AP1320

Bradley M. Jones v. Linda A. Harris
(L.C. #2014CV157)

Before Kloppenburg, P.J., Higginbotham and Blanchard, JJ.

Bradley Jones, a subject of commitment to a treatment center under WIS. STAT. ch. 980 (2015-16),¹ appeals a circuit court order affirming a decision by the Wisconsin Department of Health Services (DHS) denying and dismissing Jones' administrative complaint challenging the conditions of his commitment. During the pendency of this appeal, Jones has been released from his ch. 980 civil commitment; thus we are presented with the threshold question of whether this appeal is moot by virtue of Jones' discharge. 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 affirm.

Bradley Jones was involuntarily committed to Sand Ridge Secure Treatment Center under WIS. STAT. ch. 980. While Jones was at Sand Ridge, he filed several administrative grievances pursuant to DHS procedures claiming that he was wrongfully required to take a polygraph test in violation of specific statutory and administrative rules, that he refused to participate in the polygraph test, and that as a result he was improperly demoted from a high level of treatment to a low level of treatment and he suffered lost back wages and other privileges.

DHS Administrator Linda Harris issued the final administrative decision that “[t]he decision to refer [Jones] to MAP was not a violation of [Jones’] patient rights.” Jones sought judicial review in the circuit court by a petition for writ of certiorari, and the court dismissed the petition. Jones appealed the circuit court’s order.

During the pendency of this appeal, Jones informed this court by a letter dated January 10, 2017, that he had been discharged from his WIS. STAT. ch. 980 civil commitment and released from Sand Ridge. In the same letter, Jones contended in conclusory and general terms that his discharge from civil commitment does not render moot his claim for lost wages alleged in his administrative complaint on the basis that he had “claimed deprivation of my work hours and wages in that case.” We understand Jones to be seeking a determination on the merits of his claims, and if successful, he claims that he is entitled to recover lost wages, which, according to Jones, amounts to \$3000 at the time of his letter. However, Jones does not construct an

¹ All references to the Wisconsin Statutes are to the 2015-16 version unless otherwise noted.

argument supported by legal authority that his discharge from ch. 980 civil commitment does not render his appeal moot.

We asked Harris to respond to Jones' contention that this matter is not moot with a letter brief, and Harris responded accordingly. In her letter brief, Harris argues that this appeal is moot because Jones was discharged from his WIS. STAT. ch. 980 commitment, and that Jones cannot use this certiorari action to recover on his claim for money damages.

Jones submitted a reply letter essentially conceding Harris' point that a court on judicial review of a writ of certiorari may not order money damages. However, Jones did not directly respond to Harris' argument that this case is moot, but rather appeared to assume that his claims were not moot without argument.

An issue is moot when a party seeks a determination that will have no practical effect on an existing legal controversy. *State ex rel. Olson v. Litscher*, 2000 WI App 61, ¶3, 233 Wis. 2d 685, 608 N.W.2d 425. Appellate courts generally decline to consider moot issues. *State v. Jeremiah C.*, 2003 WI App 40, ¶10, 260 Wis. 2d 359, 659 N.W.2d 193. However, appellate courts may consider a moot issue if “the issue has great public importance, a statute’s constitutionality is involved, or a decision is needed to guide the trial courts.” *State ex rel. Olson*, 233 Wis. 2d 685, ¶3 (quoted source omitted). A moot issue may also be considered on appeal where the issue is “‘likely of repetition and yet evades review’ because the situation involved is one that typically is resolved before completion of the appellate process.” *Id.* (quoted source omitted).

We agree with Harris that the issues presented in this case are moot. The relief Jones seeks on appeal is a remand to the circuit court with directions to reverse the final administrative

decision by Linda Harris. An order reversing Harris' final administrative decision would have the practical effect of reinstating Jones to Phase 2 of the treatment program at Sand Ridge. The relief Jones seeks is related to the conditions of his confinement and treatment at Sand Ridge. Because Jones has been discharged from his ch. 980 commitment, he is no longer subject to the orders being appealed. Granting Jones his request for relief would "have no practical effect on the underlying controversy." See *PRN Assocs. LLC v. DOA*, 2009 WI 53, ¶25, 317 Wis. 2d 656, 766 N.W.2d 559.

As for Jones' claim for lost wages, assuming without deciding that his claim is not moot, this issue is easily resolved. As Harris points out in her response letter brief, a circuit court's authority to grant relief on certiorari review is limited to affirming, reversing, or remanding the agency's decision. *State ex rel. Lomax v. Leik*, 154 Wis. 2d 735, 741, 454 N.W.2d 18 (Ct. App. 1990). In view of these limitations on the court's authority to grant relief on certiorari review, it follows that courts may not award money damages on certiorari review. See *Coleman v. Percy*, 86 Wis. 2d 336, 341, 272 N.W.2d 118 (Ct. App. 1978) ("Damages may not be awarded on certiorari."). Thus, applying the rule in *Lomax* and *Coleman*, this court lacks the authority to grant Jones the relief he seeks of lost wages.

IT IS ORDERED that the order of the circuit court is summarily affirmed. See WIS. STAT. RULE 809.21.

Diane M. Fremgen
Clerk of Court of Appeals