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DISTRICT II

January 30, 2019

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

2018AP168

In the matter of the temporary guardianship and protective placement of J.J.H.: Waukesha County v. J.J.H.
(L.C. #2017ME589)

Before Neubauer, C.J., Gundrum and Hagedorn, 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).

J.J.H. appeals from an Order of Conversion to Temporary Guardianship and/or Temporary Protective Placement or Services pursuant to WIS. STAT. § 51.67 (2015-16).¹ Upon reviewing the briefs and the 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.

Now twenty-years-old, J.J.H. has been cognitively delayed since age two, has developmental disabilities, and is deaf. She also has been diagnosed with a mood disorder and anxiety. On September 11, 2017, she agreed to be voluntarily admitted to a psychiatric hospital. On arrival with her mother, she threatened self-harm and refused to proceed. On the way home, J.J.H. became violent against Mom. J.J.H. was charged with domestic disorderly conduct.

On September 12, a no-contact order was put in place and Waukesha County filed a three-party petition for a WIS. STAT. § 51.20 examination.² The petition alleged that: J.J.H. was displaying increased agitation; Mom felt unsafe, as J.J.H. has pulled knives on her and made threats to kill her and the dog; Mom, her permanent guardian, had been trying to get her into a structured residential treatment facility for some time as J.J.H. is unable to care for herself and needs 24/7 care, which Mom cannot provide due to J.J.H.'s disabilities, agitation, and threats; and J.J.H.'s communication skills are limited as she did not want to learn how to use sign language, instead learning her own way to sign or communicating in writing.

When the petition proceeded to a probable cause hearing on September 15, 2017, J.J.H. was under detention at Winnebago Mental Health Institute (WMHI). The County noted that

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

² The three petitioners were J.J.H.'s mother, grandfather, and a citizen advocate for J.J.H.

J.J.H. was unable to return home that day due to the no-contact order. The court's extensive efforts to secure a certified sign language interpreter or a real-time court reporter for the hearing were futile. The County moved to adjourn the proceeding for good cause. *See* WIS. STAT. § 885.38(7).

Advocacy counsel objected both to adjourning the hearing, *see* WIS. STAT. § 51.20(7)(a), as J.J.H. did not want to return to WMHI, and to proceeding without an interpreter. Because J.J.H.'s detention status implicated her liberty interests and her counsel objected to an adjournment, the court determined it best to proceed with the hearing without an interpreter.

J.J.H.'s WMHI psychiatrist testified that J.J.H. currently needed locked inpatient psychiatric care in either a hospital or a group home and that she was not competent to refuse psychotropic medication. The County informed the court that the adult protective services unit of the Department of Health and Human Services so far had been unsuccessful in locating an alternative to WMHI for J.J.H. and, if the WIS. STAT. § 51.20 petition was dismissed, DHHS would detain her on an emergency protective placement basis under WIS. STAT. ch. 55. It thus asked the court to convert the petition to one under WIS. STAT. § 51.67 and order that J.J.H. be temporarily protectively placed and returned to WMHI for not more than thirty days. J.J.H.'s counsel objected, reiterating J.J.H.'s desire to not return to WMHI, and asked the court to allow the ch. 55 proposal to proceed.

After briefly taking the matter under advisement, the court found that commitment under WIS. STAT. ch. 51 was not warranted but that J.J.H. was a fit subject for guardianship and protective placement and that a permanent guardianship already was in effect. It then ordered temporary protective placement at WMHI for not more than thirty days "from the date of this

hearing” and involuntary administration, if necessary, of psychotropic medication. It expressly stated that the order would expire of its own accord in thirty days, on October 15, 2017.

J.J.H. appeals. The County argues the case is moot. A case is moot when its resolution will have no practical effect on an existing controversy. *City of Racine v. J-T Enters. of Am., Inc.*, 64 Wis. 2d 691, 700, 221 N.W.2d 869 (1974). Whether a legal claim is moot is a question of law. *PRN Assocs. LLC v. DOA*, 2009 WI 53, ¶25, 317 Wis. 2d 656, 766 N.W.2d 559.

The appeal arises out of an order entered pursuant to WIS. STAT. § 51.67 on September 15, 2017. The statute plainly provides that the order may not exceed thirty days’ duration and makes no provision for extensions of such orders. The order thus expired on October 15, 2017.

J.J.H. concedes that the order has expired. She contends we nonetheless should consider her appeal as it is of great public importance; occurs frequently, such that a definitive decision is necessary to guide defense counsel and circuit courts; is likely to arise again, especially in her case, given her diagnosis, disabilities, the shortage of qualified sign language interpreters, and the possibility of future commitment or review hearings; and evades appellate review because the underlying circuit court orders are of such short duration that the appellate process cannot be completed or undertaken in time to have a practical effect on the parties. *See State v. Morford*, 2004 WI 5, ¶7, 268 Wis. 2d 300, 674 N.W.2d 349. Analogizing to the criminal context, *see Sibron v. New York*, 392 U.S. 40, 57-58 (1968), she also contends that, unless dealt with on the merits, she may suffer collateral legal disadvantages later, as the County and DHHS could use records documenting her mental illness and incompetency in future commitment proceedings.

The facts here are unique. Despite J.J.H.'s well-stated arguments, we are not persuaded that “the precise situation under consideration arises so frequently that a definitive decision is essential to guide trial courts in similar instances.” *City of Racine*, 64 Wis. 2d at 701.

Further, in “any proceeding before a court of record,” “[t]he delay resulting from the need to locate and appoint a qualified interpreter may constitute good cause for the court to toll the time limitations in the court proceeding.” WIS. STAT. § 885.38(1)(a), (7). Advocacy counsel also could have agreed to postpone the probable cause hearing for up to seven days. WIS. STAT. § 51.20(7)(a). Counsel agreed to neither. We do not think such a singular fact pattern is prone to frequent repetition.

IT IS ORDERED that the appeal is dismissed.

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

Sheila T. Reiff
Clerk of Court of Appeals