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DISTRICT III

December 28, 2023

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Circuit Court Judge
Electronic Notice

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

2021AP1478-CR State of Wisconsin v. Hajji Y. McReynolds
(L. C. No. 2020CF888)

Before Stark, P.J., Hruz and Gill, 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).

Hajji McReynolds appeals an order, issued pursuant to WIS. STAT. § 971.14 (2021-22),[1] determining that he was incompetent to proceed to trial in his criminal case, committing him to

[1] All references to the Wisconsin Statutes are to the 2021-22 version unless otherwise noted.

the Department of Health Services, and allowing the involuntary administration of medication.[2] McReynolds does not challenge the circuit court's competency determination or that portion of the court's order committing him to the Department of Health Services. He argues only that the court erred by ordering the involuntary administration of medication because the State failed to meet its burden of proof on that issue. The State has moved for summary dismissal, arguing that McReynolds' appeal of the involuntary medication order is moot.

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 assume, without deciding, that McReynolds' appeal is moot. However, we conclude that an exception to the mootness doctrine applies because the issue raised in this appeal is "capable and likely of repetition and yet evades review." *See* ***Portage County v. J.W.K.***, 2019 WI 54, ¶12, 386 Wis. 2d 672, 927 N.W.2d 509 (citation omitted). We therefore deny the State's motion for summary dismissal.

Addressing the merits, we conclude that the portion of the circuit court's order permitting the involuntary administration of medication must be reversed because, as the State concedes, the State did not meet its burden to establish all four of the factors set forth in ***Sell v. United States***, 539 U.S. 166 (2003). We therefore summarily reverse that portion of the order permitting the involuntary administration of medication.

[2] McReynolds' notice of appeal also purports to appeal the circuit court's prior order for a competency examination. Although that order is not a final order and therefore is not appealable as a matter of right, *see* WIS. STAT. § 808.03(1), "[a]n appeal from a final judgment or final order brings before the court all prior nonfinal judgments, orders and rulings adverse to the appellant and favorable to the respondent made in the action or proceeding not previously appealed and ruled upon," *see* WIS. STAT. RULE 809.10(4). Nevertheless, we observe that McReynolds does not raise any arguments on appeal related to the order for a competency examination. Consequently, we do not address that order further.

In July 2020, the State charged McReynolds with possession of a firearm by a felon and disorderly conduct, both counts as a repeater. During a status conference in June 2021, the circuit court asked McReynolds' attorney whether there was a reason to question McReynolds' competency. Counsel responded that there was a "possibility" that McReynolds needed a competency examination because McReynolds was "not effectively assisting" with his defense. The court subsequently ordered a competency examination.

Harlan Heinz, a licensed psychologist, performed McReynolds' competency examination. Heinz diagnosed McReynolds with adjustment disorder with mixed anxiety and depressed mood, posttraumatic stress disorder, and paranoid personality disorder. In his report, Heinz opined that McReynolds lacked the substantial mental capacity to understand court proceedings or assist in his own defense, citing McReynolds' "substantial thought disorganization," inability to cooperate, irrational thinking, and general paranoia. Heinz further opined, however, that McReynolds could be restored to competency within the statutory time limit. In addition, Heinz asserted that McReynolds was "incapable of expressing an understanding of the advantages and disadvantages of accepting medication or treatment and the alternatives," and he therefore recommended that the circuit court impose an involuntary medication order.

McReynolds disputed Heinz's conclusion that he was incompetent, and the circuit court therefore held an evidentiary hearing regarding McReynolds' competency. Heinz, the only witness at the hearing, testified consistent with the opinions in his report. Based on Heinz's testimony, the court found that McReynolds was not competent to proceed to trial but was likely to be restored to competency within the requisite statutory time period. The court also determined that the involuntary administration of medication was warranted. The court therefore

entered an order committing McReynolds to the Department of Health Services for treatment and authorizing the involuntary administration of medication. McReynolds filed a notice of appeal, which triggered a stay of the involuntary medication order.

In November 2021, while this appeal was pending, Dr. Matthew Seipel filed a new report in the circuit court regarding McReynolds' competency. Seipel opined that McReynolds was competent to proceed. During a competency hearing on November 22, 2021, McReynolds agreed with Seipel's conclusion and stipulated that he was competent. The court then accepted Seipel's report and found that McReynolds was competent to proceed.

Three months later, McReynolds filed his brief-in-chief in this appeal, asserting that the involuntary medication order violated his right to due process. The State moved to summarily dismiss the appeal as moot, based on the fact that McReynolds was no longer subject to the involuntary medication order. McReynolds opposed the State's motion, arguing that the appeal was not moot because this court's decision would have a practical effect on the underlying criminal case and because McReynolds remained subject to collateral consequences of the involuntary medication order. In the alternative, McReynolds argued that multiple exceptions to the mootness doctrine applied.

On June 27, 2022, we issued an order holding the State's motion to dismiss in abeyance pending the completion of briefing in this appeal. We explained that we were "not persuaded that the involuntary medication order can have any practical effect on the ongoing criminal proceeding." However, we directed the State to address in its response brief McReynolds' arguments regarding collateral consequences of the involuntary medication order and exceptions

to the mootness doctrine. The State subsequently filed a response brief addressing those issues, along with the merits of McReynolds' appellate arguments, and McReynolds filed a reply brief.

Mootness presents a question of law that we review independently. ***J.W.K.***, 386 Wis. 2d 672, ¶10. "An issue is moot when its resolution will have no practical effect on the underlying controversy." ***Id.***, ¶11 (citation omitted). "Appellate courts generally decline to reach moot issues, and if all issues on appeal are moot, the appeal should be dismissed." ***Id.***, ¶12. Nevertheless, "[t]here are several established exceptions under which this court may elect to address moot issues." ***Id.***

Here, we assume, without deciding, that McReynolds' appeal is moot because he is no longer subject to the involuntary medication order. We conclude, however, that at least one of the exceptions to the mootness doctrine applies. Specifically, this appeal presents an issue that 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.***, ¶29 (emphasis omitted) (citation omitted).

A competency commitment under WIS. STAT. § 971.14 is limited to "a period not to exceed 12 months, or the maximum sentence specified for the most serious offense with which the defendant is charged, whichever is less." Sec. 971.14(5)(a)1. Yet, as McReynolds noted in his response to the State's motion for summary dismissal, "[i]n 2021, the average time from notice of appeal to a court of appeals opinion was 369 days." Under these circumstances, we agree with McReynolds that the issue raised in this appeal will likely evade review because the appellate process is unlikely to be completed before a commitment order under § 971.14 expires.

Furthermore, the issue raised in this appeal is capable of repetition. The "capable of repetition, yet evading review" exception to the mootness doctrine "is limited to situations involving 'a reasonable expectation that the *same* complaining party would be subjected to the *same action* again.'" ***J.W.K.***, 386 Wis. 2d 672, ¶30 (citation omitted). Here, the record shows that McReynolds' competency has been challenged in the past, as Heinz testified that he had previously performed a competency examination of McReynolds in 2005. The fact that McReynolds' competency has been challenged on at least two occasions gives rise to a reasonable expectation that he may be the subject of competency proceedings again at some point in the future, during which a circuit court may again issue an involuntary medication order. Thus, the record permits a reasonable expectation that McReynolds may again be subjected to the same action that is at issue in this appeal.

For these reasons, we conclude that the "capable of repetition, yet evading review" exception to the mootness doctrine applies. We therefore deny the State's motion for summary dismissal and address the merits of McReynolds' appeal.

"In ***Sell***, the United States Supreme Court held that in limited circumstances the government may involuntarily medicate a defendant to restore his [or her] competency to proceed to trial, and it outlined four factors that must be met before a circuit court may enter an order for involuntary medication." ***State v. Fitzgerald***, 2019 WI 69, ¶2, 387 Wis. 2d 384, 929 N.W.2d 165. Specifically, the government must prove that: (1) it has an important interest in proceeding to trial; (2) involuntary medication will significantly further the government's interest; (3) involuntary medication is necessary to further the government's interest; and (4) involuntary medication is medically appropriate. ***Id.***, ¶¶14-17. "If any factor is unsatisfied, involuntary medication is a violation of the Due Process Clause and is unconstitutional." ***State v.***

Green, 2021 WI App 18, ¶16, 396 Wis. 2d 658, 957 N.W.2d 583, *aff'd in part*, 2022 WI 30, 401 Wis. 2d 542, 973 N.W.2d 770.

McReynolds and the State agree that in order to satisfy the second, third, and fourth ***Sell*** factors, the State must present an "individualized treatment plan based on a medically informed record." *See* ***id.***, ¶¶2, 37. The treatment plan must, at a minimum, identify

> (1) the specific medication or range of medications that the treating physicians are permitted to use in their treatment of the defendant, (2) the maximum dosages that may be administered, and (3) the duration of time that involuntary treatment of the defendant may continue before the treating physicians are required to report back to the court ....

Id., ¶38 (citation omitted). McReynolds and the State agree that, in this case, the State failed to present an individualized treatment plan. The State acknowledges that without an individualized treatment plan, it "fell short of satisfying its burden to obtain an involuntary medication order under ***Sell***." Accordingly, the State concedes that if this court addresses the merits of McReynolds' appeal, we should "reverse the circuit court's decision ordering involuntary medication."

We agree with the parties that because the State failed to present evidence of an individualized treatment plan at McReynolds' competency hearing, it did not satisfy its burden of

proof to obtain an involuntary medication order. We therefore summarily reverse that portion of the circuit court's order permitting the involuntary administration of medication.[3]

Upon the foregoing,

IT IS ORDERED that the order is summarily reversed in part pursuant to 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

[3] McReynolds also argues that the involuntary medication order must be reversed because "[d]ue process requires testimony from a licensed physician and the [S]tate did not present any." Because we reverse the involuntary medication order on other grounds, we decline to address this argument. *See* ***Turner v. Taylor***, 2003 WI App 256, ¶1 n.1, 268 Wis. 2d 628, 673 N.W.2d 716 (court of appeals need not address all issues raised by the parties if one is dispositive); ***Patrick Fur Farm, Inc. v. United Vaccines, Inc.***, 2005 WI App 190, ¶8 n.1, 286 Wis. 2d 774, 703 N.W.2d 707 (court of appeals decides cases on the narrowest possible grounds).