[J-195-1998]
IN THE SUPREME COURT OF PENNSYLVANIA
EASTERN DISTRICT

IN RE: T.J.	:	No. 9 E.D. Appeal Dkt. 1998
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APPEAL OF: CITY OF PHILADELPHIA, COUNTY OFFICE OF MENTAL HEALTH/MENTAL RETARDATION	:	Appeal from the Order of the Superior Court, entered August 19, 1997, at No. 1022 Philadelphia 1997, quashing the appeal from the Order of the Court of Common Pleas of Philadelphia County, Civil Trial Division, entered February 10, 1997, at No. 3176 October Term 1996
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	:	699 A.2d 1311 (Pa. Super. 1997)
	:	
	:	ARGUED: October 19, 1998

DISSENTING OPINION

MR. JUSTICE ZAPPALA **DECIDED: September 29, 1999**

I respectfully dissent. In my view, the General Assembly acted deliberately in explicitly providing the person made subject to treatment with a right to petition for review when a mental health review officer certifies that a further period of commitment is warranted, without providing a similar right to the county agency or anyone else to petition for review of a denial of such certification, which results in the person's release.

The involuntary commitment process of the Mental Health Procedures Act is designed to permit quick decisions about whether individuals pose a danger to themselves or others, while ensuring that they are deprived of their liberty for the shortest period necessary. Allowing court review where the officer's decision results in a continued deprivation of liberty, and requiring that the review be expeditious, is consistent with these

purposes. See 50 P.S. § 7303(g). Allowing the agency to appeal a decision directing that the person be discharged, however, runs directly counter to these purposes.

I am fully aware that in this case T.J. was in fact discharged in accordance with the review officer's direction. Moreover, the majority studiously avoids deciding the significant question of whether an agency could continue to detain an individual for involuntary treatment while its appeal of a discharge order was pending. Nevertheless, I believe consideration of the practical consequences of granting agency standing is necessary, and reveals the inadequacy of the majority's analysis.

If the individual is discharged while the agency's appeal goes forward, the "substantial interest" the majority attributes to the agency as the predicate for standing, i.e., "ensuring that a mental health patient who has been involuntarily committed is not erroneously discharged," slip opinion at 6, is illusory. It therefore appears implicit in the majority's rationale that an agency *must* be able to continue involuntarily detention while the appeal of the discharge order is pending. Since even under the most expeditious of circumstances such an appeal could not be concluded so as to allow for the individual's timely release in the event the discharge is affirmed, the agency can accomplish its end, continued detention, by indirection, and the individual can win only a hollow victory by prevailing in the appeal. This possibility seems to me to be entirely at odds with the policy that the Act be "interpreted in conformity with the principles of due process" and that "the least restrictions consistent with adequate treatment be employed." 50 P.S. § 7102.

Even if standing were based on another "substantial interest" that is not inconsistent with the individual's being released while the appeal is pending, this would in effect give the agency a blanket exemption from the mootness doctrine. under the "capable of repetition yet apt to evade review" rubric. As in this case, by the time a final order was entered it would have no application to the parties before the court. Every decision arising out of an

agency appeal of a discharge order would be an advisory opinion.[1] I am not persuaded that such a course is either necessary or advisable.

In addition to my dissent from the decision to allow the agency to appeal, I must register my concern with the majority's discussion of the nature of the review allowed. The majority indicates that "since the mental health review officer's determination is not a final order, then the trial court's review of it would be in the nature of de novo." Slip opinion at 2 n.1. Reliance on In re J.S., 597 A.2d 750 (Pa. Cmwlth. 1991), is misplaced, however, since that case dealt with proceedings under sections 304 and 305 of the Act, not section 303, which is involved here. Section 304 provides for *court ordered* involuntary treatment for periods of up to ninety days either as an extension of a commitment, see 50 P.S. § 7304(b), or as an initial commitment, see 50 P.S. § 7304(c).[2] Section 7304(e) provides that hearings on such petitions may be conducted by a judge or a mental health review officer,

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[1] See, e.g., In re J.S., 586 A.2d 909 (Pa. 1991), wherein this Court addressed the merits of an issue regarding the procedures applicable where a patient's commitment was changed from voluntary to involuntary. The review officer ordered the patient's release, which was done, and the agency appealed. The common pleas court accepted the agency's argument that the review officer had erred, but in its remand order stated, "It is not the intention of this Court by its order to direct the commitment of J.S. if she is not currently an in hospital [sic] patient and has no need to be committed." Id. at 912 n. 4. Similarly, our Court, in reversing the Superior Court and agreeing with the common pleas court on the procedural question, stated, "Given the passage of time since the proceedings reviewed in this decision, we shall not remand this matter to the trial court for further proceedings." Id. at 914. Significantly, the agency's standing to appeal the discharge order in the first instance was not challenged.

[2] It is significant that in cases where section 304 proceedings are initiated for someone not already in involuntary treatment, the Act specifies that "Involuntary treatment shall not be authorized during the pendency of a petition except in accordance with section 302 or section 303." 50 P.S. § 7304(c)(6). To my mind this demonstrates the legislature's intent that individuals not be detained while proceedings to place them in involuntary treatment for extended periods are conducted. It would be anomalous if a person subjected to involuntary treatment under section 302 and then section 303 were allowed to be detained while an order discharging him was appealed, and a person who was the subject of a section 304 proceeding could not be detained while that proceeding was conducted.

but since the statute speaks of a court order, the review officer's conclusions in this context can only be advisory to the court, hence interlocutory.

Section 303, however, speaks not of a court order but of a "certification" that the individual is in need of continued involuntary treatment that is to be made after an *informal* hearing or conference. Although the statute provides that such informal hearing or conference may be conducted by either a judge or a mental health review officer, 50 P.S. § 7303(b), in this context the review officer acts not as a "master" making recommendations to the court but as an official authorized to make the certification, and the decision is "final" not interlocutory.[3]

In light of all these considerations, I believe the legislature acted purposefully in specifically providing an individual certified as needing continued involuntary treatment with a right to seek review, while not extending a similar to the agency a similar right to seek review of a discharge order. Thus I would affirm the order of the Superior Court.

Mr. Chief Justice Flaherty joins.

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[3] Beyond this problematic reliance on J.S., the majority fails to explain whether the de novo review it accords to agency appeals from discharge orders is the same as or different from the review specified by the Act where a person made subject to treatment petitions for review of a certification. See 50 P.S. § 7303(g).