COURT OF APPEALS
DECISION
DATED AND FILED

August 27, 2014

Diane M. Fremgen
Clerk of Court of Appeals

Appeal No. 2014AP479 **Cir. Ct. No. 2013ME99**

STATE OF WISCONSIN **IN COURT OF APPEALS**
DISTRICT II

IN THE MATTER OF THE MENTAL COMMITMENT OF MARK T. J.:

OZAUKEE COUNTY,

PETITIONER-RESPONDENT-CROSS-APPELLANT,

V.

MARK T. J.,

RESPONDENT-APPELLANT-CROSS-RESPONDENT.

APPEAL from orders of the circuit court for Ozaukee County: PAUL V. MALLOY, Judge. *Affirmed*.

¶1 BROWN, C.J.[1] This appeal and cross-appeal arise from orders authorizing involuntary commitment under WIS. STAT. ch. 51 and denying postdisposition relief. Mark J. argues that the circuit court lost competency to adjudicate his commitment petition because it failed to hold a hearing on the petition within seventy-two hours of his "arriv[al] at the facility" where he was detained—a hospital—as required by WIS. STAT. § 51.20(7)(a) (2011-12). The County contends that Mark did not arrive at the "facility" until he was transferred from the emergency room of the hospital to its mental health treatment unit, which occurred less than seventy-two hours before the probable cause hearing. The County also contends that Mark's appeal has become moot because Mark has stipulated to, and did not appeal from, a recommitment order.

¶2 Though we are unpersuaded by the County's interpretation of the word "facility" in WIS. STAT. § 51.20(7)(a),[2] we conclude that Mark's appeal is moot because he stipulated to his recommitment and vacating his initial commitment would have no practical effect. Therefore we affirm the orders of the circuit court, albeit on other grounds.

[1] This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(d) (2011-12). All references to the Wisconsin Statutes are to the 2011-12 version unless otherwise noted.

[2] We note WIS. STAT. § 51.20(7)(a) has been amended subsequent to Mark's case. The time limit for holding a probable cause hearing for an involuntary commitment petition under the revised statute is "within 72 hours after the individual is taken into custody." 2013 Wis. Act 158, § 14. So, the main issue in Mark T.J.'s case, how to interpret "arriv[al] at the facility," will not arise in future commitments.

Facts

¶3 Around noon on July 16, 2013, Ozaukee County sheriff's deputies were dispatched to assist Mark when he called for help from his car. Deputies found Mark parked on the side of the highway, bleeding from his wrists. The deputies applied pressure and called for an ambulance. Mark explained that after trying to commit suicide by cutting his wrists he decided to drive to the hospital. He called for help after he became lightheaded while driving and did not want to cause an accident. One of the deputies informed Mark that he was not under arrest but was in custody for emergency detention. The deputy contacted Ozaukee County Human Services and arranged for Mark to be detained at the Columbia St. Mary's hospital mental health unit after treatment for his injuries.

¶4 Mark was transported to the hospital. The deputy completed an emergency detention form stating that Mark was detained at the hospital at 12:56 p.m. After Mark was treated for his injuries the officer escorted him to the mental health unit, arriving shortly after 3 p.m.

¶5 A probable cause hearing took place at 3 p.m. on July 19, 2013. No transcript of that hearing is available because of an equipment malfunction. Court record entries indicate that Mark appeared at the hearing with counsel and "stipulate[d] the finding of probable cause, time limits waived." Upon finding probable cause, the court set a final hearing date of July 26, 2013, and ordered that Mark would continue to be detained until that time or until released by a doctor's order.

¶6 At his final hearing on July 26, 2013, Mark stipulated to his commitment but contested the petition for involuntary medication. The court

issued six-month orders for involuntary commitment and medication. Mark gave notice that he intended to seek postdisposition relief from the commitment order.

¶7 The record reflects that at some point, Mark was released from the treatment facility. On August 21, 2013, the County obtained an order to detain Mark again due to his failure to comply with treatment conditions.

¶8 On December 30, 2013, the County filed a petition to extend Mark's commitment and involuntary medication orders, which were set to expire on January 26, 2014. The hearing on that recommitment petition was scheduled for January 10, 2014. On January 9, 2014, Mark filed a motion for postdisposition relief, arguing[3] that the court lost competency to proceed because Mark's initial probable cause hearing did not take place within seventy-two hours of his arrival at the detention "facility," *see* WIS. STAT. § 51.20(7)(a), i.e., the hospital. Mark argued that because the time limit expired before the hearing began, "[a]ny argument that [the court maintained competency] because Mark's attorney waived the time limits" must fail.

¶9 The hearing on the recommitment petition was rescheduled for January 21, 2014. On January 17, 2014, Mark requested a jury trial on the recommitment. The court set the case for a hearing on January 24, 2014, and for a hearing about the postdisposition relief, along with a jury trial, on January 30, 2014. On January 24, Mark stipulated to an outpatient recommitment with conditions, for one year. Mark did not appeal, or seek postdisposition relief, from that recommitment.

[3] In addition to the argument discussed here, Mark also challenged the grounds for the involuntary medication order. He has not raised those arguments on appeal.

¶10 The court heard Mark's motion for postdisposition relief with respect to his initial commitment on January 30. The County argued that the initial probable cause hearing was timely because Mark did not arrive at "the detention unit of the hospital" until about 3:15 p.m. In the County's view, arrival at the "facility" meant arrival at the mental health unit, not at the hospital itself. The County further argued that Mark's motion was moot due to Mark's stipulation to the grounds for recommitment.

¶11 Mark continued to assert that the plain meaning of arrival "at the facility" was arrival at the hospital, not arrival at a unit within the hospital. As for mootness, Mark countered that once the court lost competency to proceed due to the violation of the time limit for the probable cause hearing, none of the subsequent proceedings, including his stipulation to the recommitment petition, were valid.

¶12 At the hearing on January 30, 2014, the circuit court concluded that the issue was not moot but that the seventy-two-hour time limit for the probable cause hearing should be calculated from the time of arrival at the mental health unit, making the probable cause hearing timely. The court stated that it was unreasonable to interpret "facility" to mean the hospital facility itself rather than the mental health unit because if the time was calculated from the moment the person arrived at the hospital, time could run out before a person's medical care was completed—if, for instance, the person was in a coma upon arrival and did not wake within seventy-two hours. The court therefore denied Mark's motion.

¶13 Both parties appealed. Mark appeals the circuit court's decision that his initial probable cause hearing was timely held. The County appeals the circuit court's determination that the issue was not moot.

Discussion

¶14 The meaning of the word "facility" in calculating the seventy-two-hour time limit for holding the probable cause hearing after an emergency detention under WIS. STAT. § 51.20(7)(a) (as it existed at the time of Mark's detention)[4] is a question of statutory interpretation, reviewed de novo. ***State ex rel. Lockman v. Gerhardstein***, 107 Wis. 2d 325, 327, 320 N.W.2d 27 (Ct. App. 1982). In statutory interpretation, the court begins with the "common, ordinary, and accepted meaning" of the language of the provision in question. ***State ex rel. Kalal v. Circuit Court for Dane Cnty.***, 2004 WI 58, ¶45, 271 Wis. 2d 633, 681 N.W.2d 110. If the meaning of that language is plain, the analysis ends. ***Id.***

¶15 The initial emergency detention in Mark's case was under WIS. STAT. § 51.15. The question on appeal arises because under WIS. STAT. § 51.20(7)(a),

> if the … individual [who is the subject of a commitment petition] is detained under [§] 51.15 or this section the court shall hold a hearing to determine whether there is probable cause to believe the allegations … within 72 hours after the individual arrives at the ***facility***, excluding Saturdays, Sundays, and legal holidays. At the request of the … individual or his or her counsel the hearing may be postponed, but in no case may the postponement exceed 7 days from the date of detention.

Sec. 51.20(7)(a) (emphasis added). The emergency detention form that the detaining officer completed about Mark's detention identifies the "§ 51.15(2) Facility" holding Mark as "Columbia St. Mary's Hospital – Ozaukee." The form refers to § 51.15(2) because that statute provides a list of authorized "facilities" for

[4] As discussed above in note 2, the statute was amended by 2013 Wis. Act 158.

emergency detention, including "[a] hospital which is approved by the department as a treatment facility." Sec. 51.15(2).[5]

¶16 In this context, we think that the common, ordinary meaning of the word "facility" in WIS. STAT. § 51.20(7)(a) at the time of Mark's detention was the "hospital … approved by the department as a treatment facility," *see* WIS. STAT. § 51.15(2), i.e., the hospital itself, not a unit within it.

¶17 On appeal, the County's chief argument is that interpreting "facility" in this ordinary way causes illogical results. For instance, if the detained individual was comatose when admitted, the seventy-two hours could pass before the person regained consciousness.

¶18 We find this hypothetical implausible. A comatose individual could not express an opinion about receiving medical care, let alone about the prospect of a mental health commitment, and it is difficult to imagine why a petition would be filed before there was reason to believe that the individual opposed care and commitment.[6] Such an extreme scenario is not a convincing justification for avoiding the ordinary meaning of the language the legislature enacted.

¶19 The County also asserts that while "hospital" is unambiguous, "what is meant by a hospital in terms of a detention facility" under WIS. STAT. § 51.15(2) is ambiguous, because the other detention facilities listed (public treatment

[5] This was the language of the statute effective at the time of Mark's detention. That statute has been amended by 2013 Wis. Act 158.

[6] We note that the new version of WIS. STAT. § 51.15 expressly directs that detention may not be approved unless "the county department reasonably believes the individual will not voluntarily consent" to needed treatment. *See* 2013 Wis. Act 158, § 4

facility, state treatment facility, and private treatment facility) are all facilities that only provide mental health treatment. The County urges us to use the definition of "inpatient facility" from WIS. STAT. § 51.01(10) (which includes a reference to a treatment "unit") to "clarify" the meaning of the detention facilities in § 51.15(2). We find these arguments unconvincing too. The fact that the legislature used the specific word "hospital" in enumerating the types of detention facilities in § 51.15(2), while elsewhere referring to separate mental health treatment units, suggests that the legislature meant "hospital," not "unit," in § 51.15(2).

¶20 Although we disagree with the circuit court's conclusion on this issue of statutory interpretation, we may affirm the circuit court's decision if we find a different justification for it. ***Linda L. v. Collis***, 2006 WI App 105, ¶63, 294 Wis. 2d 637, 718 N.W.2d 205. We therefore turn to the other issue in this case, the County's claim that the dispute has become moot.

¶21 In reviewing a circuit court determination of mootness, a reviewing court gives deference to the circuit court's factual findings but considers independently whether the issue is moot or should be reviewed. ***Outagamie Cnty. v. Melanie L.***, 2013 WI 67, ¶¶ 80-81, 349 Wis. 2d 148, 833 N.W.2d 607. Generally speaking, we dismiss a case for mootness if deciding the question raised cannot have any practical legal effect on a current controversy. ***Dane Cnty. v. Sheila W.***, 2013 WI 63, ¶ 4, 348 Wis. 2d 674, 835 N.W.2d 148; ***G.S. v. State***, 118 Wis. 2d 803, 805, 348 N.W.2d 181 (1984). A court may, however, decide an otherwise moot controversy if the issue

> (1) is of great public importance; (2) occurs so frequently that a definitive decision is necessary to guide circuit courts; (3) is likely to arise again and a decision of the court would alleviate uncertainty; or (4) will likely be repeated, but evades appellate review because the appellate review

> process cannot be completed or even undertaken in time to have a practical effect on the parties.

Melanie L., 349 Wis. 2d 148, ¶ 80 (citation omitted).

¶22 With respect to the mootness question in Mark's appeal, the circuit court said, "[i]t's not moot because the [c]ourt had jurisdiction from the get-go." We agree, but without regard to the timeliness of the probable cause hearing; even when a court loses competency to exercise its jurisdiction, it does not lose subject matter jurisdiction itself. The Wisconsin state circuit courts have subject matter jurisdiction vested in them by the Wisconsin Constitution as to all matters civil and criminal. ***Village of Trempealeau v. Mikrut***, 2004 WI 79, ¶8, 273 Wis. 2d 76, 681 N.W.2d 190. Noncompliance with statutory mandates about the timing of a hearing "is not 'jurisdictional' in that it does not negate the court's subject matter jurisdiction. Rather [it] may result in a loss of the circuit court's competency to adjudicate the particular case before the court." ***Id.***, ¶9 (citations omitted).

¶23 Failing to hold a probable cause hearing within seventy-two hours of an emergency detention under WIS. STAT. § 51.20(7)(a) may extinguish a court's competency to proceed on the initial petition. ***Dodge Cnty. v. Ryan E.M.***, 2002 WI App 71, ¶5, 252 Wis. 2d 490, 642 N.W.2d 592. Once the seventy-two hour period passes without any hearing to determine probable cause, an emergency detention becomes "unlawful." ***Dane Cnty. v. Stevenson L.J.***, 2009 WI App 84, ¶13, 320 Wis. 2d 194, 768 N.W.2d 223.

¶24 If Mark had promptly objected to the fact that his probable cause hearing was occurring slightly more than seventy-two hours after his detention,

this would be a different case. Instead, however, Mark initially waived the issue,[7] only to raise it in a postdisposition motion, and then, eventually, stipulate to recommitment. We conclude that Mark's stipulation to the recommitment has rendered this appeal moot.

¶25 Whether or not Mark's waiver of the competency objection was effective, the court never lost subject matter jurisdiction, and the court exercised that jurisdiction in accepting the parties' stipulation to Mark's recommitment. While a recommitment is not an entirely new proceeding, it does require redetermination of the grounds for commitment:

> the circuit court must make a new determination of the individual's suitability for commitment at the recommitment hearing … evidence of the individual's recent behavior will be presented; and … evidence presented at each recommitment hearing may be different from evidence presented at the original commitment proceeding or a previous recommitment hearing.

State ex rel. Serocki v. Circuit Court for Clark Cnty., 163 Wis. 2d 152, 159, 471 N.W.2d 49 (1991). Once in place, the recommitment order became the basis for Mark's commitment. In this context, Mark's voluntary stipulation, under

[7] As already discussed, though no transcript exists of Mark's probable cause hearing due to an equipment error, the record contains the circuit court's notation that Mark "waived" objection regarding the time limit error at his probable cause hearing. At least in certain circumstances, a loss of competency due to failure to follow statutorily mandated procedures may be an unwaivable defect. *See* ***State v. Michael S.***, 2005 WI 82, ¶¶72-74 & n.46, 282 Wis. 2d 1, 695 N.W.2d 673; ***Green Cnty. Dept. of Human Servs. v. H.N.***, 162 Wis. 2d 635, 657-58, 469 N.W.2d 845 (1991). However, we are aware of no precedent barring voluntary waiver of this issue in WIS. STAT. ch. 51 proceedings, and there is no categorical prohibition on waiving an objection to the court's competency to proceed due to failure to follow statutorily mandated procedures. *See* ***Village of Trempealeau v. Mikrut***, 2004 WI 79, ¶9, 273 Wis. 2d 76, 681 N.W.2d 190. Because Mark's stipulation to the recommitment petition has rendered the appeal moot, we need not decide the issue of whether the law barred Mark from voluntarily waiving his objection to the court's competency to proceed.

conditions agreed upon by the parties, rendered moot the question whether Mark's initial commitment order was void due to untimeliness.

¶26 Mark urges us to decide his case despite the mootness. While we may reach moot questions in an appropriate case, such as where the issues are of great importance and should be resolved by the court, or where the issue is capable of repetition yet evades review, *see* ***Shirley J.C. v. Walworth Cnty.***, 172 Wis. 2d 371, 375, 493 N.W.2d 382 (Ct. App. 1992), none of those considerations apply here. Mark points to the fact that the initial six-month commitment time period is often too short for completion of an appeal, *see* ***id.***, **[Mark's blue at 13]** but with the amendment of the statutes, Mark's issue is unlikely to ever arise again.

¶27 We affirm the decision of the circuit court, albeit on different grounds. The County, as the prevailing party, is awarded costs of the appeal and cross-appeal.

By the Court.—Orders affirmed.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)4.