NO. 23869

IN THE SUPREME COURT OF THE STATE OF HAWAIʻI

In the Matter of JOHN DOE,
Respondent-Appellant.

APPEAL FROM THE FAMILY COURT OF THE FIRST CIRCUIT
(FC-MISCELLANEOUS NO. 00-1-0897)

ORDER DISMISSING APPEAL
(By: Moon, C.J., Levinson, Nakayama, and Acoba, JJ., and Circuit Judge Wong, assigned by reason of vacancy)

The respondent-appellant John Doe (Doe) appeals from the order of involuntary hospitalization of the district family court of the first circuit, the Honorable John C. Bryant presiding, filed on October 23, 2000, committing Doe to the Hawaiʻi State Hospital for a period of time not to exceed ninety days. On appeal, Doe contends (1) that, although the period of commitment mandated by the family court's commitment order has expired, Doe's appeal is not moot, inasmuch as his points of error are "capable of repetition, yet evading review"; (2) that the family court erred in denying his oral motion to dismiss the petitioner-appellee Department of Health's (DOH's) petition for involuntary hospitalization [hereinafter, "the petition"], pursuant to Hawaiʻi Revised Statutes (HRS) § 334-60.3 (Supp. 2002),[1] on the basis that HRS § 334-60.3 mandates that a

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[1] HRS § 334-60.3 provides in relevant part:

> **Initiation of proceeding for involuntary hospitalization.** (a) Any person may file a petition alleging that a person located in the county meets the

(continued...)

petitioner file a certificate of physician with the petition and the notice of hearing on the matter; and (3) that the family court erred in admitting, over objection, several hearsay statements made during the course of the expert testimony adduced at the hearing on DOH's petition. More specifically, Doe argues that, although the plain language of HRS § 334-60.3 states that the petition may be accompanied by a certificate of a licensed physician who has examined the person to be committed involuntarily, construing the term "may" as discretionary under subsection (a) would lead to an absurd result and was not contemplated by the legislature in enacting HRS § 334-60.3, see supra note 1.

Upon carefully reviewing the record and the briefs submitted by the parties and having given due consideration to the arguments advanced and the issues raised by the parties, we dismiss Doe's appeal as moot, inasmuch as the period of commitment at issue has expired. Moreover, Doe's appeal does not fall within a cognizable exception to the mootness doctrine, because Doe does not raise "questions that affect the public interest and are 'capable of repetition yet evading review.'" Okada Trucking Co., Ltd. v. Board of Water Supply, 99 Hawai'i 191, 196, 53 P.3d 799, 804 (2002) (quoting CARL Corp. v. State, Dept. of Educ., 93 Hawai'i 155, 165, 997 P.2d 567, 577 (2000)

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[1](...continued)

> criteria for commitment to a psychiatric facility. . . . The petition may be accompanied by a certificate of the licensed physician or psychologist who has examined the person within two days before submission of the petition, unless the person whose commitment is sought has refused to submit to medical or psychological examination, in which case the fact of refusal shall be alleged in the petition.

(Emphasis added.)

(citations omitted))). "Among the criteria considered in determining the existence of the requisite degree of public interest are the public or private nature of the question presented, the desirability of an authoritative determination for the future guidance of public officers, and the likelihood of future recurrence of the question." Okada Trucking Co., Ltd. 99 Hawai'i at 196-97, 53 P.3d at 804-05.

In the present matter, Doe challenges the meaning of HRS § 334-60.3, arguing that the term "may be accompanied by" should be construed to mean "shall be filed simultaneously with." The plain language of HRS § 334-60.3, however, unequivocally prescribes a discretionary filing of a certificate of physician. See Gray v. Administrative Dir. of the Court, 84 Hawai'i 138, 149, 931 P.2d 580, 591 (1997) ("'Where [the] verbs ['shall' and 'may'] are used in the same statute, especially where [they] are used in close juxtaposition, we infer that the legislature realized the difference in meaning and intended that the verbs used should carry with them their ordinary meanings.'"). Thus, Doe's first point of error raises a question that neither warrants "an authoritative determination for the future guidance of public officers" nor presents "the likelihood of future recurrence of the question." Okada Trucking Co., Ltd, 99 Hawai'i at 196-97, 53 P.3d at 804-05.

Likewise, Doe's second point of error does not fall within the foregoing exception to the mootness doctrine, because the admissibility of certain expert testimony is "private" in nature and, thus, does not satisfy the requisite degree of public interest for the exception to apply in the present matter. Id. at 196, 53 P.3d at 804. Therefore,

IT IS HEREBY ORDERED that Doe's appeal of the family court's order of involuntary hospitalization is dismissed.

DATED: Honolulu, Hawai'i, March 17, 2003.

On the briefs:

David A. Fisher, for
the respondent-appellant
John Doe

Andrea J. Armitage, for
the petitioner-appellee
Department of Health