NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NUMBER 2015 CA 0140

IN THE MATTER OF MENTAL HEALTH OF C.C.

VGW by Ed
JEW by Ed
Ed

Judgment Rendered: DEC 23 2015

Appealed from the
Nineteenth Judicial District Court
In and for the Parish of East Baton Rouge, Louisiana
Docket Number JC22267

Honorable Timothy E. Kelley, Judge Presiding

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Joseph A. Prokop, Jr. **Baton Rouge, LA**	**Counsel for Plaintiff/Appellee,** **Dr. Melissa Watson or the Medical Director**
C.C. **New York, NY**	**Defendant/Appellant, In Proper Person**

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BEFORE: WHIPPLE, C.J., WELCH, AND DRAKE, JJ.

WHIPPLE, C.J.

In this matter, respondent, C.C., appeals a judgment of judicial commitment. For the reasons that follow, we dismiss the appeal as moot.

FACTUAL AND PROCEDURAL BACKGROUND

On November 12, 2014, C.C. was admitted to Our Lady of the Lake Regional Medical Center (OLOL) for "bizarre behavior" pursuant to a Physician Emergency Certificate (PEC).[1] The PEC, signed by Dr. Myra Fernando, reported that C.C., a thirty-three year old female, was suffering from "bizarre behavior." Dr. Fernando further indicated that C.C. was gravely disabled and unable to seek voluntary admission.

Two days later, Dr. William Clark, the East Baton Rouge Parish Coroner, examined C.C. and prepared a Coroner's Emergency Certificate (CEC).[2] Dr. Clark determined that C.C. suffered from paranoid delusions, grandiose ideas that she "will not discuss," and pressured speech. Dr. Clark indicated that C.C. was dangerous to self, gravely disabled, and unable to seek voluntary admission.

Shortly thereafter, on November 20, 2014, Dr. Melissa Watson, the medical director of OLOL, petitioned the court for the judicial commitment of C.C., averring that in her opinion C.C. was suffering from a mental illness, which contributed to or caused her to be gravely disabled. According to the petition, the facts underlying the basis of her belief were "delusional, bizarre behavior, guarded, pressured speech, refuses medication, grandiose." Dr. Watson further averred that C.C. did not have the capacity to make a knowing and voluntary consent to treatment on a voluntary basis due to her mental condition. Dr. Watson requested that a hearing be held within eighteen days of the filing of the petition and, further, that the court appoint a licensed psychiatrist to examine C.C. and prepare a written

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[1] See LSA-R.S. 28:53(B)(1).

[2] See LSA-R.S. 28:53(G)(2).

report of those findings to the court and C.C.'s attorney three days before the hearing. Dr. Watson attached a copy of the PEC and CEC to the petition.

On December 2, 2014, the matter was heard before the district court. Dr. Watson, who was accepted by the district court as an expert in psychiatry, testified in support of the petition. At the close of petitioner's case, counsel for C.C. moved for an involuntary dismissal of the petition, which was denied by the district court. C.C. did not testify in her case on rebuttal, but instead proffered certain documents. At the conclusion of the hearing, the district court ruled that C.C. was gravely disabled and granted the petition for commitment.

On December 3, 2014, the district court signed a judgment ordering that C.C. be committed to the Louisiana Department of Health and Hospitals for a period not to exceed one hundred eighty days; that she be discharged early if, in the medical opinion of her treating psychiatrist, she was no longer disabled; that the director of the treatment facility issue reports on C.C.'s progress every ninety days; and that the director of the treatment facility notify the court in writing upon the discharge or conditional discharge of C.C.

On January 7, 2015, C.C. filed the instant appeal from the December 3, 2014 judgment of the district court, contending that the district court erred in: (1) failing to grant her motion for involuntary dismissal; (2) finding her to be gravely disabled absent clear and convincing evidence; and (3) failing to recognize "self-authenticating portions" of C.C.'s proffered evidence of employment history.[3]

[3]C.C. filed an "Original Brief" in this appeal on June 19, 2015, which contained the first two assignments of error set forth herein. A second "Original Brief" was filed by C.C. on July 9, 2015, which asserted the additional assignment of error set forth above.

DISCUSSION

On January 9, 2015, counsel for the petitioner filed a "Notice of Discharge," notifying the district court[4] that on December 5, 2014, three days after the commitment hearing, C.C. was discharged from OLOL pursuant to LSA-R.S. 28:56(C).[5] Thus, we must first determine whether C.C.'s challenge to the judgment before us on appeal, ordering that she be committed for a period not to exceed one hundred eighty days, has been rendered moot, such that this court lacks subject matter jurisdiction.

A court's subject matter jurisdiction cannot be waived or conferred by consent of the parties. Williams v. International Offshore Services, L.L.C., 2011-1240, 2011-1318, 2011-1369 (La. App. 1st Cir. 12/7/12), 106 So. 3d 212, 217, writ denied, 2013-0259 (La. 3/8/13), 109 So. 3d 367. An appellate court has a duty to examine subject matter jurisdiction *sua sponte*, even when the issue is not raised by the litigants. Swanson v. Department of Public Safety and Corrections, 2001-1066 (La. App. 1st Cir. 6/21/02), 837 So. 2d 634, 636.

Moreover, it is well settled that courts will not decide abstract, hypothetical, or moot controversies, or render advisory opinions with respect to controversies. Joseph v. Ratcliff, 2010-1342 (La. App. 1st Cir. 3/25/11), 63 So. 3d 220, 225. Cases submitted for adjudication must be justiciable, ripe for decision, and not brought prematurely. A "justiciable controversy" is one presenting an existing

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[4]Louisiana Revised Statute 28:55(E)(4) provides that the director shall notify the court in writing when a patient has been discharged or conditionally discharged.

[5]Louisiana Revised Statute 28:56(C) provides, as follows:

> Notwithstanding an order of judicial commitment, the director of the treatment facility to which the individual is committed is encouraged to explore treatment measures that are medically appropriate and less restrictive. The director may at any time convert an involuntary commitment to a voluntary one should he deem that action medically appropriate. He shall inform the court of any action in that regard. The director may discharge any patient if in his opinion discharge is appropriate. The director shall not be legally responsible to any person for the subsequent acts or behavior of a patient discharged in good faith.

actual and substantial dispute involving the legal relations of parties who have real adverse interests and upon whom the judgment of the court may effectively operate through a decree of conclusive character. A "justiciable controversy" is thus distinguished from one that is hypothetical or abstract, academic, or moot. City of Hammond v. Parish of Tangipahoa, 2007-0574 (La. App. 1st Cir. 3/26/08), 985 So. 2d 171, 178.

An issue is moot when a judgment or decree on that issue has been "deprived of practical significance" or "made abstract or purely academic." Thus, a case is moot when a rendered judgment or decree can serve no useful purpose and give no practical relief or effect. Joseph v. Ratcliff, 63 So. 3d at 225. If the case is moot, there is no subject matter on which the judgment of the court can operate. Joseph v. Ratcliff, 63 So. 3d at 225. Thus, jurisdiction, once established, may abate if the case becomes moot, as the controversy must normally exist at every stage of the proceeding, including appellate stages. City of Hammond v. Parish of Tangipahoa, 985 So. 2d at 178 (citing Cat's Meow, Inc. v. City of New Orleans, Department of Finance, 98-0601 (La. 10/20/98), 720 So. 2d 1186, 1193).

A case may become moot for several reasons. Some examples are cases wherein: (1) there has been a change in the law; (2) the defendant has paid monies owed; (3) the wrongful behavior has passed and is not likely to recur; or (4) a party has died. City of Hammond v. Parish of Tangipahoa, 985 So. 2d at 178. Even though the requirements of justiciability are satisfied when the suit is initially filed, when the fulfillment of these requirements lapses at some point during the course of litigation before the moment of final disposition, mootness occurs. In such a case, there may no longer be an actual controversy for the court to address, and any judicial pronouncement on the matter would be an impermissible advisory opinion. See City of Hammond v. Parish of Tangipahoa, 985 So. 2d at 178 (citing Cat's

Meow, Inc. v. City of New Orleans, Department of Finance, 720 So. 2d at 1193-1194).

A court must refuse to entertain an action for a declaration of rights if the issue presented is academic, theoretical, or based on a contingency which may or may not arise. American Waste & Pollution Control Company v. St. Martin Parish Police Jury, 627 So. 2d 158, 162 (La. 1993). Nor is a court required to decide moot questions or abstract propositions, or to declare, for the government of future cases, principles or rules of law which cannot affect the result as to the thing in issue in the case before it. Council of City of New Orleans v. Sewerage and Water Board of New Orleans, 2006-1989 (La. 4/11/07), 953 So. 2d 798, 802 (*per curiam*).

However, some exceptions to the mootness doctrine have been recognized. When a defendant has voluntarily ceased complained-of conduct, a court should consider: (1) whether there is any reasonable expectation that the alleged violation will recur; and/or (2) whether there are unresolved collateral consequences (such as an outstanding claim for compensatory or other monetary relief). See Cat's Meow, Inc. v. City of New Orleans, Department of Finance, 720 So. 2d at 1194-1196.

Thus, where an appellant was committed for involuntary treatment at the time of the appeal, but has been subsequently discharged or released from the commitment prior to a decision on appeal, his release from commitment renders the issue raised on appeal moot, and the court thereby lacks jurisdiction to consider it. As such, the court may dismiss the appeal. See In re Interdiction of C.S.B., 38,889 (La. App. 2nd Cir. 8/18/04), 880 So. 2d 997, 999, writ denied, 2004-2336 (La. 11/24/04), 888 So. 2d 234; State ex rel. Bayer v. White, 19 So. 2d 47, 47-48,

206 La. 200, 202 (La. 1944); cf. In re E.W., 2009-1589 (La. App. 1st Cir. 5/7/10), 38 So. 3d 1033.[6]

However, in cases where an appellant is conditionally discharged from a facility, courts have generally held that an appeal of a judgment of judicial commitment is not moot and subject to dismissal, where the appellant's discharge was conditioned upon requirements that appellant take prescribed medication and attend scheduled appointments at a mental health clinic. See State v. A.C., 543 So. 2d 133, 134 (La. App. 2nd Cir. 1989); In re P.H., 93-2389 (La. App. 4th Cir. 4/14/94), 635 So. 2d 1302, 1303; In re H.W., 94-0406 (La. App. 4th Cir. 9/29/94),

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[6]In re E.W. involved the appeal of a judgment of the trial court denying appellant's petition for writ of habeas corpus seeking his release from confinement, where the coroner failed to examine him within seventy-two hours of his admission and then issued an invalid CEC five days after his admission, which CEC contained a false date and time of appellant's admission. The defendant therein argued that the appeal was moot, as appellant had since been released from the facility. The appellant, however, urged this court to "take jurisdiction" of this matter despite its mootness, where there was a reasonable expectation that he would be subject to the same action again and where there is a strong public policy in favor of protecting individuals from illegal involuntary confinement contrary to the mental health laws. Given the egregious behavior of the public official therein, this court noted that "a substantial public interest can also provide an exception to the mootness doctrine where the question presented is of a public nature, the complained-of conduct is likely to recur, and an authoritative resolution is desirable to guide public officers." In re E.W., 38 So. 3d at 1038 (citing Cinkus v. Village of Stickney Municipal Officers Electoral Board, 228 Ill. 2d 200, 319 Ill. Dec. 887, 886 N.E.2d 1011 (2008)), as modified, (Apr. 23, 2008). After finding that the coroner had exhibited a "blatant disregard of the statute" and that the actions complained of were "indeed capable of repetition with the ability to evade review," this court applied the above "substantial public interest exception" to the mootness doctrine. In re E.W., 38 So. 3d at 1038. In doing so, this court noted, "While coroners have the power to involuntarily commit individuals for the protection of others or the individual being committed, the statutory safeguards cannot be ignored." In re E.W., 38 So. 3d at 1038.

However, we also note that in State v. Rochon, 2011-0009 (La. 10/25/2011), 75 So. 3d 876, 887, Chief Justice Kimball referenced In re E.W. and noted that the Supreme Court has not recognized the "public importance" exception to the mootness doctrine, stating:

> Although this Court has not explicitly rejected the "same complainant" requirement or recognized a "public importance" exception to the mootness doctrine,[14] such are consistent with Louisiana jurisprudence addressing claims "capable of repetition yet evading review."

In Footnote 14, the Supreme Court further observed:

> Citing Illinois jurisprudence, one circuit court in Louisiana recently ruled that "a substantial public interest can also provide an exception to mootness where the question presented is of a public nature, the complained-of conduct is likely to recur, and an authoritative resolution is desirable to guide public officers." *In re E.W.*, 09-1589, p. 8 (La.App. 1 Cir. 5/7/10); 38 So.3d 1033, 1038.

Thus, as of this date, the Louisiana Supreme Court has not specifically adopted (or rejected) the "public importance" exception.

644 So. 2d 225, 227. In such cases, the courts have reasoned that because those conditions are onerous and ultimately flow from the judgment on appeal, the judgments are not rendered moot and are not subject to dismissal on that ground. See In re P.H., 635 So. 2d at 1303 (citing State v. A.C., 543 So. 2d 133 (La. App. 2nd Cir. 1989).

However, in the instant case, the notice of discharge sets forth no requirements upon which C.C.'s discharge was conditioned. Moreover, C.C. has not averred (nor does the record show) that there is any reasonable expectation that the alleged violation will recur. Additionally, C.C. has not raised or asserted any compensatory claims or otherwise sought monetary relief in these proceedings. See In re E.W., 38 So. 3d at 1037. Thus, under the facts of this case, we are unable to find the existence of any circumstances that would warrant application of an exception to the general rule of mootness.

As stated above, a moot case is one that seeks a judgment or decree, which, when rendered, can serve no useful purpose and give no practical relief or effect. Joseph v. Ratcliff, 63 So. 3d at 225. In sum, we are constrained to find that C.C.'s release from her involuntary commitment rendered the issue raised in this appeal moot. See In re Interdiction of C.S.B., 880 So. 2d at 999; compare and contrast In the Matter of B.B., 12-0158, 826 N.W.2d 425 (Iowa 2013).[7]

Thus, as the appeal presents no justiciable controversy or claim for relief, this court lacks jurisdiction to consider it. Accordingly, we must dismiss the

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[7]In In the Matter of B.B., the Supreme Court of Iowa recognized an exception to the mootness doctrine, which provides that an appeal is not moot if a judgment left standing will cause the appellant to suffer continuing adverse collateral consequences. Citing a number of jurisdictions, the Iowa court recognized the notion that one who is involuntarily committed due to mental illness suffers collateral consequences, specifically including the accompanying stigma. In the Matter of B.B., 826 N.W.2d at 429. The court held that a party who has been adjudicated seriously mentally impaired and involuntarily committed is **presumed** to suffer collateral consequences justifying appellate review. In the Matter of B.B., 826 N.W.2d at 429. However, under our present statutory scheme and the relevant jurisprudence, Louisiana does not afford such a presumption to persons who are involuntarily committed and released unconditionally.

appeal. In doing so, we pretermit C.C.'s remaining assignments of error and do not reach the merits of her arguments.

Motion to Supplement

On June 22, 2015, C.C. filed a motion to supplement the appellate record with a Table of Contents, which was referred to the panel on appeal.[8] In light of our determination that the appeal must be dismissed as moot, we likewise deny as moot the motion to supplement.

CONCLUSION

For the above and foregoing reasons, this appeal is dismissed as moot. We decline to assess costs in these pauper proceedings.

APPEAL DISMISSED; MOTION TO SUPPLEMENT DENIED AS MOOT.

[8]On June 22, 2015, C.C. also filed a motion to supplement the appellate record with the content of certain folders containing paperwork that was proffered by the district court. On July 24, 2015, that motion was denied by another panel of this court, noting that "This Court already has access to the documents supplied with the motion through appellant's proffer in the district court. Accordingly, the motion is moot."