STATE OF MICHIGAN

COURT OF APPEALS

In re JAMES YANG.

OAKLAND COUNTY PROSECUTOR'S OFFICE,

Petitioner-Appellee,

v

JAMES YANG,

Respondent-Appellant.

UNPUBLISHED
December 28, 2021

No. 356970
Oakland Probate Court
LC No. 2001-037176-MI

Before: CAVANAGH, P.J., and K. F. KELLY and REDFORD, JJ.

K. F. KELLY, J. (*concurring in part and dissenting in part*).

I join in the majority's holding that the probate court did not abuse its discretion when it concluded that respondent's requested transition to an independent, community-based setting with team support was unsupported by a preponderance of the evidence. However, I respectfully dissent from the majority's conclusion that respondent may not pursue the appeal as a claim of right.

The issue of whether this Court has jurisdiction to hear an appeal is within the scope of our review. *Chen v Wayne State Univ*, 284 Mich App 172, 191; 771 NW2d 820 (2009). Under the court rules, the Court of Appeals has jurisdiction of an appeal of right filed by an aggrieved party from "[a] judgment or order of a court or tribunal from which appeal of right to the Court of Appeals has been established by law or court rule.[.]" MCR 7.203(A)(2). MCR 5.801 addresses appeals from the probate court to the Court of Appeals. The court rule provides, in relevant part:

> (A) Appeal of Right. A party or an interested person aggrieved by a final order of the probate court may appeal as a matter of right as provided by this rule.
>
> * * *
>
> (4) a final order affecting the rights or interests of a person under the Mental Health Code[.]

When examining which probate court orders are final to determine the appellate jurisdiction of this Court, the evaluation is made on a case-by-case basis. *In re Rottenberg Trust*, 300 Mich App 339, 353; 833 NW2d 384 (2013). "The test of finality of a probate court order is whether it affects with finality the rights of the parties in the subject matter." *Id*. at 354 quoting *In re Miller Estate*, 106 Mich App 222, 224; 307 NW2d 450 (1981). The interpretation and application of a court rule presents a question of law that the appellate court reviews de novo. *In re Leete Estate*, 290 Mich App 647, 656; 803 NW2d 889 (2010). The goal when interpreting a court rule is to give effect to the intent of the drafters by examining the language used. *Id*. We must give effect to the language plainly expressed. *Id*. If the language is plain and unambiguous, the language must be applied as written without judicial construction. *Id*.

I would conclude that the continuing order for mental health treatment is a final order under MCR 5.801(A)(4) appealable as a matter of right because it is "affecting the rights or interests of a person under the Mental Health Code." Specifically, this order determined respondent's rights or interests under the Mental Health Code because it set forth respondent's involuntary mental health treatment for the following year as provided in MCL 330.1472a(3). When the nature of the order is examined on a case-by-case basis, it is apparent that it constitutes a final order because it affects with finality respondent's rights regarding his placement. *In re Rottenberg Trust*, 300 Mich App at 353-354. Indeed, it determined respondent's degree of confinement and supervision for the next year.

In its appellate brief, petitioner asserts that "it is questionable whether" the April 1, 2021 continuing order for mental health treatment is a final order under MCR 5.801(A)(4), MCR 5.801(A)(5), or MCR 7.202(6)(a)(*i*), and notes that with yearly reviews, respondent would be entitled to a yearly appeal as of right. Under the plain language of the court rule, there is no indication that an order subject to yearly renewal may not be deemed a final order under MCR 5.801. Moreover, the failure to permit an appeal of right would prevent individuals subject to the Mental Health Code from challenging decisions addressing confinement, placement, and supervision.

We recently decided in *In re Tchakarova*, 328 Mich App 172, 178-181; 936 NW2d 863 (2019), that the expiration of an order for involuntary hospitalization after 90 days did not moot the claim brought by the respondent challenging such confinement, even though the claim could not be fully adjudicated within that time period. As part of our analysis, we remarked in a footnote that "[u]nder the Michigan Court Rules, respondent was entitled to an appeal of right from a final order affecting her rights under the Mental Health Code." *Id*. at 180 n 3, citing MCR 5.801(A)(4). Although the mootness doctrine is not before us in this case, I agree with that statement of law from *In re Tchakarova*, and I adopt it.

I would not impose such a limitation in light of the absence of any such restriction in the court rule. Petitioner's concern regarding the frequency of appeals when balanced against the rights of mentally incapacitated individuals should be directed to the Legislature. "It is axiomatic that an individual subjected to involuntary mental health treatment will be significantly affected by the order [of confinement] because treatment decisions will be made for the individual and, if inpatient treatment is ordered, his or her freedom of movement will be limited." *In re Tchakarova*, 328 Mich App at 181. I would hold that the order of the probate court is appealable as of right.

/s/ Kirsten Frank Kelly