

DA 17-0263

IN THE SUPREME COURT OF THE STATE OF MONTANA

2019 MT 45N

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IN THE MATTER OF:

G.M.,

Respondent and Appellant.

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APPEAL FROM: District Court of the Eighteenth Judicial District,  
In and For the County of Gallatin, Cause No. DI 16-13B  
Honorable Rienne H. McElyea, Presiding Judge

COUNSEL OF RECORD:

For Appellant:

Chad Wright, Appellate Defender, Lisa S. Korchinski, Assistant Appellate  
Defender, Helena, Montana

For Appellee:

Timothy C. Fox, Montana Attorney General, Katie F. Schulz, Assistant  
Attorney General, Helena, Montana

Marty Lambert, Gallatin County Attorney, Erin Arnold, Deputy County  
Attorney, Bozeman, Montana

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Submitted on Briefs: January 16, 2019

Decided: February 19, 2019

Filed:

  
Clerk

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Justice Beth Baker delivered the Opinion of the Court.

¶1 Pursuant to Section I, Paragraph 3(c), Montana Supreme Court Internal Operating Rules, this case is decided by memorandum opinion and shall not be cited and does not serve as precedent. Its case title, cause number, and disposition shall be included in this Court's quarterly list of noncitable cases published in the Pacific Reporter and Montana Reports.

¶2 G.M. appeals the Eighteenth Judicial District Court's order of commitment following a jury trial because she was not present at the preliminary hearing in which the District Court ordered her detained at Montana State Hospital ("MSH") pending the involuntary commitment trial.

¶3 Montana State University campus officers placed G.M. into protective custody after she exhibited active delusions and accused University staff of trying to kill her. She was evaluated by John Karath, a certified mental health professional, who concluded that G.M. suffered from an unspecified psychotic disorder based on fixed delusions and unspecified anxiety disorder. Karath opined that G.M. was unable to provide for her own basic needs, including safety and health, and that she was at risk of physical injury. On March 13, 2017, the Gallatin County Attorney filed a petition for involuntary commitment of G.M. The same day, G.M. personally appeared from Hope House via video conference, with appointed counsel, for the initial hearing. The court set a hearing on the petition for the following day.

¶4 On March 14, 2017, G.M.'s counsel appeared in court but G.M. did not. G.M.'s counsel stated that he had advised G.M. that she did not need to come to the March 14 commitment hearing because it would be vacated after he requested a jury trial on her behalf. G.M.'s counsel requested a jury trial on her behalf. The District Court set the jury trial for March 31, 2017. G.M.'s counsel requested that G.M. stay at Hope House in Bozeman pending the trial. The County Attorney argued that Hope House is "a short-term, one or two-day facility, not a long-term facility," and requested that G.M. be transferred to MSH. Shannon Maroney, a certified mental health professional who also evaluated G.M., testified about the availability of services at Hope House and advocated for G.M. to be sent to MSH because it was the least restrictive environment required to protect G.M. The District Court ordered G.M. to be transferred to MSH pending trial.

¶5 G.M. was personally present at the jury trial on March 31. Following deliberations, the jury returned a verdict concluding that G.M. suffered from a mental health disorder requiring commitment based on her inability to provide for her own needs and the fact that, if left untreated, her condition would continue to deteriorate and create a danger to herself and others. The District Court conducted a dispositional hearing immediately after the verdict, and Maroney testified in support of her recommendation that G.M. be committed to MSH. The court issued an order committing G.M. to MSH for ninety days. MSH issued a notice of G.M.'s pending unconditional discharge with a tentative discharge date of May 30, 2017.

¶6 G.M. argues that the Order of Commitment should be reversed because there was no clear and established statutory waiver of her presence at the March 14 hearing. G.M. argues further that her attorney could not waive her rights because the District Court did not make a finding supported by facts that G.M.'s presence would seriously adversely affect her mental condition, or that an alternative location for the hearing would prevent such adverse effect. G.M. maintains that absent a proper waiver, her right to be present at the March 14 hearing was violated, and the March 31 Order of Commitment should be reversed. G.M. was, however, present for the March 31 jury trial, and does not argue any error occurred in that proceeding.

¶7 A court may order a respondent's detention pending the adjudicatory hearing for involuntary commitment upon request of the county attorney and upon the existence of probable cause. Section 53-21-124(1), MCA. If a person demands a jury trial and the trial cannot be held within seven days, the individual may be sent to the state hospital until the time of trial, if the state hospital is the least restrictive environment required to protect the life and physical safety of the person detained. Section 53-21-120(1)-(2), MCA. A person detained pending an involuntary commitment hearing "may apply to the court for immediate relief with respect to the need for detention or the adequacy of the facility being utilized to detain." Section 53-21-120(4), MCA. When a court orders detention of a person pending the hearing, counsel for the respondent may request an immediate detention hearing. Section 53-21-124(1), MCA.

¶8 Although we typically consider involuntary commitment appeals despite the appellant's release, we do so because the issue is "capable of repetition, yet otherwise would evade review." *In re S.L.*, 2014 MT 317, ¶ 21, 377 Mont. 223, 339 P.3d 73. To prove that a given situation is capable of repetition, yet evading review, a party must show:

(1) the challenged action was in its duration too short to be fully litigated prior to the cessation or expiration of the action; and

(2) there was a reasonable expectation the same complaining party would be subjected to the same action again.

*In re Mental Health of D.V.*, 2007 MT 351, ¶ 30, 340 Mont. 319, 174 P.3d 503 (internal citations omitted). A 90-day involuntary commitment to MSH is too short in duration to allow the issues presented to be fully litigated prior to a respondent's release. "Moreover, there is a reasonable expectation that [she] could be subjected to the same action again in the future." *In re Mental Health of D.V.*, ¶ 32.

¶9 The same cannot be said here. Although a person with a serious mental disorder reasonably may have an expectation that she again could be subjected to involuntary commitment proceedings, G.M. has not shown a reasonable expectation that she again would be subjected to detention at the Montana State Hospital following a proceeding from which she is absent. She would in any event retain her statutory right to request immediate relief from the district court of any such detention pending the commitment hearing. Sections 53-21-120(4), -124(1), MCA. We thus conclude that, for purposes of this appeal, "by a change of circumstances prior to the appellate decision the case has lost any practical

purpose for the parties[.]” *In re C.S.*, 2014 MT 74, ¶ 15, 374 Mont. 289, 320 P.3d 981 (quoting *In re T.J.F.*, 229 Mont. 473, 475, 747 P.2d 1356, 1357 (1987)).

¶10 We have determined to decide this case pursuant to Section I, Paragraph 3(c) of our Internal Operating Rules, which provides for memorandum opinions. In the opinion of the Court, the case presents a question controlled by settled law or by the clear application of applicable standards of review. The issue of G.M.’s absence from the March 14 hearing is moot, and there is no effective relief that may be granted at this point. We affirm the District Court’s Order of Commitment.

/S/ BETH BAKER

We Concur:

/S/ MIKE McGRATH

/S/ JIM RICE

/S/ LAURIE McKINNON

/S/ DIRK M. SANDEFUR