[J-195-1998]
IN THE SUPREME COURT OF PENNSYLVANIA
EASTERN DISTRICT

IN RE: T.J.	:	No. 9 E.D. Appeal Docket 1998
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APPEAL OF: CITY OF PHILADELPHIA, THE COUNTY OFFICE OF MENTAL HEALTH/MENTAL RETARDATION	:	Appeal from the order of the Superior Court, entered August 19, 1997 at No. 01022 Philadelphia 1997, which quashed the appeal from the order of the Court of Common Pleas of Philadelphia County, Civil Trial Division, entered February 10, 1997 at October Term 1996, No. 3176.
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	:	699 A.2d 1311 (Pa. Super. Ct. 1997).
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	:	ARGUED: October 19, 1998

OPINION

MR. JUSTICE CAPPY **DECIDED: September 29, 1999**

The issue with which we are presented in this matter is whether the Philadelphia County Office of Mental Health/Mental Retardation ("MH/MR") had standing to contest a mental health hearing officer's decision to discharge a mental patient from involuntary commitment. We hold that MH/MR does have standing, and therefore reverse the Superior Court's order quashing MH/MR's appeal.

Sometime in the fall of 1996, T.J. began exhibiting bizarre behavior. T.J. would enter convenience stores and take food out of the stores for which she had not paid, claiming that Christ had told her to feed the people of the world. On other occasions she claimed she was Christ. Her sleep patterns became erratic. Also, she claimed that unknown persons were poisoning her food; her resultant refusal to eat had caused her to lose approximately thirty pounds in a one month period.

On October 18, 1996, T.J.'s husband and sister completed an application for "INVOLUNTARY EXAMINATION AND TREATMENT" of T.J. In the application, they expressed concern for T.J.'s well-being as well as for the safety of her three children. On that same day, T.J. was examined by a psychiatrist at Misericordia Hospital ("Hospital") who concluded that T.J. was severely mentally disabled and in need of treatment. She was subsequently involuntarily committed to Misericordia Hospital for a period not to exceed 120 hours, pursuant to 50 P.S. § 7302.

On October 21, 1996, a petition to extend treatment pursuant to 50 P.S. § 7303 ("303 petition") was filed, requesting that T.J.'s involuntary commitment be extended for a period not to exceed twenty days. T.J. moved to have the 303 petition discharged, claiming that there was insufficient evidence to prove that in her present condition she posed a clear and present danger to herself and others.

A hearing was held before a mental health review officer ("review officer") on October 22, 1996. At that time, the attorney for the MH/MR attempted to introduce additional evidence of T.J.'s mental incapacity. This alleged conduct, however, had not been noted in the original 303 petition. The review officer did not allow this additional information into evidence. The review officer ultimately determined that there was insufficient evidence to establish that T.J. was in need of involuntary treatment and thus ordered her discharged.

On November 1, 1996, the MH/MR filed with the trial court a petition to review the determination of the review officer.[1] T.J. moved to quash MH/MR's petition on the ground

[1] The Commonwealth Court has stated that review by a trial court of a mental health review officer's determination is not in the nature of an appeal since a mental health review officer is not capable of entering a final order. See In re: J.S., 597 A.2d 750, 752 (Pa. Cmwlth. Ct. 1991). While J.S. concerned 50 P.S. §§ 7304 and 7305 - and the matter sub judice involves § 7303 - we nonetheless find J.S. to be instructive as all three of these statutes are governed by 50 P.S. § 7109. Section 7109 is the provision which states that hearings (continued…)

that MH/MR had no right to seek review of a discharge determination. The trial court quashed this petition on January 7, 1997. The court later rescinded this order, however, apparently on the basis that T.J.'s motion to quash had not been served on MH/MR. On February 5, 1997, the trial court denied MH/MR's petition on the merits.

MH/MR filed an appeal with the Superior Court. T.J. filed a motion to quash alleging, inter alia, that MH/MR had no right of review from a decision by a review officer discharging a patient from involuntary commitment. The Superior Court agreed with T.J. on this point, finding that MH/MR lacked standing. The Superior Court rested its opinion on two bases. First, the Superior Court found that the Mental Health Procedures Act ("MHPA"), 50 P.S. § 7101 et seq. did not specifically provide that the MH/MR had the right to seek review of a discharge petition with the trial court. Thus, the Superior Court reasoned, the legislature had not granted standing to MH/MR.

The Superior Court went on to state that a party may have standing in a dispute not only via a specific legislative grant but also simply by establishing that the party is "aggrieved" by the official order or action. The court stated that for a party to be "aggrieved," it must have: "1) a substantial interest in the subject matter of the litigation; 2) the party's interest must be direct; and, 3) the interest must be immediate and not a remote consequence of the action." Beers v. Commonwealth, Unemployment Compensation

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conducted pursuant to §§ 7303, 7304, and 7305 may be conducted by a judge of the court of common pleas or by a mental heath review officer. Where, however, the hearing is conducted by a mental health review officer, § 7109 instructs that such a decision is reviewable by the court of common pleas. The court in J.S. utilized this self-same language from § 7109 - which is applicable to the hearing conducted in J.S. as well as the hearing conducted in the matter sub judice - as the basis for its determination regarding the effect of a mental health review officer's order. In re: J.S., 597 A.2d at 752. We therefore find that reliance on J.S. to be apt. We further note that since the mental health review officer's determination is not a final order, then the trial court's review of it would be in the nature of de novo.

Board of Review, 633 A.2d 1158 (Pa. 1993). The Superior Court applied this test and determined that MH/MR was not "aggrieved" and therefore lacked standing to pursue this matter. In arriving at this conclusion, the Superior Court placed great emphasis on its understanding that MH/MR did not have a "close and personal connection" to T.J.; that T.J.'s, and not MH/MR's, liberty interests were involved; and finally, that only T.J. and not MH/MR had any interest in this proceeding. Super. Ct. slip op. at 8-11. Although the Superior Court briefly mentioned at the outset of its opinion that MH/MR had been created by the legislature to treat mental patients and protect the mental patients from harming themselves and others, it did not take the legislatively mandated purpose of MH/MR into account when it conducted its standing analysis.

MH/MR filed a petition for allowance of appeal from the order of the Superior Court; we subsequently granted allocatur.[2]

The sole issue before this court is whether MH/MR has standing to contest the review officer's decision refusing to extend treatment of T.J. and discharging her.[3] As this is a question of law, our scope of review is plenary. See Phillips v. A-BEST Products Co., 665 A.2d 1167, 1170 (1995). As to determining the appropriate standard of review over this matter, we have failed to uncover any case law from this court which is on point. We find, however, that the most sensible approach would be to apply the typical appellate standard of review which requires that the reviewing court examine the lower tribunal's ruling for an

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[2] As T.J has already been discharged from Misericordia Hospital, this matter is technically moot. It is beyond peradventure that any decision in this case will have no effect on T.J. personally. Yet, we will still review this matter as it raises an issue of important public interest, and is an issue which is capable of repetition and yet apt to evade review. In re: Fiori, 673 A.2d 905, 909 n. 4 (Pa. 1996).

[3] T.J. also raises other arguments in support of her position that MH/MR should fail. T.J., however, did not cross-petition for allowance of appeal and therefore these issues have been waived.

abuse of discretion or error of law. See Albright v. Abington Memorial Hospital, 696 A.2d 1159 (Pa. 1997); Park Home v. Williamsport, 680 A.2d 835 (Pa. 1996).

Standing is a requirement that parties have sufficient interest in a matter to ensure that there is a legitimate controversy before the court. In determining whether a party has standing, a court is concerned only with the question of who is entitled to make a legal challenge and not the merits of that challenge. See Sprague v. Casey, 550 A.2d 184 (Pa. 1988) . As a general matter, the core concept of the doctrine of standing is that a person who is not adversely affected in any way by the matter he seeks to challenge is not "aggrieved" and has no right to obtain a judicial resolution of his challenge. Independent State Store Union v. Pennsylvania Liquor Control Board, 432 A.2d 1375 (Pa. 1981).

Although the Superior Court correctly enunciated the general rule of standing, it failed to recognize that we refined the rule for application to the particular situation where a governmental agency is alleging that it has standing in a matter. Commonwealth, Pennsylvania Game Comm'n v. Commonwealth, Dept. of Environmental Resources, 555 A.2d 812 (Pa. 1989). In Pennsylvania Game Commission, we discussed how an administrative agency could be given standing by the legislature other than through an explicit grant. We stated that

> [a]lthough our law of standing is generally articulated in terms of whether a would-be litigant has a "substantial interest" in the controverted matter, and whether he has been "aggrieved," . . . we must remain mindful that the purpose of the "standing" requirement is to insure that a legal challenge is by a proper party. The terms "substantial interest" [and] "aggrieved" . . . are the general, usual guides in that regard, but they are not the only ones. For example, when the legislature statutorily invests an agency with certain functions, duties and responsibilities, the agency has a legislatively conferred interest in such matters. From this it must follow that, unless the legislature has provided otherwise, such an agency has an implicit power to be a litigant in matters touching upon its concerns. In such circumstances the legislature has implicitly ordained that such an agency is a proper party litigant, i.e. that it has "standing".

Id. at 815 (citations omitted; emphasis supplied). See also Franklin Township v. Commonwealth, Dept. of Environmental Resources, 452 A.2d 718 (Pa. 1982) (township had standing to contest granting of permit for solid waste disposal as the granting of the permit necessarily implicates the township's responsibility of protecting the quality of life of its citizens.)

We find that the rule enunciated in Pennsylvania Game Commission controls in this matter. Furthermore, application of that rule reveals that the legislature implicitly ordained that MH/MR has standing. The legislature created county mental health and mental retardation programs with the express purpose that they "diagnosis, care, treat[ ], rehabilitat[e] and det[ain] the mentally disabled . . . ." 50 P.S. § 4301(a). A person is mentally disabled "when, as a result of mental illness, his capacity to exercise self-control, judgment and discretion in the conduct of his affairs and social relations or to care for his own personal needs is so lessened that he poses a clear and present danger of harm to others or to himself." 50 P.S. § 7301.

Clearly, ensuring that a mental patient who has been involuntarily committed is not erroneously discharged is a matter "touching upon [MH/MR's] concerns" as the MH/MR's goals of providing proper medical treatment to the patient as well as preventing that patient from harming others are implicated. Thus, in matters such as the one sub judice, MH/MR would have standing to file a petition for review or an appeal.

T.J., however, argues that the Superior Court properly quashed the appeal. One of her primary arguments in support of this position is that "government appeals are inherently moot because virtually every involuntary commitment resulting from a successful government appeal would be based upon stale evidence . . . ." Appellee's brief at 1. T.J.'s argument is alluding to the fact that the legislature has dictated that the evidence used to support the finding that a person's mental illness has rendered her a "clear and present danger," and is thus "mentally disabled," must refer to events that had occurred within the

past thirty days. 50 P.S. § 7301.[4] T.J. asserts that this thirty day requirement was the legislature's way of "balanc[ing] a person's liberty [interest] and society's right to provide timely involuntary treatment . . . ." Appellee's brief at 16.

We agree with T.J. that where a governmental petition for review or appeal is not determined prior to the lapsing of thirty days from the time of the alleged incidents, then the governmental petition for review or appeal is mooted; the government could not proceed on a petition where the allegations had become stale. Also, it could very well be, as T.J. implies, that in this day of overcrowded court dockets, the usual scenario is that a court cannot act on a governmental petition for review or appeal prior to the running of the thirty days. Yet, the possibility that a governmental petition for review or appeal could be mooted out is simply unrelated to the issue of the government's standing. These two issues are separate concerns, and the determination of one question in no fashion controls the outcome of the other. To be sure, there may be matters where the government's application is not timely acted upon, either because the judicial review process is protracted[5] or simply because the information on which the original petition was based becomes stale. And in those matters, the action will be dismissed - but not because the government lacks standing, but rather because the information has become stale and petition for commitment must necessarily fail.[6]

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[4] The legislature provided an exception to this thirty day requirement in certain instances where the mental health patient has been charged with a crime. 50 P.S. § 7301(b). That exception has no application to the matter at hand.

[5] For example, the trial court's order in the instant matter was entered more than three months after T.J. had committed the complained of conduct. Clearly, MH/MR's petition for review and its subsequent appeal were thus technically mooted.

[6] We did not grant review on the issue of whether the MH/MR may, in effect, be granted a supersedeas and detain a patient involuntarily pending appeal of an order discharging
(continued…)

For the foregoing reasons, we find that the Superior Court erred as a matter of law when it determined that MH/MR lacked standing to contest this matter. Therefore the order of the Superior Court is reversed.[7]

Mr. Justice Saylor did not participate in the consideration or decision of this matter.

Mr. Justice Zappala files a dissenting opinion joined by Chief Justice Flaherty.

(…continued)
that patient. Contrary to the position taken by the dissenting opinion, which posits that we are somehow addressing the issue of whether a patient may be detained pending appeal of an order of discharge, we stress to the lower courts and the practicing bar that we express no opinion on this issue as it is not before this court. An attempt to characterize this opinion as addressing such an issue is, in our view, a mischaracterization.

[7] As noted in footnote 2, supra, this appeal is technically moot. Thus, although we have reversed the order of the Superior Court in the instant matter, our determination in this case shall not impact on T.J. personally.