

him and petitioned for a civil commitment evaluation.

Mr. Taber was detained for 14 days for involuntary treatment at ESH followed by a 90-day involuntary treatment. Dr. Alan Muhlestein and Dr. Jaime Basnillo requested he continue treatment for up to 180 days. The petition alleged that as a result of a mental disorder, Mr. Taber continued to be gravely disabled. The doctors opined a less-restrictive placement was not in Mr. Taber's best interest. And, Dr. Basnillo petitioned for involuntary treatment with antipsychotic medication.

At a May 10, 2010 hearing on the petitions, Dr. Basnillo related Mr. Taber suffered from a delusional disorder characterized by his continued belief that he and his former wife were still married. Mr. Taber incorrectly believed he was a court-ordered caregiver for his former wife. Dr. Basnillo testified Mr. Taber had a history of chemical dependency issues. Dr. Basnillo further testified Mr. Taber was not ready for discharge from ESH. Steven Ruvo, a social worker, testified Mr. Taber was not ready to be discharged from ESH. The court granted both petitions.

The court found by clear, cogent and convincing evidence that Mr. Taber suffered from a mental disorder which rendered him gravely disabled, and that less restrictive alternatives to detention were not in his, or others' best interests. The court ordered him to take antipsychotic medication. In its oral ruling granting the petition for involuntary treatment with antipsychotic medication, the court found that based upon the evidence of Mr. Taber's unwillingness to take medication on his own that he has or

will suffer severe deterioration in routine functioning if he does not receive medication and that his refusal to take medications will substantially increase the likelihood of his need to stay in the hospital. Mr. Taber appealed. However, after just 105 days, Mr. Taber was released from ESH on a less-restrictive alternative. On November 6, 2010 the involuntary detention order expired.

ANALYSIS

First we decide if this appeal is moot. Mr. Taber contends he raises issues of continuing and substantial public interest.

An appeal is moot where the court cannot grant effective relief. *In re Det. of LaBelle*, 107 Wn.2d 196, 200, 728 P.2d 138 (1986). Nonetheless, an appellate court will consider a moot case when it is in the public interest to do so. *Id.* Factors to be considered include whether or not the matter is of a private or public nature, the need for guidance to public officials, and whether the problem is likely to recur. *In re Det. of Cross*, 99 Wn.2d 373, 377, 662 P.2d 828 (1983).

Cases involving procedures, as both *Cross* and *LaBelle* demonstrate, frequently present exceptions to the mootness doctrine. Additionally, cases involving whether a detainee has a right to self-representation and cases involving a detainee's loss of the right to own a firearm present exceptions to the mootness doctrine. See *In re Det. of J.S.*, 138 Wn. App. 882, 890, 159 P.3d 435 (2007) (court would review on appeal issue of whether trial court's refusal to allow individual to represent himself at his involuntary

No. 29083-2-III
In re Det. of Taber

civil commitment hearing though issue was moot); *In re Det. of D.F.F.*, 144 Wn. App. 214, 219, 183 P.3d 302 (2008) (mootness was not a bar to detainee's appeal of trial court's order committing her to 90 days of psychiatric treatment, where trial court's order, which specified that possession of a firearm by detainee constitutes a felony, independently impaired individual's protected right to own firearm) *review granted*, 164 Wn.2d 1034, 197 P.3d 1185 (2008). But, dispositive here, a detainee's challenge to the evidence sufficiency for an expired involuntary commitment order is not a continuing and substantial public interest question that justifies review of a moot case. *In re Det. of W.R.G.*, 110 Wn. App. 318, 322, 40 P.3d 1177 (2002).

While Mr. Taber attempts to characterize his issues as constitutional (due process) and statutory interpretation, he actually challenges the sufficiency of the State's evidence showing he was gravely disabled, thereby warranting commitment. Under *In re Detention of W.R.G.*, his challenge is not one of a continuing and substantial public interest question justifying review of an otherwise moot case. The issue is moot.

Even so, concerning evidence sufficiency, the State bears the burden of proving that someone is "gravely disabled" in order to involuntarily confine the person. RCW 71.05.280(4); RCW 71.05.310. The burden must be met by clear, cogent, and convincing evidence. RCW 71.05.310. We will review to see if substantial evidence supports the trial court's factual findings and whether the findings support the

conclusions of law. *LaBelle*, 107 Wn.2d at 209. “Substantial evidence is evidence that is sufficient to persuade a rational, fair-minded person of the truth of the finding.” *In re Estate of Jones*, 152 Wn.2d 1, 8, 93 P.3d 147 (2004).

A person is gravely disabled if, “as a result of a mental disorder,” the person:

(a) Is in danger of serious physical harm resulting from a failure to provide for his or her essential human needs of health and safety; or (b) manifests severe deterioration in routine functioning evidenced by repeated and escalating loss of cognitive or volitional control over his or her actions and is not receiving such care as is essential for his or her health or safety.

RCW 71.05.020(17). The doctors’ testimony established Mr. Taber was suffering from a mental disorder and grave disability. The trial court’s findings of fact indicate Mr. Taber is disabled based on the second prong of the definition—severe deterioration in routine functioning evidenced by loss of cognitive or volitional control over his actions. In order to find someone gravely disabled under RCW 71.05.020(17)(b), the evidence presented must include recent proof of significant loss of cognitive or volitional control, and it “must reveal a factual basis for concluding that the individual is not receiving or would not receive, if released, such care as is essential for his or her health or safety.” *LaBelle*, 107 Wn.2d at 208.

Mr. Taber suffers from a delusional disorder and marijuana dependency. Dr. Muhlestein and Dr. Basnillo opined a less-restrictive placement was not in Mr. Taber’s best interest. Dr. Basnillo testified Mr. Taber suffered from a delusional disorder

characterized by his continued belief that he and his former wife were still married. Mr. Taber also incorrectly believed he was a court-ordered caregiver for his former wife. Dr. Basnillo testified Mr. Taber had a history of chemical dependency issues. Dr. Muhlestein noted Mr. Taber would purchase marijuana before purchasing food. And, Mr. Taber refused to take antipsychotic medication. Dr. Muhlestein opined that Mr. Taber has a mental illness which impairs his cognitive and volitional functioning to the point that he is unable to adequately care for his health and safety needs.

The record shows Mr. Taber was not ready for discharge and was homeless. The court noted even if Mr. Taber had a residence to be discharged to, his mental health issues were still significantly in dispute.

The record, thus, provides substantial evidence to support the trial court's finding that Mr. Taber is gravely disabled using the clear, cogent, and convincing standard.

Accordingly, the trial court did not err in finding Mr. Taber to be gravely disabled under chapter 71.05 RCW, and in ordering a 180-day involuntary treatment for him.

Affirmed.

A majority of the panel has determined this opinion will not be printed in the Washington Appellate Reports, but it will be filed for public record pursuant to RCW 2.06.040.

Brown, J.

No. 29083-2-III
In re Det. of Taber

WE CONCUR:

Korsmo, A.C.J.

Siddoway, J.