COURT OF APPEALS
DECISION
DATED AND RELEASED

February 22, 1996

NOTICE

No. 95-2359

STATE OF WISCONSIN **IN COURT OF APPEALS**
DISTRICT IV

In the Matter of the Mental Condition of Thomas F.W.,
Alleged To Be in Need of an Involuntary Mental Commitment:

STATE OF WISCONSIN,

Petitioner-Respondent,

v.

THOMAS F.W.,

Respondent-Appellant.

APPEAL from an order of the circuit court for Marquette County: LEWIS MURACH, Judge. *Dismissed*.

EICH, C.J.[1] Thomas F.W. appeals from an order committing him to the Mendota Mental Health Institute for a period of one year[2] and providing

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[1] This appeal is decided by one judge pursuant to § 752.31(2)(d), STATS.

[2] Technically, the order committed Thomas F.W. to the custody of the Marquette County 51.42 Board, with initial placement at Mendota "or such lesser restrictive

for "involuntary medication and treatment" during that time, if deemed necessary by his treating doctors. The order was entered on January 4, 1995, and expired on January 4, 1996.

Thomas F.W. argues on appeal that the involuntary medication provisions of the order were improper because, contrary to the trial court's findings, the evidence was insufficient to comply with the requirements of § 51.61(1)(g)4, STATS., which sets forth the criteria for determining a patient's competency to refuse medication. Specifically, he claims that it was not established that (a) he was "incapable of expressing an understanding of the risks and benefits" of his medication, and (b) the "advantages and disadvantages of, and alternatives to" the medication had been explained to him. He also argues that the commitment should have been limited to six months under § 51.20(13)(g), STATS., which provides a six-month limitation for a "first," as opposed to a "consecutive," order of commitment.[3]

The statutory standards for competency to refuse medication were discussed and amplified in ***Virgil D. v. Rock County***, 189 Wis.2d 1, 11-12, 524 N.W.2d 894, 898 (1994), where the supreme court held that "before a circuit court can find that a patient is not competent to refuse medication, it must be satisfied by clear and convincing evidence that the patient is incapable of

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environment as deemed appropriate by the treating doctors," and "[t]hereafter, for the period of this Order, the commitment shall be on an out-patient basis."

[3] The statute provides:

> [T]he first order of commitment of a subject individual under this section may be for a period not to exceed 6 months, and all subsequent consecutive orders of commitment of the individual may be for a period not to exceed one year.

expressing an understanding of the risks and benefits of, and the alternatives to, the proposed medication or treatment." (Footnote omitted.) The ***Virgil D.*** court's ruling, of course, subsumes the statutory requirement that the physicians have explained the advantages and disadvantages of, and alternatives to, the proposed medication. Thomas F.W.'s argument on appeal is that the evidence adduced at the hearing was insufficient under those standards.

The State argues that the appeal is moot because the order appealed from expired on January 4, 1996. A case is moot where, among other things, it "`seeks a decision ... upon some matter which when rendered ... cannot have any practical legal effect upon the existing controversy.'" ***State ex rel. La Crosse Tribune v. Circuit Court***, 115 Wis.2d 220, 228, 340 N.W.2d 460, 464 (1983) (quoted source omitted). The rule exists because "[i]t is generally thought to be in the interest of judicial economy not to continue to litigate issues that will not affect real parties to an existing controversy." ***Id***.

There are several exceptions to the mootness rule. A case that is otherwise moot may be taken up by the court: (1) "[w]here the issues are of great public importance ..."; (2) "where the constitutionality of a statute is involved ..."; (3) "where the precise situation under consideration rises so frequently that a definitive decision is essential to guide the trial courts ..."; (4) "where the issue is likely to arise again and should be resolved by the court to avoid uncertainty ..."; or (5) "where a question was capable and likely of repetition and yet evades review because the appellate process usually cannot be completed and frequently cannot even be undertaken within the time that would have a practical effect upon the parties." ***La Crosse Tribune***, 115 Wis.2d at 229, 340 Wis.2d at 464 (quoted sources omitted).

Centering his argument on the fifth exception, Thomas F.W. contends that a mootness dismissal in this case would have the effect of mooting all challenges to six- or twelve-month commitments because the appellate process cannot be completed within that time. Thus, says Thomas F.W., the issues he raises here "would always evade review because ... the[y] would always be rendered moot."[4]

[4] We agree with the State that the first four exceptions to the mootness rule are

The State agrees--as do we--that, in the normal course of the appellate process in an overburdened court system, decisions within six months (or sometimes even a year) from the date of the trial court's order may be rare.[5] But the exception is not based solely on time; it contemplates the existence of a "question [that is] capable and likely of repetition." ***La Crosse Tribune***, 115 Wis.2d at 229, 340 N.W.2d at 464. As we have said, the issues raised by Thomas F.W. in this case are fact-driven and involve the application of accepted rules to the facts of the case. There is nothing to suggest that the arguments raised involve questions that are likely of repetition.[6]

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inapplicable. The issues on this appeal relate to the application of specific statutory and case law criteria to the facts of record. They present no constitutional challenge, and Thomas F.W. has not otherwise persuaded us that the issues "are of great public importance." Nor is there anything in the record or in Thomas F.W.'s briefs to suggest that the precise situation presented by his appeal "arises so frequently that a definitive decision is essential to guide the trial courts," or should be issued to "avoid uncertainty" in the law. ***State ex rel. La Crosse Tribune v. Circuit Court***, 115 Wis.2d 220, 229, 340 Wis.2d 460, 464 (1983).

[5] We note in this regard that Thomas F.W. did not request expedited briefing and consideration of his appeal--an available process invoked by this court in appropriate cases.

[6] In addition to his two challenges to the involuntary-medication provisions of the order which, as we have indicated, are governed by § 51.61(1)(g)4, STATS., and by ***Virgil D.***, Thomas F.W. argues that his one-year commitment was invalid under § 51.20(13)(g), which provides that a "first order of commitment .... may be for a period not to exceed six months, and all subsequent consecutive orders of commitment ... may be for a period not to exceed one year." He claims that, although he had been under a prior commitment, the county failed to obtain an extension in time and thus the commitment was not extended, but rather, the instant proceedings became a "new" commitment. He asks that we "terminate his commitment."

This, too, is an argument resolved by application of established legal principles--in this case the provisions of § 51.20(13)(g), STATS.--to the facts of the case. Nothing in Thomas F.W.'s contentions warrants application of any of the exceptions to the mootness rule. Indeed, his request for relief at the conclusion of this section of his brief--termination of the commitment--already occurred on January 4, 1996, by operation of the order itself.

Finally, we note that Thomas F.W. is presently the subject of a new commitment order, issued on December 22, 1995, and based on a jury verdict finding him to be mentally ill, dangerous and a proper subject for treatment.[7]

For the reasons discussed, we conclude that Thomas F.W.'s appeal is moot, and that none of the issues he raises come within the exceptions to the mootness rule discussed in ***La Crosse Tribune*** and similar cases. We therefore dismiss his appeal.

By the Court.—Appeal dismissed.

This opinion will not be published. *See* RULE 809.23(1)(b)4, STATS.

[7] This order, obviously, is not part of the record on appeal. It is, however, the type of document of which we may take judicial notice. *See* ***Lumby v. Lumby***, 116 Wis.2d 347, 349, 341 N.W.2d 725, 726 (Ct. App. 1983) (court of appeals may take judicial notice of federal bankruptcy court records as matters "`capable of accurate and ready determination' by th[e] court"). We note, too, that Thomas F.W. has not objected to or commented on the State's reference to the order and its inclusion in the appendix to the State's brief.