COURT OF APPEALS
DECISION
DATED AND FILED

June 16, 2015

Diane M. Fremgen
Clerk of Court of Appeals

Appeal No. 2014AP2579 **Cir. Ct. No. 2014ME19**

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

IN THE MATTER OF THE MENTAL COMMITMENT OF DENNIS M.:

DUNN COUNTY,

PETITIONER-RESPONDENT,

V.

DENNIS M.,

RESPONDENT-APPELLANT.

APPEAL from orders of the circuit court for Dunn County: JAMES M. PETERSON, Judge. *Dismissed*.

¶1 HRUZ, J.[1] Dennis M. appeals an order denying his post-commitment motion for relief from a prior involuntary commitment order.[2] He argues the circuit court erred when it denied his motion because there was insufficient evidence presented at the March 27, 2014 commitment hearing to support the court's finding that Dennis M. was "dangerous" as defined by WIS. STAT. § 51.20(1)(a)2. However, because Dennis M. entered into a voluntary stipulation to recommitment that expired in January of 2015 and has not been renewed, the issue of whether there was sufficient evidence at the initial commitment hearing is moot, as vacating Dennis M.'s initial commitment order would have no practical effect.

BACKGROUND

¶2 After Dennis M. was detained at an Eau Claire hospital, the circuit court conducted a hearing and found probable cause to believe Dennis M. was mentally ill, a proper subject for treatment, and dangerous to himself or others. The court ordered evaluations by two mental health professionals pending a final hearing.

¶3 The final hearing was conducted on March 27, 2014. At the close of evidence, counsel for Dennis M. conceded Dennis M. needed to be stabilized and that the County's recommendation of a six-month placement was appropriate. The

[1] This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2). All references to the Wisconsin Statutes are to the 2013-14 version unless otherwise noted.

[2] Judge Phillip P. Todryk presided over Dennis M.'s probable cause hearing; Reserve Judge C.A. Richards presided over the final hearing and signed the March 27, 2014 commitment order; and Judge James M. Peterson signed the October 14, 2014 order denying Dennis M.'s post-commitment motion.

circuit court agreed and found, based on the testimony of two doctors, that Dennis M. was mentally ill, presented a substantial risk of harm to himself or others, and was a proper subject for treatment. The court ordered a six-month commitment, as well as involuntary medication and treatment. The court also found that Dennis M. was "adjudicated pursuant to 18 U.S.C. 922(g)(4) as a 'mental defective' or committed to a mental institution." The order prohibited him from possessing any firearms, based on that federal law as well as WIS. STAT. § 941.29(1)(e).

¶4 On July 30, the County petitioned the court for a six-month extension of Dennis M.'s involuntary commitment. Dennis M., represented by new counsel, filed a post-commitment motion requesting that the court dismiss the March 27 order for commitment, and grant him a new trial. Dennis M. argued the evidence presented at the final commitment hearing was insufficient to show by clear and convincing evidence that Dennis M. was dangerous.[3]

¶5 The County opposed Dennis M.'s motion. In response, Dennis M. sent a letter to the court noting that the County's opposition brief had numerous references to the record, including to the reports of Drs. Michael Lace and Kevin Hess. Dennis M. indicated those reports had not been introduced into evidence or marked as exhibits, and thus were not a part of the hearing record and could not be considered in the post-commitment proceedings. The circuit court denied Dennis M.'s post-commitment motion in full in a written decision and order dated

[3] In the post-commitment motion, Dennis M. also claimed he received ineffective assistance of counsel in relation to his March 27, 2014 commitment hearing. Dennis M. has not renewed that issue on appeal because, according to him, it is "superfluous" to the sufficiency-of-the-evidence issue before this court.

August 29. Dennis M. renewed his argument in a second letter to the court, dated September 2, in which he observed the court, too, had cited heavily to the reports of Drs. Hess and Lace, despite the fact that those reports had not been made part of the record of the final hearing.

¶6 On September 16, the parties stipulated to an extension of commitment until October 25, 2014.

¶7 After Dennis M. objected to the court's reliance on the two doctors' reports in denying his post-commitment motion, the parties briefed the issue, and the court issued a supplemental written decision and order on October 14. Therein, the circuit court found the reports of Drs. Hess and Lace were not part of the hearing record, as neither report was moved into evidence. Nevertheless, the court found that sufficient grounds existed in the hearing record to support commitment based on, among other evidence, the testimony of Drs. Hess and Lace.

¶8 Thereafter, on October 22, 2014, Dennis M. again voluntarily stipulated to recommitment for three months. As with his first voluntary extension, Dennis M. stipulated to the factual basis for his recommitment based on reports by psychiatrist William Platz, who examined Dennis M. in July 2014 and on October 1. The second voluntary extension of commitment expired January 22, 2015, and was not renewed. That second voluntary extension, which was in the form of a Stipulation and Order for Extension of Commitment signed by the circuit court, expressly "found and adjudged," among other things, that

> 2. [Dennis M.] has been adjudicated pursuant to 18 USC 922(g)(4) as a "mental defective" or committed to a mental institution. The subject is prohibited from possessing any firearm. This prohibition shall remain in effect until lifted

> by the court. Expiration of the mental commitment proceeding does not terminate this restriction.
>
> a. Federal law provides penalties for possessing, transporting, shipping, receiving or purchasing a firearm, … pursuant to 18 U.S.C. §§ 921(a)(3) and (4) and 922(g)(4).
>
> b. Pursuant to Section 941.29 of the Wisconsin Statutes, possession of a firearm while subject to this prohibition order is a Class G felony[.]

¶9 Dennis M. appeals the October 14, 2014 order denying his post-commitment motion for relief from the underlying March 27, 2014 commitment order.

DISCUSSION

¶10 The parties dispute whether there was sufficient and credible evidence of Dennis M.'s "dangerousness" under WIS. STAT. § 51.20(1)(a)2. to support the circuit court's original commitment order and its subsequent decision to deny Dennis M.'s post-commitment motion. However, the County also argues Dennis M.'s appeal is rendered moot by the entry and subsequent expiration of Dennis M.'s second voluntary stipulation to recommitment. Citing ***State ex rel. Serocki v. Circuit Court for Clark County***, 163 Wis. 2d 152, 471 N.W.2d 49 (1991), the County notes that while a recommitment is not an entirely new proceeding, it does require the circuit court to make a fresh determination of the grounds for commitment, and the evidence used to make that determination may be different from that used at the initial commitment. ***Id.*** at 159. Accordingly, the County asserts that Dennis M.'s voluntary stipulation, under conditions agreed upon by the parties, became the basis for his commitment and for his concomitant firearms restriction under federal and state law. The County argues, "Dennis M.'s voluntary stipulation to recommitment[,] coupled with the fact that his

commitment has expired[,] has rendered moot the question of whether the circuit court erred when it denied Dennis M.'s post-commitment relief. Vacating his initial commitment would have no practical effect." We agree.

¶11 An issue is moot when its resolution will have no practical effect on the underlying controversy. ***State ex rel. Olson v. Litscher***, 2000 WI App 61, ¶3, 233 Wis. 2d 685, 608 N.W.2d 425. When an issue is moot, we generally will not consider it. ***Id.***

¶12 Dennis M. argues his appeal is not moot because the now-expired order for commitment continues to have a practical effect on him. However, he fails to coherently or persuasively explain how the relief he seeks would have a practical effect on any existing controversy or on his rights. Instead, he merely speculates, "one concrete example of a continuing effect of an expired Order for Commitment is the loss of the right to possess a firearm." He continues:

> [W]hether the rights are lost from an original commitment or an extension, a party may petition a Court for reinstatement of the right to possess a firearm under § 51.20(13)(cv)1m. An appellate decision ruling that there was insufficient evidence to support a finding of dangerousness in the first place would be a persuasive argument in favor of having the lost rights reinstated.

¶13 We reject this conjectural argument. Through his voluntary extensions of commitment, Dennis M. stipulated to various, adjudged conditions, including the loss of his firearm rights. The order granting the second extension, which was entered with Dennis M.'s acknowledgment that Dr. Platz's October 1 examination and report provided the factual foundation for his recommitment, became an independent basis for his firearms restrictions under applicable federal and state law. That order expired by its terms in January of 2015. Dennis M. did not appeal the order approving the second extension. As a result, we agree with

the County that vacating Dennis M.'s initial commitment would have no practical effect with respect to his firearms restrictions. While Dennis M. has identified a perfectly accessible, statutorily prescribed means by which he may pursue relief from his firearms restriction, our providing him a ruling that generates "a persuasive argument in favor of having [his] lost rights [to firearms] reinstated" is speculative and not a "practical effect" overcoming mootness.

¶14 Dennis M. also argues the extension of an order for commitment is "foundationally dependent on" a valid order, but he fails to provide any citation to authority for the proposition. ***State v. Pettit***, 171 Wis. 2d 627, 646, 492 N.W.2d 633 (Ct. App. 1992) ("Arguments unsupported by references to legal authority will not be considered."). Even if true in some sense, under ***Serocki***, this notion does nothing to alter the superseding and legally binding effect of the October 22 Stipulation and Order for Extension of Commitment. At the very least, Dennis M. has failed to provide this court with any basis to conclude to the contrary. Specifically, he has not even attempted to explain, in this appeal, any legal basis on which he could now seek vacation of the expired October 22 extension order, even if the original commitment order is vacated. Given the fact that Dennis M. is no longer being held under the commitment order or any extension orders, and he has not articulated a meaningful, reasonably definite way in which vacation of the expired order would affect his present or future interests, we agree with the County that his appeal is moot.

¶15 Dennis M. argues, in the alternative, that his case falls within an exception to the mootness rule. There are four recognized exceptions to the rule of dismissal for mootness:

> If the issue: (1) is of great public importance; (2) occurs so frequently that a definitive decision is necessary to guide

> circuit courts; (3) is likely to arise again and a decision of the court would alleviate uncertainty; or (4) will likely be repeated, but evades appellate review because the appellate review process cannot be completed or even undertaken in time to have a practical effect on the parties.

Outagamie Cnty. v. Melanie L., 2013 WI 67, ¶80, 349 Wis. 2d 148, 833 N.W.2d 607.

¶16 However, Dennis M. fails to develop a coherent argument regarding the sole exception he claims pertains to his case—i.e., that this issue is likely to be repeated, yet evades appellate review because the subject commitment is typically resolved before completion of the appellate process. *See* ***Pettit***, 171 Wis. 2d at 646 (stating that we may decline to review undeveloped arguments that are inadequately briefed). In any event, Dennis M.'s appeal is based on his complaint that the court's original commitment determination was unsupported by sufficient evidence of dangerousness. The nature of such a review is inherently individualized, and it does not involve questions of law that typically warrant exception to the mootness doctrine. As such, this narrow, case-specific appeal does not present for our consideration a general legal issue likely to be repeated but incapable of review.

¶17 For the foregoing reasons, we conclude this appeal is moot.

By the Court.—Appeal dismissed.

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