

FILED
Court of Appeals
Division II
State of Washington
7/16/2018 1:37 PM
NO. 51245-9-11

Appeal from Clark County Superior Court Case No. 17-6-00158-7

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION II

<p>In re Detention of Z.C., STATE OF WASHINGTON, Respondent, v. Z.C., Appellant.</p>
<p>BRIEF OF RESPONDENT</p>

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Cases:

In re the Det. of M.K., 168 Wn. App. 621 (Div. II, 2012).....5

Statutes:

RCW 71.052
RCW 71.05.1502
RCW 71.05.2302
RCW 71.05.2803
RCW 71.05.3203

I. INTRODUCTION

Z.C. was ordered to 180 days of involuntary treatment to Western State Hospital (WSH) on May 23, 2017. Shortly thereafter, on June 2, 2017, the Chief Executive Officer of WSH approved a conditional release for the remainder of Z.C.'s 180-day commitment. He was released to Clark County with a list of conditions he needed to follow while he lived in the community.

Prior to the termination of the Order entered on May 23, 2017, Patricia Morgan and Eric Lillibridge filed a petition for 180 days of less restrictive alternative treatment for Z.C. The petition was filed on November 13, 2017, and was heard by Commissioner Swingen on November 16, 2017. The same day, Commissioner Swingen signed Findings of Fact and Conclusions of Law ordering Z.C. to 180 days of less restrictive alternative treatment. That Order expired on May 15, 2018, and Z.C. is no longer under any Court Order to receive treatment.

On July 16, 2018, the Respondents obtained a dismissal of the underlying matter. See **Attachment A**. Since the underlying Order has been dismissed, effectively providing Z.C. with the relief requested in his Opening Brief, this Court should dismiss this appeal as moot.

II. RESPONSE TO ASSIGNMENTS OF ERROR

Z.C.'s Assignments of Error all concern the specific findings of the Order of less restrictive alternative treatment entered on November 16, 2017, as well as the hearing that occurred on that day. The Clark County Superior Court has dismissed this matter, effectively providing Z.C. with the relief he requested. This appeal is now moot.

III. STATEMENT OF THE CASE

Under Washington State law, individuals may be civilly committed to a facility that will provide the individual mental health treatment.¹ See RCW 71.05. Initially, a person can be detained for 72 hours if a Designated Mental Health Provider (DMHP) determines the person presents a likelihood of serious harm or is gravely disabled as a result of a mental disorder, and a judge signs an order allowing for such detention. RCW 71.05.150. Subsequent petitions may be filed for longer periods of time, provided the petitioners are able to show the individual: A. Has a mental disorder; B. Presents a likelihood of serious harm or is gravely disabled; and C. That there are no less restrictive alternatives to detention in the best interest of the person or others. RCW 71.05.230. The

¹ State law also now allows for the commitment of individuals if they meet certain criteria for substance use disorder. This law was not in effect at the time Z.C. was committed and is not an issue in this appeal. References to the statutes governing involuntary treatment are to the statutes as enacted at the time the Order was signed – November 16, 2017.

petitioners may petition for 14 days, then 90 days, then subsequent 180-day commitments if the patient continues to meet the criteria. RCW 71.05.280. A person subject to a 90- or 180-day commitment order is to be remanded to a facility certified for such treatment by the Department of Social and Health Services (DSHS), which is usually Eastern or Western State Hospitals. RCW 71.05.320.

Z.C. was committed to Western State Hospital for 180 days on May 23, 2017. CP 23-27. He agreed to remain at WSH for that length of time and agreed to entry of the Order based on grave disability only. CP 25. He did not challenge the entry of that Order. On June 2, 2017, the Chief Executive Officer of WSH signed a Notice of Conditional Release for Z.C. that allowed Z.C. to be released from inpatient treatment to Elahan Place in Clark County. CP 29. The Notice of Conditional Release also required Z.C. to abide by certain conditions, including, keeping all appointments, and following treatment recommendations of his psychiatric medication provider and keep all mental health appointments. CP 30. The Notice for Conditional Release was to expire on November 19, 2017. CP 29. It does not appear that Z.C. objected to the Conditional Release.

On November 13, 2017, Z.C.'s providers petitioned for an additional 180 days of less restrictive alternative treatment. CP 32-36. The petitioners stated additional less restrictive alternative treatment was

necessary because Z.C. was not fully complying with orders to take medications and because he had demonstrated substantial deterioration in his functioning. CP 34. The petitioners believed less restrictive alternative treatment would be in Z.C.'s best interest. CP 25. Z.C. was represented by counsel at the hearing and did not request a jury trial or object to the lack of an offer of a jury trial. Report of Proceedings (RP) at 5; 10-13. The Court heard from two petitioners: David Lyski, DMHP, and Patricia Morgan, PMHNP, as well as the respondent, Z.C. RP at 5, 24, & 32.

At the conclusion of all of the testimony, the Court found that Z.C. was suffering from a mental disorder, Schizophrenia, and that he was gravely disabled, by virtue of being in danger of serious physical harm resulting from a failure to provide for essential human needs of health or safety and there was a manifestation of severe deterioration in routine functioning, evidenced by repeated and escalating loss of cognitive control over his actions and was not receiving such care as is essential for his health or safety. CP 61. The Court specifically found the petitioners had proven these elements by clear, cogent, and convincing evidence. *Id.* Z.C. signed the Order that stated he was ordered to abide by thirteen (13) conditions. CP 61-63. The Order was signed on November 16, 2017, and expired on May 15, 2018. Z.C.'s appeal is moot.

IV. ARGUMENT

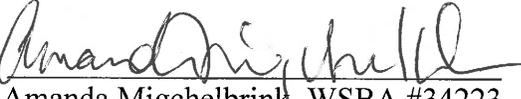
The underlying matter that gave rise to the issues raised on appeal was dismissed on July 16, 2018. Z.C. requested the Order either be reversed or remanded for more specific findings. *See Opening Brief* at 31. By dismissing this matter, the Respondents have effectively provided the relief Z.C. sought in his appeal. An appeal is moot where it presents merely academic questions and where the Court can no longer provide effective relief. *In re the Det. of M.K.*, 168 Wn. App. 621, 625-26 (Div. II, 2012). The underlying Order that gave rise to the appeal has been dismissed; therefore, it is moot and should be dismissed.

V. CONCLUSION

For the reasons stated above, the appeal should be dismissed as moot.

Respectfully submitted this 16th day of July, 2018.

ANTHONY F. GOLIK
Prosecuting Attorney
Clark County, Washington

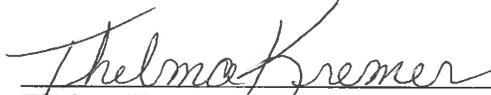
By: 
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Attorney for Clark County

CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing, BRIEF OF RESPONDENT, with the Clerk of the Court of the Washington State Court of Appeals, Division II, by using the Appellate CM/ECF system on July 16, 2018.

I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the Appellate CM/ECF system.



Thelma Kremer, Legal Secretary

ATTACHMENT A

2
CB

STATE OF WASHINGTON }
COUNTY OF CLARK } ss.

I, Scott G. Weber, County Clerk and Clerk of the Superior Court of Clark County, Washington, DO HEREBY CERTIFY that this document, consisting of 2 page(s), is a true and correct copy of the original now on file and of record in my office and, as County Clerk, I am the legal custodian thereof.

Signed and sealed at Vancouver, Washington, this date:

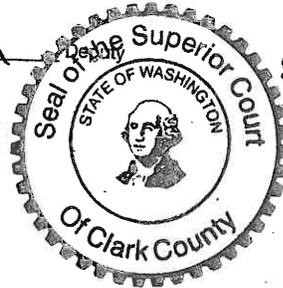
Scott G. Weber, County Clerk

By

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SCOTT G. WEBER, CLERK
CLARK COUNTY



IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF CLARK

In Re the Detention of,
ZEBERIAH CAMERON

Patricia Morgan, PMHNP and
Eric Lillibridge, MS, MHP, and
David Lyski, BS, DMHP,
Petitioners,

ZEBERIAH CAMERON,
Respondent.

No. 17-6-00158-7

MOTION TO DIMISS AND ORDER
VACATING ORDER OF 180 DAY LESS
RESTRICTIVE ALTERNATIVE, DATED
NOVEMBER 16, 2017

MOTION

COMES NOW, on this 16th day of July, 2018, Petitioners, Patricia Morgan, PMHNP and Eric Lillibridge, MS, MHP, represented by Amanda Migchelbrink, Civil Deputy Prosecuting Attorney, requests the court dismiss the above-entitled action with prejudice. and the Respondent, Zeberiah Cameron, being represented by Jennifer Sweigert, Attorney at Law; and the Court having before it the documents and filings in this matter, the order for 180 day less restrictive alternative, dated November 16, 2017, is vacated.

Dated this 16th day of July, 2018.

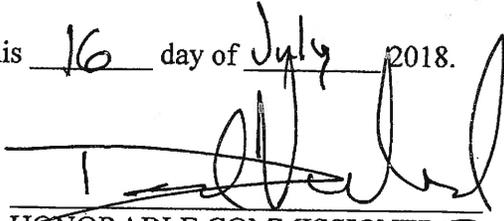
Amanda Migchelbrink, WSBA #34223

ORDER

1 Based on the motion above,
2 IT IS NOW, HEREBY ORDERED,

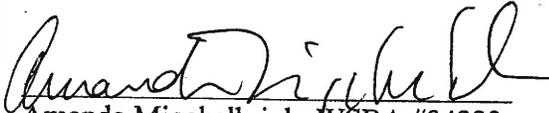
3 This matter shall be, and is dismissed with prejudice.

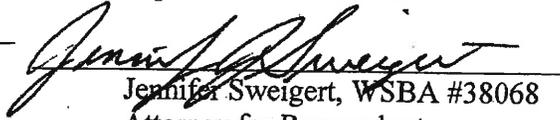
4
5 DONE IN OPEN COURT this 16 day of July 2018.

6
7 
8 HONORABLE COMMISSIONER
9 JUDGE

10 Presented by:

Approved as to form;
Notice of presentation waived:

11 
12 Amanda Migchelbrink, WSBA #34223
13 Deputy Prosecuting Attorney


Jennifer Sweigert, WSBA #38068
Attorney for Respondent

CLARK COUNTY PROSECUTING ATTORNEY

July 16, 2018 - 1:37 PM

Transmittal Information

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