

FILED  
Court of Appeals  
Division II  
State of Washington  
1/16/2019 4:52 PM

NO. 52641-7-II

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

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IN RE THE DETENTION OF:  
V.S.  
Appellant.

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ON APPEAL FROM THE SUPERIOR COURT OF THE  
STATE OF WASHINGTON FOR PIERCE COUNTY

The Honorable Barbara McInville, Commissioner

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BRIEF OF APPELLANT

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LISE ELLNER  
Attorney for Appellant

LAW OFFICES OF LISE ELLNER  
Post Office Box 2711  
Vashon, WA 98070  
(206) 930-1090  
WSBA #20955

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A. ASSIGNMENTS OF ERROR

1. The trial court erred by ordering an additional 180 involuntary commitment where the evidence did not support that V.S. was a risk to self or others.

2. The issue regarding the involuntary commitment is not moot because it is a matter of continuing and substantial public interest and the involuntary commitment order may have future collateral consequences for V.S.

Issues Presented on Appeal

1. Did the trial court err by imposing a 180 day commitment where the state did not present evidence to establish that V.S. is gravely disabled?

2. Can this case be moot where this court can provide relief?

B. STATEMENT OF THE CASE

Dr. Traci Drake, PhD is the psychologist who worked with V.S. She testified during this case on behalf of the state's petition for an additional 180 days of commitment. RP 74-84. When asked if V.S. presented a serious risk of harm to self or others, Dr. Drake responded as follows:

I don't think she would do well without a place to go and funding for that placement. So, I don't -- you know, she's got a medical issue as well, diabetes, which needs attending to. So, there are a combination of things I think that would put her at risk. So I think the best thing to do is to put her into a placement where she has the ability to meet her needs

RP 77-78. V.S. has diabetes, a mild neurocognitive disorder and schizophrenia that responds well to medication. RP 74-78.

Currently, V.S. is cooperative; she takes her medications, and makes good decisions. RP 79-80. Dr. Drake also noted that V.S is stable and has no problematic behavior or mood symptoms and has more reality based thinking. RP 75. According to Dr. Drake, V.S. does not believe that she needs medication but agreed to take medications until she works with an outside provider. RP 75.

## C. ARGUMENT

### 1. ISSUE NOT MOOT

“A case is moot if a court can no longer provide effective relief.” *Orwick v. City of Seattle*, 103 Wn.2d 249, 253, 692 P.3d 793 (1984). An individual’s release from detention does not render an appeal moot because collateral consequences flow from the determination authorizing such detention. *Born v, Thompson*, 154 Wn.2d 749, 762-64, 117 P.3d 1098 (2005).

In the case of civil commitments under chapter 71.05 RCW, the trial court is directed to consider, in part, a history of recent prior civil commitments, thus, each order of commitment entered up to three years before the current commitment hearing becomes a part of the evidence against a person seeking denial of a petition for commitment. See RCW 71.05.012 (“[C]onsideration of prior mental history is particularly relevant in determining whether the person would receive, if released, such care as is essential for his or her health or safety.”); RCW 71.05.212 (“When [ ] ... conducting an evaluation under this chapter, consideration shall include all reasonably available ... records regarding ... [p]rior commitments under this chapter.”); RCW 71.05.245.

A “trial court presiding over future involuntary commitment hearings may consider the respondent’s prior involuntarily commitment orders when making its commitment determination.” *In re the Detention of M.K.*, 168 Wn. App. 621, 629, 279 P.3d 897 (2012). Accordingly, each commitment order is not moot because it has a collateral consequence in subsequent petitions and hearings, allowing the Court to render relief if it holds that the detention under a civil commitment order was not warranted. *M.K.*, 168 Wn. App.at

626-27.

2. THE STATE REPRESENTED  
INSUFFICIENT EVIDENCE TO  
SUPPORT THE FINDINGS AND  
CONCLUSIONS THAT V.S. IS  
GRAVELY DISABLED AND  
PRESENTS A RISK OF HARM TO  
SELF OR OTHERS

The state failed to prove that V.S., as a result of a mental disorder, presents a likelihood of serious harm, or is gravely disabled.

To commit a person for involuntary treatment, the state must show by preponderance of evidence that the person, is gravely disabled as a result of a mental disorder, and presents a likelihood of serious harm. *In re Detention of D.V.*, 200 Wn. App. 904, 906, 403 P.3d 941 (2017), RCW 71.05.240(3)(a); RCW 71.05.020(22)..

Where the trial court has weighed the evidence, appellate review of an involuntary commitment order is limited to determining whether substantial evidence supports the findings and, if so, whether the findings in turn support the trial court's conclusions of law and judgment. *In re Detention of LaBelle*, 107 Wn.2d 196, 209, 728 P.2d 138 (1986). Substantial evidence is the quantum of evidence sufficient to persuade a fair-minded person of the truth of

the declared premise. *In re Detention of H.N.*, 188 Wn. App. 744, 762, 355 P.3d 294 (2015).

RCW 71.05.020(22) defines “gravely disabled” as

a condition in which a person, as a result of a mental disorder: (a) **Is in danger of serious physical harm resulting from a failure to provide for his or her essential human needs of health or 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.

(Emphasis added) The trial court entered a finding of gravely disabled based on subsection (22)(a). CP 215-18.

“Likelihood of serious harm” to oneself means a “substantial risk that ... [p]hysical harm will be inflicted by a person upon his or her own person, as evidenced by threats or attempts to commit suicide or inflict physical harm on oneself.” RCW 71.05.020(35)(a)(i).

When the threat of harm is to oneself, this risk of harm must be corroborated by an actual threat of self-harm. *D.V.*, 200 Wn. App. at 907. Care and treatment of an individual’s mental illness must be more than “preferred or beneficial or even in his best interests.” *LaBelle*, 107 Wn.2d at 208. To justify commitment, such

care must be shown to be *essential* to an individual's health or safety and the evidence should indicate the harmful consequences likely to follow if involuntary treatment is not ordered. *M.K.* 168 Wn. App. at 630.

*D.V. and M.K.*, support reversal of the involuntary commitment. In *M.K.*, this Court provided the quantum of evidence necessary to establish this first prong of RCW 71.05.020(22)(a). A petitioner "must present recent, tangible evidence of failure or inability to provide for such essential human needs as food, clothing, shelter, and medical treatment which presents a high probability of serious physical harm within the near future unless adequate treatment is afforded." *M.K.*, 168 Wn. App. at 630 (*quoting LaBelle*, 107 Wn.2d at 204-05).

In *M.K.*, the commitment proceeding was very brief and the order was limited to factual detail in lieu of checking the box on the form for the commitment. *Id.* The order form provided that *M.K.* "seemed to be responding to internal stimuli, impulsive, grandiose themes, threatening to peers[,] went on unauthorized leave. Assaultive on return, impaired judgment [and] insight, continues with grandiose themes, intrusive, rambling speech." *M.K.*, 168 Wn.

App. at 624.

This Court reversed the order of commitment and held that the state did not establish that M.K. was unable to make rational decisions with respect to his treatment based on the information in the order form because there was no nexus between the state's concerns and M.K.'s mental illness. *M.K.*, 168 Wn. App. at 624, 630.

Here, similar to *M.K.*, doctor Drake did not establish that V.S. was at risk to herself. Rather doctor Drake's testimony explained that there were a combination of undisclosed risks and V.S. would not do well. RP 77-78. This does not describe the harmful consequences and does not establish that V.S. was unable to make rational decisions with respect to her treatment. Rather the doctor testified that V.S. was cooperative, thinking clearly and willing to take her medications. RP 75, 79-80. Reversal is required under *M.K.* 168 Wn. App. at 630.

In *D.V.*, although the threat of harm was to another which required corroboration, the case is instructive. The state relied on the Western State psychologist who, based on D.V.'s threat to others, opined that D.V. posed a "likelihood of serious harm" to

others. *Id.*

The Court of Appeals disagreed, reversed the order of commitment and held that: (1) “[t]he doctor's personal belief or fear cannot establish a likelihood of serious harm as it is defined in the statute[]”, and (2) the evidence was insufficient to establish that the person threatened “was personally in fear that he or she would be harmed in the manner threatened.” *D.V.*, 200 Wn. App. at 907-08.

Here, although the risk of harm was to oneself, the state was nonetheless required to at least provide evidence of a threat of harm. *D.V.*, 200 Wn. App. at 907-08. The state failed in this effort because there was no threat of risk of harm. There was less evidence in this case than in *D.V.*, because here the doctor merely expressed her personal opinion that she did not believe V.S “would do well without a place to go and funding for that placement.” RP 77-78.

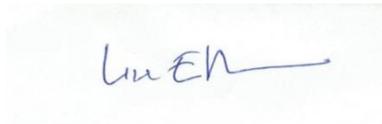
This personal opinion like that in *D.V.* is insufficient to establish that V.S. presented a serious harm as defined in RCW 71.05.020(22). Reversal is required under *D.V.* *D.V.*, 200. Wn. App.at 908-09. Accordingly, this Court must remand for reversal of the order of commitment.

D. CONCLUSION

V.S. respectfully requests this Court reverse the August 20, 2018 order of commitment.

DATED this 16<sup>th</sup> day of January 2019.

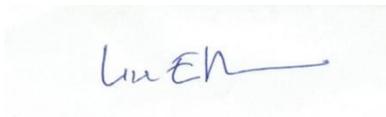
Respectfully submitted,

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LISE ELLNER  
WSBA No. 20955  
Attorney for Appellant

I, Lise Ellner, a person over the age of 18 years of age, served the Office of the Attorney General at [shsappealnotification@atg.wa.gov](mailto:shsappealnotification@atg.wa.gov) and V.S.(at private home address) a true copy of the document to which this certificate is affixed on January 16, 2019. Service was made by electronically to the AAG and V.S. by depositing in the mails of the United States of America, properly stamped and addressed.

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Signature

**LAW OFFICES OF LISE ELLNER**

**January 16, 2019 - 4:52 PM**

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