

NO. 68752-2-I

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

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IN RE THE DETENTION OF M.V.

STATE OF WASHINGTON,

Respondent,

v.

M.V.,

Appellant.

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

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APPELLANT'S OPENING BRIEF

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Elaine L. Winters  
Attorney for Appellant

WASHINGTON APPELLATE PROJECT  
1511 Third Ave., Suite 701  
Seattle, Washington 98101  
(206) 587-2711

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A. ASSIGNMENTS OF ERROR

1. The commitment court erred by concluding M.V. was gravely disabled as defined at RCW 71.05.020(17)(b). CP 38.

2. The commitment court erred by concluding that M.V. manifested severed deterioration in routine functioning as evidenced by repeated and escalating loss of cognitive or volitional control over her actions. 2RP 89-91.

3. The commitment court erred by concluding that M.V. would not receive the care essential for her health and safety if released from the hospital. 2RP 91-93.

4. The commitment court erred by committing M.V. for 90 days based in part upon her unwillingness to work with the hospital social worker or discharge planner. 2RP 93.

5. If it was a finding of fact, the court's oral finding that M.V. had promised to take medication after a prior hospitalization but did not is not supported by the evidence. 2RP 87.

6. The court's oral finding that M.V. was unable to process information or explain things clearly in court is not supported by the evidence. 2RP 90, 91, 92.

## B. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR

The constitutional right to due process protects citizens from involuntary commitment based only upon mental illness. U.S. Const. amend. XIV; Const. art. I, § 3. The court may commit a person as gravely disabled if the State proves by clear, cogent, and convincing evidence that, as a result of a mental disorder, (1) the respondent manifests severe deterioration in routine functioning, as evidenced by repeated and escalating loss of cognitive or volitional control over her actions, and (2) the respondent is not receiving the care essential to her health and safety.

1. Must Ms. V.'s 90-day commitment order be vacated because the court's determination that she showed severe deterioration in her routine functioning was not based upon multiple incidents of repeated and escalating loss of cognitive or volitional control?

2. Ms. V. testified rationally about her plans to locate housing, food, and mental health treatment upon release from the hospital. Must Ms. V.'s 90-day commitment order be vacated because the State did not prove she was unable to care for her own health and safety needs if released from the hospital?

3. Was Ms. V.'s initial unwillingness to work with hospital staff in planning for her release a valid basis to conclude she was gravely disabled when Ms. V. had requested assistance in locating resources and testified about her ability to access the resources?

4. Findings of fact must be supported by substantial evidence in light of the clear, cogent, and convincing standard of proof. Must the commissioner's oral finding that Ms. V. had previously promised to take medication when she was hospitalized but had not done so be stricken because there is no evidence to support the finding?

5. Ms. V. was able to testify about her plans for release but sometimes the court had to ask her to speak louder so that she could be heard. Does this testimony support the court's conclusion that she was unable to process information, explain things clearly, or advocate for herself?

6. Ms. V.'s 90-day commitment has ended. May her case be dismissed as moot when she continues to suffer significant collateral consequences as a result of the commitment order?

### C. STATEMENT OF THE CASE

M.V. appealed from King County Superior Court orders involuntarily committing her for mental health treatment first for 14 days and then for 90 days. Amended Notice of Appeal filed June 25, 2012. This appeal contests only the 90-day commitment order.

#### 1. **14-day commitment**

The Honorable Dean Lum ordered M.V. committed for 14 days on April 18, 2012, after finding that she presented a likelihood of serious harm to others due to a mental disorder. CP 19-20.

The court's conclusion was based upon an incident when King County Sheriff's Deputy Robert Nibler responded to Ms. V.'s apartment building because of a disturbance call from another resident. 1RP 6- 8.<sup>1</sup> When Ms. V. did not respond to his knock on the door, Deputy Nibler entered Ms. V.'s apartment and located her in the bathroom. 1RP 7-9. As he grabbed the bathroom door and opened it, Ms. V. walked towards the deputy and swung a toilet tank lid at his head. 1RP 9-11. Deputy Nibler quickly pushed Ms. V. back into the bathroom and held the door closed until other police officers arrived and subdued her. 1RP 10-11. Ms. V. was taken to

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<sup>1</sup> The verbatim report of proceedings of the 14-day commitment hearing is referred to as 1RP, and the verbatim report of proceedings of the 90-day commitment hearing is referred to as 2RP.

the emergency room, where she had a blood alcohol level of .118 and was verbally aggressive with hospital staff and the police. 1RP 12, 13, 29.

Ms. V's initial temporary diagnosis was alcohol-induced psychosis, but psychologist Julia Singer opined that Ms V. probably suffered from schizoaffective disorder based upon information she received from Ms V.'s father. 1RP 16-17. The court committed Ms. V. for 14 days on the grounds that there was a serious and substantial risk that she might harm another person due to her mental disorder. CP 16, 19-20; 1RP 45.

## **2. 90-day commitment**

The State later petitioned to commit Ms. V. for an additional 90 days, this time arguing that Ms. V. was gravely disabled. CP 21; 2RP 4. Psychologist Singer testified that Ms. V. suffered from schizoaffective disorder, a mental disorder which had a severe adverse impact on her cognitive and volitional functioning. 2RP 30, 34. The psychologist's opinion was based upon information from Ms. V.'s parents, the psychologist's brief interactions with Ms. V., testimony from the 14-day hearing, review of the medical records, and consultation with Ms. V.'s treatment team. 2RP 35, 50. Dr. Singer observed that Ms. V. was anxious and depressed, very

guarded and isolative, soft-spoken, and showed some delusional thinking. 2RP 36.

The psychologist's conclusion that Ms. V. was gravely disabled was based upon multiple factors: Ms. V's homelessness in light of her eviction from her apartment; her resistance to help from hospital staff in obtaining out-patient mental health treatment; the likelihood that Ms. V. would not be able to function well in a homeless shelter; the deterioration described by Ms. V's father; the incident that resulted in her 14-day commitment; Ms. V's difficulty advocating for herself; and her lack of insight into her mental health problems. 2RP 39-48, 51-52.

Ms. V. testified as to how she would care for herself if released from the hospital. She had a list of resources, including homeless shelters, and she also could afford to pay for a hotel if she was unable to obtain a shelter bed. 2RP 63-67, 72-73, 76. Ms. V. explained that she would obtain mental health treatment at an out-patient clinic because she wanted to continue to use medication after her release. 2RP 67-68, 73, 75. Ms. V.'s Medicaid would cover the costs of mental health treatment. 2RP 67, 69-70. She also received food stamps and knew how to purchase groceries or buy ready-to-eat food if homeless. 2RP 70-71. She also hoped to obtain

the clothing and other necessities that had been in her apartment.

2RP 71.

Ms. V.'s father testified he had gradually lost contact with his daughter and only seen her once in the two and a half years prior to her hospitalization. 2RP 9-10, 10-11, 19-20. Four to eight years earlier she had been a regular member of the family with a part-time job, and even worked full-time for a brief period. 2RP 10, 13-14. Ms. V. had been living independently in her current apartment for about eight years and received financial assistance. 2RP 10, 21, 24.

Mr. V. visited Ms. V's apartment after she was hospitalized and described it as extremely chaotic, dirty, and so covered with items that he was unable to walk to the balcony door. 2RP 15-17.

Court Commissioner Gerald Smith committed Ms. V. for 90 days after determining that she was gravely disabled under subsection (b). CP 35; 2RP 85-86, 93. The court entered form findings of fact and conclusions of law that mirror the language of the civil commitment statutes. CP 37-38. Upon revision, the superior court affirmed the commissioner's ruling and the commissioner's findings of fact and conclusions of law. CP 46.

D. ARGUMENT

1. **The State failed to prove that M.V. was gravely disabled.**

a. The constitutional right to due process protects citizens from involuntary commitment based only upon mental illness. Involuntary civil commitment based upon a person's mental disorder is a "massive curtailment of liberty" that entitles a person to due process protections. Addington v. Texas, 411 U.S. 418, 425, 99 S.Ct. 1804, 60 L.Ed.2d 323 (1979); Humphrey v. Cady, 405 U.S. 504, 509, 92 S.Ct. 1048, 31 L.Ed.2d 394 (1972); McLaughlin v. Dummer, 100 Wn.2d 832, 838-39, 676 P.2d 444 (1984); U.S. Const. amend. XIV; Const. art. I, § 3. A mere finding of mental illness does not authorize the State to confine a person against their will. O'Conner v. Donaldson, 422 U.S. 563, 575, 95 S.Ct. 2486, 45 L.Ed.2d 396 (1974); In re Detention of LaBelle, 107 Wn.2d 196, 201, 728 P.2d 138 (1986).

Washington statutes authorize the involuntary commitment of individuals who, as a result of a mental disorder, (1) pose a substantial risk of harm to themselves or others or (2) are gravely disabled. RCW 71.05.020(17), .150, .240, .280, .320; LaBelle, 107 Wn.2d at 201-02. When the State seeks to commit an individual on

the grounds that she is gravely disabled, it must prove that, as a result of a mental disorder, the individual:

(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 and safety.

RCW 71.05.020(17). At a 90-day commitment hearing, the State's burden of proof is clear, cogent, and convincing evidence.

McLaughlin, 100 Wn.2d at 842-43; RCW 71.05.310.

In this case, the court commissioner committed Ms. V. for 90 days under RCW 71.05.020(17)(b). The LaBelle Court cautioned that the broad commitment standard found in that subsection of the statute creates the possibility of unconstitutional civil commitment simply because a person is mentally ill and may benefit from treatment. LaBelle, 107 Wn.2d at 207. It is thus "particularly important" that the State provide a factual basis for the conclusion that the individual "manifests severe [mental] deterioration in routine functioning." Id. at 208 (quoting RCW 71.05.020(17)(b)).

Such evidence must include recent proof of significant loss of cognitive or volitional control. In addition, the evidence must reveal that the individual is not

receiving or would not receive, if released, such care as is essential for his or her health or safety. It is not enough to show that care and treatment of an individual's mental illness would be preferred or beneficial or even in his best interests. 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.

Id. (emphasis in original).

In addition, the State must show that the person is unable to make a rational decision concerning his need for treatment due to his mental illness. LaBelle, 107 Wn.2d at 208. "This requirement is necessary to ensure that a causal nexus exists between proof of 'severe deterioration in routine functioning' and proof that the person so affected 'is not receiving such care as is essential for his or her health and safety.'" Id. (quoting RCW 71.05.020(17)(b)).

b. The State did not produce clear, cogent, and convincing evidence that Ms. V. was gravely disabled. The court improperly committed Ms. V. as gravely disabled because the State did not prove by clear, cogent, and convincing evidence that (1) Ms. V.'s deterioration in routine functioning was shown by repeated and escalating loss of cognitive or volitional control or (2) due to her mental health problems, Ms. V. would not receive necessary care if released. RCW 71.05.020(17)(b); LaBelle, 107 Wn.2d at 208.

The court entered conclusory findings of fact which are not sufficient for appellate review, despite the LaBelle Court's admonition that "such findings hereafter are not adequate" when involuntary commitment is ordered by the court.<sup>2</sup> LaBelle, 107 Wn.2d at 220. This Court, however, may supplement the lack of findings with the commissioner's oral ruling. Id. at 219-20; 2RP 89-93.

i. *There was no evidence of repeated and escalating loss of cognitive or volitional control.* The court commissioner found Ms. V.'s ability to function deteriorated as a result of her mental condition, as evidenced by her loss of contact with her family, the condition of her apartment, and her inability to clearly and articulately testify in court. 2RP 88-90. The court's conclusion thus is not based upon any evidence that Ms. V. showed severe deterioration in routine functioning "as evidenced by repeated and escalating loss of cognitive or volitional control over" her actions as required by the civil commitment statute. RCW 71.05.020(17)(b) (emphasis added).

Ms. V's father testified that approximately four to eight years prior to the commitment trial, Ms. V. lived in an apartment and was

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<sup>2</sup> The findings are especially concerning because the court commissioner was the deputy prosecuting attorney in LaBelle.

employed for three years, although mostly part-time. 2RP 9-10, 13. During that period of time, Ms. V. participated in the family by attending family events and vacations. 2RP 13-14. Ms. V.'s parents, however, gradually lost contact with her and had seen her only one time in the past two and a half years. 2RP 10-11, 19-20.

Mr. V. testified that his daughter had been hospitalized one time before, in 2001, but gave no information about her condition before or after that hospitalization. 2RP 26. There was no evidence it was a court-ordered hospital stay. Prior to announcing his oral findings, the court commissioner noted that Ms. V. "has a history of psychiatric treatment and that she in the past has left the hospital and promised to get care." 2RP 87. The record, however, does not support this statement. In a civil commitment case, the trial court's factual findings will not be upheld on appeal unless the finding is supported by "substantial evidence in light of the 'highly probable' test." LaBelle, 107 Wn.2d at 209. The only evidence presented here – that Ms. V. had been hospitalized once before – does not support a factual finding that she had promised to take her medical upon leaving the hospital and had not done so.

Thus, all the State proved was that Ms. V.'s mental health deteriorated one time, culminating in the current commitment.

The gravely disabled statute, however, must be construed to limit unconstitutional commitment. LaBelle, 107 Wn.2d at 207. The statute requires that the respondent's severe deterioration in routine functioning be "evidenced by repeated and escalating loss of cognitive or volitional control over his or her actions." RCW 71.05.020(17)(b). In the absence of such evidence, commitment under this subsection must be reversed.

ii. The State did not prove by clear, cogent, and convincing evidence that Ms. V. would not receive necessary care if released from the hospital. The definition of gravely disabled also requires the State to prove the respondent is "not receiving such care as is essential for his or her health or safety." RCW 71.05.020(17)(b). The commissioner concluded that Ms. V. would not receive essential care if she were released from the hospital because she had not worked with the hospital social worker to make discharge plans, was not capable of making plans on her own, and lacked the ability to do so. 2RP 91-92.

The LaBelle Court addressed this requirement in finding sufficient evidence to commit three of the four appellants as gravely disabled. Mr. LaBelle, for example, lacked any awareness of routine care or basic hygiene, and his only plan was to live on the streets

“without adequate food or shelter.” LaBelle, 107 Wn.2d at 210. Mr. Marshall told the psychologist that he normally ended up in jail when he ran out of food or money, and Marshall did not understand he needed mental health treatment. Id. at 211, 213. Mr. Trueblood had no place to stay and his only plans were to “stay all night in a diner or to buy a sleeping bag and a tent and camp out in parks or go to Bellevue and get in contact with dead people.” Id. at 215. He also was unable to make rational decisions about his own need for the treatment and care necessary for his health and safety. Id. at 216.

In contrast, Ms. V. had medical insurance and financial assistance. She explained that she would seek housing and out-patient mental health services if released from the hospital, and she discussed what resources she would use to help her meet those needs. She also knew how to use a grocery store to obtain food. She thus demonstrated her ability to make sure her essential needs were taken care of and an awareness that she needed mental health treatment.

The court commissioner, however, found that Ms. V. lacked the cognitive ability to obtain shelter or mental health treatment. 2RP 90. This was apparently based upon the fact that Ms. V. did

not seek assistance from the hospital social workers. 2RP 36-37, 39. The evidence shows that Ms. V. did ask for housing referrals. She also had a list of resources, knew how to use the telephone, and could use the library to obtain more information. 2RP 50-51, 63, 65-66. 69-70. Thus, there was no evidence to support the commitment court's conclusion that Ms. V. would "wander the streets" if released from the hospital. 2RP 91.

The court commissioner's determination that Ms. V. would not care for herself if released from the hospital was also based upon her demeanor in court. The court asserted that Ms. V. was unable to talk loud enough for the court to hear, had difficulty explaining things clearly or fully, and showed her lack of experience. 2RP 89, 90, 91. A review of Ms. V.'s testimony, however, reveals that she had thought through what to do if released from the hospital and was able to articulate her plans. 2RP 63-76. In addition, the fact that Ms. V. spoke softly does not logically support the court's conclusion that she could not take care of herself. Nor does the court's assumption that she had led a sheltered life show that she was unable to care for herself as a result of a medical disorder.

c. The 90-day commitment must be vacated. The commissioner found that Ms. V. was gravely disabled based upon evidence that her mental condition deteriorated one time. There was no evidence of “repeated and escalating loss of cognitive or volitional control” as required by statute. The commissioner’s conclusion that Ms. V. would not be able to meet her own essential needs outside of the hospital setting is supported only by assumptions about Ms. V.’s dependency on her family and inability to advocate for herself. These assumptions are not supported by the evidence and are contradicted by Ms. V’s carefully articulated plans to care for herself upon release. The commitment order must be vacated. LaBelle, 107 Wn.2d at 214, 217-18, 225.

**2. Ms. V’s appeal is not moot.**

The court ordered Ms. V. involuntarily detained for 90 days on May 14, 2012. CP 34-36. The 90-day period has expired, and the State may argue that the case is therefore moot. The civil commitment, however, continues to have adverse collateral consequences for Ms. V. and is therefore not moot. See In re Cross, 99 Wn.2d 373, 377, 662 P.2d 828 (1983) (“most civil commitment appeals will be saved from mootness by the significant and adverse consequences to which commitment gives rise.”).

Should the State seek to commit Ms. V. in the future, the current commitment will be used as evidence against her. RCW 71.05.012, .212(1)(d), .245; In re Detention of M.K., 168 Wn.App. 621, 625-29, 279 P.3d 897 (2012). The commitment court prohibited Ms. V. from exercising her constitutional right to possess a firearm until those rights are restored by a court, a significant collateral consequence of the commitment. CP 36; 2RP 93; In re Detention of D.F.F., 144 Wn.App. 214, 291, 183 P.3d 302 (2008), aff'd 172 Wn.2d 27 (2011). The State also has the right to petition to commit Ms. V. for an additional 180-days based upon this commitment. RCW 71.05.320; D.F.F., 144 Wn.App. at 291. Thus, the case is not moot.

In addition, Washington courts have long recognized that “the need to clarify the statutory scheme governing civil commitment is a matter of continuing and substantial public interest.” LaBelle, 107 Wn.2d at 200 (quoting McLaughlin, 100 Wn.2d at 838); accord, In re Detention of R.S., 124 Wn.2d 766, 770, 881 P.2d 972 (1994); Cross, 99 Wn.2d at 377; In re Detention of C.M., 148 Wn.App. 111, 115, 197 P.3d 1233, rev. denied, 166 Wn.2d 1012 (2009). This Court may also exercise its discretion to review Ms.V.’s case in order to provide guidance to the lower courts

addressing civil commitments on the grounds the respondent is gravely disabled.

E. CONCLUSION

M.V. asks this Court to vacate the 90-day commitment order because the State did not prove by clear, cogent, and convincing evidence that she was gravely disabled.

DATED this 14<sup>th</sup> day of September 2012.

Respectfully submitted,



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Elaine L. Winters – WSBA # 7780  
Washington Appellate Project  
Attorneys for Appellant

**IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON  
DIVISION ONE**

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IN RE THE DETENTION OF	)	
	)	
M. V.,	)	NO. 68752-2-I
	)	
APPELLANT.	)	
	)	

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**DECLARATION OF DOCUMENT FILING AND SERVICE**

I, MARIA ARRANZA RILEY, STATE THAT ON THE 14<sup>TH</sup> DAY OF SEPTEMBER, 2012, I CAUSED THE ORIGINAL **OPENING BRIEF OF APPELLANT** TO BE FILED IN THE **COURT OF APPEALS - DIVISION ONE** AND A TRUE COPY OF THE SAME TO BE SERVED ON THE FOLLOWING IN THE MANNER INDICATED BELOW:

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X \_\_\_\_\_ 

**Washington Appellate Project**  
701 Melbourne Tower  
1511 Third Avenue  
Seattle, Washington 98101  
☎(206) 587-2711