

SUPREME COURT OF VERMONT

E.S. v. State

178 Vt. 519 (2005) · Decided March 15, 2005

SUMMARY

The Vermont Supreme Court dismissed as moot an appeal from a family court order finding probable cause to hold E.S. for involuntary mental health treatment pending a preliminary hearing. The court held that neither the negative-collateral-consequences exception nor the capable-of-repetition exception to mootness applied, and that the challenged probable-cause order was not final for purposes of appeal. The court did not decide whether the exclusionary rule applied to the preliminary hearing and expressly declined to endorse the lawfulness of the restraint imposed by VA hospital personnel.

CASE DETAILS

COURT	Supreme Court of Vermont
JURISDICTION	Vermont
DECIDED	March 15, 2005
DISPOSITION	dismissed
PROCEDURAL POSTURE	E.S. appealed a Washington Family Court order finding probable cause to hold him for involuntary mental health treatment pending a preliminary hearing. While the appeal was pending, the State dismissed the involuntary-treatment application and E.S. was released. The Supreme Court of Vermont dismissed the appeal as moot and also concluded that the appealed order was not final and had not been properly authorized for interlocutory review.
STANDARD OF REVIEW	Whether an appeal is moot and whether an order is final or properly reviewable interlocutorily are questions of appellate jurisdiction reviewed by the Supreme Court.
PRECEDENTIAL VALUE	published precedential opinion
PARTIES	E.S. v. State

TOPICS

- mootness
- interlocutory appeal
- appellate jurisdiction
- appellate procedure
- health law

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether the appeal was moot after E.S. was released and the State dismissed the involuntary-treatment application.
2. Whether an exception to mootness applied because of likely negative collateral consequences or because the challenged action was capable of repetition yet evading review.
3. Whether the probable-cause detention order was a final judgment or was otherwise properly reviewable by interlocutory appeal.
4. Whether the exclusionary rule applied to evidence offered at the preliminary probable-cause hearing.

HOLDINGS

1. The appeal was moot because E.S. had been released from custody and the State had dismissed its application for involuntary treatment, leaving no live controversy that the Court could resolve by affecting his custodial status.
2. The possible negative collateral consequences of E.S.'s detention did not avoid mootness because he was never formally adjudicated mentally ill, never subjected to an order of involuntary treatment, and never received a full commitment hearing.
3. The capable-of-repetition-yet-evading-review exception did not apply because there was no reasonable expectation that E.S. would again be subject to the same action.
4. The probable-cause order was not a final judgment, and E.S. could not obtain interlocutory review without permission from the Supreme Court.

KEY QUOTATIONS

“A live controversy must exist during all stages of review.” (178 Vt. at 520)

“Nevertheless, the denial of liberty the commitment process allows must be based on the procedures the Legislature has required.” (178 Vt. at 522)

FACTUAL BACKGROUND

E.S. was visiting a VA hospital in Vermont when staff became concerned after his stepfather reported that he was suicidal. A VA police officer prevented him from leaving, and hospital personnel restrained him after he became increasingly belligerent; a psychiatrist described him as acutely manic, delusional, agitated, threatening, and violent. E.S. was transferred to Vermont State Hospital, but the State dismissed the involuntary-treatment application before the appeal was filed, and E.S. was released and returned to Mississippi.

PROCEDURAL HISTORY

After E.S. was detained at a VA hospital, transferred to Vermont State Hospital, and held pending a probable-cause hearing, the Washington Family Court admitted testimony from a VA police officer and treating physician, denied E.S.'s motion to exclude the evidence, and found probable cause to continue his detention. The State later

dismissed the involuntary-treatment application, E.S. was released and returned to Mississippi, and he appealed. The Supreme Court of Vermont dismissed the appeal as moot and premature.

DISPOSITION

dismissed

CASES CITED

- In re P.S., 167 Vt. 63, 67-68, 702 A.2d 98, 100-01 (1997)
- In re PCB File No. 92.27, 167 Vt. 379, 381, 708 A.2d 568, 569-70 (1998)
- State v. J.S., 174 Vt. 619, 620, 817 A.2d 53, 55-56 (2002) (mem.)
- State v. Condrick, 144 Vt. 362, 364, 477 A.2d 632, 633 (1984)
- State v. O'Connell, 136 Vt. 43, 45, 383 A.2d 624, 625 (1978)
- In re C.C., 150 Vt. 112, 113, 549 A.2d 1058, 1059 (1988)
- State v. Gundlah, 160 Vt. 193, 196, 624 A.2d 368, 370 (1993)
- In re C.K., 156 Vt. 194, 198, 591 A.2d 57, 60 (1991)

OPINION

PER CURIAM.

¶ 1. E.S. appeals a Washington Family Court order finding probable cause to hold E.S. for involuntary mental health treatment pending a preliminary hearing. E.S. claims that the court erred by admitting evidence obtained following an unlawful detention and that the State failed to meet its burden to show probable cause.

We dismiss the appeal as moot. ¶ 2. On January 8, 2004, E.S., a resident of Mississippi, was at the Veteran's *520Administration (VA) hospital in White River Junction, Vermont to obtain copies of personal records. Some of the VA staff became concerned about him after his stepfather told them that E.S. was suicidal. At 2:15 p.m., a VA police officer told E.S. that he could not leave the hospital until he was seen by a psychiatrist.

E.S. then met with a staff psychiatrist, who completed a physician's certificate for an emergency examination of E.S. The certificate stated that E.S. was "acutely manic" and was "very irritable and angry and threatening staff and patients" and was "very delusional and agitated." It added that E.S. had threatened to "clock" various staff and had pushed a VA employee, and that his family reported that he had made "multiple suicidal and violent statements over the past several days." ¶ 3.

Because E.S. had no local relatives, the VA police officer and other staff held E.S. in a hospital room until a mental health professional could arrive to complete the commitment papers. See 18

V.S.A § 7504(a) (commitment application must be signed by interested party and physician); id. § 7101(9) (mental health professional is an interested party).

In response to the restraint, E.S. became increasingly belligerent. As the court found: “He threatened to hurt anyone who came near him. He was shouting and swearing. He kicked at hospital staff, the police officer, and a physician. He received emergency psychiatric medication and was placed in restraints.” The mental health professional arrived at the hospital at 6:00 p.m. and completed the commitment papers, relying in large part on E.S.’s conduct in response to the restraint.

E.S. was transported to the Vermont State Hospital (VSH), where a staff psychiatrist conducted the emergency examination and completed the admission certificate. The State filed an application for involuntary treatment on January 9, 2004. E.S. requested a probable cause hearing on January 13, 2004, 18 V.S.A § 7510(a), and the hearing was held on January 21, 2004. ¶ 4.

At the hearing, the State offered the testimony of the VA police officer and E.S.’s treating physician at VSH in support of its case to demonstrate that there was probable cause to hold E.S. E.S. objected to the admission of their testimony, claiming that he was illegally detained by the VA police officer at the VA hospital and that any information gleaned as a consequence of this illegal detention could not be admitted under the exclusionary rule.

The family court denied E.S.’s motion to exclude the evidence and found probable cause. It ordered E.S. to remain at the VSH pending a hearing on the application for involuntary treatment. The State dismissed the application on February 13, 2004, and E.S. left VSH and returned to his home state of Mississippi.’ E.S. filed this appeal on February 24, 2004. ¶ 5.

We first address the State’s arguments that the appeal should be dismissed because the case is moot and E.S. did not appeal from a final order. With respect to the mootness claim, a case becomes moot when “the issues presented are no longer ‘live’ or the parties lack a legally cognizable interest in the outcome.” *In re P.S.*, 167 Vt. 63, 67, 702 A.2d 98, 100 (1997).

A live controversy must exist during all stages of review. *Id.* At the time E.S. filed this appeal, he had been released from custody and the State had dismissed its application for involuntary treatment. Thus, this Court can no longer issue a ruling that would affect E.S.’s custodial status, and the case is moot unless an exception to the mootness rule applies. ¶ 6.

Even if moot, a case may be reviewed if: (1) “negative collateral consequences are likely to result from the action being reviewed”; or (2) “the underlying situation is capable of repetition, yet evades review!” *Id.* at 67, 702 A.2d at *521101.

The second exception applies when the challenged action is too short to be fully litigated and there is a reasonable expectation that the individual will be subject to the same action again. *In re PCB*

File No. 92.27, 167 Vt. 379, 381, 708 A.2d 568, 569-70 (1998).

In this case, neither exception is applicable. ¶ 7. In the past, we have recognized that when involuntary commitment results in social stigma it may satisfy the first exception. See, e.g., *State v. J.S.*, 174 Vt. 619, 620, 817 A.2d 53, 55-56 (2002) (mem.) (holding that case is reviewable because “negative collateral consequences of being initially adjudicated mentally ill and then involuntarily hospitalized may continue to plague appellant with both legal disabilities and social stigmatization”).

The cases where we applied this exception, however, have involved a trial court adjudication of commitment and the appeal sought to reverse that adjudication. *Id.*; *State v. Condrick*, 144 Vt. 362, 364, 477 A.2d 632, 633 (1984); *State v. O’Connell*, 136 Vt. 43, 45, 383 A.2d 624, 625 (1978).

In the one case where the mental health order on appeal was an order of involuntary medication, not a commitment judgment, we held that expiration of the order rendered the case moot. In *re C.C.*, 150 Vt. 112, 113, 549 A.2d 1058, 1059 (1988).

Here, we conclude that the possible negative collateral consequences that will result from E.S.’s detention at VSH are not sufficient to avoid mootness. E.S. never went through a full hearing, was never formally adjudicated mentally ill and was never under an order of involuntary treatment.

To the extent there is a stigma, it arises more from the fact that the State sought to commit E.S., and this is a fact that no decision by this Court can erase. ¶ 8. We have also applied the second exception in an involuntary commitment case where the individual was likely to be under state review again.

In *re P.S.*, 167 Vt. at 68, 702 A.2d at 101 (holding that “[g]iven P.S.’s past history, the general circumstances that gave rise to the revocation of P.S.’s nonhospitalization order” were likely to occur again and therefore not moot). There is no “reasonable expectation” that E.S. will be subject to the same action again because he is a resident of a distant state, has no ties to Vermont and was here once for a unique set of circumstances.

See *State v. Gundlah*, 160 Vt. 193, 196, 624 A.2d 368, 370 (1993) (holding exception did not apply because “[a] repetition of the fact pattern presented seems highly unlikely and certainly does not rise to a reasonable expectation”). ¶ 9.

We also agree with the State that the order from which E.S. appealed — finding that probable cause was present — was not a final judgment, and E.S. failed to obtain permission for an interlocutory review. Like preliminary detention rulings in CHINS juvenile cases, the order resolved only a preliminary question and not the merits. See *In re C.K.*, 156 Vt. 194, 198, 591 A.2d 57, 60 (1991) (denying review for rulings in preliminary stages of CHINS process “absent grounds for extraordinary relief”). ¶ 10.

Because we find the appeal is moot and applied for prematurely without permission from this Court, we do not reach the question of whether the exclusionary rule applies to preliminary hearings. In reaching this conclusion, however, we emphasize that we are not endorsing or finding lawful the VA hospital's conduct when it restrained E.S. pending completion of the commitment application.

The record does not disclose under what power VA police and staff held E.S., and we understand the difficulties in following the statutory commitment procedure when the proposed patient lacks ties to Vermont so that there is no readily-available person to act as an applicant. Nevertheless, the denial of liberty the commitment process allows *522 must be based on the procedures the Legislature has required.

Appeal dismissed.