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

appellate procedure | mental health law | evidence | civil procedure

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)

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