

## MEMORANDUM DECISION

Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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## IN THE COURT OF APPEALS OF INDIANA

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In the Matter of the Civil  
Commitment of: J.H.,  
J.H.,  
*Appellant-Respondent,*

v.

Health and Hospital Corporation  
d/b/a Sandra Eskenazi Mental  
Health Center,  
*Appellee-Petitioner.*

May 11, 2022

Court of Appeals Case No.  
21A-MH-2862

Appeal from the Marion County  
Superior Court

The Honorable Steven R.  
Eichholtz, Judge

Trial Court Cause No.  
49D08-2111-MH-38884

**Brown, Judge.**

[1] J.H. appeals the trial court's December 1, 2021 Order of Temporary Commitment. We dismiss as moot.

### ***Facts and Procedural History***

[2] On November 19, 2021, the Health and Hospital Corporation of Marion County d/b/a Sandra Eskenazi Mental Health Center ("Eskenazi") filed a Petition for Involuntary Commitment and a Physician's Statement. The petition alleged J.H. was suffering from schizophrenia and was gravely disabled.

[3] On December 1, 2021, the trial court held a hearing. Dr. Kenneth Smith testified that he was a psychiatrist, J.H. was admitted to Eskenazi on November 17, 2021, and he saw J.H. on November 18, 2021, and every day since then except for three days. Dr. Smith indicated he had acted as J.H.'s attending physician with respect to his previous hospitalizations in January 2019, November 2019, March 2020, and September 2021. He testified that he diagnosed J.H. with schizophrenia during his first hospitalization in January 2019. He stated that J.H. "has recurrently had auditory hallucinations," including during the instant hospitalization, "where he will seem to be responding to internal stimuli or as if he's talking with himself when no [one] else is there" and "has had delusional thought content [] that's mostly been grandiose." Transcript Volume II at 11-12. He testified "I've observed this [] during this hospital stay and also during past hospital stays in which he will [] feel like that he has a much greater amount of wealth than what he is known to have." *Id.* at 12. He indicated that J.H. is quite intelligent and capable of

caring for himself when his mental condition is good, and that “he [] has felt . . . that his ability to [] create and run large businesses, the businesses seem to exceed his, his actual ability.” *Id.* When asked to provide an example of one of J.H.’s delusions, Dr. Smith indicated that the previous week, J.H. told him “that he had enough money to pay the salaries for everyone that works on our unit.” *Id.* When asked about J.H.’s judgment and reasoning, Dr. Smith testified “I believe that . . . when he’s been stable with his mental health condition that he’s tended to have overall fair judgment and reasoning but when he’s had active mental health symptoms [] from his Schizophrenia his judgment has tended to be quite impaired.” *Id.* at 13. When asked “what was his judgment or reasoning like yesterday,” he indicated that it was not good. *Id.*

[4] Dr. Smith testified that, when he approached J.H. the previous day, J.H. wanted to shake his hand, he informed him that he was not shaking hands with anyone due to the ongoing pandemic, J.H. “then [] tensed up and [] clenched both of his fists and started shaking and then he said to me I will quote delta or omicron, delta or omicron, choose, choose, vaccine, vaccine, you’re overwhelming me with finances,” “this sort of thought processing [] impressed upon me that he was having difficulty being able to understand the reality of the circumstances going on around him and think clearly,” and “from that I feel like his [] judgment is [] impaired.” *Id.* at 13-14.

[5] Dr. Smith further testified that he had been offering J.H. an anti-psychotic medication and believed the medication would likely improve J.H.’s symptoms if he would take it consistently and an appropriate dose for him was reached.

He testified “[w]e’ve offered [the medication] in the oral form a total of twenty-nine times, and he’s taken it ten of those times,” “I did seem to see some correlation that his symptoms improved marginally when he was being more compliant with it,” and “I’d also offered . . . a long acting injectable version of the [medication] . . . and he refused to take that.” *Id.* at 14. He indicated that J.H. had refused to take the medication the previous five times it was offered to him and was not currently showing any signs of insight into his condition and need for medication.

[6] Dr. Smith indicated that he believed J.H. was in need of care, custody, and treatment in the facility. He testified he believed J.H. would benefit from a regular commitment based on J.H.’s treatment history but that a temporary commitment “would still be helpful because it would allow us to treat him now and help improve his condition so that we could discharge him from the hospital soon.” *Id.* at 16-17. On cross-examination, Dr. Smith indicated that J.H. came to the hospital voluntarily at the urging of his family but had been asking for discharge during the majority of his hospital stay. When asked about the length of J.H.’s inpatient treatment if a commitment were granted, he testified it would depend on J.H.’s symptoms, he “would expect most likely that he would be able to be discharged in about a week,” and “he’s tended to overall respond to anti-psychotic treatment well and so I would . . . hope that he would have a similar outcome and improve quickly so we could get him discharged.” *Id.* at 18.

[7] J.H.'s father testified that, during the previous three weeks, he observed J.H. "communicate very, very [] freely, very openly . . . with too much familiarity . . . with complete strangers as if a filter had been taken off and [] there was no concern about [] potential danger from strangers." *Id.* at 22. When asked about instances which concerned him, he testified:

My son told me that he was trying to . . . showcase his skills in order to [] take some initiative to get a job at the, at the hotel so he went behind the bar, is the allegation, and he told me as much he was just trying to show them that he had taken some classes. Show them the fruits of the classes he had taken where he can mix drinks and [] the result is that they [] told him to leave the premise[s] within fifteen minutes or they would call the cops, so he called me to [] come pick him up.

*Id.* at 24.

[8] J.H. testified, and when asked if he had the ability to provide for himself, stated "I [] kind of live off my mom but the way I've been working I have money that I'm somewhat expecting to receive shortly and [] I think I'm self-sustainable," "I can work very well," and "I'm learning to contract my jobs to better agreements and not get entrapped in less than desirable job or work situations [] making sure I have the right [] resources to [] be at work whether it's friends that can get me there or [] bus ride et cetera." *Id.* at 27. When asked if he currently had a job or would be looking for one, he replied "my next major move for [] income would be like filing taxes based on my LLC operations." *Id.* When asked if he had an issue with taking the medication his doctor had prescribed, he responded:

Yes, the medication um essentially the way I understand it I'm probably on a two-year statute of limitations for malpractice that might be related to pain and suffering or multiple uses of the same patent which might multiply and that might be a lot of money for malpractice insurance to pay out to a single person because it probably hasn't happened too many times. But as I'm not sure, I just like to be myself and, and inquire the information to see if we can just do damages in a cordial manner for the purpose of leaving the illness of the table and you know, Dr. Olive's probably advisory of Dr. Smith and Dr. Hart to so . . . .

*Id.* at 28. When asked what he meant when he said he was expecting to receive money, he replied: "Damages to my person, uh better relayed as legal remedies that I take in monetary benefits uh . . . ." *Id.* at 29. When asked if he planned to receive outpatient treatment, he replied: "I'm not really under the influence that I need outpatient treatment for mental health. I'm more so concerned about things such as my heart rate, possible signs of heart attack. [] I don't ever get asked questions relating to onset of uh chronic diseases other than Schizophrenia." *Id.* at 30. When asked if he believed he had a mental illness, he answered "I'd rather not debate the opinion because it's not my expertise but as I know the hospital to work together with the community uh, my illness might be the relation or uh lack of desire to relate to some people in the community." *Id.* at 31. Also, when asked if he had a job, J.H. testified:

I have my own company, I operate executively, intellectual property under my possession. Um, I'm a mixologist uh, I get job offers constantly uh I'm on withdraw from UPS. I actually got accepted to Target uh warehouse on West Morris street um so eventually every day that I'm in the hospital are days that I'm unable to get to my actual job . . . so I'm not sure actually.

*Id.* The trial court found that J.H. suffers from a mental illness and was gravely disabled and entered an Order of Temporary Commitment.

### *Discussion*

[9] J.H. requests this Court reverse his temporary commitment and contends the trial court’s decision is not supported by sufficient clear and convincing evidence that he was gravely disabled. Eskenazi maintains J.H.’s appeal is moot as his period of temporary commitment has ended and cites *T.W. v. State*, 121 N.E.3d 1039 (Ind. 2019), *reh’g denied*.

[10] In *T.W.*, the Indiana Supreme Court consolidated two appeals for purposes of its opinion. 121 N.E.3d at 1041. The Court held:

A threshold issue in these appeals is mootness. “The long-standing rule in Indiana courts has been that a case is deemed moot when no effective relief can be rendered to the parties before the court.” *Matter of Lawrance*, 579 N.E.2d 32, 37 (Ind. 1991). When the controversy at issue has been ended or settled, or somehow disposed of so as to render it unnecessary to decide the question involved, the case will be dismissed. *Id.* But “Indiana recognizes a public interest exception to the mootness doctrine, which may be invoked when the issue involves a question of great public importance which is likely to recur.” *Matter of Tina T.*, 579 N.E.2d 48, 54 (Ind. 1991). When this Court elects to address an issue under the public interest exception, it need not “address all of the issues in the case as presented by the parties.” *Lawrance*, 579 N.E.2d at 37.

The records show these appeals of the temporary commitment orders are moot. Statutes governing temporary commitment provide that “[i]f, upon the completion of the hearing and consideration of the record, the court finds that the individual is mentally ill and either dangerous or gravely disabled, the court may order the individual to:

(1) be committed to an appropriate facility; or (2) enter an outpatient treatment program under IC 12-26-14 for a period of not more than ninety (90) days.” Ind. Code § 12-26-6-8(a); *see* Ind. Code § 12-26-6-1. The period specified in each appealed order has passed.

*Id.* at 1042. The Court stated, “[d]espite the appeals’ mootness, we address an issue of great public importance likely to recur: Did the Commissioner lack authority to enter orders of civil commitment?” *Id.* After concluding the Commissioner lacked authority to enter the commitment orders, the Court held, “[u]nder these circumstances, though, where the orders concern periods that have expired, remanding those orders to the trial court for its review serves no apparent purpose” and dismissed the appeals as moot. *Id.* at 1044.<sup>1</sup>

[11] Here, J.H. acknowledges that, “[a]s [Eskenazi] correctly notes . . . , J.H.’s Order of Temporary Commitment has ended.” Appellant’s Reply Brief at 12. J.H.’s appeal from the order of temporary commitment presents issues unique to the facts and circumstances of his individual case without general

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<sup>1</sup> In *Commitment of E.F. v. St. Vincent Hosp. & Health Care Ctr., Inc.*, this Court stated the Indiana Supreme Court in *T.M.* “clarified that temporary commitment appeals should be, as a rule, dismissed as moot, though in rare circumstances a question of great public interest may justify not dismissing the otherwise moot appeal” and held “E.F.’s appeal does not present such a rare circumstance.” 179 N.E.3d 1017, 1019 (Ind. Ct. App. 2021), *trans. pending*. We held, “[a]s in this case, appeals from temporary commitments typically present issues unique to the facts and circumstances of each individual without general applicability,” “there is no support for the dissent’s position that the great public interest exception to the mootness doctrine is intended to apply to an entire class of cases,” and “[r]ather, each appellant arguing this exception to the mootness doctrine must show that the facts and circumstances of her appeal involve an issue of great public importance likely to recur.” *Id.* at 1020. We dismissed E.F.’s appeal as moot. *Id.* A dissenting opinion in *E.F.* stated “we have never required the appellant to give a specific reason, other than that it is a temporary involuntary-commitment case, to show it is a matter of great public interest” and that *T.W.* did not alter this doctrine. *Id.* at 1020-1021 (J. Vaidik, dissenting). A petition for transfer has been filed with the Indiana Supreme Court.



applicability. We cannot say the appeal involves a question of great public importance which is likely to recur. We conclude, in light of *T.W.*, that J.H.'s appeal is moot.

[12] Even if J.H.'s appeal were not moot, we conclude that reversal would not be warranted. In Indiana, an individual who is alleged to be mentally ill and either dangerous or gravely disabled may be committed to a facility for not more than ninety days under Ind. Code §§ 12-26-6. The petitioner is required to prove by clear and convincing evidence that the individual is mentally ill and either dangerous or gravely disabled and detention or commitment of that individual is appropriate. Ind. Code § 12-26-2-5(e). The clear and convincing evidence standard is an intermediate standard of proof greater than a preponderance of the evidence and less than proof beyond a reasonable doubt. *See T.D. v. Eskenazi Health Midtown Cmty. Mental Health Ctr.*, 40 N.E.3d 507, 510 (Ind. Ct. App. 2015). In order to be clear and convincing, the existence of a fact must be highly probable. *Id.* In reviewing the sufficiency of the evidence supporting a determination requiring clear and convincing evidence, we will consider only the evidence favorable to the judgment and all reasonable inferences drawn therefrom, and we will not reweigh the evidence or judge the credibility of witnesses. *Id.*

[13] J.H. "acknowledges he has been diagnosed with schizophrenia and does not contest the diagnosis of mental illness in this appeal." Appellant's Brief at 13. Rather, he challenges the finding that he is gravely disabled. Ind. Code § 12-7-2-96 provides:

“Gravely disabled”, for purposes of IC 12-26, means a condition in which an individual, as a result of mental illness, is in danger of coming to harm because the individual:

(1) is unable to provide for that individual’s food, clothing, shelter, or other essential human needs; or

(2) has a substantial impairment or an obvious deterioration of that individual’s judgment, reasoning, or behavior that results in the individual’s inability to function independently.

[14] The record reveals that Dr. Smith testified that he had diagnosed J.H. with schizophrenia, J.H. “has recurrently had auditory hallucinations,” including during the instant hospitalization, where he seemed to be responding to internal stimuli, and that J.H. “has had delusional thought [] that’s mostly been grandiose.” Transcript Volume II at 12. He also provided examples of J.H.’s behaviors. Dr. Smith further testified as to the medication he believed would likely improve J.H.’s symptoms if taken consistently, that J.H. had taken the medication ten of the twenty-nine times it was offered and refused the medication the previous five times it was offered to him, and he noticed some improvement when J.H. was more compliant with the medication. He also indicated that J.H. was not showing any signs of insight into his condition and need for medication and that he believed that J.H. was in need of treatment at the facility. The court also heard testimony from J.H.’s father regarding his observations and concerns for J.H. and J.H.’s testimony regarding his illness and ability to meet his needs and function independently. Based upon the testimony as set forth above and in the record, we conclude that clear and

convincing evidence supports the trial court's determination that J.H. was gravely disabled for purposes of his temporary commitment.

[15] For the foregoing reasons, we find this appeal is moot, but were it not, we would affirm the trial court's December 1, 2021 Order of Temporary Commitment.

[16] Dismissed as moot.

Mathias, J., concurs.

Molter, J., concurs in result without opinion.