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IN THE COURT OF APPEALS OF INDIANA

In the Matter of the Civil Commitment of E.F.,

Appellant-Respondent,

v.

St. Vincent Hospital and Health Care Center, Inc. d/b/a St. Vincent Stress Center,

Appellee-Petitioner.

November 30, 2021

Court of Appeals Case No. 21A-MH-1332

Appeal from the Marion Superior Court, Probate Division

The Honorable Steven R. Eichholtz, Judge

The Honorable Melanie L. Kendrick, Magistrate

Trial Court Cause No. 49D08-2106-MH-18950

Najam, Judge.

Statement of the Case

[1] E.F. appeals the trial court's order granting St. Vincent Hospital and Health Care Center, Inc. d/b/a St. Vincent Stress Center's ("St. Vincent") petition for involuntary commitment. E.F. presents two issues for our review. However, we do not reach the merits of E.F.'s appeal because it is moot.

[2] We dismiss.

Facts and Procedural History

[3] On June 4, 2021, St. Vincent filed with the trial court an Application for Emergency Detention of Mentally Ill and Dangerous or Gravely Disabled Person alleging that E.F. was suffering from a psychiatric disorder that prevented her from being able to take care of herself. St. Vincent also filed a Petition for Involuntary Commitment, signed by a physician, stating that E.F. was manic and unable to control her diabetes, which resulted in gangrene and a toe amputation. The physician stated that E.F. was "paranoid" and was "calling police," and she was "spending large sums of money." Appellant's App. Vol. 2 at 17. Finally, the physician stated that E.F.'s family "does not feel they can keep her safe." *Id.*

[4] Following a hearing on June 9, the trial court found that E.F. was suffering from a psychiatric disorder and that she was gravely disabled. The court concluded that E.F. was in need of custody, care, and treatment at St. Vincent "for a period of time not to exceed ninety (90) days" *Id.* at 11. The court

ordered that St. Vincent discharge E.F., at the latest, on September 7, 2021. This appeal ensued.

Discussion and Decision

[5] E.F. contends that the trial court erred when it found that she was gravely disabled and that her temporary commitment to St. Vincent was appropriate. E.F. acknowledges that, because the term of her temporary commitment has expired, this court cannot provide effective relief on appeal except to address "'questions of great public interest that are likely to recur.'" Appellant's Br. at 5 n.1 (quoting *M.Z. v. Clarian Health Partners*, 829 N.E.2d 634, 637 (Ind. Ct. App. 2005), *trans. denied*). But, in her brief, E.F. does not identify any questions of great public interest likely to recur.

[6] In the past, this court would "routinely consider the merits of appeals brought by persons alleging insufficient evidence to support [temporary] involuntary commitments." *C.J. v. State*, 74 N.E.3d 572, 575 (Ind. Ct. App. 2017). As the dissent points out, in *In re Commitment of J.B.*, our court held that *every* involuntary commitment case involves "issues of great public importance [that] are likely to recur[.]" 766 N.E.2d 795, 799 (Ind. Ct. App. 2002). However, our Supreme Court did not address this question until 2019, when it 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. *T.W. v. State*, 121 N.E.3d 1039, 1042 (Ind. 2019). E.F.'s appeal does not present such a rare circumstance.

[7] In *T.W.*, our Supreme Court addressed consolidated appeals of two temporary commitment orders. *Id.* at 1041. The Court stated that, because the terms of the commitment orders had expired, the appeals were moot. *Id.* at 1042. "Despite the appeals' mootness," the Court went on to "address an issue of great public importance likely to recur," namely, whether, on the record of those appeals, a commissioner lacked the authority to enter the commitment orders. *Id.* The temporary commitment orders indicated that the judge had adopted the findings and recommendations of its commissioner but the orders, "on their face, purport[ed] to be those of a 'Judge'" and *not* a commissioner. *Id.* at 1043. Absent direction from our Supreme Court on that question, the trial court would have likely repeated that practice.

[8] Our Supreme Court's analysis in *T.W.* is consistent with its own precedent. As the Court has made clear, "[t]ypically, the doctrine of mootness leads courts to decline to address the merits . . . ." *Horseman v. Keller*, 841 N.E.2d 164, 170 (Ind. 2006) (citing *Ind. Bureau of Motor Vehicles v. Zimmerman*, 476 N.E.2d 114, 118 (Ind. 1985)). And while there is an exception to that rule for appeals that present an issue of great public importance, the exception does not apply where there are no "out-of-the-ordinary . . . issues in need of resolution." *In re Courthouse Sec. in Tippecanoe Cnty.*, 765 N.E.2d 1254, 1257 (Ind. 2002) (per curiam). Nothing about the sufficiency of the evidence supporting any given temporary commitment is an out-of-the-ordinary issue in need of resolution under the great public importance exception.

[9] The dissent reads *T.W.* to endorse by omission our court's historical practice of treating every temporary commitment appeal as inherently involving issues of great public importance. And the dissent finds issues of great public importance in every temporary commitment appeal because, as we held in *J.B.*, such cases concern an individual's value and dignity as well as the proof necessary to commit a person against his or her will. But while these appeals are undoubtedly important to each appellant, to paint the "great public importance" exception with this broad of a brush would eviscerate the exception and require us to address every one of these cases on their merits although they are moot. That approach is contrary to the Court's holding in *T.W.* that appeals of temporary commitments *are moot unless* they involve an issue of great public importance likely to recur. *Id.* at 1042. And the Court in *T.W.* addressed only the one issue of great public importance presented in those consolidated appeals and did not address the other issues raised by the appellants, namely, the sufficiency of the evidence to support their commitments. *Id.* at 1041.

[10] As in this case, appeals from temporary commitments typically present issues unique to the facts and circumstances of each individual without general applicability. And 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. Rather, 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. *See id.* at 1042.

[11] Here, E.F. does not identify any questions of great public importance in her brief on appeal, and we do not discern any. Indeed, E.F. ignores *T.W.* altogether and only mentions the mootness doctrine in a footnote. "A court which must . . . make up its own arguments because a party has not adequately presented them runs the risk of becoming an advocate rather than an adjudicator." *Young v. Butts*, 685 N.E.2d 147, 151 (Ind. Ct. App. 1997) (citing *Keller v. State*, 549 N.E.2d 372, 373 (Ind. 1990)). A brief should not only present the issues to be decided on appeal, but it should be of material assistance to the court in deciding those issues. *Id.* Because E.F. does not argue that this appeal should be decided under an exception to the mootness doctrine, we cannot consider whether any such exception might apply here.

[12] The trial court's order for the temporary involuntary commitment terminated after the ninety-day commitment period, or September 7, 2021, at the latest. Accordingly, under our Supreme Court's opinion in *T.W.*, we are unable to provide relief to E.F. And E.F. does not argue that any exception to the mootness doctrine applies. Therefore, pursuant to *T.W.*, we dismiss this appeal as moot.

[13] Dismissed.

Weissmann, J., concurs.

Vaidik, J., dissents with separate opinion.

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Vaidik, Judge, dissenting.

[14] For almost twenty years, we have reviewed temporary involuntary-commitment cases notwithstanding their mootness under the public-interest exception. But 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. I disagree with the majority that *T.W.* altered this well-established doctrine. Therefore, I respectfully dissent.

[15] Usually, when a court cannot render effective relief to a party, the case is deemed moot and dismissed. *In re J.B.*, 766 N.E.2d 795, 798 (Ind. Ct. App.

2002). However, Indiana courts have long recognized that a case may be decided on its merits under an exception to the general rule when the case involves a question of great public interest. *In re Lawrance*, 579 N.E.2d 32, 37 (Ind. 1991). In *J.B.*, this Court noted that "[t]he question of how persons subject to involuntary commitment are treated by our trial courts is one of great importance to society." 766 N.E.2d at 798. Since *J.B.*, we have consistently addressed the merits of temporary involuntary-commitment cases without any specific showing of great public interest.

[16] This is for good reason. Temporary involuntary-commitment cases have a significant impact on the patient, yet without our general application of the public-interest exception these cases would entirely evade review.[1] As such, we have reviewed these cases under the public-interest exception because they involve "the value and dignity of the individual facing commitment" and "the question of the proof necessary for involuntary commitment." *In re J.M.*, 62 N.E.3d 1208, 1210 (Ind. Ct. App. 2016) (quotation omitted); *see also B.M. v. Ind. Univ. Health*, 24 N.E.3d 969, 971 n.1 (Ind. Ct. App. 2015). We have similarly applied this exception, without a specific showing of public interest, in other types of cases. *See R.A. v. State*, 770 N.E.2d 376, 379 (Ind. Ct. App. 2002)

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[1] No doubt an order of involuntary commitment carries a stigma and could result in harmful consequences for the patient in the future. Arguably, this makes these cases not moot at all, as we could then render effective relief by vacating that order. *See* Jonathan B. Warner, Collateral Consequences and the Right to Appeal: Reconsidering Whether Temporary Commitment Appeals are Moot in Indiana, 15 Ind. Health L. Rev. 295, 300 (2018) (noting that appellate courts could reverse a commitment order and have it removed from patient's medical record, which is meaningful relief). Nonetheless, that is not what this Court has found in the past, nor does either party suggest as such.

(noting we address cases involving juvenile detention, even where the juvenile has been released, because "the propriety of juvenile detention and the commitment of Indiana youth to the [Department of Correction] involve matters of great public importance").

[17] The majority acknowledges our prior application of the public-interest exception to these cases but states that our Supreme Court in *T.W.* altered this standard to require that the challenging party explicitly show their specific case involves a great public interest.[2] But our case law makes clear such argument is not required, and at no point in *T.W.* does the Court purport to overrule this prior precedent or to establish a new analysis regarding what constitutes a great public interest. The Court does not even mention the long line of cases finding temporary involuntary-commitment cases are of great public interest. Instead, the Court in *T.W.* addresses a completely different issue: whether a commissioner (as opposed to a judge) lacks the authority to enter a commitment order. *T.W.* involved a more specific issue of great public interest, and the Court addressed only that issue. That does not mean that *J.B.* and its progeny have been overruled. Given the well-established standard for analyzing these cases despite their mootness, I cannot agree with the majority that the Supreme Court altered this standard—without explicitly stating the new

[2] The majority states E.F. failed to show her case involves a public-interest exception to the mootness doctrine and thus her appeal should be dismissed. I note that St. Vincent similarly ignored the mootness doctrine in its brief and instead addressed E.F.'s arguments on the merits. We should do the same.

standard or acknowledging the prior case law—in a case addressing a separate dispositive issue.

[18] In any event, a split has clearly emerged in this Court regarding *T.W.* The majority here adopts a new standard based on its interpretation of *T.W.*, and several unpublished cases in the last few years have done the same. Other cases, both published and unpublished, have continued to apply the standard established in *J.B. See A.S. v. Ind. Univ. Health Bloomington Hosp.*, 148 N.E.3d 1135, 1137 n.1 (Ind. Ct. App. 2020). This has led to some parties having their claims heard on the merits and others being dismissed without review, dependent entirely on which panel they are assigned. Clarification from the Supreme Court as to the correct standard for these cases would alleviate these inequitable results.

[19] Here I would find that although E.F.'s case is moot because her temporary involuntary-commitment term has expired, her case involves an issue of great public interest and the merits should be addressed.