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In the Supreme Court of the State of Alaska

In the Matter of the Necessity for the Hospitalization of:	Supreme Court No. **S-15859**
N. B.	**Order** Supplemental Briefing
Trial Court Case # **3AN-15-00204PR**	
In the Matter of the Necessity of the Hospitalization of:	Supreme Court No. **S-16467**
L.M.	
Trial Court Case # **3AN-16-01656PR**	Date of Order: **July 26, 2017**

Before: Stowers, Chief Justice, Winfree, Maassen, Bolger, and Carney, Justices.

In *In the Matter of the Necessity for Hospitalization of N.B.*, Supreme Court Case Number S-15859, N.B. appeals from a superior court order that required N.B. to be involuntarily hospitalized for 30 days because it found that N.B. was mentally ill and gravely disabled. The court also granted the State's petition to require N.B. to be involuntarily medicated with psychotropic medications. In *In the Matter of the Necessity of the Hospitalization of L.M.*, Supreme Court Case Number S-16467, L.M. appeals from a superior court order that involuntarily committed L.M. to the Alaska Psychiatric Institute for 90 days after a jury found her to be a danger to others and the court determined that there were no less restrictive alternatives to hospitalization.

In both appeals the State argues that these appeals are moot, relying on *Wetherhorn v. Alaska Psychiatric Institute*[1] and *In re Mark V.*[2]

In *Wetherhorn*, our seminal case addressing mootness in the context of involuntary commitment proceedings, we explained that "[a] claim is moot if it is no longer a present, live controversy, and the party bringing the action would not be entitled to relief, even if it prevails."[3] We also observed that we will "consider a question otherwise moot if it falls within the public interest exception to the mootness doctrine."[4] We listed the three factors that should be analyzed in determining whether the public interest exception applies: (1) whether the disputed issues are capable of repetition, (2) whether the mootness doctrine, if applied, may cause review of the issue to be repeatedly circumvented, and (3) whether the issues presented are very important to the public interest.[5] We held that Wetherhorn's evidentiary challenges to the 30-day commitment order were moot because the 30-day period of commitment had "long since passed."[6] We also held that the public interest exception did not apply because in

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1 156 P.3d 371 (Alaska 2007).

2 324 P.3d 840 (Alaska 2014).

3 *Wetherhorn*, 156 P.3d at 380.

4 *Id.*

5 *Id.* at 380 - 81.

6 *Id.* at 380.

Wetherhorn's case she was committed "based on a set of specific facts that amounted to a finding that she was gravely disabled" and that "[i]f it were to become necessary to seek Wetherhorn's commitment again, the hearing would be based on a different set of facts specific to different circumstances."[7] We concluded that it was "unclear how two different hearings based on different facts and circumstances could be compared, and thus the factual questions are not capable of repetition."[8]

In *In re Joan K*, another involuntary commitment appeal, we adopted the collateral consequences exception to the mootness doctrine.[9] We held that, inasmuch as this commitment was Joan K's first commitment, the general collateral consequences flowing from an involuntary commitment — for example, social stigma, adverse employment restrictions, application in future legal proceedings — were sufficient to satisfy this exception to mootness.[10] We subsequently applied the collateral consequences exception to a technically moot involuntary commitment appeal in *In re Jeffrey E.*[11]

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[7] *Id.* at 381.

[8] *Id.*

[9] 273 P.3d 594 (Alaska 2012).

[10] *Id.* at 598.

[11] 281 P.3d 84 (Alaska 2012).

In *In re Mark V.*, we concluded that the collateral consequences exception did not apply to a technically moot involuntary commitment appeal.[12] We did so because Mark V.'s factual circumstances were materially different than those presented in *Joan K.* and *Jeffrey E.*: Mark V. had five previous involuntary commitment orders, including four earlier in the same year as the order appealed from, and he failed to demonstrate that the most recent order had caused any cognizable additional collateral harm.[13] At oral argument Mark V. urged this court to reach the merits of his appeal because Alaska Statute 47.30.765 gives respondents in involuntary commitment proceedings a right to appeal.[14] We declined to do so, explaining that "[w]e do not read AS 47.30.765 as requiring appellate review of a moot civil proceeding dispute."[15]

We note that in some of these appeals this court has been divided, and several justices have dissented arguing that the court should decide the merits of all

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[12] 324 P.3d 840 (Alaska 2014).

[13] *Id.* at 842, 844-45.

[14] *Id.* at 847.

[15] *Id.* at 848.

involuntary commitment appeals given, among other things, the massive curtailment of liberty attendant to involuntary commitment.[16]

In both *N.B.* and *L.M.*, the respondent appellants argue that their appeals are not moot, or if they are, exceptions to the mootness doctrine apply. The State responds that both cases are moot or that no exceptions to mootness apply. N.B. argues that as a matter of statute and due process she has a right to have this court review her involuntary commitment on the merits. She also asserts that if her appeal is moot, public interest and collateral consequences exceptions apply. L.M. also argues that her appeal should be decided on the merits and that exceptions to mootness apply.

Notably, L.M. also asks this court to revisit and overrule our mootness holding in our seminal *Wetherhorn* decision as interpreted in *Joan K.* The State has not had an opportunity to respond to this argument, and the parties in *N.B.* did not address this argument at all.

In light of this brief (and incomplete) historical and procedural background, the parties in *N.B.* and *L.M.* are ordered to file supplemental briefs addressing the following questions:

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[16] *See In re Joan K.*, 273 P.3d at 602 (Stowers, Justice, dissenting); *In re Mark V.*, 324 P.3d at 848 (Stowers, Justice, with whom Maassen, Justice, joined, dissenting).

1. Applying the standards employed by this court for overturning precedent, was *Wetherhorn*'s mootness holding originally erroneous or is it no longer sound because of changed conditions, and, if so, will more harm than good result from overruling this holding? As part of this analysis, the parties are requested to address the time and effort spent litigating on appeal the application of the mootness doctrine and its various exceptions. *See also In re Reid K.*, 357 P.3d 776, 782-83 (Alaska 2015) (directing that in future appeals from involuntary commitments, the State should move to dismiss the appeal if it believes the appeal is moot and no exceptions to mootness apply).

2. Does this court's mootness jurisprudence in involuntary commitment cases deprive the trial courts of significant precedent and guidance in their decision-making?

3. Does the public interest exception, as formulated and applied in *Wetherhorn* and subsequent involuntary commitment and involuntary medication cases, meaningfully protect a respondent's right to appellate review of involuntary commitment and involuntary medication orders?

4. Does the collateral consequences exception, as formulated and applied in *Joan K.* and subsequent involuntary commitment and involuntary medication cases, meaningfully protect a respondent's right to appellate review of involuntary commitment and involuntary medication orders?

The parties shall file simultaneous memorandum opening briefs and reply briefs (originals and six copies). The parties' simultaneous opening supplemental briefs are due on or before **8/25/17** and shall be limited to 20 pages. The parties' simultaneous reply briefs are due on or before **9/14/17** and shall be limited to 20 pages.

The parties may request oral argument in accordance with Appellate Rule 213.

Entered by direction of the court.

Clerk of the Appellate Courts

Marilyn May

cc: Supreme Court Justices

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