Circuit Court for Allegany County
Case No.: C-01-CV-24-000059

UNREPORTED

IN THE APPELLATE COURT

OF MARYLAND*

No. 271

September Term, 2024

IN THE MATTER OF ANDREW TAYLOR

Nazarian,
Reed,
Harrell, Glenn T., Jr.
(Senior Judge, Specially Assigned)
JJ.

PER CURIAM

Filed: November 13, 2024

* This is a per curiam opinion. Consistent with Rule 1-104, the opinion is not precedent within the rule of stare decisis nor may it be cited as persuasive authority.

Appellant, Andrew Taylor, is a patient of the Thomas B. Finan Center, an in-patient psychiatric facility operated by appellee, the Maryland Department of Health ("MDH"). In May of 2022, Mr. Taylor was ordered committed to MDH by the District Court for Montgomery County after being found incompetent to stand trial in two separate cases charging him with second-degree assault. In September of 2023, Mr. Taylor refused to take two antipsychotic medications, Risperdal and Olanzapine, prescribed by his doctor, Dr. Ihuoma Nicole Okezie. In February of 2024, a Clinical Review Panel ("CRP") met and approved administration of the medications despite Mr. Taylor's refusal, pursuant to Md. Code Ann., Health-General ("Health-Gen.") § 10-708(b)(2). Mr. Taylor appealed, and on February 9, 2024, an administrative law judge ("ALJ") affirmed the CRP's decision, beginning a 90-day approval period for administration of the medications.

On February 20, 2024, Mr. Taylor filed a petition for judicial review in the Circuit Court for Allegany County. On March 6, 2024, the court affirmed the ALJ's decision. Mr. Taylor thereafter noted the instant appeal, where he challenges the legality of his ordered commitment and, consequently, the authority to forcibly medicate him. In response, MDH moves to dismiss the appeal, asserting that the 90-day approval period expired on May 9, 2024, and accordingly, that the appeal is moot. Alternatively, MDH asserts that the ALJ's decision was supported by substantial evidence, and thus, that the judgment should be affirmed. Mr. Taylor concedes that the CRP's authorization "is moot[,]" but maintains that "the drugs are harmful and malicious and are contrary to personal physician's care[.]"

DISCUSSION

A. Relevant Statutory Scheme

The procedures for medicating an individual who is committed to a mental health facility and refusing medication are set forth in Health-Gen. § 10-708. First, a CRP, "which is composed of health professionals not directly responsible for the individual's treatment, must decide whether to approve the forcible administration of medication." *Mercer v. Thomas B. Finan Ctr.*, 476 Md. 652, 657-58 (2021); *see also* Health-Gen. § 10-708(c)(2) and (g). The CRP may approve the administration of medication if it determines that certain conditions are met, including, that without the medication, the patient is at risk of continued hospitalization and "[r]emaining seriously mentally ill with no significant relief of the mental illness symptoms that: 1. [c]ause the individual to be a danger to the individual or others while in the hospital[.]" Health-Gen. § 10-708(g)(3).

If the CRP approves administration of medicine, such treatment "may not be approved for longer than 90 days." Health-Gen. § 10-708(n)(1). The individual refusing medication may appeal the CRP's decision by requesting an administrative hearing pursuant to Health-Gen § 10-708(l)(1). Following a request for an administrative hearing, "[t]he administrative law judge shall conduct a de novo hearing to determine if the standards and procedures in this section are met." Health-Gen. § 10-708(l)(6). At the administrative hearing, the medical facility must prove "by a preponderance of the evidence, that the standards and procedures of this section have been met." Health-Gen. § 10-708(l)(7)(ii). Finally, if an appeal is noted, the CRP's decision is stayed "until the issuance of the administrative decision." Health-Gen. § 10-708(l)(3).

B. Mootness

As an initial matter, we note that "in order for a case to be heard and an appellate court to provide a remedy, there must be an existing controversy." *Off. of Pub. Def. v. State*, 413 Md. 411, 422 (2010). Indeed, "[a] case is moot when there is no longer an existing controversy when the case comes before the Court or when there is no longer an effective remedy the Court could grant." *Suter v. Stuckey*, 402 Md. 211, 219 (2007). Subject to limited exceptions, if a controversy no longer exists when the case comes before us, we "usually dismiss the appeal without addressing the merits of the issue." *Powell v. Maryland Dep't of Health*, 455 Md. 520, 540 (2017); *see also* Md. Rule 8-602(c)(8).

However, "on rare occasions, we reach issues that are otherwise moot." *Beeman v. Dep't of Health & Mental Hygiene*, 105 Md. App. 147, 158 (1995). Indeed, "[o]ne exception to the mootness doctrine is where a controversy that becomes non-existent at the moment of judicial review is capable of repetition but evading review." *Sanchez v. Potomac Abatement, Inc.*, 198 Md. App. 436, 443 (2011), *aff'd*, 424 Md. 701 (2012). In other words, "where a case, while technically moot, presents a recurring matter of public concern which, unless decided, will continue to evade review, we nonetheless have considered the case on its merits." *Off. of Pub. Def.*, 413 Md. at 423.

Here, on February 9, 2024, the ALJ affirmed the CRP's authorization to administer the medication, which lifted the stay and began the 90-day approval period. Accordingly, we agree that the CRP's authorization, which Mr. Taylor appeals, expired on May 9, 2024, and is now moot. *See Allmond v. Dep't of Health & Mental Hygiene*, 448 Md. 592, 607 n.10 (2016). Nonetheless, because orders to administer refused medications expire in 90

days, challenges thereto are among the issues that "may frequently recur, and which, because of inherent time constraints, may not be able to be afforded complete appellate review." *Att'y Gen. v. Anne Arundel Cnty. Sch. Bus Contractors Ass'n, Inc.*, 286 Md. 324, 328 (1979). Stated differently, "even an expedited appeal is not sufficiently swift to assure review of an order authorizing forced administration of antipsychotic medications[.]" *Beeman*, 105 Md. App. at 159. Accordingly, notwithstanding the mootness of the matter before us, we turn to the merits of Mr. Taylor's appeal.

C. Analysis

The record before us indicates that the court's decision to affirm the ALJ's determination was supported by a preponderance of the evidence. Mr. Taylor's treating physician, Dr. Okezie,[1] testified that although Mr. Taylor previously had success with antipsychotic medications, that he began refusing the medications and thereafter became increasingly delusional, irritable, and aggressive. Dr. Okezie noted several instances where Mr. Taylor acted verbally aggressive towards others following his refusal of the medications, including insulting staff, threatening to punch staff, asking a staff member "what size tire do you wear[,]"[2] and stating that he wanted to put one staff member "on a plane and drop him over Africa[.]" Further, uncontested testimony indicated that Mr.

[1] At the hearing before the ALJ, Dr. Okezie was noted as an expert in general medicine, adult psychiatry, and the treatment of patients in an inpatient setting.

[2] As explained by Dr. Okezie, Mr. Taylor had "mentioned before a practice called necklacing where someone puts a tire covered in gasoline over someone's neck and sets it on fire."

Taylor dared a peer to punch a staff member in the face and on at least one occasion, prevented staff from exiting his room by blocking her exit.

Additionally, other than testifying generally that the threats were "misquoted," Mr. Taylor did not dispute that he had exhibited increased delusional, irritable, or aggressive behavior following his refusal of the medications. Nor did he dispute that the relevant standards and procedures set forth in Health-Gen. § 10-708 had been met. Accordingly, the ALJ found that the relevant standards and procedures had been met, and that several facts weighed in favor of affirming the CRP's authorization, including the "pending charge[s] of assault[,]" the fact that Mr. Taylor's "symptoms are not currently controlled[,]" and the evidence of "dangerousness to others, particularly threatening to punch staff, advising others to punch staff, [referencing] dropping a person out of a plane, and blocking the exit of staff from a room." We agree that these facts support the determination that Mr. Taylor was at risk of remaining hospitalized with mental illness symptoms causing him to be a danger to himself or others pursuant to Health-Gen. § 10-708(g)(3).

Finally, Mr. Taylor's challenges to his court-ordered commitment to MDH, made by the District Court for Montgomery County in 2022, are not properly before us in this appeal. *See* Md. Rule 8-202(a).

JUDGMENT OF THE CIRCUIT COURT FOR ALLEGANY COUNTY AFFIRMED. COSTS TO BE PAID BY APPELLANT.