

ROCK COUNTY, WISCONSIN



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CLERK OF WISCONSIN
SUPREME COURT

January 31, 2022

Sheila Reiff, Clerk of the Supreme Court
110 E. Main St., Ste. 215
PO Box 1688
Madison, WI 53701-1688

RE: *Rock County v. P.P.*
District IV, Appeal No. 2021AP678; Rock County Case No. 2020 ME 63

To Whom It May Concern:

Rock County submits this response to P.P.'s petition for review, pursuant to Wis. Stat. §809.62(3). Should the Court prefer an expanded brief response on any of the positions taken, Rock County would respectfully request notice and time to provide such.

P.P. requests review of this matter to have the Court extend the analysis articulated in *Marathon County v. D.K.*, 2020 WI 8, 390 Wis. 2d 50, 937 N.W.2d 901 from commitment orders to Orders for Involuntary Medication or Treatment under Wis. Stat. §51.61(1)(g) ("medication order"). P.P. further requests the Court go beyond the *D.K.* analysis to set a new rule: that challenges to medication orders are never moot. P.P. states a decision by the Court in this matter will clarify and harmonize the law for circuit courts. Rock County contends this is a fact specific issue which does not set forth a proper issue for review; the Court of Appeals properly decided this case because the issue raised may be resolved with the application of established law.

In recent years, the Wisconsin Supreme Court has heard many cases involving Wis. Stat. Chapter 51. See e.g. *D.K. supra*, *Langlade County v. D.J.W.*, 2020 WI 41, 391 Wis. 2d 231, 942 N.W.2d 277. Though most recent cases focus on commitment orders, the Court has previously analyzed the standards and procedures for medication orders at length in *In the matter of the mental commitment of Melanie L.* 2013 WI 67, 349 Wis. 2d 148, 833 N.W.2d 607. In the myriad recent commitment appeals, medication orders are frequently reviewed in conjunction with a commitment order because a medication order cannot exist without a commitment order.

P.P. argues medication orders should never be moot, urging the Court to not only extend the analysis in *D.K.* to include medication orders but also to expand that analysis to create a new rigid rule. P.P. argues that the Court of Appeals erred in finding P.P.'s appeal moot as there are collateral consequences of a medication order which should render challenges to medication orders never moot. P.P. wishes to extend the reasoning of *Sibron v. New York*, 392 U.S. 40, (1968), mentioned in *D.K.* at ¶23, from the discrete legal consequences of a criminal conviction to any general or social consequences an individual may suffer from a medication order. P.P. also discusses the consequences of a commitment order but, as the commitment order is not appealed, those arguments should be disregarded. The Court of Appeals appropriately reasoned that a challenged conviction which forms a causal relationship to legal consequences of that conviction,

as discussed in *State v. Theoharopoulos*, 72 Wis. 2d 327, 240 N.W.2d 635 (1976), is a different scenario than the general social consequences described by P.P. in his challenge to this medication order. The Court in *D.K.* did not go so far as to deem no extension is ever moot, rather the Court in *D.K.* left the issue open for review on a case-by-case basis. This is the appropriate analysis. Even criminal convictions, as discussed in *Sibron* and *Theoharopoulos*, allow challenges to be moot if there is no causal relation between collateral consequences and the challenged conviction.

While *D.K.* left open the question of stigma as a collateral consequence, it did so referring to a commitment order, not a medication order. The distinction is also appropriate – a commitment order may stand-alone; a medication order cannot. Additionally, a commitment order may have legal collateral consequences, much like a criminal conviction, in a potentially life long firearms ban; discrete legal collateral consequences do not exist for the medication order alone. Any potential social or general collateral consequence of a medication order is tied to the collateral consequence of a commitment order. The only collateral consequences raised by P.P. are comingled with the arguments of the social consequences of a commitment order juxtaposed to the challenged medication order – primarily stigma. The commitment order in this matter is not challenged, and yet P.P. is unable to disentangle the consequences of medication order from the commitment order.

P.P.'s issue is in truth extremely narrow. P.P. has a fact specific inquiry which has been reviewed by the Court of Appeals and appropriately determined to be moot because P.P. stipulated to a new medication order as the original order was set to expire. Furthermore, even assuming the best facts for P.P., the Court of Appeals determined there was no consequence which would be affected by action of the court in overturning the original medication order because any consequence of the original medication order is duplicated in the order which was entered, by agreement of the parties, and which is not challenged. At its heart, P.P.'s question is a fact based review. P.P. attempts to create a larger issue by stating a decision in this matter would provide clarity in the law and provide guidance to circuit courts about medication orders, however, this analysis has already been provided in *Melanie L.*

While medication orders undoubtedly effect individuals while under a commitment order, the specific nature of this case makes the question raised moot and no exceptions to mootness apply. The Court of Appeals appropriately analyzed P.P.'s claims and determined a resolution of the merits of this matter would have no effect on any party, and that P.P. did not lay out any exception for review. P.P.'s stipulation to a new medication order as the challenged order was set to expire eviscerates any consequences P.P. could claim coming from the challenged order. As such, Rock County requests this petition be denied.

Respectfully,

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cc: Elizabeth Rich