STATE OF WISCONSIN

IN SUPREME COURT

Case Number: 2023AP1263

In the matter of the Mental Commitment of C.J.H.:

WINNEBAGO COUNTY,

Petitioner-Respondent,

v.

C.J.H.,

Respondent-Appellant-Petitioner

On Appeal from Orders for Extension of Commitment and Involuntary Medication and Treatment Entered in Winnebago County Circuit Court, The Honorable Bryan D. Keberlein, Presiding

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COUNTY'S RESPONSE IN OPPOSITION TO THE PETITION FOR REVIEW

Hannah E. Kottke,
Assistant Corporation Counsel
State Bar Number: 1113053
Attorney for Petitioner-Respondent

Winnebago County Office of
Corporation Counsel
112 Otter Avenue
Oshkosh, WI 54901
(920) 236-4751
hkottke@winnebagocountywi.gov

INTRODUCTION

This Court should deny Carly's petition for review because this Court's primary function is to clarify or interpret the law. This Court does not accept petitions for review to review facts, review issues forfeited at the trial level, or review discretionary acts of the trial court. "Supreme court review is a matter of judicial discretion, not of right, and will be granted only when special and important reasons are presented." Wis. Stat. § 809.62(1r). No such reasons have been presented by Carly. Nor have the statutory criteria been met. Carly's petition should be denied for the following reasons.

REASONS THE PETITION SHOULD BE DENIED

Carly's petition should be denied because it doesn't apply the statutory criteria in Wis. Stat. § 809.62(1r). First, the petition fails to present any significant question of state or federal constitutional law. Second, the legal issues raised are well-settled in the case law and no conflict in the law exists. Third, the petition doesn't apply the facts of this specific case to the standard of review. Finally, this appeal is moot and the petition fails to explain how it is not moot.

I. The petition fails to present any significant question of state or federal constitutional law.

Carly raised two issues for the court of appeals to consider: 1) the court's discretionary evidentiary ruling admitting an examining physician's report over a hearsay objection, and 2) reviewing the sufficiency of the evidence

to support a finding of dangerousness and incompetency to refuse psychotropic medication.

The court of appeals determined that the trial court didn't erroneously exercise its discretion when it admitted the examining physician's report because it supported the doctor's opinion pursuant to Wis. Stat. § 907.03 and contained admissible non-hearsay statements. *Walworth County v. Therese B.*, 2003 WI App 223 ¶8, 267 Wis. 2d 310, 671 N.W.2d 377.

The court of appeals also determined that the trial court didn't err when it found there was sufficient evidence to support dangerousness, even without statements from Dr. Bales's report, and that there was sufficient evidence to support the medication order. The testimony, by itself, supported the basis for the commitment and medication. The court of appeals analyzed the evidence and determined that the trial court as a matter of law had not erred. The court of appeals was correct.

Importantly, this Court does not favor accepting issues of sufficiency of the evidence and discretionary trial court rulings for review. Wis. Stat. § 809.62(1r). Here, Carly conflates sufficiency of the evidence and discretionary trial court rulings with constitutional issues to meet her goal of having her case accepted in front of this Court when this Court's review is not a matter of right. Wis. Stat. § 809.62(1r).

Because the discretionary evidentiary ruling and the sufficiency of the evidence issues on appeal didn't rise to the level of constitutional importance, Carly, now, manufactures new constitutional arguments in her petition that she never previously raised. Then, she fails to develop the constitutional arguments in her petition.

Now, Carly argues in her petition that she is entitled to review of her case as a matter of constitutional right because she was ordered to take psychotropic medication, and she doesn't want to take it. She argues that because persons have a general constitutional right to refuse psychotropic medication, she is entitled to review of her medication order without citing any specific constitutional provision.

She argues that "due process" of an unidentified constitution coupled with *Outagamie County v. Melanie L.,* 2013 WI 67, ¶67, 349 Wis. 2d 148, 833 N.W.2d 607, entitle her to relief. She claims that a "particular" medication wasn't explained. Yet, she fails to mention that Dr. Bales specifically named Trazadone and Effexor in his testimony. (R. 62:13). She doesn't explain that Dr. Bales testified that during the explanation of the medication Carly disrobed, interrupted him and was yelling. (R. 60:11). She fails to explain that Dr. Bales testified that Carly "could not engage in a rational or reasonable dialogue about psychotropics, but the dialogue did occur." (R. 60:11-12). She also fails to mention that Dr. Bales's report that was entered into evidence also lists Carly's medications as Geodon,

Trazadone, Benadryl, Venlafaxine, Ativan, and Klonopin. (R. 17:2).

Appellate courts will only consider constitutional issues raised for the first time on appeal if it is in the best interest of justice to do so, if both parties have had an opportunity to brief the issue, and if there are no factual issues that must be resolved. *See, e.g., L.K. v. B.B. (In the Int. of Baby Girl K)*, 113 Wis.2d 429, 448, 335 N.W.2d (1983). *But see State v. Marshall*, 113 Wis. 2d 643, 653-54, 335 N.W.2d 615 (1983).

Here, there are plain factual issues raised in Carly's petition. She leaves out entire recitations of facts including that several particular medications were testified to by Dr. Bales and listed in his report of examination. Carly never previously raised the issue regarding a particular medication but now raises it in a petition for review. This new issue should be barred. See *Id*.

The law requires Carly to apply the criteria justifying any reason the Court should consider this new issue on appeal. See *Id*. However, Carly failed to raise a specific constitutional issue to the court of appeals. The court of appeals never had an opportunity to decide any of these new issues raised by Carly for the first time. The County did not have the opportunity to brief any constitutional issue because Carly never raised any constitutional issue to the court of appeals. This Court is left with no decision from the court of appeals that addresses Carly's new "due process"

arguments because they were never raised previously. The petition should fail for these reasons alone. See *Id.*

Even more concerning than raising these new issues, is that Carly does not develop any constitutional arguments. Her argument contains a general passing reference to an unidentified constitution. She does not argue that specific state or federal constitutional provisions apply to any question or issue in this case. Carly's failure to develop her argument means the argument cannot be considered on appellate review. *State v. Pettit,* 171 Wis. 2d 627, 646-47, 492 N.W.2d 633(Ct. App. 1992).

Every case involves constitutional issues on a general level, but that does not mean that every case is ripe for review. Carly invokes a general reference to a person's constitutional right to refuse medication. She never applies the constitution to her case in any specific way. Her petition contains general constitutional statements that apply to all involuntary medication hearings. She does not frame nor state the issues in a constitutional context. She does not even specify what constitution she relies on. Because no *significant question* or *real* constitutional issue is raised in her petition, it does not meet this Court's criteria pursuant to Wis. Stat. § 809.62(1r)(a) and the argument is barred because it is not developed. *Id*. For these reasons this newly raised issue fails.

As to the issue of examining physicians' reports being entered into evidence, Carly asserts that she is entitled to review of a discretionary hearsay determination by the

trial court and conflates it with a constitutional issue. Again, she cites the "due process rights" of an unidentified constitution as the basis for her request to have the case reviewed. She doesn't identify whether we are talking about the Wisconsin Constitution or the United States Constitution. She doesn't describe how a trial court's highly discretionary evidentiary decision on a hearsay objection is a significant question of state or federal constitutional law. *Pettit,* clearly explains that issues raised on appeal but not sufficiently developed must be deemed waived by appellate courts. *Id*. Because appellate courts are barred from deciding issues that are raised but not developed, Carly's argument regarding entry of the report is waived.

II. The legal issues raised are well-settled in the case law and no conflict in the law exists.

a. Carly's argument that the County is required to present sufficient evidence in support of an involuntary medication order pursuant to Wis. Stat. § 51.61(1)(g)4.a-b and *Melanie L.* is well settled law.

Wisconsin Statutes § 51.61(1)(g)4.a-b states:

> For purposes of a determination under subd. 2. or 3., an individual is not competent to refuse medication or treatment if, because of mental illness, developmental disability, alcoholism or drug dependence, and after the advantages and disadvantages of and alternatives to accepting the *particular* medication or treatment have been explained to the individual, one of the following is true:
>
> **a.** The individual is incapable of expressing an understanding of the advantages and disadvantages of accepting medication or treatment and the alternatives.
>
> **b.** The individual is substantially incapable of applying an understanding of the advantages, disadvantages and alternatives to his or her mental illness, developmental disability, alcoholism or drug dependence in order to

> make an informed choice as to whether to accept or refuse medication or treatment.

(Emphasis added). *Melanie L.* is not unique or distinguished from the statute. 2013WI 67, ¶ 67, 349 Wis. 2d 148, 833 N.W.2d 607. *Melanie L.* applies the statute.

Carly seems to argue that *Melanie L.* requires more than what is in the statute. She is not correct as a matter of law. *Id*. Though Carly asserts that a particular medication must be explained to meet the reasonable explanation requirement in *Melanie L.*, she fails to discuss how this argument is applicable to this case. Carly never applies the statute or *Melanie L.* to the facts of this case.

As discussed above, Dr. Bales did testify to specific names of medications that Carly was prescribed and listed those medications in his report. (R. 62:13; 17:2). Just applying reasonable inferences and searching the record to support the trial court's findings of fact, results in a clear inference that particular medications were explained. See *Becker v. Zoschke*, 76 Wis.2d 336, 347, 251 N.W.2d 431 (1977).

Dr. Bales also clearly testified that he explained the advantages, disadvantages, and alternatives of mood-stabilizing medication and that Carly was incompetent to refuse. (R. 62:10-13). Carly's refusal to address these facts in the record means that her petition must fail.

b. It is well settled law that examining physician's or psychologist's reports should be admitted into evidence in involuntary commitment proceedings. *Marathon County v. D.K. (In re D.K.),* 390 Wis. 2d 50, 80, 937 N.W.2d 901, 916 (2020).

This Court has directed Counties to enter doctor's reports into evidence in commitment proceedings. *Id*. In *D.K.* the Court said:

> We pause once more to speak to the bench and the bar. We do so because finality in commitment proceedings is very important to all concerned. D.K.'s commitment expired in November 2017, and he will not have a final answer to the questions whether his commitment was appropriate until 2020. Had certain things been more detailed. The County could have further developed its medical expert's testimony, **moved the**

> **expert's report into evidence**, and properly provided notice of its witnesses. …

Id (emphasis added).

The court of appeals has on many recent occasions discussed the importance of entering the doctor's report into evidence. In *Washington County v. Z.A.Y., (In re Z.A.Y)*, 2023AP447, unpublished slip op. ¶15 (WI App Sept 13, 2023), this Court stated in footnote 4:

> There are clear, easy steps that could have been taken to bolster the record. **First, the report of the examining physician who testifies should always be moved into evidence**; it provides a further basis for an appellate court to discern facts and inferences in support of the trial court's rulings…

Id (emphasis added). [1]

Again, in *Winnebago County v. L.J.F.G. (In the matter of L.J.F.G)*, 22AP1589 unpublished slip op., ¶16 (WI App April 12, 2023); the court of appeals stated in footnote 3:

> This judge, for one, strongly encourages not only this county but other counties as well to take more care in this regard in the future. It is my observation that a significant number of Wis. Stat. chs. 55 and 51 appeals could be avoided entirely if counties would take just a little more time and care to ask a few additional thoughtful questions **or otherwise present additional evidence -such as reports, for example – that would help to more clearly satisfy statutory standards**. It seems to this judge that the requisite evidence often exists but is simply not presented by the county or not presented in as careful and thoughtful manner as possible…

Id. (emphasis added). [2]

In this case, the County followed the Courts' directives to enter the report into the record. Because this

[1] Pursuant to Wis. Stat. § 809.23(3)(b), this unpublished case is cited, not as precedent, but for its "persuasive value" only.

[2] Pursuant to Wis. Stat. § 809.23(3)(b), this unpublished case is cited, not as precedent, but for its "persuasive value" only.

Court has already directed Counties to enter doctors' reports into evidence, it cannot be error for the trial court to accept reports into evidence when it supports the doctor's opinion pursuant to Wis. Stat. §907.03.

In this case, the court of appeals was correct. The court of appeals determined that it was not an erroneous exercise of discretion to admit Dr. Bales's report. It appropriately applied the highly deferential standard of review that appellate courts are required to apply. See *State v. X.S.* 2022 WI 49, ¶33, 402 Wis. 2d 481, 976 N.W.2d 425.

In this case, the court of appeals applied the standard of review stating, "[t]he question on appeal is not whether [the appellate] court, ruling initially on the admissibility of evidence, would have permitted it to come in but whether the trial court exercised its discretion in accordance with accepted legal standards and in accordance with the facts of record." *Id.*

The court of appeals also quoted, in this case, *Walworth County v. Therese B*., saying: "It is well settled that it is 'proper for a physician to make a diagnosis based in part upon medical evidence of which he has no personal

knowledge but which he gleaned from the reports of others.'". 267 Wis.2d 310, ¶9 (citing *State v. Williams*, 2002 WI 58, ¶ 19, 253 Wis. 2d 99, 644 N.W.2d 919).

In this case, the court of appeals iterated the two purposes of physician's reports in commitment and medication proceedings. *Winnebago County v. C.J.H., (In re C.J.H.),* 2023AP1263, unpublished slip op. at ¶19 (Ct. App. March 6, 2024).[3] The first purpose is to allow a physician to support his expert opinions by providing to the court an outline of his opinions and the basis for the opinions. *Id*. The second purpose is to allow the circuit court to see what type of medication has been prescribed and how a person is responding to it. *Id*. The trial court admitted Dr. Bales' report after finding that he had testified that the report contained his expert opinion. (R.62:17).

It is well settled law and there is no need for further clarification regarding the purpose of entering the report. This Court has made clear that entry of the report aids in appellate review. *D.K.* at ¶80. Wisconsin Statutes §§ 907.02

[3] Pursuant to Wis. Stat. § 809.23(3)(b), this unpublished case is cited, not as precedent, but for its "persuasive value" only.

and 907.03 are clear; an expert doctor can provide an expert opinion that is based upon sufficient facts or data, if it will assist the trier of fact in evaluating the expert's opinion, even if that information would ordinarily be inadmissible. *Therese B.* also clearly outlines the parameters of hearsay in the context of expert opinions. 267 Wis.2d 310, ¶9 (citing *State v. Williams*, 2002 WI 58, ¶ 19, 253 Wis. 2d 99, 644 N.W.2d 919). Carly is wrong. The issue regarding the admissibility of expert reports to support expert opinions is well settled law. For all of these reasons, her petition should be denied.

III. Carly fails to apply the facts of this case to the applicable standards of review.

a. Sufficiency of the evidence as to the involuntary medication order.

Carly does not argue that any factual findings are clearly erroneous as required by the standard of review on appeal. Instead, she limits her challenge to arguing that "due process" and *Melanie L.*, 2013WI 67, ¶ 67, 349 Wis. 2d 148, 833 N.W.2d 607 require that the County meet a higher burden than the legislature enacted in Wis. Stat. § 51.61(1)(g)(4)(a) &(b). This issue of elevating the burden of proof was never raised in her brief to the court of appeals and this matter was never raised at the trial court level.

As a matter of law, the trial court and the court of appeals got it right. The testimony in this case not only mirrored the statutory standard in *Winnebago County v. Christopher S.* but the testimony went into a detailed explanation of the medication review specific to Carly. *Christopher S.* at ¶50; *Winnebago County v. C.J.H., (In re C.J.H.)*, unpublished slip op. 2023AP1263, ¶ 27-29, (Ct. App. March 3, 2024). The record was sufficient, and Carly does not argue to the contrary in her petition.

As observed by the court of appeals, the expert's testimony was specific to Carly. *Id* at. ¶ 29. The court of appeals outlined the testimony of Dr. Bales in its decision as follows:

Q	Are you asking for authorization to involuntarily medicate her with psychotropic medication?
A	Yes
Q	Do you believe that [it]would have a therapeutic value for her?
A	Yes
Q	What sort of medication would you be seeking? And if you could give one example of its benefits.
A	Basically a mood stabilizing medication. … And now, there's many, and I reviewed this with her. That was when she began to disrobe and talked over me and yelled and made some sexual comments of some kind. I had multiple staff around. But she could neither express nor apply my attempt at reviewing medications with her when I met with her. …
Q	Do you believe she's competent or incompetent to refuse medication?
A	Incompetent
Q	Were the advantages, disadvantages, and alternatives of accepting medication explained to [Carly]?
A	Yes. By me. …
Q	And what, if any, alternatives were discussed with [Carly]?

> A …I said there's no good alternatives. Yes, therapy, anger management, case management. I attempted to dialogue about this, and again, it was interruptions, disrobing, yelling. Just she could not engage in a rational or reasonable dialogue about psychotropics, but the dialogue did occur.

¶27. This was just a synopsis of *some* of Dr. Bales's testimony about his medication explanation, and Carly's demeanor throughout the evaluation that informed Dr. Bales' opinion that she was incompetent to refuse medication. (R. 62:10-13). Dr. Bales testified that Carly could neither *express nor apply* the medication review information to herself while he met with her. (R. 62:10-13).

The circuit court found:

> [Bales] testified, again that he believed [Carly was a proper subject for treatment. The doctor testified regarding medications, that he did believe medication would have therapeutic value. He believed that she was not capable of applying an understanding to herself, that she was incompetent to refuse medications. The doctor testified that he explained the advantages, disadvantages, and alternatives. He did testify that he didn't believe there were any good alternatives to the medications. The doctor testified that the medications would not unreasonably impair her ability to participate in future legal proceedings, and that, again, he believed that a mood stabilizer would be appropriate and would help her with her anger, agitation, and hypersexuality.
>
> …
>
> Given all of [the] consistent testimony, I will find that the elements have been met for a six-month commitment and order that. I will order based on the testimony, *the uncontroverted medical testimony* of Dr.

> Bales, that a medication order is appropriate. I would note that Dr. Thumann's testimony was, again, consistent, with Dr. Bales, that the medications have had a calming effect for [Carly], based on the doctors' testimony here today.
>
> *So I do think it's not a question of whether medications would be appropriate, but whether there's medical testimony here in a court of law to support that the elements of the statute have been met, and they have*. So there will be a six-month commitment with a medication order.

(R.62:37-38, 43) (Emphasis added). The trial court properly applied the statutory standards under Wis. Stat. § 51.61(1)(g)4.a-b. The court of appeals, in this case, properly applied *J.W.J.*, 375 Wis. 2d 542, ¶15, *Christopher S*, 366 Wis. 2d 1 ¶50, and *Becker v. Zoschke*, 76 Wis. 2d 336, 347, 251 N.W.2d 431 (1977), to conclude that, as a matter of law, the court's factual findings were not clearly erroneous.

The testimony was sufficient to prove by clear and convincing evidence that Carly is incompetent to refuse medication and treatment. The expert's testimony can be directly linked to the requirements for an involuntary medication order. Like the doctor in *Christopher S.*, Dr. Bales's testimony closely tracked the statutory language and helped the County meet its burden of proof. *See Christopher S.*, ¶54. ("Because these statements mirrored the statutory standard, they met the statutory standard.

Thus, the circuit court did not err when it concluded that the County proved by clear and convincing evidence that Christopher was incompetent to refuse psychotropic medication and treatment as required by Wis. Stat. § 51.61(1)(g)4.b.").

The court of appeals decision in this case on the issues of sufficiency of the evidence are grounded in the record and are consistent with *Melanie L.* at ¶67. *Melanie L.* does not raise the burden of proof that is required in Wis. Stat. § 51.61(1)(g)(4)a-b, but instead *Melanie L.* clearly expresses that when expert testimony cannot be linked back to the statutory standard it does not meet it. *Id*. In *Melanie L.* the doctor applied the incorrect standard to her determination of incompetency that could not be linked back to the statute. *Id*.

In this case, there is no question that the statutory standard was applied because Dr. Bales testified to the standard and the court applied the standard in its findings and order. (R. 67:10-13, 37-43). The court of appeals correctly decided that there was sufficient evidence to support a finding of incompetency.

b. Carly does not raise her previous assertion that there was insufficient evidence of dangerousness supporting the commitment order, therefore, this issue is waived. See *United Co-op. v. Frontier FS Co-op.*, 2007 WI App 197, ¶ 39, 304 Wis.2d 750, 738 N.W.2d 578.

Carly argued to the court of appeals that evidence of her dangerousness was insufficient without Dr. Bales's report being erroneously entered into the record. The court of appeals disagreed; it decided that "even without the other statements in Bales's report, there [was] sufficient admissible evidence of Carly's dangerousness to herself." *C.J.H.* at ¶25.[4] In this case, the County called three witnesses, all of whom testified to Carly's statements to them that were suicidal, and described her self-harming behaviors as observed by them. Entry of the report didn't even play a role in the court's findings of dangerousness. (R.62: 38-43). The court of appeals is correct.

Her failure to argue that the evidence of dangerousness was insufficient means that she concedes that

[4] Pursuant to Wis. Stat. § 809.23(3)(b), this unpublished case is cited, not as precedent, but for its "persuasive value" only.

the evidence of dangerousness in this case was sufficient "even without the report." See *C.J.H.* at ¶25; See also *United Co-op. v. Frontier FS Co-op.*, 2007 WI App 197, ¶ 39, 304 Wis.2d 750, 738 N.W.2d 578. When a subsequent brief or response does not address the merits of a legal issue, that lack of response is considered a concession. *Id*. Carly didn't address this issue. Therefore, any subsequent argument from Carly that the evidence of dangerousness supporting the commitment order was insufficient should be disregarded. See *Id.*; See also *Bilda v. County of Milwaukee*, 2006 WI App 57, ¶ 20 n.7, 292 Wis. 2d 212, 713 N.W.2d 661.

Because Carly failed to assert that the trial court's findings were clearly erroneous, that means that any issue as it relates to the commitment order is *not reviewable* and this Court is left considering the involuntary medication order exclusively. (Emphasis added). Her failure to argue left the door open for mootness principles to attach to this case. Mootness hadn't previously applied in the court of appeals because the commitment too was at issue, but now we are left solely with the medication order.

c. Carly fails to apply the erroneous exercise of discretion standard of review to the trial court's discretionary decision to admit the report as required by law. *State v. X.S.* 2022 WI 49, ¶33, 402 Wis. 2d 481, 976 N.W.2d 425.

Carly's petition should fail because she doesn't apply the standard of review to the trial court's discretionary decision to enter the doctor's report. Instead, Carly says that the Court should accept review to determine how, why, and for what purpose an expert doctor's report can be admitted. Carly never mentions erroneous exercise of discretion as being the standard of review for determining when a trial court can admit an exhibit into evidence. Carly doesn't even describe what alleged hearsay is contained in the report, in this case. Because she doesn't address whether the court erred by admitting the report, she doesn't address whether it even legally matters that the report was entered in this case or why she would be entitled to a discretionary review of that discretionary decision. *Id* ; See also *United Co-op. v. Frontier FS Co-op.*, 2007 WI App 197, ¶ 39, 304 Wis.2d 750, 738 N.W.2d 578; Wis. Stat. § 809.62(1r). Carly's failure to argue that the trial court erroneously exercised its

discretion by admitting the doctor's report means that the issue is waived. See *id*.

The court of appeals in this case applied the standard of review stating, ""[t]he question on appeal is not whether [the appellate] court, ruling initially on the admissibility of evidence, would have permitted it to come in but whether the trial court exercised its discretion in accordance with accepted legal standards and in accordance with the facts of record." *State v. X.S.* 2022 WI 49, ¶33, 402 Wis. 2d 481, 976 N.W.2d 425.

As stated above, the court of appeals analyzed the trial court's discretionary decision noting that Wis. Stat. § 907.03 permits experts to rely on hearsay when providing their opinion. *Therese B.* at ¶8. The trial court's exercise of discretion meets the standard of review. It applied the statue and limited the admissibility of the report to the confines of Wis. Stat. § 907.03 when it said, "Given his testimony that the report accurately reflects his findings in this report, I'm going to admit the report into evidence." (R. 62:17). The trial court's reasoning for discretionarily admitting the report is clear from the record. (R. 62:17).

Every appellate court is limited by the applicable standard of review. This case is no exception, Carly doesn't apply it in her petition, so she waives the argument that the trial court erred. See also *United Co-op. v. Frontier FS Co-op.*, 2007 WI App 197, ¶ 39, 304 Wis.2d 750, 738 N.W.2d 578. For all of these reasons, Carly's petition should be denied.

IV. This appeal as to the involuntary medication order is moot and Carly's petition does not address mootness.

Carly never addresses the issue of mootness in her petition, but it is important to address. Because Carly never argues that the commitment order was improper, she isn't entitled to review of that order.

She does argue that the medication order was improper. However, even if all of the criteria for review were met and this Court accepted all of Carly's arguments, we are left with a medication order that expired on August 7, 2023 and no challenge to Carly's commitment order.

In *D.K.* and *Sauk County v. S.A.M.*, 2022 WI 46, ¶20, ¶27 n.5, 402 Wis. 2d 379, 975 N.W.2d 162, the Court decided that commitment orders could have collateral consequences, even if they were expired. *D.K.* and *S.A.M.*

don't apply to this case because the only challenge by Carly is a challenge to an involuntary medication order and not a commitment order. *Id*. The possible collateral consequences that attach to commitment orders don't accompany medication orders, so the appeal is moot. See *id*.

Furthermore, Carly's decision to not address mootness means that she concedes that her appeal is moot. See *United Co-op. v. Frontier FS Co-op.* at ¶ 39. Therefore, this Court should not accept review because this appeal is moot.

CONCLUSION

This Court should deny the petition for review for all of the reasons stated. Carly doesn't present an issue of constitutional importance. She doesn't present an issue of conflict in the law. She ignores the facts of this case and doesn't apply the standard of review. Finally, her appeal is moot.

Dated and electronically filed this 16th day of April, 2024.

Respectfully submitted
and electronically signed by:

HANNAH E. KOTTKE,
Assistant Corporation Counsel
State Bar Number: 1113053
Winnebago County Office of
Corporation Counsel

112 Otter Avenue
Oshkosh, WI 54901
(920) 236-4751
hkottke@winnebagocountywi.gov
Attorney for Petitioner-Respondent

CERTIFICATION AS TO FORM AND LENGTH

I hereby certify that this brief conforms with the Rules contained in Wis. Stat. § 809.19(8)(b), (bm) and (c). The length of the brief is 4,796 words.

Dated this 16th day of April, 2024.

Electronically signed by:
Hannah E. Kottke
Assistant Corporation Counsel for
Winnebago County