STATE OF IDAHO)
County of KOOTENAI)ss

FILED_____

AT_____ O'Clock _____M
CLERK OF DISTRICT COURT

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Deputy

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE STATE OF IDAHO IN AND FOR THE COUNTY OF KOOTENAI

IN THE MATTER OF THE COMMITMENT OF: **W.P.J-D**	Case No. **CV 2017 4512** **MEMORANDUM DECISION AND ORDER ON APPEAL**

I. FACTUAL BACKGROUND AND PROCEDURAL HISTORY.

This matter is before the Court on appellant W.P.J.-D's appeal from the magistrate court's decision to commit him to the custody of the director of the Department of Health and Welfare pursuant to Idaho Code § 66-329.

On or about June 9, 2017, W.P.J.-D voluntarily brought himself to the crisis center to get help for his mental health symptoms. Commitment Hr'g Tr. 5:6–13. Due to his symptoms, W.P.J.-D was transported to the emergency room, presumably at Kootenai Health, where he was placed on a physician hold. *Id.* at 5:6–16. W.P.J.-D was evaluated by two designated examiners. The designated examiners concluded that W.P.J.-D was mentally ill and gravely disabled, and recommended commitment.[1] The State of Idaho (State) subsequently filed an Application for Involuntary Care on June 13, 2017.

On June 16, 2017, the magistrate court, Judge Mayli Walsh presiding, held a hearing on the State's application to involuntarily commit W.P.J.-D to the custody of the

[1] The Certificates of Designated Examiner were not submitted as evidence at the June 16, 2017, commitment hearing and were not relied on by the magistrate court. The Certificates

director of the Department of Health and Welfare. The State and counsel for W.P.J.-D each called one witness. Sharene Heisler, designated examiner, testified on behalf of the State; counsel for W.P.J.-D called W.P.J.-D himself to testify. At the conclusion of the hearing, the magistrate judge granted the State's application and ordered W.P.J.-D hospitalized pursuant to Idaho Code § 66-329.[2] *Id.* at 15:7–18:18. In doing so, the magistrate judge concluded that W.P.J.-D was mentally ill, gravely disabled, and unable to provide informed consent to treatment. *Id.* at 15:7–17:14.

On July 6, 2017, W.P.J.-D filed a Notice of Appeal. On August 30, 2017, the Clerk of the District Court issued a Notice of Settling of Transcript on Appeal and Briefing Schedule. Pursuant to the briefing schedule, W.P.J.-D filed a Brief in support of his appeal on October 17, 2017. In his Brief, W.P.J.-D generally argues that there was insufficient evidence presented at the hearing to support the magistrate court's finding that W.P.J.-D was gravely disabled. W.P.J.-D acknowledges, however, that his appeal may be moot given that his commitment was terminated on September 5, 2017.

On November 20, 2017, the State filed Respondent's Brief. The State argues that the magistrate court made a clear record of its finding that W.P.J.-D was gravely disabled and there was substantial and competent evidence presented at the hearing to support that finding. The State concludes by asking the Court to dismiss W.P.J.-D's appeal as moot.

On December 4, 2017, W.P.J.-D filed Appellant's Reply Brief, in which he reiterates that there is an insufficient record to support the magistrate court's finding by clear and convincing evidence that W.P.J.-D was gravely disabled at the time of the

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are referenced here in order to set forth this case's procedural history.

[2] The magistrate court also issued written Findings of Fact, Conclusions of Law, and

hearing. He agrees that the magistrate court made clear findings, but argues that the record does not support those findings. W.P.J.-D again acknowledges that his appeal is likely moot.

On December 6, 2017, the State filed a Request to Render Opinion without Oral Argument, in which it asked the Court to render an opinion based upon the briefs without oral argument. On December 14, 2017, W.P.J.-D filed a Notice of No Objection to State's Request to Render Opinion without Oral Argument.

Pursuant to the State's request and no objection from W.P.J.-D, the Court issues this Memorandum Decision and Order on Appeal based on the parties' briefs and without oral argument.

II. STANDARD OF REVIEW.

On an appeal from the magistrate division to the district court, the district court acts in an appellate capacity. I.R.C.P. 83(f)(1). When doing so, Idaho Rule of Civil Procedure 83 directs the district court to "review the case on the record and determine the appeal in the same manner and on the same standards of review as an appeal from the district court to the Supreme Court . . . ." *Id.* Accordingly, in this instance, the district court reviews the magistrate "record to determine whether there is substantial and competent evidence to support the magistrate's findings of fact and whether the magistrate's conclusions of law follow from those findings. . . . ." *Pelayo v. Pelayo*, 154 Idaho 855, 858–59, 303 P.3d 214, 217–18 (2013) (quoting *Bailey v. Bailey*, 153 Idaho 526, 529, 284 P.3d 970, 973 (2012) (citation omitted)). After reviewing the magistrate record, the district court must affirm the magistrate's decision if the magistrate's findings are supported by substantial and competent evidence and the magistrate's conclusions follow from those findings. *Id.*

Order for Hospitalization that same day.

III. ANALYSIS.

W.P.J.-D's appeal presents two issues. The first issue is whether the Court should dismiss his appeal as moot. Assuming W.P.J.-D's appeal is not moot, the second issue is whether a review of the magistrate's record demonstrates there is substantial and competent evidence to support the magistrate's finding that W.P.J.-D was gravely disabled.

A. The issue presented in W.P.J.-D's appeal is likely moot.

The State argues, and W.P.J.-D agrees, that this appeal is moot because W.P.J.-D's commitment has been terminated. Resp't's Br. 5; Br. 2; Appellant's Reply Br. 1. In general, "[a]n issue becomes moot if it does not present a real and substantial controversy that is capable of being concluded through judicial decree of specific relief." *Ameritel Inns, Inc. v. Greater Boise Auditorium Dist.*, 141 Idaho 849, 851, 119 P.3d 624, 626 (2005) (citing *State v. Rogers*, 140 Idaho 223, 91 P.3d 1127 (2004)). Idaho recognizes three exceptions to the mootness doctrine: "(1) when there is the possibility of collateral legal consequences imposed on the person raising the issue; (2) when the challenged conduct is likely to evade judicial review and thus is capable of repetition; and (3) when an otherwise moot issue raises concerns of substantial public interest." *Id.* at 851–52, 119 P.3d at 626–27.

In this case, W.P.J.-D's involuntary commitment was terminated on September 5, 2017. As such, his appeal appears to be moot because a favorable decision would not produce any relief for W.P.J.-D. Nevertheless, as noted, an otherwise moot issue may be subject to judicial review if one of the three exceptions to the mootness doctrine applies. W.P.J.-D does not argue that an exception to the mootness doctrine applies. The State acknowledges only the third exception to the mootness doctrine could apply and argues it is inapplicable to the issue presented in W.P.J.-D's appeal. Resp't's Br.

5. To support that argument, the State contends that the issue presented in W.P.J.-D's appeal is "a matter of sufficiency of evidence to justify the decision of the lower court." *Id.* In the State's view, that issue is not a matter of public interest. *Id.*

Beginning with the third exception to the mootness doctrine, the Court agrees with the State that the issue presented by W.P.J.-D's appeal does not raise concerns of substantial public interest. The issue presented in W.P.J.-D's appeal is whether the hearing and record support the magistrate's finding that W.P.J.-D was gravely disabled due to mental illness. As noted by the State, W.P.J.-D's claim challenges the sufficiency of the evidence relied on by the magistrate court. While resolution of that issue by this Court is likely of interest to W.P.J.-D, it does not raise concerns of substantial public interest. Rather, the issue presented is unique to W.P.J.-D. *Compare Russell v. Fortney*, 111 Idaho 181, 722 P.2d 490 (Ct. App. 1986) (finding the public interest exception inapplicable because the petitioner "alleged constitutional violations unique to the petitioner[]" and noting that the petitioner did not purport to speak in behalf of any other detainees."), *with Bradshaw v. State*, 120 Idaho 429, 432, 816 P.2d 986, 989 (1991) (holding that "the issue of whether individuals will be required to receive medication against their will while committed is of . . . public interest and concern."). Because the issue presented in W.P.J.-D's appeal does not raise concerns of substantial public interest, the third exception is inapplicable.

Under the second exception, a court may reach the merits of an otherwise moot issue when the challenged conduct is capable of repetition, but likely to evade judicial review. The U.S. Supreme Court explained that this exception to the mootness doctrine consists of two elements: "(1) the challenged action was in its duration too short to be fully litigated prior to its cessation or expiration, and (2) there was a reasonable expectation that the same complaining party would be subjected to the same action

again." *Murphy v. Hunt*, 455 U.S. 478, 482, 102 S. Ct. 1181, 1183, 71 L. Ed. 2d 353 (1982). Assuming the first element can be met, there is no argument or facts to support a reasonable expectation that W.P.J.-D will be subject to involuntary commitment under Idaho Code § 66-329 again. All the Court knows is that W.P.J.-D has a mental illness, experiences symptoms as a result of that mental illness, has gone without mental health treatment for an undefined period of time (in the past), and was the subject of a single commitment proceeding. In the Court's view, these facts are not sufficient to demonstrate a likelihood of recurrence; that is, there is not a reasonable expectation that W.P.J.-D will be subject to an involuntary commitment again based on the facts before the Court. Therefore, the Court concludes that the second exception to the mootness doctrine does not apply to this case.

The applicability of the first exception to the mootness doctrine is a closer call—whether there is a possibility of collateral legal consequences to W.P.J.-D. It appears that Idaho appellate courts have not addressed the application of the first exception of the mootness doctrine in the context of an involuntary commitment. However, other jurisdictions have "recognize[d] the notion that one who is involuntarily committed due to a mental illness suffers collateral consequences."[3] *In re B.B.*, 826 N.W.2d 425, 429 (Iowa 2013) (citations omitted). For example, in *In re B.B.*, 826 N.W.2d 425 (Iowa 2013), the Iowa Supreme Court considered whether an individual's appeal from an involuntary commitment was moot given that the commitment had been terminated. *Id.*

[3] The Iowa Supreme Court provided the following string citation to support its assertion: *In re Ballay*, 482 F.2d 648, 651–52 (D.C.Cir. 1973); *In re Joan K.*, 273 P.3d 594, 597–98 (Alaska 2012); *In re Morris*, 482 A.2d 369, 371–72 (D.C. 1984); *Bradshaw v. State*, 120 Idaho 429, 816 P.2d 986, 989 (1991); *In re McCaskill*, 603 N.W.2d 326, 329 (Minn. 1999); *In re Splett*, 143 Ill.2d 225, 157 Ill. Dec. 419, 572 N.E.2d 883, 885 (1991); *In re Walter R.*, 850 A.2d 346, 349–50 (Me. 2004); *In re Hatley*, 291 N.C. 693, 231 S.E.2d 633, 634–35 (1977); In re D.B.W., 616 P.2d 1149, 1150–51 (Okla. 1980); *State v. Lodge*, 608 S.W.2d 910, 912 (Tex. 1980); In re Giles, 657 P.2d 285, 286–87 (Utah 1982); *State v. J.S.*, 174 Vt. 619, 817 A.2d 53, 55–56

at 428–32. It held that "a party who has been . . . involuntarily committed is *presumed* to suffer collateral consequences justifying appellate review."[4] *Id.* at 429–30 (emphasis added). The Iowa Supreme Court based its holding on the stigma associated with an involuntary commitment and the "potential for the adjudication to be used in future proceedings . . . . " *Id.* at 431 (citing to *Westlake v. State*, 440 So.2d 74 (Fla. Dist. Ct. App. 1983) as an example of a court rejecting the argument that the ***social*** stigma of an involuntary commitment is a collateral ***legal*** consequence).

While the Iowa Supreme Court's reasoning in *In re B.B.* is appealing, it is not binding on this Court. Furthermore, W.P.J.-D has not argued that there is a possibility his involuntary commitment will lead to collateral legal consequences, nor has he identified what collateral legal consequences he might experience as a result of his involuntary commitment. Given the lack of binding authority and argument by W.P.J.-D, the Court concludes that the third exception to the mootness doctrine is also inapplicable to W.P.J.-D's appeal.

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(2002).

[4] In recognizing this presumption, the Iowa Supreme Court explained that the presumption can be rebutted. It stated:

> we recognize collateral consequences are mitigated if the person has previously been involuntarily committed under chapter 229. For example, under federal law he or she will not lose the right to possess firearms because the right was already lost following the first commitment. *See* 18 U.S.C. § 922(d) (2006). Nonetheless, we believe prior involuntary commitments are better used as evidence to rebut the presumption of collateral consequences, rather than to deny the existence of collateral consequences. *See Joan K.,* 273 P.3d [594, 597 (Alaska 2012).

In re B.B., 826 N.W.2d 425, 431 (Iowa 2013).

B. Even if the issue presented in W.P.J.-D's appeal is not moot, there is substantial and competent evidence to support the magistrate's finding that W.P.J.-D was gravely disabled.

In his Brief, W.P.J.-D concedes that there was sufficient evidence presented at the commitment hearing to support the magistrate's finding that he suffered from a mental illness. Br. 1. However, W.P.J.-D contends that the "transcript [of the commitment hearing] does not support the finding that W.P.J.-D was so gravely disabled that he would have physically, emotionally[,] and mentally deteriorated without hospitalization." *Id.* at 2. The State disagrees and argues that the magistrate's finding that W.P.J.-D was gravely disabled due to mental illness is based on testimony from the designated examiner. Resp't's Br. 4–5.

Idaho Code § 66-329 provides that a person can be involuntarily committed if the court finds by clear and convincing evidence that the proposed patient: (a) is mentally ill; and (b) is, because of such condition, likely to injure himself or others, or is *gravely disabled* due to mental illness. I.C. § 66-329(11) (emphasis added). Idaho Code § 66-317 defines "gravely disabled," in relevant part, to

> mean[] a person who, as the result of mental illness, is . . .[l]acking insight into his need for treatment and is unable or unwilling to comply with treatment and, based on his psychiatric history, clinical observation or other clinical evidence, if he does not receive and comply with treatment, there is a substantial risk he will continue to physically, emotionally or mentally deteriorate to the point that the person will, in the reasonably near future, be in danger of serious physical harm due to the person's inability to provide for any of his own basic personal needs such as nourishment, essential clothing, medical care, shelter or safety.

I.C. § 66-317(13).

As noted above, on appeal, this Court reviews the magistrate "record to determine whether there is substantial and competent evidence to support the

magistrate's findings of fact and whether the magistrate's conclusions of law follow from those findings. . . . ." *Pelayo*, 154 Idaho at 858–59, 303 P.3d at 217–18.

> Evidence is substantial if a reasonable trier of fact would accept it and rely upon it in determining whether a disputed point of fact has been proven. *King v. King*, 137 Idaho 438, 442, 50 P.3d 453, 457 (2002). The Idaho Supreme Court has also said that the substantial evidence test requires a greater quantum of evidence in cases where the trial court's finding must be supported by clear and convincing evidence than in cases where a mere preponderance is required. *State v. Doe*, 143 Idaho 343, 346, 144 P.3d 597, 600 (2006). Clear and convincing evidence is generally understood to be evidence indicating that the thing to be proved is highly probable or reasonably certain. *In re Doe*, 143 Idaho 188, 191, 141 P.3d 1057, 1060 (2006). Further, the magistrate's decision must be supported by objectively supportable grounds. *Doe,* 143 Idaho at 346, 144 P.3d at 600. On appeal, [the court] view[s] the evidence in favor of the trial court's judgment and will uphold the magistrate's findings of fact even if there is conflicting evidence. *Nelson v. Nelson*, 144 Idaho 710, 713, 170 P.3d 375, 378 (2007). Additionally, [the court] will not make credibility determinations or replace the trial court's findings of fact by reweighing the evidence. *Id.*

Idaho Dep't of Health & Welfare, Mental Health Servs. v. Doe, 157 Idaho 274, 279, 335 P.3d 614, 619 (Ct. App. 2014).

Here, the magistrate's finding that W.P.J.-D was gravely disabled is consistent with the definition of gravely disabled found in subsection (13)(b) of I.C. § 66-317, and the magistrate's finding is supported by the designated examiner's testimony. At a minimum, the designated examiner's testimony was based on a face-to-face interview of W.P.J.-D, a review of W.P.J.-D's charts, and some form of communication with W.P.J.-D's treating physicians, providers, and staff. Commitment Hr'g Tr. 5:17–25, 10:12–20. The designated examiner testified that she diagnosed W.P.J.-D with schizophrenia. *Id.* at 6:12. She stated that W.P.J.-D was gravely disabled as a result of that diagnosis because of his homelessness, lack of medication, increase in his mental health symptoms, and lack of viable outpatient treatment options. *Id.* at 7:4–21. Further, on cross-examination, the designated examiner testified that W.P.J.-D was

unwilling to take his medication(s) as prescribed. *Id.* at 10:21–11:4. At the conclusion of the commitment hearing, the magistrate made the following findings:

> What's being argued here is that you're gravely disabled. . . . And there's a meaning to gravely disabled. The statute specifically says that in order for someone to be deemed gravely disabled there has to be evidence that if you don't comply with treatment there's a substantial risk that you will continue to physically, emotionally and mentally deteriorate to a point that in the reasonably near future you will be in danger of serious physical harm or that you're lacking -- and you're lacking insight into the need for treatment, unable to -- or unwilling to comply with treatment.
>
> And I received some information that that's correct. That there has been homelessness, a lack of treatment in the past. Based on this lack of treatment, specifically prescriptions for your mental illness, there's been an increase in your systems [sic]. And I recognize that you brought yourself to the crisis center and you should be applauded for doing so that when you felt there was a problem here, you went to the crisis center, so recognizing that this was a problem.
>
> But they haven't been able to identify (inaudible). Based on some of your conduct during the designated evaluation and the examination by psychiatrist of an appropriate outpatient plan for you to prevent further decompensation. So things have gotten pretty bad, likely because you haven't been taking prescriptions for some time, and that that may deteriorate in the future if you're not placed on medication. And that you're a risk to yourself because of this decompensation.
>
> And there's further testimony that the Court finds credible that you are struggling to understand the full nature of the mental illness and the need for medication demonstrated by your refusal to comply with some of the requests that you increase your medication of a certain kind.
>
> And so based on that, the Court does find that there has been substantial and competent evidence that you are gravely disabled and that as (inaudible) by the Court it is clear and convincing. Therefore, the Court does have jurisdiction.

Commitment Hr'g Tr. 15:16–17:14.

The Court concludes that the magistrate judge's finding that W.P.J.-D was gravely disabled due to his mental illness is based on the designated examiner's testimony as summarized above. Further, the designated examiner's testimony is substantial and competent evidence to support the magistrate court's finding that W.P.J.-D was gravely disabled.[5] Accordingly, because there is substantial and

[5] The Court recognizes that the commitment hearing transcript includes a number of

competent evidence to support the magistrate's finding that W.P.J.-D was gravely disabled due to his mental illness, and W.P.J.-D concedes there is sufficient evidence to support the magistrate's finding that he is mentally ill, the magistrate court's decision to involuntarily commit W.P.J.-D is affirmed.

C. W.P.J.-D does not argue that the magistrate court's record of its findings is unclear.

In its Respondent's Brief, the State argues that the magistrate court made a clear record of its findings pursuant to Idaho Code § 66-329 and Idaho Rule of Civil Procedure 52(a). Resp't's Br. 2–3. In his Brief and Appellant's Reply Brief, W.P.J.-D does not argue that the magistrate's record is unclear. Rather, W.P.J.-D's argument on appeal is that the evidence and testimony presented at the commitment hearing do not support the magistrate court's finding that W.P.J.-D was gravely disabled. Br. 1–2; Appellant's Reply Br. 1. Because W.P.J.-D does not argue that the magistrate's record of its findings is unclear, the Court does not address that argument.

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"inaudible" portions that makes judicial review more difficult than it otherwise should be. Despite those omissions, after reviewing the transcript, the Court believes that if read in context, the transcript is sufficient to support the magistrate court's finding that W.P.J.-D was gravely disabled.

IV. CONCLUSION AND ORDER.

For the reasons stated above, the Court dismisses the appeal as moot. Alternatively, in the event the appeal is not moot, the magistrate judge's decision is affirmed.

IT IS HEREBY ORDERED the appeal is DISMISSED as it is MOOT.

ALTERNATIVELY, IT IS FURTHER ORDERED the June 16, 2017, Findings of Fact, Conclusions of Law, and Order of Magistrate Judge Mayli Walsh is AFFIRMED.

Entered this 16th day of January, 2018.

_____
John T. Mitchell, District Judge

Certificate of Service

I certify that on the _____ day of January, 2018, a true copy of the foregoing was mailed postage prepaid or was sent by interoffice mail or facsimile to each of the following:

Lawyer	**Fax #**	**Lawyer**	**Fax #**
Michael A. Clapin	208 446-1701	Wendy Gabriel	208 446-1978

Hon. Mayli Walsh

_____
Jeanne Clausen, Deputy Clerk