Circuit Court for Charles County
Case No. JV-20-23

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1279

September Term, 2020

IN RE: Z.L.

Kehoe,
Berger,
Ripken,

JJ.

Opinion by Berger, J.

Filed: September 28, 2021

In this appeal, we are asked to decide whether the Circuit Court for Charles County, sitting as the juvenile court, erred in ordering competency attainment services for Z.L., appellant. The State has moved to dismiss the appeal as moot because the order is no longer in effect. Appellant concedes that the issue is moot but requests that we address the merits of the issue because the appeal raises an "unresolved issue of important public concern." For the following reasons we shall dismiss the appeal.

Before reciting the facts, a brief overview of the statute governing competency proceedings in the juvenile court will be helpful. Juvenile defendants are deemed incompetent to proceed when they are not able to (1) understand the nature or object of the proceeding; or (2) assist in their defense. Md. Code (1974, 2020 Repl. Vol), Courts and Judicial Proceedings Article (CJP), § 3-8A-01(q).[1] The juvenile court is authorized to stay the proceedings and order that the Maryland Department of Health or any other qualified expert conduct a competency evaluation if the court finds that:

> (i) There is probable cause to believe that the child has committed the delinquent act; and
>
> (ii) There is reason to believe that the child may be incompetent to proceed with a waiver hearing under § 3-8A-06 of this subtitle, an adjudicatory hearing under § 3-8A-18 of this subtitle, a disposition hearing under § 3-8A-19 of this subtitle, or a violation of probation hearing.

§ 3-8A-17.1(a)(1).

[1] Unless otherwise specified, all statutory references that follow are to the Courts and Judicial Proceedings Article.

Within 15 days after receipt of the qualified expert's report, the juvenile court is required to hold a competency hearing at which the court "shall determine, by the evidence presented on the record, whether the juvenile is incompetent to proceed." § 3–8A–17.4(a) and (b). Factual findings "shall be based on the evaluation of the child by the qualified expert." § 3-8A–17.4(c). The State and/or juvenile, however, may call other expert witnesses to testify at the competency hearing. § 3–8A–17.1(a)(3). The State bears the burden of proving the juvenile's competency beyond a reasonable doubt. § 3-8A-17(d).

If the court determines that the juvenile is incompetent, but that "there is a substantial probability that the child may be able to attain competency in the foreseeable future and that services are necessary to attain competency," then a juvenile court can order attainment services, through the Department of Health, for the juvenile for an initial period of "not more than 90 days." § 3–8A–17.6(a).[2] If the child has not gained competency within six months after the date of the court's finding of incompetency and is alleged to have committed an act that would constitute a misdemeanor if the child was treated as an adult, the court is required to dismiss the juvenile petition. CJP § 3–8A–17.9(2).

FACTS AND LEGAL PROCEEDINGS

On February 12, 2020, the State filed a petition alleging that appellant, who was then eight years-old, committed the delinquent acts of second-degree assault and fourth-

[2] Pursuant to § 3-8A-17.8(c)(3)(1), the juvenile court may order that services be continued after the initial 90-day period, subject to the time periods for dismissal of the case in § 3-8A-17.9.

degree burglary. The court ordered a competency evaluation, and a competency hearing was held on December 17, 2020.

At the hearing, the court considered the written report of the psychologist who performed the competency evaluation. The evaluator concluded that appellant was not competent to proceed, citing his "young age, impaired decision-making abilities, and psychiatric symptomology." The evaluator further concluded that appellant did not have a substantial probability of attaining competency in the foreseeable future, citing the following reasons:

> [Appellant] is currently receiving his medications and treatment and he was not cooperative during this evaluation or during a typical day, as reported [by] his mother. His behavior is described as out of control by his mother. He requires more intensive treatment that will likely take a significant amount of time.

The evaluator added that:

> Although the likelihood of [appellant] attaining competency to proceed in the foreseeable future is low, if the court determined that [appellant's] case remained viable, he may benefit from "psycho-educational competency attainment services," typically provided by the Maryland Department of Health, to improve his knowledge of legal issues while he is engaged in treatment. Engaging him in services could not commence until [appellant] is in a more stable condition.

Ruling from the bench, the court found appellant incompetent to stand trial. The court further found that there was a substantial probability that appellant would be able to attain competency in the foreseeable future and ordered competency attainment services. Defense counsel objected to the order for attainment services, stating that, according to the

evaluation, there was not a substantial probability that appellant would become competent to proceed in the foreseeable future.

On January 14, 2021, appellant noted this timely appeal from the order for competency attainment services. He asserts in his brief that the court's finding that there was a substantial probability that he would attain competency in the foreseeable future was erroneous because (1) the court failed to base its finding on the evaluation of the qualified expert, and (2) there was no other evidence before the court to support its finding. On April 28, 2021, while this appeal was pending, the juvenile court dismissed the juvenile petition upon a finding that appellant was not likely to attain competency by June 15, 2021, or six months from the initial finding of incompetency.

DISCUSSION

The State has moved to dismiss the appeal as moot because the order for competency attainment services is no longer in force.[3] Appellant concedes that the appeal is moot but urges that we take exception to the general rule that appellate courts do not render opinions where the issue is moot. We decline to do so.

"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.'" *State v. Dixon*, 230 Md. App. 273, 277 (2016) (quoting *Suter v. Stuckey*, 402 Md.

[3] Alternatively, the State moves to dismiss the appeal on grounds that no appeal is allowed from the interlocutory order for competency attainment services. Appellant contends that the order is appealable under the collateral order doctrine. We need not resolve the issue of appealability because we find no reason to address the merits of the moot issue.

211, 219–20 (2007)). "[A]ppellate courts do not sit to give opinions on abstract propositions or moot questions, and appeals which present nothing else for decision are dismissed as a matter of course." *La Valle v. La Valle*, 432 Md. 343, 351–52 (2013) (quoting *State v. Ficker*, 266 Md. 500, 506–07 (1972)); *see also Dixon*, *supra*, 230 Md. App. at 277 ("As a general rule, courts do not entertain moot controversies.").

Only in "rare instances which demonstrate the most compelling of circumstances" will a reviewing court address the merits of a moot case. *Stevenson v. Lanham*, 127 Md. App. 597, 623–24 (1999) (quoting *Reyes v. Prince George's County*, 281 Md. 279, 297 (1977)). The Court of Appeals has articulated those instances as follows:

> only where the urgency of establishing a rule of future conduct in matters of important public concern is imperative and manifest, will there be justified a departure from the general rule and practice of not deciding academic questions. [I]f the public interest clearly will be hurt if the question is not immediately decided, if the matter involved is likely to recur frequently, and its recurrence will involve a relationship between government and its citizens, or a duty of government, and upon any recurrence, the same difficulty which prevented the appeal at hand from being heard in time is likely again to prevent a decision, then the Court may find justification for deciding the issues raised by a question which has become moot, particularly if all these factors concur with sufficient weight.

In re Julianna B., 407 Md. 657, 666 (2009) (quoting *Lloyd v. Board of Supervisors of Elections*, 206 Md. 36, 43 (1954)).

Appellant asserts the issue presented in his appeal is a matter of "important public concern," because (1) the court "wastes valuable resources" when it orders competency attainment services despite the opinion of the qualified expert that there is no substantial

probability that the child will attain competency in the foreseeable future, and (2) orders for competency attainment services present a hardship to the child and the child's family. Appellant further contends that the issue is likely to recur, citing a report from the Maryland Department of Health which indicates that competency attainment services are involved in 100 juvenile cases each year. Finally, appellant maintains that orders for competency attainment services are likely to evade appellate review because a juvenile will either attain competency or, as in this case, the juvenile petition will be dismissed by the time the issue comes before this Court for a decision.

Assuming, without deciding, that an interlocutory order for competency attainment services is appealable, we are not persuaded that the issue presented in this case warrants a rare exception to the rule that appellate courts do not render opinions on a moot issue. Even if we were to agree that an order for competency attainment services involves a matter of important public concern, we are not persuaded that that there is an "imperative and manifest" urgency to establish a rule of future conduct. Aside from appellant's general assertion that competency attainment services are "involved" in 100 juvenile cases per year, there is no indication that, in any of those cases, it has been argued that the court erred in finding a substantial probability that the juvenile may be able to attain competency in the foreseeable future. *See State v. Chaney*, 375 Md. 168, 184 (2003) ("error is never presumed by a reviewing court, and we [do] not draw negative inferences from [a] silent record."). Nor has appellant pointed to any instance in which an appeal has been taken from an order for competency attainment services, whether or not it was later dismissed as moot, and we are aware of none. *Cf. Beeman v. Department of Health & Mental Hygiene*,

107 Md. App. 122, 134-35 (1995) (finding it appropriate to review moot appeal from agency decision to approve forced medication of a patient in a State psychiatric institution where, annually, 73 administrative appeals were noted from a yearly average of 175 cases involving forced medication); *In re: Sophie S.*, 167 Md. App. 91, 97 (2006) (concluding that the moot issue on appeal was likely to recur because similar issues had been presented in other recent appeals).

Consequently, we have no basis to conclude that the issue on appeal is "likely to recur frequently" or that the "public interest clearly will be hurt if the question is not immediately decided." Accordingly, we decline to address the merits of the issue on appeal.

APPEAL DISMISSED AS MOOT. COSTS TO BE PAID BY APPELLANT.