IN THE

SUPREME COURT OF VIRGINIA

Record No. 042158

MICHAEL PAUGH,

Petitioner/Appellant,

v.

HENRICO COUNTY AREA MENTAL HEALTH/
COMMONWEALTH OF VIRGINIA,

Respondent/Appellee.

BRIEF IN OPPOSITION TO APPEAL

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NATURE OF THE CASE AND MATERIAL PROCEEDINGS IN THE TRIAL COURT

Michael Paugh appeared before the Circuit Court for Henrico County on May 18, 2012, to appeal from an Order of a Special Justice for the General District Court ordering involuntary hospital admission and treatment. Va. Code §37.2-817(C). The Circuit Court conducted a hearing and at the conclusion did not order any further hospitalization or treatment. Paugh assigns error to the Court's ruling, the standard of review the Court employed to judge the case, and the admission of certain evidence.

APPELLANT'S ASSIGNMENTS OF ERROR

THE TRIAL COURT ERRONEOUSLY INTERPRETED VA. CODE § 37.2-821 AND VIRGINIA LAW WHEN CONSIDERING WHETHER THE CIRCUIT COURT HEARING WAS A TRIAL DE NOVO OR A REVIEW OF THE SPECIAL JUSTICE'S DECISION.

THE TRIAL COURT ERRED IN RULING THAT THE ENTIRETY OF THE PRE-ADMISSION SCREENING REPORT, HEARSAY INCLUDED, SHOULD BE ADMITTED WHEN VA CODE § 37.2-816 STATES THAT ONLY THE FACTS THEREIN SHOULD BE ADMITTED.

THE TRIAL COURT ERRED IN RULING THAT MICHAEL PAUGH MET THE CRITERIA FOR INVOLUNTARY COMMITMENT AT THE TIME THE DE NOVO HEARING WAS HELD.

STATEMENT OF FACTS

On March 19, 2012, Henrico County Police, responding to a call for service, went to the residence of the Respondent/Appellant, Michael Paugh, and while in contact with him there developed such significant concerns about Paugh's mental well-being that they transported him for an emergency evaluation at Henrico County Area Mental Health. (App. 26, 32). Henrico Mental obtained a Temporary Detention Order from Henrico Magistrate Judge Jennifer Helshman. (App. 1).

As part of their duties, the social workers at Henrico Mental Health prepared a Preadmission Screening Report and, subsequently, a Petition for Involuntary Treatment. (App. 32-47, 48-49). In the Preadmission Report, Henrico Mental Health workers documented what the police officers reportedly had observed in Paugh's residence, as well as their own telephone conversation with the out-of-state friend of Paugh who, following a telephone conversation with Paugh earlier that night, had placed the call to police asking them to check on him. (App. 35-36). Attached to the Prescreen Report was the apparent beginning of a letter, seized by Henrico Police from Paugh's residence that night, which read: "Dear Amanda, That you're reading this letter means that I've given up. I am so sorry." (App. 47).

In a hearing the next day for Paugh's involuntary hospitalization, Va. Code § 37.2-814 et seq., the Special Justice of the Henrico General District Court heard testimony in support of the Prescreen Report and received an Independent Examination report from a psychologist who had examined Paugh, and admitted both reports to the record. (App. 32-47, 50-52). The psychologist diagnosed Paugh with Depression and indicated that the circumstances of the previous day suggested that Paugh posed a significant risk of self-harm. Because Paugh refused other treatment, the psychologist recommended involuntary hospital treatment. (Id.).

The Special Justice ordered involuntary hospitalization and treatment and Paugh noted his appeal to the Henrico Circuit Court. (App. 2-4).

Sometime after the March 20, 2012, commitment hearing, but prior to the May 18, 2012, appeal hearing in Henrico Circuit Court, Paugh's treating physician discharged him from the hospital with an outpatient treatment plan. Accordingly, at the May 18, 2012, appeal hearing, the Commonwealth stipulated that Paugh's discharge refuted a finding that he still met the criteria for involuntary commitment. (App. 7).

In the appeal hearing, the Circuit Court admitted materials from the record per Va. Code § 37.2-816, including the Preadmission Screening Report and the attached letter to Amanda that had been seized by Henrico

Police. (App. 20). At the conclusion of the hearing, the Circuit Court noted that Paugh had met the criteria for involuntary hospitalization and treatment when that was ordered on March 20, but did not order further treatment or hospitalization. (App. 29). This appeal follows.

STANDARD OF REVIEW AND ARGUMENT

THE ISSUES RAISED BY THE RESPONDENT/APPELLANT ARE MOOT.

A matter is moot where there is no actual controversy nor any relief which can be afforded. See RF&P Corp. v. Little, 247 Va. 309, 315, 440 S.E.2d 908, 912 (1994). In this case, the Respondent/Appellant, Paugh, appealed to the Circuit Court from a March 20, 2012, Order of a Special Justice compelling involuntary hospitalization and mental health treatment. Va. Code § 37.2-821. Following the appeal hearing, the Henrico Circuit Court issued a June 11, 2012, Order concluding the matter but without compelling further hospitalization or treatment. (App. 53-54).

Paugh now appeals from this favorable ruling from the Circuit Court. In his brief, Paugh argues that the Henrico Circuit Court applied an incorrect standard of review on appeal, and that the Court abused its discretion in the admission of certain evidence during the hearing. In his final argument, Paugh claims that the Court erred by finding that Paugh

met the criteria for involuntary hospitalization when ordered on March 20, 2012.

Nowhere in his brief, however, does Paugh identify any injury or harm flowing from the Circuit Court's rulings or its disposition of the case. Nowhere in brief does Paugh even specify what relief it is he seeks. Indeed, there is no remedy available for Paugh's assignments of error because the Circuit Court ruled in Paugh's favor and did not order continued hospitalization or treatment. All of the Circuit Court's remaining discussion or statements are dicta. Hence, there is no actual controversy in the appeal of this case; the issues are moot and any opinion of this Court would be advisory in nature and contrary to well-established judicial policy.[1]

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[1] Moreover, there was no Circuit Court error. The Court conducted a hearing and recognized the *de novo* standard applicable to the proceedings. The Court's June 11, 2012, Order is consistent with the parties' stipulation that Paugh no longer required involuntary treatment. Paugh's argument, in essence, is that the Court should have granted his motion to dismiss, but instead ruled that the appeal "was denied." Presumably, the Court's intend was that the Petition for Involuntary Treatment, the subject of the *de novo* hearing, was denied. In any event, Paugh fails to demonstrate harm arising from the wording of the Court's ruling.

Nor did the Court abuse it's discretion by admitting the Prescreen Admission Report in its entirety. The admissibility of evidence is "an issue left to the discretion of the trial court." Holsapple v. Commonwealth, 39 Va. App. 522, 537, 574 S.E.2d 756, 763 (2003). In his brief, Paugh tries to distinguish certain parts of the report as admissible hearsay and others as non-admissible hearsay. Virginia Code § 37.2-816, however, addresses the use of the Prescreening Report, and simply directs that "the report shall be

See RF&P Corp. v. Little, 247 Va. 309, 315, 440 S.E.2d 908, 912 (1994) (a matter is moot where there is no actual controversy nor any relief which can be afforded); see also, Hankins v. Town of Virginia Beach, 182 Va. 642, 643-44, 29 S.E.2d 831, 832 (1944) (same).

The policy prohibiting advisory opinions, as summarized by the quotation below, has a long history in the Commonwealth:

> Whenever it appears or is made to appear that there is no actual controversy between the litigants, or that, if it once existed, it has ceased to do so, it is the duty of every judicial tribunal not to proceed to the formal determination of the apparent controversy, but to dismiss the case. It is not the office of courts to give opinions on abstract propositions of law, or to decide questions upon which no rights depend, and where no relief can be afforded. Only real controversies and existing rights are entitled to invoke the exercise of their powers.

Franklin v. Peers, 95 Va. 602, 603, 29 S.E. 321, 321 (1898); see also Miller v. International Union of United Brewery, etc. Workers of Am., 187 Va. 889, 897, 48 S.E.2d 252, 255 (1948); Potts v. Mathieson Alkali Works, 165 Va. 196, 225, 181 S.E. 521, 533 (1935); Board of Supervisors of Amherst County v. Combs, 160 Va. 487, 497, 169 S.E. 589, 593 (1933); Wallerstein v. Brander, 136 Va. 543, 546, 118 S.E. 224, 225 (1923); Hamer v. Commonwealth, 107 Va. 636, 637, 59 S.E. 400, 400 (1907).

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admitted into evidence and made part of the record of the case," without other restriction.

Paugh's final argument challenges the Circuit Court's conclusion that Paugh's involuntary hospitalization on March 20, 2012, was "valid." There was adequate evidence in the record to support the Court's conclusions that Paugh's involuntary treatment on March 20, 2012, was necessary. Recognizing that fact was not inconsistent with the Court's ultimate decision that hospitalization was no longer medically necessary following the *de novo* appeal. Paugh suffered no harm from this *dicta.*

In the case at bar, the Respondent/Appellant fails to identify any controversy before the Court, or any relief to which he is entitled. Any opinion in this matter would be merely advisory and of no benefit to either party.

CONCLUSION

For the foregoing reasons, the judgment of the circuit court should be affirmed.

Respectfully submitted,

COMMONWEALTH OF VIRGINIA
Respondent herein.

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CERTIFICATE OF SERVICE

I hereby certify that Rule 5:26 has been complied with, and that Appellee counsel desires to waive oral argument at issue. This Brief in Opposition is within the word count limitation, as it contains 1,265 words. A true copy of the foregoing has been mailed to Charles R. Samuels, 4908 Monument Ave, Suite 100, Richmond, 23230 on this _____day of February, 2013.

_____/s/_____
Paul C. Galanides