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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
SIXTH APPELLATE DISTRICT

In re C.B., a Person Coming Under the  
Juvenile Court Law.

H036118  
(Santa Clara County  
Super. Ct. No. MH034663)

THE PEOPLE,

Plaintiff and Respondent,

v.

C.B.,

Defendant and Appellant.

Acting under the authority of Welfare and Institutions Code sections 6500 et sequitur, the trial court granted an order extending the commitment of appellant C.B. to the Department of Developmental Services (Department) on a finding that she suffered from mental retardation and was a danger to herself and others. On appeal she contends that the trial court committed reversible error by relying on a clear-and-convincing-evidence standard of proof when the correct standard is proof beyond a reasonable doubt, and by failing to find that appellant's dangerousness to self or others was a product of mental retardation. Respondent concedes that the court committed reversible error but contends that the appeal is moot because the one-year commitment has expired. We

conclude that because appellant was previously committed on the same grounds under an order which has now become final, a reversal of the order now before us cannot relieve appellant of any stigma that might otherwise warrant reversal. We will therefore dismiss the appeal as moot.

### **BACKGROUND**

On April 8, 2009, the trial court granted the district attorney's petition for an order of commitment on the ground that appellant was mentally retarded and dangerous to herself or others. (*People v. Barrett* (2012) 54 Cal.4th 1081, 1090-1092 (*Barrett I*.) That order was ultimately affirmed by this court and, on petition for review, by the Supreme Court. (*Id.* at pp. 1093, 1111; see *id.* at p. 1114 [Werdegar, J., concurring in result], *id.* at p. 1116 [Liu, J., same].)

Meanwhile, on February 25, 2010, the district attorney sought to extend appellant's commitment for another year by filing a "Petition for Recommitment" under Welfare and Institutions Code section 6502 alleging that appellant was "currently residing at California Psychiatric Transitions [(CPT)] on an involuntary commitment" and that she was "a person mentally retarded and . . . a danger to herself and others."

It is this petition that produced the order now before us. The trial court conducted a hearing on August 5, 2010. In opening remarks, the deputy district attorney asserted that the governing standard of proof was clear and convincing evidence. She then presented evidence consisting of the testimony of a staff psychiatrist and a written report from the regional center service coordinator. After appellant herself testified briefly, the court heard closing arguments from counsel. The deputy district attorney asserted that she had proven the statutory grounds for commitment "beyond a reasonable doubt." When she concluded, the court remarked, "I'm not going to hold you to it, but I'm assuming that rather than beyond a reasonable doubt, you have done that [i.e., proven your case] by clear and convincing evidence." Counsel replied, "Thank you."

After hearing argument from counsel for appellant and rebuttal by the deputy district attorney, the court sustained the petition. In doing so it said, “I think at the present time, I think by clear and convincing evidence, that evidence has demonstrated that she does have mild retardation as one of her axis diagnos[e]s and that she is a danger to herself and others. . . . [¶] And it appears, again, by clear and convincing evidence she is presently in the least restrictive placement. . . .” The minute order memorializing the hearing states, “Court states that the evidence demonstrated [appellant] has mild retardation [and] is a danger to herself [and] others. She should remain in placement. Order is signed.” The signed order states, as pertinent, that appellant “was found to be mentally retarded and a danger to herself and others” and that she was committed to the Department “for a period of one year commencing on August 5, 2010.”

This timely appeal followed.

#### **DISCUSSION**

A person who is the subject of a proceeding for involuntary commitment on grounds of mental retardation and danger to self or others is entitled to have the case for commitment established by proof beyond a reasonable doubt. (*Money v. Krall* (1982) 128 Cal.App.3d 378, 382; see *In re Hop* (1981) 29 Cal.3d 82, 93.) As respondent concedes, the court below plainly erred by expressly adopting the lower standard of proof by clear and convincing evidence. The only point of controversy is whether we should reverse the order under review or dismiss the appeal as moot.

By the time respondent’s brief was filed in this court, the recommitment order of August 5, 2010, had expired by its terms. Further, respondent asserts in a separate motion to dismiss that as of April 2012 appellant “has been released and is no longer subject to any commitment pursuant to Welfare and Institutions Code section 6500 et seq.” In a supporting declaration, counsel for respondent states that the district attorney’s office has told him “that after the August 5, 2011 expiration of appellant’s one-year commitment . . . , the district attorney sought no further commitment of appellant.”

Appellant neither contests nor objects to this representation, which we therefore accept as true.

Ordinarily a court will not decide a case unless it involves “a present, concrete, and genuine dispute as to which the court can grant effective relief.” (*In re I.A.* (2011) 201 Cal.App.4th 1484, 1489.) An order imposing an involuntary commitment ordinarily becomes subject to dismissal as moot when the order ceases by its terms to restrain the subject’s liberty. (See, e.g., *People v. Hurtado* (2002) 28 Cal.4th 1179, 1186 [case “became moot when defendant’s 1996 commitment expired”; court nonetheless addressed recurring issues raised on merits].) However, the “stigma” inflicted by such an order may require consideration on the merits even though the order has become technically moot. Appellant cites *In re Michael D.* (1977) 70 Cal.App.3d 522, where a parentless minor sought review of an order appointing a guardian for the purpose of committing the minor to a state hospital. While the matter was pending, the minor was discharged from the hospital and placed in a foster home. (*Id.* at p. 524, fn. 1.) The court “decline[d] to consider the matter moot” in light of “the stigma involved in placement in a mental institution.” (*Id.* at p. 524, fn. 1; see also *Conservatorship of Johnson* (1991) 235 Cal.App.3d 693, 696, fn. 1.)

In *Katz v. Superior Court* (1977) 73 Cal.App.3d 952, five adults petitioned to overturn orders appointing their parents as conservators, apparently for the purpose of separating the petitioners from a religious community or practice to which they had chosen to adhere. While the matter was pending the appellate court stayed the orders under review, thereby “enabl[ing] each temporary conservatee to associate with whomsoever he or she might choose.” (*Id.* at p. 959.) In nonetheless addressing the soundness of the orders, the court relied primarily on the rule that technical mootness will not prevent review on the merits when a case “ ‘poses an issue of broad public interest that is likely to recur.’ ” (*Id.* at p. 961, quoting *In re William M.* (1970) 3 Cal.3d 16, 23; see *People v. Hurtado, supra*, 28 Cal.4th at p. 1186.) However, the court could also be

understood to invoke the “stigma” exception, if only indirectly, by citing *People v. Feagley* (1975) 14 Cal.3d 338. In *Feagley* the court reviewed a commitment as a mentally disordered sex offender despite the subject’s release from the commitment. In declining to deem the order moot, the court referred to an earlier decision in which it had held that “even a temporary commitment as an apparent mentally disordered sex offender may be challenged after discharge, reasoning in part that ‘defendant is entitled to the opportunity to clear his name of the adjudication that he is a probable mentally disordered sex offender.’ ” (*Id.* at p. 345, quoting *People v. Succop* (1967) 67 Cal.2d 785, 790.)

We may assume for present purposes that these decisions would be equally applicable to a commitment based upon mental retardation—or, more modernly, developmental disability (see *Barrett I, supra*, 54 Cal. 4th at p. 1088, fn. 2). They nonetheless appear inapplicable here, because the order before us is merely redundant of an earlier order to the same effect on the same grounds. The Supreme Court has now affirmed that order (*Barrett I, supra*), denied rehearing (see 2012 Cal. LEXIS 8950), and issued its remittitur (see <[http://appellatecases.courtinfo.ca.gov/search/case/dockets.cfm?dist=0&doc\\_id=1935552](http://appellatecases.courtinfo.ca.gov/search/case/dockets.cfm?dist=0&doc_id=1935552)> (as of Oct. 10, 2012)). The order is thus immune from further direct judicial review. Since it appears to possess precisely the same stigmatizing effect as the subsequent order, a disposition setting aside the latter would have no apparent tendency to relieve appellant of any stigmatizing effect otherwise flowing from these proceedings. It follows that the case falls outside the “stigma” exception to the rule against deciding moot causes.

**DISPOSITION**

The appeal is dismissed.

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RUSHING, P.J.

WE CONCUR:

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ELIA, J.

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WALSH, J.\*

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\* Judge of the Santa Clara County Superior Court assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.