IN THE SUPREME COURT OF FLORIDA

SHIRLEY GODWIN,

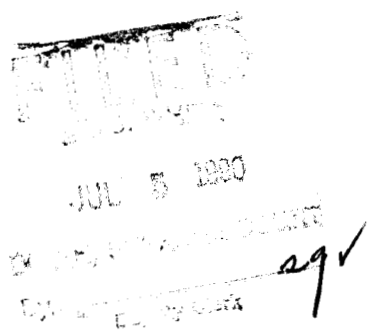
Petitioner,

vs. CASE NO. 75,881

STATE OF FLORIDA,

Respondent.

_____/



RESPONDENT'S BRIEF ON THE MERITS

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PRELIMINARY STATEMENT

Shirley Godwin was the Respondent in the trial court below and the Appellant in the district court of appeal. She will be referred to as the Petitioner or by her name. The State of Florida was the Appellee below and will be referred to as the Respondent or as the State. The State will designate references to the transcript by the symbol "T" followed by the appropriate page number.

STATEMENT OF THE CASE AND FACTS

Respondent adopts Petitioner's Statement of the Case and Facts. However, Respondent believes Petitioner's Statement is incomplete as it stands and therefore supplements the Statement with the following summary.

On or about July of 1989, Petitioner entered the Sheriff's Department, behaving in an irrational manner, at which time she was transported to and admitted to PATH (T. 5). This was her third admission to PATH since March 1989.

The treating psychiatrist at PATH, Dr. Bragado-Spence, testified that she had diagnosed the petitioner as having a bipolar disorder in the manic phase. (T. 4) Dr. Bragado-Spence stated that she recommended placement at Florida State Hospital because Petitioner was unable to care for herself. (T. 4)

In support of this recommendation Dr. Bragado-Spence stated that the Petitioner had been seen wandering the streets with no place to stay (T. 4), that she had personally seen the Petitioner sleeping at bus stops (T. 10), that the Petitioner had delusions that a Mexican had kidnapped her child (T. 6) and that Mexicans with machetes were after her (T. 11).

On two occasions, Petitioner exhibited health problems on admission which she refused to acknowledge. During a previous admission, Petitioner was admitted with bronchitis which she felt was a result of not smoking enough (T. 6) and for which she refused to take medication (T. 8, 9). During the admission from which the challenged commitment proceedings ensued, Petitioner entered PATH filthy with her feet so full of blisters she

couldn't walk (T. 9). Yet in her own testimony, Petitioner denied the problem (T. 15).

During a previous admission, Petitioner was placed on lithium and was improving, however, she began refusing medication and left the facility (T. 7) It is because of her refusal to take medication and to take care of herself (T. 7, 12), that Dr. Bragado-Spence recommended placement at Florida State Hospital as the least restrictive alternative (T. 4,7,8,12).

Petitioner was involuntarily committed on July 19, 1989. On August 2, 1989, Petitioner filed her notice of appeal. On October 11, 1989, counsel for Petitioner field for an extension of time to file her Initial Brief in this cause. The First District Court of Appeal granted Petitioner an extension until January 23, 1990. (October 20, 1989 order) Petitioner filed her Initial Brief on January 23, 1990. The State filed its Motion to Dismiss on January 24, 1990.

SUMMARY OF THE ARGUMENT

The First District Court of Appeal properly dismissed Petitioner's appeal on the grounds of mootness as a result of Petitioner's intervening discharge from commitment.

Under the state's mootness doctrine as it currently applies to involuntary commitment appeals, an involuntarily committed individual who is released prior to the disposition of their appeal must establish the existence of at least one of the following in order to avoid dismissal on the grounds of mootness: 1) That the individual will suffer a collateral legal consequence of the commitment or 2) That the case involves an issue, other than the sufficiency of the evidence, that is of great public importance or capable of repetition but evading review, or 3) That the appealed commitment is the basis for continuing commitment. Petitioner has failed to make the requisite showing necessary to avoid application of the mootness doctrine in her case. Petitioner's arguments in support of abrogation of the mootness doctrine regarding public policy and collateral social consequences are hypothetical and abstract in nature and have no application to the factual circumstances currently before this Court. Petitioner's argument regarding the application of Section 394.457, Florida Statutes, is also inapplicable. Even assuming that reversal of an involuntary commitment constitutes a defense to the payment of costs,

Petitioner was indigent at the time of her commitment and has made no showing that she was or would be impacted by that statute.

The judiciary's present application of the mootness doctrine to commitment appeals allows a case by case analysis that permits a balance to reached between the interests of involuntary commitees, the judiciary and the state and should thus be preserved.

Regarding the second issue, the State asserts that the trial court's order of involuntary commitment was proper. The State established by clear and convincing evidence that Petitioner was mentally ill, was incapable of surviving alone and that her self-neglect resulted in actual harm and a real and present threat of future substantial harm to her well-being. As the evidence presented by the State to the Court below fulfilled the requirements of Section 394.476, Florida Statutes, Petitioner's involuntary commitment should be affirmed.

ISSUE I

WHETHER GODWIN'S RELEASE FROM INVOLUNTARY COMMITMENT DURING THE PENDENCY OF HER APPEAL RENDERED HER CASE MOOT.

This case is before this Court as a result of the First District Court of Appeal's certification of the following question as one of great public importance:

> When an individual seeking review of an Order of Involuntary Commitment has been Released from that commitment prior to disposition of the appeal on the merits, what showing must she make to avoid dismissal of the appeal on the grounds of mootness?

Godwin v. State, 557 So.2d 955 (Fla. 1st DCA 1990).

The State contends that the current mootness doctrine in Florida, as it relates to involuntarily committed individuals, is appropriate and achieves the proper balance between the liberty interests impacted by involuntary commitment, the Judiciary's interest in limiting its review to actual controversies rather than abstract or hypothetical legal questions, and the public's interest in efficiently utilizing the State's limited resources.

The First District Court of Appeal's stated basis for its decision to certify the above-referenced question was the Petitioner's argument offered in response to the State's motion to dismiss that "a myriad of consequences exist in our society as a result of a commitment to a mental health facility--even subsequent to release."

The only specific example of this "myriad of consequences" cited by Godwin in her Response to the State's motion to dismiss

was the problem of explaining gaps in work history to potential employers. The First District Court specifically referenced this example in its decision certifying the above-cited question to this Court. In her Response to the State's motion to dismiss, Petitioner also acknowledged that anti-discrimination laws provide such individuals a remedy in employment situations and that in at least some cases these laws prevent discrimination, but argues that the commitment should be reviewed because it is the commitment that is the underlying cause of employment problems.

Petitioner's current position on the First District Court of Appeal's certified question as evidenced by Petitioner's Brief on the Merits is that she should not be required to make any showing to avoid application of the mootness doctrine because the mootness doctrine should not apply to involuntary commitment appeals under any circumstances. Appellant bases her position on three arguments: 1) that "public policy" supports abrogation of the mootness doctrine (including the argument that involuntary commitees suffer collateral social consequences, including social stigma), 2) that involuntary commitees are potentially liable for the cost of their care under Section 394.457(8), Florida Statutes, and 3) that some foreign jurisdictions have held that such appeals fall within the "capable of repetition, but continually evading review" exception to the mootness doctrine. It is noteworthy that Petitioner's brief fails to include any specific examples or evidence of consequences, including

potential employment consequences, actually suffered by Petitioner as a result of her challenged commitment.

MOOTNESS

Mootness is "the doctrine of standing set in a time frame: The requisite personal interest that must exist at the commencement of the litigation (standing) must continue throughout its existence (mootness)" Montgomery v. Dept. of Health and Rehabilitative Services, 468 So.2d 1014, 1016 (Fla. 1st DCA 1985). See also, U.S. Parole Commission v. Geraghty, 445 U.S. 388, 100 S.Ct. 1202 (1980). When an intervening event makes it impossible for the court to grant a party any effectual relief, the case becomes moot. Montgomery, supra at 1016. Cotrell v. Amerkan, 35 So.2d 383, 384 (Fla. 1948).

The rule underlying the mootness doctrine is derived from Article III of the United States Constitution, which requires the existence of a case or controversy as a prerequisite for the exercise of judicial power. Liner v. Jafco, 375 U.S. 301, 306, 84 S.Ct. 391 (1964).

There are two main exceptions to the mootness doctrine that have been adopted by Florida courts. The first exception is triggered when the court determines that a case involves an issue that is of such importance that it should be decided irrespective of the lack of current controversy between the parties. The second exception is triggered when the court determines that a case involves issues which are capable of repetition but evading review.

THE CURRENT MOOTNESS DOCTRINE IN FLORIDA AS IT RELATES TO INVOLUNTARY COMMITMENT APPEALS

Currently in this state, an appeal of an involuntary commitment will not be declared moot even though the appellant has been discharged if the appellant establishes any of the following: 1) that some collateral legal consequence arises from the commitment, Westlake v. State, 440 So.2d 74 (5th DCA 1983); 2) that a recommitment has been based on the appealed commitment, Everett v. State, 524 So.2d 1091 (1st DCA 1988); or 3) that an issue (other than the sufficiency of the evidence) is implicated which triggers the question of public importance or capable of repetition exception to the mootness doctrine, State v. Kinner, 398 So.2d 1360 (1987).

The following cases have shaped the contours of the mootness doctrine in this state regarding involuntary commitment appeals: State v. Kinner, supra; Westlake v. State, supra; Madden v. State, 463 So.2d (Fla. 2d DCA 1984); Everett v. State, supra.

The most important of these cases is Kinner, supra, in which this Court determined that an involuntary commitee's release moots the issue of whether the evidence presented at the commitment hearing supported the commitee's confinement. Kinner at 1363. In Kinner, this Court stated that it would not "determine a controversy where issues have become moot, unless the questions presented are of general public interest and importance, or unless such judgment as this Court might enter would affect the rights of parties." Id. at 1362.

Kinner involved two issues: 1) the constitutionality of Section 393.063(22), Florida Statutes (1977), and 2) the sufficiency of the evidence presented to support the commitment. Id. This Court held that a subsequent amendment to the challenged statute did not moot the first issue because a significant number of persons were presently institutionalized pursuant to the application of the predecessor statute. Id. However, this Court also held that:

> Mr. Kinner's release renders the second issue, whether the evidence supported his confinement, moot. We, therefore, need not make a decision as to the findings of fact of the trial court.

Id. at 1363.

Thus, Kinner establishes that the application of the mootness doctrine to the issue of the sufficiency of the evidence is proper even though the mootness doctrine clearly does not apply to constitutional challenges to the relevant commitment statute and arguably would not apply to any other issues impacting on the liberty interests of committed individuals.

Westlake v. State, supra, was the next case impacting on the mootness doctrine as applied to involuntary commitment appeals. In Westlake, the Fifth District Court of Appeal held that, given Westlake's release during the pendency of the appeal, the challenge of his involuntary commitment was governed by this Court's ruling in Kinner, supra. Id., 440 So.2d at 75. The court in Westlake noted that "counsel for the Appellant urged this Court that the case should not be considered moot because of

the stigma attached to an involuntary commitment for treatment of mental illness". Id. The court specifically addressed the issue of stigma by stating:

> Although such stigma was judicially recognized by at least one federal court as the basis for determining the proper quantum of proof to be applied to civil commitment proceedings, that same court relied on the possibility of collateral legal, not social, consequences as a basis for rejecting the mootness argument presented there. In re Ballay, 482 F.2d 648 (D.C. Cir. 1973). No such collateral legal consequences (e.g., restriction of voting rights, jury service, driver's licenses or gun licenses) have been suggested to us in the instant case. We observe, moreover, that the most salutory relief available to a person wrongfully committed would be release pursuant to a timely petition for writ of habeas corpus, not an impractical appeal which cannot avert short-term confinement. In any event, we are governed by the precedent of the Florida Supreme Court (Kinner) rather than that of the federal courts in determining an issue such as mootness of an appeal.

Id.

In Madden, supra, the Second District Court of Appeal offered further guidance regarding the scope of the "collateral legal consequences" exception forwarded in Westlake, supra. The appellant in that case was able to establish that despite his release during the pendency of his commitment appeal, he suffered

collateral legal consequences (revocation of his medical certificate and suspension of his pilot's certificate) as a result of his involuntary commitment. The Second District Court of Appeal held that such consequences rose to the level of a legal collateral consequence. Madden, at 270-271.

In Everett, supra, the First District Court of Appeal further limited the scope of the mootness doctrine in those instances involving administrative continuation of involuntary placement after the original six month commitment order had expired. The Court held that "[i]f a circuit judge's order of initial involuntary placement is erroneous, subsequent administrative orders of continued involuntary placement, predicated as they are on the initial order, do not render challenges to that order moot". Id. at 1092-1093.

When viewed in light of Kinner, supra, Westlake, supra, Madden, supra, and Everett, supra, Petitioner has failed to make any showing that justifies an abrogation of the mootness doctrine in her case. All of the "myriad of social consequences" Petitioner discusses regarding the impact that an involuntary commitment has on an individual after release from custody are of a hypothetical nature and have no application under the facts currently before this Court.

Based on the above-cited case law, Petitioner's appeal was properly dismissed on the grounds of mootness. Similar to the facts in Kinner, Petitioner's appeal involved a challenge to the sufficiency of the evidence after the appellant had already been

discharged. In contrast to Kinner however, Petitioner's appeal did not involve any other issues which were of great public importance. Pursuant to this Court's ruling in Kinner, Petitioner's appeal was properly dismissed because there was no meaningful relief that could be provided to Petitioner under the factual circumstances of her case as she had already been released from custody.

Similar to Westlake, Petitioner argues that the social stigma attached to involuntary commitment should bar the application of the mootness doctrine. Westlake properly held that social stigma did not rise to the level of a collateral legal consequence. As Petitioner has failed to allege any actual or potential specific injury that could be cured by a reversal of her commitment, the First District Court of Appeal properly dismissed her appeal as moot.

Unlike the Appellant in Madden, Petitioner has not established any collateral legal consequence of her involuntary commitment. While Petitioner's response to the State's motion to dismiss alleged that Petitioner would potentially suffer adverse employment consequences at least slightly analogous to the situation in Madden, Petitioner has provided no evidence to support that allegation. The State contends that based on Petitioner's five year history of mental illness, there are no grounds for arguing that her involuntary commitment could be the basis for any type of collateral legal consequence as was suffered by the appellant in Madden.

Clearly, Everrett does not apply in Petitioner's case, as she was released rather than recommitted. However, Everett does highlight the fact that a previous involuntary commitment can only be used as the basis for a future involuntary commitment if the commitments are continuous. Except in the case of continuous commitments, the State must prove all of the criteria set out in Section 394.467, F.S., and the State can not rely on previous involuntary commitment as the basis for a future involuntary commitment. Thus, in this state, there is no collateral legal consequence associated with a past commitment in regards to future commitment as is the case in other foreign jurisdictions. See State v. Lodge, 608 S.W. 2d 910, 911 (Tex. 1980) (Texas statute allowing involuntary commitment for indefinite period if individual is treated for at least 60 days pursuant to an order of temporary hospitalization within 12 months immediately proceeding the petition for indefinite involuntary commitment).

Petitioner argues that rather than requiring her or other appellants to establish the existence of collateral consequences in order to avoid application of the mootness doctrine, the State should have the burden of proving an absence of collateral consequences in order to avoid application of the mootness doctrine. Petitioner's argument flies in the face of the basic principle that an appellant has the initial burden to prove that her case involves an actual controversy. It would be an impossibility for the state to prove a negative and would result therefore in an absolute rule that mootness would never apply.

POTENTIAL LIABILITY PURSUANT TO SECTION 394.457(8), F.S.

Petitioner argues that an assessment of fees pursuant to Section 394.457(8), F.S., and Section 402.33, F.S., is a direct consequence of involuntary commitment that prevents Petitioner's claims from being deemed moot. Petitioner further argues that a reversal of her commitment "should result in her being able to successfully assert non-liability for these costs."

Initially, it should be noted that Section 402.33, F.S., specifically states that fees may not be charged to indigents (Section 402.33(1)(g), F.S.), and that the Department of Health & Rehabilitative Services may not require individuals to pay fees in excess of their ability to pay. Section 402.33(6)(a), F.S.

Petitioner was indigent at the time of her involuntary commitment, as evidenced by her representation by the Public Defender's Office. Further, Petitioner has not offered any evidence that she has been held financially liable for the fees associated with her commitment to Florida State Hospital. Thus, Petitioner has not experienced any financial consequence of her commitment and therefore, the issue of whether financial liability under the statute constitutes a collateral legal consequence is not properly before this Court in this case.

Nor is this an issue capable of repetition but evading review. A non-indigent person who could properly raise this argument has access to evidence of such indebtedness in accordance with Ch. 402, F.S.

Additionally, Petitioner's unsupported assertion that the reversal of a commitment would be a valid basis for asserting non-liability for costs assessed pursuant to Section 402.33, F.S., has no basis in the law. Neither Chapter 394, F.S. nor Chapter 402, F.S., contain language establishing that individuals who have received mental health services and have the ability to pay are no longer liable for payment for these services if the involuntary commitment is overturned. HRS may still be able to collect fees for services rendered to those individuals with the ability to pay based on a quantum merit theory, especially in those instances where the individual would have been paying for food, rent, drug therapy and mental health treatment anyway. Further, an individual does not appear to be precluded from arguing in another judicial forum that his commitment was wrongful as a defense to liability for fees even if his timely filed appeal was dismissed on the grounds of mootness.

PUBLIC POLICY SUPPORTS THE APPLICATION OF THE MOOTNESS DOCTRINE ON A CASE BY CASE BASIS

Public policy supports the case by case approach to the mootness doctrine currently practiced by Florida courts regarding involuntary commitment appeals. This case by case approach ensures that those individuals who suffer from the type of consequences that can be remedied or redressed by a reversal of the commitment will be given the opportunity to appeal. At the same time, this approach supports the judiciary's interest in hearing only those cases involving actual controversies and the state's interest in avoiding further overburdening an already overtaxed legal system.

Under the current approach, an individual who has been released prior to the pendency of her appeal has the opportunity to respond to the State's motion to dismiss by presenting evidence and arguments regarding collateral legal consequences they have or will suffer. Evidence regarding financial liability pursuant to Section 402.33, F.S., impact on employment or future employment, impact on any other legal right that the individual enjoys could be presented to establish that the individual's case falls within one of the exceptions to the mootness doctrine. Of course, as noted previously, if the individual's appeal involves other issues beyond the mere sufficiency of the evidence, those issues could be heard irrespective of the lack of a showing of collateral legal consequences.

Petitioner has asserted that public policy supports complete abrogation of the mootness doctrine in the area of involuntary commitment and thus every individual who has been involuntarily committed should be able to appeal. This assertion is based mainly on the argument that social stigma is an unavoidable consequence of an involuntary commitment. Admittedly, those individuals who suffer collateral legal consequences due to this stigma should be permitted to pursue their appeal irrespective of their release. Collateral legal consequences by their very nature, would be remedied by a reversal of the involuntary commitment. In contrast, unspecific social stigma without attendant collateral legal consequences can not be remedied by reversal of the involuntary commitment.

Further, the United States Supreme Court has noted that it is the symptomatology of a mental or emotional illness that is "truly stigmatizing" Parham v. J.R., 442 U.S. 584, 602, 99 S.Ct. 2493, 2503 (1979) (citing to social science research finding that the stigma of mental hospitalization is not a major problem for the ex-patient" Id. at n.12) The Supreme Court has further noted that "[o]ne who is suffering from a debilitating mental illness and in need of treatment is neither wholly at liberty or free from stigma." Addington v. Texas, 441 U.S. 418, 429, 99 S.Ct. 1804, 1811 (1979).

The majority of involuntary commitment appeals, including the Petitioner's, do not challenge the determination that the

appellant is suffering from a mental illness, but instead concede the existence of a mental illness and challenge one of the further findings required by Chapter 394, F.S. However, it is the mental illness diagnosis itself and the resultant behavioral symptoms of mental illness that are the root of societal stigma, not hospitalization. Hospitalization, whether voluntary or involuntary, and a subsequent release, may mitigate societal stigma due to the fact that the individual is perceived as being "healed".

Petitioner has cited a number of foreign jurisdiction cases in support of her argument that the mootness doctrine should not be applied to involuntary commitment appeals. While these cases contain discussion of the social stigma potentially experienced by involuntarily committed individuals, the decisions in a number of these cases are based on a finding of "collateral legal consequences" rather than mere social stigma. Sibron v. New York, 392 U.S. 40, 88 S.Ct. 1889 (1968); In re Ballay, 482 F.2d 648 (D.C. Cir. 1973); In re Hatley, 231 S.E.2d 633, 291 N.C. 693 (N.C. 1977); People v. Nunn, 438 N.E.2d 1342, 108 Ill. App. 3d 169 (Ill. App. 5 Dist. 1982). The remaining cases cited by the Petitioner are distinguishable from the case at bar because they involved issues, other than the sufficiency of the evidence, which were either of great public importance and/or capable of repetition but evading review, Matter v. Z.O., 484 A.2d 1287 (N.J. Super A.D. 1984), or involved statutory interpretation of

the relevant involuntary commitment statute. See State v. Van Tassel, 484 P.2d 1117, 5 Or. App. 376 (Or. App. 1971) (interpreting Oregon Statute 426.070); Lodge v. State, 597 S.W. 2d 733 (Tex Cir. App. 4 Dist. 1980) (interpreting Tex. Rev. Civ. Stat. Ann. 5547).

A number of foreign jurisdictions continue to support application of the mootness doctrine to commitment appeals, applying the same exceptions as Florida courts. Radulski v. Delaware State Hospital, 562 A.2d 562 (Del. 1988); In re Faucher, 558 A.2d 705 (Me. 1989); In re Robledo, 341 N.W.2d 278 (Minn. 1983); State Ex Rel D.W. v. Hensley, 574 S.W.2d 389 (Mo. 1978); Diamond v. Cross, 662 P.2d 828 (Wash. 1983); In re G.S., 348 N.W. 2d 181 (Wis. 1984).

The case of Radulski, supra, is noteworthy in that the Delaware Supreme Court encouraged attorneys to utilize expedited review of involuntary commitment cases as a way of avoiding application of the mootness doctrine. Id. at 566. Expedited review would be an option in Florida, especially in those instances where counsel for the committed individual believes that the commitment is clearly wrongful and that the committed individual will thus be quickly released by the hospital from custody. As evidenced by the record in this case, involuntary commitment proceedings are relatively short and uncomplicated. A notice of appeal could be submitted immediately and the trial judge could order expedited preparation of the transcript and

record. It would be the responsibility of the appellant to timely submit an initial brief and to motion the appellate court for expedited consideration of the appeal. Not only would this have the effect of avoiding a dismissal on the grounds of mootness, it would serve the committed individual's interest in being released as soon as possible.

It may be that the potential stigma associated with an involuntary commitment supports an argument that the mootness doctrine should not be applied summarily to commitment appeals without giving the appellant the opportunity to present evidence of collateral legal consequences that may result from stigma. However, the potentiality of stigma is not an adequate basis for abrogating the mootness doctrine altogether.

The state has an interest in efficiently utilizing its limited resources. Complete abrogation of the mootness doctrine regarding involuntary commitment appeals will increase the number of appeals that the district courts must hear and will increase the workload of public defenders and assistant attorneys general. In light of the fact that the current mootness doctrine ensures that all individuals who are in a position to obtain meaningful relief from reversal of the involuntary comitment can do so, there is no compelling justification for increasing the burden on the state's legal system.

Counsel for Petitioner, pursuant to an extension granted by the First District Court of Appeal, did not submit an initial

brief challenging Petitioner's commitment until January 23, 1990, almost six months after the commitment order was entered. Petitioner argues that the short nature of certain individuals' commitment stays contributes to the problem of their commitment evading review. However, this problem can be largely attributed to the nature of the regular appellate process and an effort to process involuntary commitment appeals through an expedited process would alleviate this problem.

In conclusion, the current case by case application of the mootness doctrine as evidenced by Kinner, supra, Westlake, supra, Madden, supra, and Everett, supra, appropriately balances the competing interests implicated in involuntary commitment appeals. Petitioner has failed to present any adequate justification for abrogating the mootness doctrine in her case or as a general principle in all commitment cases.

Petitioner has failed to present any evidence of any collateral legal consequences suffered as a result of her involuntary commitment and thus her appeal was properly dismissed as moot. Respondent respectfully requests this Court to uphold the lower court's decision finding Petitioner's appeal moot.

ISSUE II

WHETHER THE STATE MET ITS BURDEN OF SHOWING BY CLEAR AND CONVINCING EVIDENCE THAT THE PETITIONER, BY HER NEGLECT AND REFUSAL TO CARE FOR HERSELF, POSED A REAL AND SUBSTANTIAL THREAT OF HARM TO HER WELL-BEING.

The Supreme Court in In re Beverly, 342 So.2d 481 (1977), defined the criteria which must be met before the trial court may enter an order for involuntary commitment. The person must be mentally ill and because of the illness, the person must be likely to injure himself or others if allowed to remain at liberty or if the person is non-dangerous, he must be in need of treatment and lack sufficient capacity to make responsible application for it.

The Court further stated that:

> If the judge concludes that the mental illness manifests itself in neglect or refusal to care for himself, that such neglect or refusal poses a real and present threat of substantial harm to his well being, and that he is incompetent to determine for himself whether treatment for his mental illness would be desirable, then the criteria of the statute have been met.

Id. at 487.

The State showed by clear and convincing evidence that Petitioner met the criteria as stated by this Court in In re Beverly, supra, and therefore, the lower court's order of involuntary commitment should be upheld.

Dr. Bragado-Spence, the Petitioner's treating psychiatrist, testified that she diagnosed the Petitioner as having a bipolar disorder mental illness (T.4). She further testified that the Petitioner was incapable of caring for herself and that Florida State Hospital was the least restrictive alternative available (T.4).

In support of this recommendation she presented information that Petitioner refused to take medication when ill (T.8) and in fact believed that the possible cause of her illness, smoking, was instead the cure (T.6,8). Petitioner also refused to take medication for her mental illness (T.7). She had been seen living on the streets, sleeping at bus stops (T.5,10), was delusional (T.6,18) and incoherent (T.5,9). On her last admission she was filthy and her feet were so covered with blisters that she could not walk (T.9). In addition, the Petitioner denied that she had a mental illness (T.7,16).

In In re Barbara Jackson, 342 So.2d 492 (1977), a case directly on point with the case at issue, this Court further held that when a showing is made that a patient has refused to take medication and where her doctor has testified that she required care and lacked the capacity to request it, the evidence was clear and convincing that the order for involuntary commitment was proper.

While, obviously, the refusal to take medication is, in and of itself, an insufficient basis for involuntary commitment, it

is in this case symptomatic of an individual who fails to recognize both her mental illness and other maladies and as a result, neglects to care for herself. Without treatment the mental illness and the resultant neglect will continue and she will continue to require care but because of her illness will be unable to recognize the need. This refusal to care for herself with the resultant threat of harm was the basis for Dr. Bragado-Spence's recommendation.

The Petitioner claims that the State has only raised the "question" of harm to her well-being. The evidence presented to the lower court illustrated that there was more than a mere "question" of harm; there was evidence of self neglect that resulted in actual harm to the Petitioner.

It is well-settled in Florida jurisprudence that a judgment by a trial court reaches a court of appeal clothed with a presumption of validity, and if upon the pleadings and evidence before the trial court there is any theory of principle of law supporting its judgment, a court of appeal is obliged to affirm. Cohen v. Mohawk, Inc., 137 So.2d 222 (Fla. 1962); Bei v. Harper, 475 So.2d 912 (Fla. 2d DCA 1985); Wales v. Wales, 422 So.2d 1066 (Fla. 1st DCA 1982). Otherwise stated, an appellate court will not substitute its judgment for that of the trial court, where the decision is supported by competent substantial evidence. Kopplow & Flynn, P.A. v. Trudell, 445 So.2d 1065 (Fla. 3d DCA 1984); Mann v. Price, 434 So.2d 943 (Fla. 2d DCA 1983); Randolph

v. McCullough, 342 So.2d 129 (Fla. 1st DCA 1977). Further, a trial court's findings should not be disturbed in the absence of a clear showing that the court abused its discretion or otherwise committed reversible error. Green v. Green, 254 So.2d 860 (Fla. 1st DCA 1971); Cook v. Cook, 305 So.2d 12 (Fla. 1st DCA 1974).

The trial court was in the best position to evaluate and weigh the evidence presented during the commitment hearing. Further, the trial court had the opportunity to view the demeanor and behavior of each witness that testified at the hearing including the behavior of the Petitioner, who, as was evident from the transcript, was rambling, incoherent, delusional, and irrational at the commitment hearing.

Petitioner has failed to show an abuse of discretion on the part of the trial court. The evidence presented by the State clearly refutes Petitioner's contention that the commitment order was not supported by clear and convincing evidence.

Petitioner fails to point out to this Court how the trial court abused its discretion or otherwise committed error. Rather, she reasserts the same legal arguments and facts presented to the court below, and asks this Court to reweigh the evidence and reach a contrary conclusion. This, the Court should decline to do. Moreover, this Court should affirm the ruling of the trial court based on Petitioner's failure to carry her burden of demonstrating either an abuse of discretion or that the trial court erred as a matter of law. See, City of Miami v.

Huttoe, 38 So.2d 819 (Fla. 1949); LaGorce Country Club v. Cerami, 74 So.2d 95 (Fla. 1954).

No abuse of discretion has been demonstrated by the Petitioner. The State established by clear and convincing evidence that the Petitioner's mental illness manifested itself in neglect which posed a real and substantial threat to her well-being.

CONCLUSION

The trial court's order for involuntary placement should be affirmed.

Respectfully submitted,
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CERTIFICATE OF SERVICE

I **HEREBY CERTIFY** that a true and correct copy of the foregoing has been furnished by hand delivery to **LYNN WILLIAMS, ASSISTANT PUBLIC DEFENDER**, Leon County Courthouse, 301 South Monroe Street, Tallahassee, Florida 32302 this 5th day of July, 1990.

Kathleen E. Moore
KATHLEEN E. MOORE