



In the Missouri Court of Appeals Eastern District

DIVISION TWO

	)	No. ED108158
	)	
In the Matter of the Care and Treatment	)	Appeal from the Circuit Court
of D.E.K.,	)	of Saint Charles County
	)	03PR124286
Appellant.	)	
	)	Honorable Norman C. Steimel III
	)	
	)	FILED: December 22, 2020

Introduction

D.E.K. appeals from the probate court's judgment denying his pro se petition for conditional release from his commitment to the Department of Mental Health for control, care, and treatment as a sexually violent predator. We affirm.

Factual and Procedural Background¹

Since April 2005, D.E.K. has been committed to the Department of Mental Health ("DMH") for control, care, and treatment, after having been found to meet the statutory definition of a sexually violent predator ("SVP"). As required by statute, DMH has filed annual reports recommending D.E.K.'s continued commitment, citing D.E.K.'s diagnoses of pedophilic disorder, exhibitionistic disorder, schizophrenia, and substance use disorders, and D.E.K.'s

¹ As the parties are familiar with the issues presented, record on appeal, and D.E.K.'s previous correspondence with the probate court, we discuss only the facts relevant to this appeal.

active delusions. *See* Section 632.498.² Despite recommending continued commitment, the most recent reports from 2018 and 2019 noted that D.E.K.’s “mental abnormality has changed; however, it has not significantly changed such that he is safe to be at large” because, “[i]f released, he is likely to engage in predatory acts of sexual violence.”

Since at least 2015, D.E.K. has written the probate court asking for permission to file a petition seeking his own release and sending documents he believed pertinent to his case. On May 15, 2019, D.E.K. filed a motion to proceed pro se to seek his release pursuant to Section 632.498.3, along with a letter referencing filing a petition for release and a motion to exclude expert testimony, all filed without the approval of the Director of DMH (“the Director”). On June 10, D.E.K. filed a letter asking to voluntarily dismiss his petition without prejudice, which the probate court granted on June 13. On July 2, D.E.K. asked the probate court to vacate the previous dismissal and filed a motion to reinstate his earlier petition for release, along with a demand for a jury trial and motions to proceed pro se and to exclude expert witnesses. On July 3, D.E.K. sent a letter to the probate court asking for counsel and “requesting that this letter be considered [his] application for release.”

On July 19, the probate court entered an order denying D.E.K.’s pending motions and petition for release, without a hearing. The probate court denied the July 2 motions as being “outside the jurisdiction of the court” due to D.E.K.’s voluntary dismissal of his previous May 15 petition for release. The probate court denied the July 3 letter, construed as a petition for release, as frivolous pursuant to Section 632.504 because it failed to set forth a factual basis for D.E.K.’s release request.

This appeal follows.

² All statutory references are to the Revised Statutes of Missouri (2000), as supplemented annually through 2019.

Standard of Review

D.E.K. acknowledges that his claims of error were not preserved, and he requests plain error review.³ Plain errors are those that affect substantial rights and result in manifest injustice or a miscarriage of justice. Mo. R. Civ. P. 84.13(c)⁴; *see also In re Care and Treatment of D.N.*, 598 S.W.3d 108, 117, 119 (Mo. banc 2020). We undertake this review of unpreserved claims of error in our discretion. Mo. R. Civ. P. 84.13(c).

Discussion

In his two points on appeal, D.E.K. argues the probate court erred in denying his petition for release without a hearing in that: (1) the probate court failed to follow the minimum statutory requirements in denying the petition as frivolous; and (2) the probate court mistakenly determined it lacked jurisdiction over the petition and related motions. We disagree and affirm the probate court's judgment.

We address D.E.K.'s points on appeal out of order so that our discussion proceeds chronologically, beginning with the probate court's denial of the motions filed on July 2 (Point II) and ending with the probate court's denial of the petition for release filed on July 3 (Point I).

Point II

In his second point on appeal, D.E.K. argues the probate court plainly erred in denying his motion to reinstate his petition for release after determining it lacked jurisdiction over the case following D.E.K.'s voluntary dismissal of his previous petition for release. We disagree, but begin with a note on terminology.

³ D.E.K. requests plain error review under Rule 30.20, which articulates the standard for plain error review in criminal cases on appeal. *See* Mo. R. Crim. P. 30.20. This case, however, is a civil proceeding, *see In re Care and Treatment of Kirk v. State*, 520 S.W.3d 443, 450 (Mo. banc 2017) (proceedings under SVPA are civil), and we therefore review it under the plain error standard articulated in Rule 84.13(c). *See* Mo. R. Civ. P. 84.13(c).

⁴ All rule references are to the Missouri Rules of Civil Procedure (2019), unless otherwise indicated.

Here, relying on case law addressing motions to reinstate voluntarily dismissed claims, the probate court approached the issue presented as one of jurisdiction. However, this understanding is outdated in light of *J.C.W. ex rel. Webb v. Wyciskalla*, 275 S.W.3d 249 (Mo. banc 2009). In *Webb*, the Supreme Court of Missouri clarified that issues such as the one presented here are not ones of personal or subject matter jurisdiction, and rather speak to a trial court's authority over a particular claim at a particular time. *Id.* at 254. Therefore, to the extent the parties and the probate court framed the issue as one of jurisdiction over D.E.K.'s petition for release, we instead analyze this point on appeal as relating to the probate court's authority over this particular claim at this particular time. *See Parkway Constr. Servs., Inc. v. Blackline LLC*, 573 S.W.3d 652, 662 n.3 (Mo. App. E.D. 2019) (framing point on appeal challenging jurisdiction over reinstatement of voluntarily dismissed claim as properly regarding trial court's authority, in light of *Webb*). We are to be especially cautious of employing the terminology of authority rather than jurisdiction in the case of SVP proceedings, given that the probate court has a special relation to and continued oversight of the individual's commitment as an SVP. *See, e.g.*, Section 632.498. The probate court here did not lack jurisdiction over D.E.K.'s petition and related motions, and merely lacked the authority to reinstate D.E.K.'s action once dismissed. *See Parkway Constr. Servs., Inc.*, 573 S.W.3d at 662.

Once a petitioner voluntarily dismisses an action in its entirety, it is as if the suit had never been brought. *Henry v. Piatchek*, 578 S.W.3d 374, 379 (Mo. banc 2019); *Richter v. Union Pacific R.R. Co.*, 265 S.W.3d 294, 297 (Mo. App. E.D. 2008). Given that we consider a voluntarily dismissed petition in this way, a trial court has no power to reinstate a petition that has been so dismissed. *Richter*, 265 S.W.3d at 297; *see also Bearden v. Mo. Valley Coll.*, 593 S.W.3d 138, 142 (Mo. App. W.D. 2020) ("the trial court has no power to reinstate the case, even

the next day upon a plaintiff's motion") (internal quotations and citation omitted). When a party dismisses all counts involved in a suit, the court loses authority over the suit because "there are no pending claims or parties and nothing left for the court to determine." *Parkway Constr. Servs., Inc.*, 573 S.W.3d at 662. As such, "[n]o steps can be taken upon the suit after dismissal" and any attempted "steps taken thereafter are a nullity." *Henry*, 578 S.W.3d at 379 (internal quotations and citation omitted).

The probate court here did not err, plainly or otherwise, in denying D.E.K.'s July 2 motion to reinstate his May 15 petition for release. After D.E.K. voluntarily dismissed his earlier petition, it was as if no petition had ever been filed. *See id.* at 377 (stating that, after voluntary dismissal of entire suit, there was "no suit"). Therefore, there was nothing for the probate court to reinstate and it did not err in denying D.E.K.'s motion to reinstate his voluntarily dismissed petition. *See Richter*, 265 S.W.3d at 303 (finding trial court correctly concluded it had no authority to reinstate voluntarily dismissed claim). Likewise, because there was no underlying action, the probate court did not err in denying D.E.K.'s contemporaneously filed demand for a jury trial and motions to proceed pro se and to exclude expert witnesses. *See Hague v. Trs. of Highlands of Chesterfield*, 431 S.W.3d 504, 508–10 (Mo. App. W.D. 2014) (concluding circuit court did not err in finding it could not issue any relief regarding voluntarily dismissed action).

After the voluntary dismissal of an entire action without prejudice, the only avenue available to a petitioner is to refile the same petition anew. *See* Mo. R. Civ. P. 67.01 ("[a] dismissal without prejudice permits the party to bring another civil action for the same cause, unless the civil action is otherwise barred"). D.E.K. attempted to refile his petition anew when he sent the probate court a letter on July 3 that he requested "be considered [his] application for

release.” This new petition was fully considered by the probate court and is the subject of D.E.K.’s first point on appeal, discussed below.

Point II is denied.

Point I

In his first point on appeal, D.E.K. argues the probate court plainly erred in denying his petition for release as frivolous, in that it failed to follow the minimum requirements of Section 632.498, namely appointing counsel, issuing sufficient findings, and holding a hearing. We disagree.

The Missouri Sexually Violent Predator Act (“SVPA”) governs the civil commitment of individuals adjudicated to be SVPs. *See* Sections 632.480 to 631.525. Section 632.498 provides for an annual review of the status of each individual committed as an SVP, which “ensures involuntary confinement that was initially permissible will not continue after the basis for it no longer exists.” *In re Care and Treatment of Murrell v. State*, 215 S.W.3d 96, 105 (Mo. banc 2007); *see also* Section 632.498.1. Under this annual review mechanism, the Director is required to prepare an annual report on each individual’s mental condition and provide it to the court responsible for the original commitment. Section 632.498.1. If the Director determines “the person’s mental abnormality has so changed that the person is not likely to commit acts of sexual violence if released,” the Director “shall authorize the person to petition the court for release.” Section 632.501. If the Director does not approve a petition for release, an individual committed to DMH may still petition the court for conditional release without the Director’s approval. Section 632.498.2.

Upon receiving a petition for release, the court will generally hold a hearing to determine whether the individual no longer suffers from a qualifying “mental abnormality” that makes the

individual likely to engage in acts of sexual violence if released. *See* Section 632.498.4.

However, a court may deny a petition for release without a hearing if the petition is filed without the Director's approval and "is based upon frivolous grounds." Section 632.504. Section 632.504 also instructs that,

if a person has previously filed a petition for release without the director's approval and the court determined either upon review of the petition or following a hearing that the petitioner's petition was frivolous or that the petitioner's condition had not so changed that the person was safe to be at large, then the court shall deny the subsequent petition unless the petition contains facts upon which a court could find the condition of the petitioner had so changed that a hearing was warranted.

Id.

Here, D.E.K. alleges error in the probate court's failure to either make specific findings as to why the petition was insufficient, or to appoint counsel and hold a hearing on the matter. As outlined above, a court is not required to hold a hearing—or appoint counsel for such a hearing—if the petition is frivolous. *See* Sections 632.504, 632.498. Therefore, the inquiry is whether the trial court erred in finding that D.E.K.'s petition for release was frivolous.

Neither Section 632.504 nor any other section of the SVPA defines "frivolous." However, our Supreme Court has defined frivolous, as applied to petitions for release, as "of little weight or importance: having no basis in law or fact" and "clearly insufficient on its face." *In re Care and Treatment of Coffman*, 225 S.W.3d 439, 446 (Mo. banc 2007) (quoting Webster's New International Dictionary (3d ed. 1993) and Black's Law Dictionary (6th ed. 1990)). In *Coffman*, the Missouri Supreme Court reviewed the circuit court's denial of a petition for release as frivolous, without a hearing. *Id.* at 441, 445. The petitioner in *Coffman* based his petition for release on the allegation that he was no longer dangerous due to deterioration in his physical health, which was supported by an expert evaluation. *Id.* at 441–42, 445–47. The *Coffman* court disagreed with the circuit court that the petition was frivolous, and remanded for a hearing

because the petition “was sufficient to allege a basis to believe that [petitioner] is no longer dangerous.” *Id.* at 446–47.

Unlike the petitioner in *Coffman*, D.E.K. failed to allege a basis either to believe he no longer suffers from a mental abnormality resulting in a likelihood of committing sexual violence or to believe he is no longer dangerous for another reason. D.E.K.’s July 3 letter, which he requested “be considered [his] application for release,” contained no statements regarding the basis for D.E.K.’s requested release from confinement.⁵ This letter did not allege any facts that would tend to show a basis for D.E.K.’s claim, and therefore had “no basis in law or fact” and was “clearly insufficient on its face.” *See id.* at 446 (quoting Webster’s New International Dictionary (3d ed. 1993) and Black’s Law Dictionary (6th ed. 1990)). As such, the probate court did not err, plainly or otherwise, in denying the petition as frivolous under Section 632.504 based on its finding that “[n]othing in the letter sets forth any factual basis for [D.E.K.’s] request.” *See id.* at 446–47.

Point I is denied.

Conclusion

The probate court’s judgment denying D.E.K.’s petition for conditional release and related motions is affirmed.



Robin Ransom, Presiding Judge

Sherri B. Sullivan, J., and Lisa P Page, J., concur.

⁵ For the reasons stated in Point II, *supra*, our discussion of the sufficiency of D.E.K.’s petition for release focuses solely on D.E.K.’s July 3 letter and not any earlier filing.