

TWENTY-FIFTH JUDICIAL CIRCUIT
OF VIRGINIA

ANNE F. REED, JUDGE
STAUNTON CIRCUIT COURT
GEORGE M. COCHRAN JUDICIAL CENTER
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STAUNTON, VIRGINIA 24401



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Re: *Giles County Department of Social Services v. Nelson Smith, in his capacity as Commissioner of the Virginia Department of Behavioral Health and Development Services and Jamie M. Bamford, in her capacity as Director of Commonwealth Center for Children and Adolescents ~ Case No. CL22000102-00*

Dear Counsel:

This case arises out of a series of events involving a minor, S.E., who was the subject of a temporary detention order (TDO) which required her to be transported to the Commonwealth Center for Children and Adolescents (the Center) after a medical evaluation at the Chippenham Hospital in Richmond. Chesterfield County Police executed the order on February 21, 2022, at 2:07 a.m. and the order expired on February 25, 2022, at 2:07 a.m.

The Center did not admit S.E. when she arrived, citing a lack of available beds. A representative of the Center indicated that S.E. would be admitted on February 25, 2022, at 8:00 a.m. However, when the time came, the Center did not admit S.E. as the order had expired.

As a result of the Center's failure to admit S.E., the Giles County Department of Social Services has filed the instant suit alleging in its petition that Defendants committed a violation of Virginia Code Section 16.1-340.1:1(B) and civil contempt of judicial orders by violating the temporary detention orders. Plaintiff seeks as remedies: (I) that the court declare the Center's failure and/or refusal to admit, evaluate or treat the respondent to be unlawful; (II) issue temporary and permanent injunctions enforcing Virginia Code Section 16.1-340.1:1(B); (III) issue a writ of mandamus requiring the Center to comply with the mandatory admission provisions of Virginia Code Section 16.1-340.1:1.

In response to Plaintiff's requests for relief, Defendants have filed a demurrer, a plea in bar, and a plea of sovereign immunity. On June 28, 2022, the Court heard argument on the demurrer and pleas. Additionally, evidence was presented in the form of testimony by Director Bamford of the Commonwealth Center.

Request for Mandamus Relief

At the hearing, Plaintiff indicated that it was abandoning its claims for declaratory and injunctive relief. As such, the only issue for the Court to address is Plaintiff's request for a writ of mandamus. Because the Court finds that there is no live controversy, the issue is moot, and Defendants' Demurrer is **granted**.

A. Plaintiff's Lawsuit is Moot

The Supreme Court has observed that "[w]henver it appears 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." *McCarthy Holdings LLC v. Burgher*, 282 Va. 267, 275 (2011). Neither party disputes that the TDO to which S.E. was subject has expired. As such, any controversy as it relates directly to the execution of the original TDO for S.E. is clearly moot.

There, however, is an exception to the mootness doctrine when issues are "capable of repetition yet evading-review." In *Ingram v. Commonwealth*, 62 Va. App. 14, 24 (2013), the Court of Appeals indicated that:

This exception to mootness should be used "sparingly" and usually only in cases that are "short-lived by nature." *Daily Press, Inc.*, 285 Va. at 452, 739 S.E.2d at 639. Such "exceptional situations" typically involve "disputes of abbreviated duration where the party seeking review can make a reasonable showing that he will again be subjected to the alleged illegality." *Elliott*, 48 Va.App. at 554, 633 S.E.2d at 204-05 (citations and internal quotation marks omitted). Compare *United States v. Juvenile Male*, —U.S. —, —, 131 S.Ct. 2860, 2865, 180 L.Ed.2d 811 (2011) (refusing to apply the capable-of-repetition doctrine where 21-year-old defendant "will never again be subject to ... juvenile

supervision”), with *Turner v. Rogers*, — U.S. —, —, 131 S.Ct. 2507, 2515, 180 L.Ed.2d 452 (2011) (applying the capable-of-repetition doctrine where “there is a more than reasonable likelihood that [defendant] will again be subjected to the same action” (internal quotation marks omitted)).

Ingram v. Commonwealth, 62 Va. App. 14, 22 (2013). Although the present case involves a dispute of abbreviated duration—i.e., the TDO—the Plaintiff has not alleged any facts or provided any evidence to suggest that there is “more than reasonable likelihood that [defendant] will again be subject to the same action.” *Id.* The complaint alleges only a single instance of this occurring with any particularity. Further, although Plaintiff indicated in its Memorandum in Support that it intended to call Defendant Bamford to testify regarding the number of recent failures to admit minors who are subject to a TDO and directed to the Center, this testimony did not yield any support for Plaintiff’s case. In fact, Defendant Bamford testified that within the past month, there have not been any children, subject to a TDO, who were placed on the Center’s waiting list. S.E., herself, was admitted to the Center on a TDO just a few days after the initial incident without delay. It may be entirely possible—perhaps even probable—that in the future, the Center will not have available bedspace and turn away a child subject to a TDO. However, Plaintiff provided no evidence to suggest that S.E.—or even another child within the custody of the Giles County DSS—are more than reasonably likely to be subject to this action. As such, Plaintiff has not shown that the complained of conduct is capable-of-repetition-but-evading-review and the case presents no live controversy. Because the present case is moot, it is the duty of this Court “not to proceed to the formal determination of the apparent controversy but to dismiss the case.” *McCarthy Holdings LLC*, 282 Va. at 275. Defendant’s Demurrer is therefore granted as to Plaintiff’s request for mandamus relief. However, Plaintiff is granted leave to file an amended complaint if it can allege facts sufficient to demonstrate a live controversy.

The Court would ask Mr. Bernhardt to prepare an order reflecting the Court’s decision in this matter and circulate it for entry.

Sincerely,



Anne F. Reed, Judge

AFR/epl

Cc: Clerk of Court