KeyCite Yellow Flag - Negative Treatment
Declined to Extend by Com. v. Pfistner, Mass.Super., May 3, 2001

388 Mass. 607
Supreme Judicial Court of Massachusetts, Hampshire.

Mir HASHIMI
v.
Bruce KALIL.

Argued Dec. 10, 1982.
|
Decided April 4, 1983.

Petition was filed for civil commitment of state hospital patient for additional year. Patient moved to dismiss petition on ground that he had been denied statutory right to hearing within 14 days of filing of petition. The District Court, Hampshire Division, Morse, J., denied motion, holding that time-of-hearing requirement was not jurisdictional, and entered order of civil commitment to state hospital for period not to exceed one year. The Appellate Division of the District Courts reversed, and petition for commitment was ordered dismissed. On appeal, the Supreme Judicial Court, Lynch, J., held that: (1) notwithstanding that issue was moot, it would be considered, since it was of great public importance and was capable of repetition, yet evading review, and (2) statute providing that civil commitment hearing "shall" be commenced within 14 days of filing of petition is mandatory and jurisdictional.

Order of the Appellate Division affirmed.

West Headnotes (6)

[1] **Mental Health**
Review

Notwithstanding that challenge on appeal to conduct of civil commitment hearing more than 14 days after filing of petition was technically moot, since challenged order for civil commitment had expired prior to filing of briefs or oral argument, Supreme Judicial Court would consider question, in view of fact that issue tended to evade review, since appellate process could take longer than maximum one-year period of commitment, and that interpretation of statute permitting Commonwealth to restrict individual's liberty was matter of public importance. M.G.L.A. c. 123, §§ 7, 8.

24 Cases that cite this headnote

[2] **Statutes**
Natural, obvious, or accepted meaning

In construing statute, words are to be accorded their ordinary meaning and approved usage.

23 Cases that cite this headnote

[3] **Statutes**
Mandatory or directory statutes

Word "shall" is ordinarily interpreted as having mandatory or imperative obligation.

33 Cases that cite this headnote

[4] **Statutes**
Mandatory or directory statutes

Generally, statutory directions to public officers for protection of rights are mandatory.

Cases that cite this headnote

[5] **Statutes**
Extrinsic Aids to Construction

Where words of statute were clear and unambiguous and, given their ordinary meaning, yielded workable and logical result, there was no need to resort to extrinsic aids in interpreting statute.

32 Cases that cite this headnote

[6] **Mental Health**
Time of hearing and presence of respondent

Statute providing that civil commitment hearing "shall" be commenced within 14 days of filing of petition, unless delay is requested by person or his counsel, is mandatory and jurisdictional, particularly in view of fact that statute provides mechanism for restraint on individual's personal liberty and that time limit on holding of hearing goes to essence of public duty. M.G.L.A. c. 123, § 7(c).

23 Cases that cite this headnote

Attorneys and Law Firms

**1388 *607 John A. Barry, Jr., Sp. Asst. Atty. Gen. (William L. Pardee, Asst. Atty. Gen., with him), for plaintiff.

Robert D. Fleischner, Northampton, for defendant.

Darcy Dumont and Robert Weber, Boston, for Mental Health Legal Advisors Committee, amicus curiae, submitted a brief.

Before ABRAMS, NOLAN, LYNCH and O'CONNOR, JJ.

Opinion

LYNCH, Justice.

[1] On August 19, 1981, a staff psychiatrist at Northampton State Hospital filed a petition for civil commitment in the Northampton Division of the District Court Department,[1] to commit Bruce Kalil, a patient at the *608 hospital, for an additional one year. G.L. c. 123, §§ 7 and 8. A hearing on this petition was scheduled by the District Court judge for September 3, 1981, which was fifteen days after the filing of the petition. Neither Kalil nor anyone on his behalf had requested this date or a continuance. On September 3, Kalil orally moved to dismiss the petition. The motion was denied without prejudice and the hearing was continued until September 10, 1981, over the objection of Kalil. At the hearing on September 10, Kalil filed a motion to dismiss the petition on the ground that he had been denied his statutory right to a hearing within fourteen days of the filing of the petition **1389 for his civil commitment. The judge denied the motion, found facts to warrant Kalil's commitment pursuant to G.L. c. 123, §§ 7 and 8, and entered an order of civil commitment to Northampton State Hospital for a period not to exceed one year. The judge found that the hearing was not held within fourteen days as required by G.L. c. 123, § 7, but that this requirement was not jurisdictional. On report to the Appellate Division of the District Courts under G.L. c. 123, § 9, the decision of the District Court was reversed and the petition for commitment was ordered dismissed. The case is here on appeal from the decision and order of the Appellate Division. The parties do not dispute that the order of commitment would have expired on September 10, 1982, had it not been reversed by the Appellate Division, and that no effort was made to seek any further commitment.

Since the order for civil commitment had expired prior to the filing of the briefs or oral argument in this court it is clear that the case is moot. "Ordinarily, litigation is considered moot when the party who claimed to be aggrieved ceases to have a personal stake in its outcome." *Blake v. Massachusetts Parole Bd.,* 369 Mass. 701, 703, 341 N.E.2d 902 (1976). See *Vigoda v. Superintendent of Boston State Hosp.,* 336 Mass. 724, 725–726, 147 N.E.2d 794 (1958); *Henderson v. Mayor of Medford,* 321 Mass. 732, 733–735, 75 N.E.2d 642 (1947).

*609 The parties concede that the case is technically moot but urge that the issue should be decided nonetheless since the issue is one of great importance and "capable of repetition, yet evading review." *Brach v. Chief Justice of the Dist. Court Dep't,* 386 Mass. 528, 533, 437 N.E.2d 164 (1982). *First Nat'l Bank v. Haufler,* 377 Mass. 209, 211, 385 N.E.2d 970 (1979). "An issue apt to evade review is one which tends to arise only in circumstances that create a substantial likelihood of mootness prior to completion of the appellate process." *Id.* Since the maximum period of commitment under G.L. c. 123, § 8, is one year, and the appellate process may take longer than a year, as is demonstrated by these facts, such a likelihood clearly exists here. It is also clear that the interpretation of a statute which permits the Commonwealth to restrict an individual's liberty is a matter of public importance.

We therefore consider whether the statute requires that a civil commitment hearing be commenced within fourteen days of the filing of the petition.

The plaintiff argues that the legislative history, the absence of any specific language in the statute delineating the consequences of failure to hold the hearing within the required period, and the absence of any showing of prejudice in this case requires the conclusion that the requirement is only directory. We do not agree.

[2] [3] [4] [5] [6] The language of G.L. c. 123, § 7(*c*), as

amended through St.1978, c. 367, § 71C, is clear and unambiguous: "The hearing *shall* be commenced within fourteen days of the filing of the petition unless a delay is requested by the person or his counsel" (emphasis supplied). "[W]here the language of the statute is plain and unambiguous ... legislative history is not ordinarily a proper source of construction." *Hoffman v. Howmedica, Inc.,* 373 Mass. 32, 37, 364 N.E.2d 1215 (1977). In construing a statute, words are to be accorded their ordinary meaning and approved usage. *Burke v. Chief of Police of Newton,* 374 Mass. 450, 452, 373 N.E.2d 949 (1978); *Johnson v. District Attorney for the N. Dist.,* 342 Mass. 212, 215, 172 N.E.2d 703 (1961). The word "shall" is ordinarily interpreted as having a mandatory or imperative obligation. *Id.* Cf. ***610** *Myers v. Commonwealth,* 363 Mass. 843, 846, 298 N.E.2d 819 (1973). In addition, a general rule exists that directions to public officers for the protection of rights are mandatory. Since the words of the statute are clear and unambiguous and since, given their ordinary meaning, they yield a workable and logical result, there is no need to resort to extrinsic aids in interpreting the statute. See *Department of Community Affairs v. Massachusetts State College Bldg. Auth.,* 378 Mass. 418, 427, 392 N.E.2d 1006 (1979). It must be kept in mind that this statute provides a mechanism for a restraint on an individual's personal liberty. ****1390** See *Humphrey v. Cady,* 405 U.S. 504, 509, 92 S.Ct. 1048, 1052, 31 L.Ed.2d 394 (1972). Thus decisions relied upon by dealing with the time within which an administrative officer must make a decision, *Monico's Case,* 350 Mass. 183, 186, 213 N.E.2d 865 (1966), file a description of land in the registry of deeds, *Beckford v. Inhabitants of Needham,* 199 Mass. 369, 370, 85 N.E. 473 (1908), assess taxes, *Pond v. Negus,* 3 Mass. 230, 231 (1807), do not apply. That the statute imposes a restraint on liberty also compels the conclusion that the time limit on the holding of the hearing goes to the essence of the public duty.

Because of the view we take of this case, it is not necessary for us to reach the constitutional arguments advanced by Kalil.

The order of the Appellate Division is affirmed.

So ordered.

All Citations

388 Mass. 607, 446 N.E.2d 1387

Footnotes

1 We do not consider the propriety of a petition for commitment brought by a staff psychiatrist since the parties have not raised the issue and its resolution is unnecessary in view of our disposition of the case. See G.L. c. 123, §§ 1 and 7.