

COURT OF APPEALS
STARK COUNTY, OHIO
FIFTH APPELLATE DISTRICT

STATE OF OHIO

Plaintiff-Appellee

-vs-

ANDREA CARR

Defendant-Appellant

: JUDGES:

:
: Hon. William B. Hoffman, P.J.
: Hon. Patricia A. Delaney, J.
: Hon. Craig R. Baldwin, J.

:
: Case No. 2014CA00200

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: OPINION

CHARACTER OF PROCEEDING:

Appeal from the Stark County Court of
Common Pleas Case No. 2008CR2164

JUDGMENT:

APPEAL DISMISSED

DATE OF JUDGMENT ENTRY:

May 20, 2015

APPEARANCES:

For Plaintiff-Appellee:

JOHN D. FERRERO, JR.
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Renee M. Watson
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For Defendant-Appellant:

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Delaney, J.

{¶1} Appellant Andrea Carr appeals from the October 29, 2014 Judgment Entry of the Stark County Court of Common Pleas denying her motion to move from Level III to Level IV movement at Heartland Behavioral Healthcare. Appellee is the state of Ohio.

FACTS AND PROCEDURAL HISTORY

{¶2} A statement of the facts underlying this case is not necessary to our resolution of this appeal.

{¶3} Appellant was charged by indictment with one count of murder pursuant to R.C. 2903.02(A) with a firearm specification on January 9, 2009. Appellant was initially found incompetent to stand trial, but the case eventually proceeded to bench trial on May 11, 2010. Appellant was found not guilty by reason of insanity and committed to Heartland Behavioral Healthcare.

{¶4} In November 2010, appellant was granted "Level III privileges" at Heartland. Upon review in October 2013, the trial court denied any change in appellant's status or privileges.

{¶5} In two reports dated July 23, 2014 and October 8, 2014, appellant's treating psychiatrist recommended continued commitment with an expansion of her privileges to "Level IV." Level IV privileges permit escorted visits off the grounds of Heartland. A hearing was held on appellant's continued commitment on October 15, 2014. Appellee stipulated to appellant's continued commitment but objected to expansion of her privileges to Level IV.

{¶6} The trial court declined to expand appellant's privileges to Level IV pursuant to a Judgment Entry dated October 29, 2014. Appellant thereupon initiated the instant appeal.

{¶7} In the meantime, the trial court held a continued commitment hearing on April 8, 2015 and approved the expansion of appellant's privileges to Level IV pursuant to Judgment Entry dated April 27, 2015. Appellee moved to supplement the record with this Judgment Entry and we granted the motion.

{¶8} Appellant originally raised the following sole assignment of error:

ASSIGNMENT OF ERROR

{¶9} "I. THE TRIAL COURT ERRED IN DENYING APPELLANT'S INCREASE IN PRIVILEGES AS REQUESTED BY THE PSYCHIATRIC HOSPITAL."

ANALYSIS

{¶10} For the following reasons, we find appellant's assignment of error to be moot and therefore dismiss this appeal.

{¶11} Appellant's request for Level IV privileges has been granted during the pendency of this appeal and there is no live controversy before this court. Generally, an appeal may not be based upon an abstract question devoid of a live controversy. *Lorain Cty. Bd. of Commrs. v. U.S. Fire Ins. Co.*, 81 Ohio App.3d 263, 266-67, 610 N.E.2d 1061 (9th Dist.1992), citing *Ohio Contract Carriers Assn., Inc. v. Pub. Util. Comm.*, 140 Ohio St. 160, 42 N.E.2d 758 (1942), syllabus; see *Tschantz v. Ferguson*, 57 Ohio St.3d 131, 133, 566 N.E.2d 655 (1991). Black's Law Dictionary (8 Ed.Rev.2004) 1029 defines "moot" as, among other things, "[h]aving no practical significance; hypothetical or academic." An action determined to be moot must be dismissed. *Lorain Cty. Bd. of*

Commrs. v. U.S. Fire Ins. Co., 81 Ohio App.3d 263, 266–267, 610 N.E.2d 1061 (9th Dist.1992).

{¶12} Appellant's request not to dismiss the appeal is unavailing. The Eighth District Court of Appeals stated in *State v. Bistricky*, 66 Ohio App.3d 395, 397, 584 N.E.2d 75 (1990): “The duty of this court is to decide actual controversies between parties and to enter judgments capable of enforcement. We are not required to give mere advisory opinions or to rule on questions of law which cannot affect the matters in issue in the case before us.” Appellant argues this case is not moot because the issues are capable of repetition yet evading review, but we disagree because of the nature of this case. Court review pursuant to R.C. 2945.401 is acutely fact-specific; periodic review is required because mental health evaluations are fluid and a doctor's recommendation may change from one hearing to the next. See generally, *State v. Aduddell*, 5th Dist. Stark No. 2010-CA-00137, 2011-Ohio-582; *State v. Evans*, 5th Dist. Richland No. 12CA76, 2013-Ohio-2730.

{¶13} Any determination by this court of appellant's status would be strictly advisory because no actual controversy remains between the parties. See, *Ohio Patrolmen's Benevolent Assn. v. McFaul*, 144 Ohio App.3d 311, 314, 760 N.E.2d 31, 33 (8th Dist.2001). Moreover, it is pointless for us to evaluate whether the parties submitted clear and convincing evidence at the October 14, 2014 hearing when that hearing was superseded by the April 8, 2015 hearing and resulting judgment entry granting appellant's request.

{¶ 14} Appellant's sole assignment of error is dismissed.

By: Delaney, J. and

Hoffman, P.J.

Baldwin, J., concur.