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1 **IN THE COURT OF APPEALS OF THE STATE OF NEW MEXICO**

2 Opinion Number: _____

3 Filing Date: **August 5, 2024**

4 **No. A-1-CA-41467**

5 **IN THE MATTER OF HEATHER LEWIS,**
6 **a person alleged to be in need of mental healthcare.**

7 **STATE OF NEW MEXICO,**

8 Petitioner-Appellee,

9 v.

10 **HEATHER LEWIS,**

11 Respondent-Appellant.

12 **APPEAL FROM THE DISTRICT COURT OF CHAVES COUNTY**

13 **James M. Hudson, District Court Judge**

14 Raúl Torrez, Attorney General

15 Santa Fe, NM

16 Lawrence M. Marcus, Assistant Solicitor General

17 Albuquerque, NM

18 for Appellee

19 Sage Legal Planning Law Firm, P.C.

20 Katie Gwartney Roehlk

21 Roswell, NM

22 for Appellant

1 **OPINION**

2 **BOGARDUS, Judge.**

3 {1} Respondent Heather Lewis appeals the district court’s order involuntarily
4 committing her to the New Mexico Behavioral Health Institute (NMBHI) for thirty
5 days, pursuant to NMSA 1978, Section 43-1-11(A) (2009); and its order denying the
6 Petitioner State of New Mexico’s motion seeking an extension of that commitment,
7 pursuant to NMSA 1978, Section 43-1-12 (2009). On appeal, Respondent argues
8 that the district court exceeded its statutory authority and violated her due process
9 rights by delaying the start of her commitment until she was transported to NMBHI
10 without the additional protections required by Section 43-1-12 for extending
11 involuntary commitments. For the following reasons, we hold that the district court
12 exceeded its statutory authority.

13 **BACKGROUND**

14 {2} On August 25, 2023, Respondent voluntarily sought treatment at the
15 emergency room at Eastern New Mexico Medical Center (ENMMC). Respondent
16 was struggling with suicidal thoughts and requested admission to Sunrise Mental
17 Health (Sunrise) for treatment. Because of Respondent’s history of mental health
18 issues and psychiatric admissions at ENMMC, on August 31, 2023, Petitioner asked
19 the district court to involuntarily commit Respondent to NMBHI for thirty days.

1 {3} On September 5, 2023, after a hearing on the petition, the district court
2 determined by clear and convincing evidence that Respondent presented a likelihood
3 of serious harm to herself and would likely benefit from the proposed commitment.
4 Additionally, the district court concluded that Respondent’s commitment was
5 consistent with the least drastic means available. The next day, the district court filed
6 an order reflecting its findings and committing Respondent to NMBHI “for a period
7 not to exceed [thirty] days, commencing on the date of filing of this order.” The
8 court further ordered Respondent to remain at Sunrise “until the Chaves County
9 Sheriff’s Department is prepared to transport [R]espondent to [NMBHI].”

10 {4} On September 22, 2023, Petitioner filed a motion requesting the district court
11 commit Respondent for long-term treatment at NMBHI. The motion stated that
12 Respondent had not yet been transferred to NMBHI because, “[a]s of September 22,
13 2023, no bed ha[d] been made available.” On September 28, 2023, the district court
14 held a hearing on the motion to extend Respondent’s commitment. At the hearing,
15 Respondent argued that she had not been served with a second petition seeking to
16 extend her commitment as required by statute. *See* § 43-1-12(A). The district court
17 agreed with Respondent that no petition had been filed and further stated that,
18 because the order of commitment was entered on September 6, 2023, Petitioner had
19 missed the deadline to file the required petition. The district court then denied

1 Petitioner’s motion, stating that “the original commitment will continue for up to
2 thirty days.”

3 {5} On October 4, 2023, the district court entered an order denying Petitioner’s
4 motion and replaced its first order of commitment. Despite its oral ruling that
5 Petitioner’s motion failed to abide by the requirements of Section 43-1-12(A),
6 inexplicably, the district court found that Petitioner’s motion was premature
7 “[b]ecause Respondent ha[d] not been transported to the [NMBHI, and therefore]
8 the commitment ha[d] not yet been effected and the period of commitment ha[d] not
9 yet begun.” Respondent was not transferred to NMBHI until October 13, 2023.
10 Respondent was released on November 12, 2023—sixty-eight days after the district
11 court’s first order of commitment. Respondent appeals both the district court’s first
12 order involuntarily committing her to NMBHI for no longer than thirty days and its
13 subsequent order denying Petitioner’s motion and altering the date her commitment
14 began.

15 **DISCUSSION**

16 {6} Respondent argues that the district court exceeded its statutory authority by
17 amending its original order and delaying the start date of her involuntary
18 commitment until she was transported to NMBHI. Specifically, Respondent asserts
19 the district court’s action exceeded its statutory authority because (1) the district
20 court’s determination that her commitment did not begin until her transport was

1 contrary to the plain language of Section 43-1-11, and (2) by delaying the start date
2 of Respondent's commitment, the district court effectively extended her
3 commitment beyond the thirty-day maximum imposed by Section 43-1-11(E)
4 without abiding by the statutory requirements for extending commitments. In
5 response, Petitioner asserts that Respondent's arguments fail because (1)
6 Respondent's appeal is moot; (2) Respondent failed to preserve them; (3) the district
7 court's amendment of the order for commitment was in accordance with Section 43-
8 1-11; and (4) even if the district court's action was not in accordance with Section
9 43-1-11, it constituted a valid extension of Respondent's commitment under Section
10 43-1-12. We conclude that the district court exceeded its statutory authority when it
11 delayed the start date of Respondent's commitment until she was transported to
12 NMBHI.

13 **I. Mootness**

14 {7} First, we address Petitioner's argument that because Respondent is no longer
15 confined, Respondent's appeal should be dismissed as moot. Respondent concedes
16 that she has been released from NMBHI and there is no current controversy for
17 which this Court can provide relief. Nonetheless, Respondent points out that the
18 issues she presents are of substantial public interest and are capable of repetition, yet
19 evading review, and we agree.

1 {8} Generally, “[i]t is not within the province of an appellate court to decide
2 abstract, hypothetical or moot questions in cases wherein no actual relief can be
3 afforded.” *Lucero v. Centurion Corr. Healthcare of N.M., LLC*, 2023-NMCA-050,
4 ¶ 18, 534 P.3d 258 (internal quotation marks and citation omitted). However, we
5 “may do so as a matter of discretion when an issue is of substantial public interest
6 or capable of repetition yet evading review.” *White v. Farris*, 2021-NMCA-014,
7 ¶ 34, 485 P.3d 791 (internal quotation marks and citation omitted). This Court has
8 previously determined that procedural errors affecting thirty-day involuntary
9 commitments are issues of substantial public interest capable of repetition and
10 evading review. *See State v. Pernell*, 1979-NMCA-008, ¶ 9, 92 N.M. 490, 590 P.2d
11 638 (determining the denial of a motion to dismiss the appeal as moot was properly
12 denied because an error in a thirty-day involuntary commitment is both capable of
13 repetition and an issue of substantial public importance). We see no reason to treat
14 this case differently.

15 {9} Because these commitments are statutorily limited to thirty days, the time is
16 almost always too short to appeal. Therefore, the issues in this case are capable of
17 repetition without review. This court just “cannot be oblivious to the importance of
18 the number of persons who are affected by involuntary commitment orders.” *Id.*
19 (omission, internal quotation marks, and citation omitted). Because the issue of a
20 district court’s authority to extend involuntary commitments is a matter of public

1 importance that may evade our review due to the short-term nature of commitment,
2 we exercise our discretion to decide it.

3 **II. Preservation**

4 {10} We next address Petitioner’s contention that Respondent failed to preserve her
5 arguments for appeal. Generally, “a court sitting in an appellate capacity will not
6 review an issue raised for the first time on appeal.” *White*, 2021-NMCA-014, ¶ 32.
7 However, “[i]f a party has no opportunity to object to a ruling or order at the time it
8 is made, the absence of an objection does not thereafter prejudice the party.” Rule
9 12-321(A) NMRA.

10 {11} In this case, Respondent had no opportunity to object to the district court’s
11 delay of the start of her thirty-day commitment until after the district court filed its
12 written order denying Petitioner’s motion to extend her commitment. Until this order
13 was filed, Respondent believed she was already serving the commitment imposed
14 by the district court’s original order that stated Respondent’s commitment began on
15 the date it was filed. Moreover, by denying Petitioner’s motion to extend her
16 commitment during the hearing on Petitioner’s motion to extend, the district court
17 affirmed Respondent’s belief that her commitment would end thirty days from
18 September 6, 2023. Only after the hearing, in the district court’s order denying
19 Petitioner’s motion and amending its original order to involuntarily commit
20 Respondent, she was informed that her period of commitment had not yet begun.

1 Appealing the district court’s order was the first opportunity Respondent had to
2 object to this order. As a result, Respondent did not need to preserve her objections
3 to the order for this Court to review them. *See* Rule 12-321(A); *see also* *Robison v.*
4 *Katz*, 1980-NMCA-045, ¶¶ 27-28, 94 N.M. 314, 610 P.2d 201 (concluding that it
5 was unreasonable for the firm representing Respondent at the time to object and thus
6 Respondent had no opportunity to object below). Having so decided, we now turn
7 to Respondent’s substantive challenges to the district court’s orders.

8 **III. Statutory Authority Under Section 43-1-11**

9 {12} Respondent argues that the district court erred when it determined that
10 Respondent’s commitment did not begin until she was transported to NMBHI.
11 Specifically, Respondent asserts that the district court exceeded its statutory
12 authority by delaying Respondent’s commitment based on a distinction between
13 residential mental health facilities and evaluation facilities that does not exist in the
14 statutory language. We agree.

15 {13} This issue requires us to engage in statutory interpretation, which requires
16 review de novo. *See Hovet v. Allstate Ins. Co.*, 2004-NMSC-010, ¶ 10, 135 N.M.
17 397, 89 P.3d 69. “In construing a particular statute, [our] central concern is to
18 determine and give effect to the intent of the Legislature.” *N.M. Dep’t of Health v.*
19 *Compton*, 2001-NMSC-032, ¶ 18, 131 N.M. 204, 34 P.3d 593 (alteration, internal
20 quotation marks, and citation omitted). In doing so, we start with the plain language

1 of the statute because “[its] plain language is the most reliable indicator of legislative
2 intent.” *Stennis v. City of Santa Fe*, 2010-NMCA-108, ¶ 10, 149 N.M. 92, 244 P.3d
3 787. When such “language . . . is clear and unambiguous, we must give effect to that
4 language and refrain from further statutory interpretation.” *Truong v. Allstate Ins.*
5 *Co.*, 2010-NMSC-009, ¶ 37, 147 N.M. 583, 227 P.3d 73 (internal quotation marks
6 and citation omitted).

7 {14} Section 43-1-11(E) states in relevant part that “the court may order a
8 commitment for evaluation and treatment not to exceed thirty days.” The statute’s
9 language is clear and unambiguous. Both the phrase “not to exceed thirty days” and
10 “for evaluation and treatment” modify the word “commitment.” The phrase “for
11 evaluation and treatment” indicates the allowable purpose of the commitment while
12 the phrase “not to exceed thirty days” specifies the maximum commitment period.
13 Neither phrase modifies the other, thus neither phrase is determinative of the other.
14 And so, no matter the purpose of the commitment—for evaluation, treatment, or
15 both—thirty days is the maximum number of days a person can be committed under
16 Section 43-1-11.

17 {15} Yet, this is insufficient to answer the question before us. To determine if the
18 district court erred, we must determine when Respondent’s commitment began. The
19 statute does not state when the thirty-day time begins. Nevertheless, we can infer
20 from the purpose of the statute when the Legislature intended the time to begin. Our

1 Supreme Court has stated that the purpose served by involuntary commitment is
2 balancing Petitioner’s interest in “providing care to its citizens who are unable
3 because of emotional disorders to care for themselves . . . [and its interest] under its
4 police power to protect the community from the dangerous tendencies of some who
5 are mentally ill” with the interest of the person in being free from the “significant
6 deprivation of liberty” caused by being committed. *Compton*, 2001-NMSC-032, ¶ 7.
7 The Legislature struck this balance by enacting “a scheme under which individuals
8 are entitled to progressively greater procedural protection in response to increased
9 periods of involuntary civil commitment.” *Id.* ¶ 10. As a result, the thirty-day
10 maximum for initial commitment begins the date of the seven-day hearing required
11 by Section 43-1-11(A). The increased procedural protection for deprivation of
12 liberty longer than the initial thirty days permitted by Section 43-1-11 indicates the
13 Legislature intended the time period to commence the moment a person is
14 involuntarily deprived of their liberty by court order.

15 {16} Petitioner argues that because NMSA 1978, Section 43-1-22 (1977) gives the
16 district court the authority to “direct the sheriff . . . to furnish suitable transportation
17 [to a residential mental health facility] in order to effect [an ordered] commitment,”
18 the court must also have the authority to delay the start of commitment until the
19 client is transported. However, nothing in Section 43-1-22 indicates when
20 commitment begins. Moreover, the district court’s authority to facilitate a client’s

1 transportation to a specific facility is not the equivalent of the authority to delay the
2 start date of a commitment period until a client is transported to that facility.
3 Furthermore, no other provision in the statute requires a person to be transported to,
4 or to be treated at a specific type of facility for commitment to begin. Reading
5 Section 43-1-22 to allow the district court to delay the start date of a commitment
6 until a person is transported to a specific facility, despite the deprivation of a person's
7 liberty by court order would be contrary to the balance the Legislature struck
8 between Petitioner's interests and the person's liberty when creating the procedural
9 safeguards in the statute. In striking this balance, the Legislature set the maximum
10 period of deprivation of liberty that can be ordered by a court, without further
11 proceedings and a further determination that an extended commitment is necessary,
12 at thirty days regardless of where that deprivation occurs. Therefore, the period for
13 an involuntary commitment must begin the moment a person is deprived of their
14 liberty by court order, regardless of whether or not they have been transported to the
15 facility at which they were specifically ordered to serve their commitment, even if
16 that facility better meets their treatment needs.

17 {17} Because commitment begins the moment a person is deprived of their liberty
18 pursuant to an order of commitment, we conclude that the district court erred in
19 amending its order for commitment to delay the start of the permissible thirty-day
20 period until Respondent was transported to NMBHI. Respondent was initially

1 committed to NMBHI on September 6, 2023, “for a period not to exceed [thirty]
2 days, commencing on the date of filing of this order.” Commencing the commitment
3 on the date of the seven-day hearing after involuntary admission is required by
4 statute. *See* § 43-1-11(E); *Compton*, 2001-NMSC-032, ¶ 18. On the same day, the
5 district court ordered Respondent to remain at Sunrise, the facility she had
6 voluntarily entered for treatment, until the sheriff could transport her to NMBHI.
7 Therefore, as of September, 6, 2023, Respondent was effectively deprived of her
8 liberty by the district court’s order of commitment, and thus her thirty-day
9 commitment began on that day. Because the maximum number of days a person can
10 be committed without Petitioner and court abiding by the additional procedural
11 protections of Section 43-1-12 is thirty days, *compare* § 43-1-11(E), *with* § 43-1-
12 12(E),—Respondent’s commitment was statutorily required by statute to end
13 October 5, 2023. Petitioner’s inability to timely transport Respondent to the facility
14 to which she was initially committed has no bearing on the statute’s time lines.
15 Therefore, the district court erred when it delayed the start date of Respondent’s
16 commitment until she was transported to NMBHI.

17 **IV. The District Court’s Actions Under Section 43-1-12**

18 {18} Lastly, we address Petitioner’s argument that even if the district court’s delay
19 of the start date of Respondent’s commitment was error under Section 43-1-11, it

1 was functionally a proper extension of the thirty-day commitment under Section 43-
2 1-12. Again, we disagree.

3 {19} Section 43-1-12(A) requires that the physician or evaluation facility at which
4 the client is committed file a petition seeking extension within twenty-one days of
5 the beginning of the commitment. The petition must “explain the necessity for
6 extended commitment, specify the treatment that has been provided during the
7 evaluation and include an individual treatment plan for the proposed commitment
8 period.” *Id.* Furthermore, a hearing must be held on the petition before the expiration
9 of the initial commitment period and the client must be provided the same rights to
10 be heard at the extended commitment hearing as they were provided by Section 43-
11 1-11(B) in the hearing prior to the original commitment plus the “right to a trial by
12 a six-person jury, if requested.” Section 43-1-12(B). Finally, for an extended
13 commitment to be appropriate, the district court must make a finding by clear and
14 convincing evidence that the client continues to present a likelihood of harm to
15 themselves or others, and “that extended treatment is [not only] likely to improve
16 the client’s condition [but also] that the proposed extended commitment is consistent
17 with the least drastic means principle.” Section 43-1-12(E).

18 {20} Here, neither the petition nor the hearing afforded Respondent the procedural
19 protections required by statute, nor did the district court make the required findings,
20 which permit the court to extend Respondent’s commitment beyond the initial thirty-

1 day period. First, although Petitioner’s motion provided a cursory explanation from
2 Sunrise why extended commitment was necessary and attached Respondent’s
3 medical records describing Respondent’s treatment so far, it did not contain an
4 individual treatment plan for the proposed extended commitment. Such information
5 is critical to determine whether extended commitment is “consistent with the least
6 drastic means principle.” *See* NMSA 1978, § 43-1-3(D)(2) (2023, amended 2024)
7 (defining “consistent with the least drastic means principle” as including “no
8 requirement for residential care except as reasonably necessary for the
9 administration of treatment or for the protection of the client or others from physical
10 injury”).

11 {21} Second, because the district court determined that Petitioner’s motion did not
12 constitute a proper petition for extended commitment under the statute, Respondent
13 neither presented evidence on her own behalf nor contested the evidence and
14 opinions provided by Petitioner as required under Section 43-1-11(B). *See* § 43-1-
15 12(B) (“A hearing shall be held upon the petition . . . at which the client shall have
16 all rights granted to the client under Section 43-1-11.”). Moreover, the district
17 court’s ruling that Petitioner’s motion was inadequate and that “the original
18 commitment will continue for up to thirty days,” denied Respondent the right to an
19 evidentiary hearing, including the right to request a six-person jury trial.

1 {22} Finally, because the district court denied Petitioner’s motion as inadequate or
2 premature, the court made none of the findings required by Section 43-1-12 to extend
3 a commitment beyond thirty days: whether Respondent remained dangerous to
4 herself or others; whether extending Respondent’s treatment would improve her
5 condition; or whether an extended commitment was consistent with the least drastic
6 means principle. Without such findings, made after a hearing with the required
7 procedural protections, a district court cannot extend a commitment beyond the
8 thirty-day maximum set by Section 43-1-11. Therefore, the district court’s action in
9 amending the start date of Respondent’s commitment did not constitute a proper
10 extension of commitment under Section 43-1-12.

11 **CONCLUSION**

12 {23} For the foregoing reasons, we conclude that the district court’s delay of the
13 start date of Respondent’s involuntary commitment was contrary to law, we reverse
14 and remand to the district court so that it can vacate its order.

15 {24} **IT IS SO ORDERED.**

16
17

KRISTINA BOGARDUS, Judge

18 **WE CONCUR:**

19
20

JACQUELINE R. MEDINA, Judge

21
22

JANE B. YOHALEM, Judge