COLLATERAL CONSEQUENCES AND THE RIGHT TO APPEAL: RECONSIDERING WHETHER TEMPORARY COMMITMENT APPEALS IN INDIANA ARE MOOT

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I. INTRODUCTION

Indiana law permits a trial court to order a mentally ill person committed without his or her consent for brief periods of time in certain circumstances.[1] If a court orders such a commitment, by the time the committed person is able to obtain appellate review in the Indiana Court of Appeals[2] the terms of the commitment will have expired, rendering the appeal moot under existing precedent. This article advocates that, while immediate relief to the committed person may not be available from an appellate court in Indiana, nonetheless the potential for harmful collateral consequences from the fact of a temporary commitment prevents these appeals from being deemed moot. This article further contends that, in any event, Article 7, Section 6 of the Indiana Constitution prohibits Indiana's appellate courts from categorically declaring these appeals moot.

Part II of this article will discuss Indiana Code Chapter 12-26-6, which permits Indiana's trial courts to order temporary commitments not to exceed ninety days, and a typical factual scenario leading to appeal that arises under that Chapter.[3] Part III will review how Indiana's appellate courts routinely decide such appeals and will include background on the law of mootness in Indiana. Part IV will present intellectual challenges to the current approach Indiana's appellate courts take to temporary commitment appeals. And Part V will suggest the current approach be reconsidered because a temporary commitment carries the potential for harmful collateral consequences and because Article 7, Section 6 of the Indiana Constitution prohibits Indiana's appellate courts from categorically declaring temporary commitment appeals moot.

II. TEMPORARY COMMITMENTS

Indiana Code Chapter 12-26-6 outlines the procedural requirements through which a party may obtain, and a trial court may order, the temporary commitment

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1. IND. CODE §§ 12-26-4-5, -5-1, -6-1 (2016) (providing for twenty-four-hour, seventy-two-hour, and ninety-day commitments, respectively). Conversely, a regular commitment is a commitment that is expected to require custody, care, or treatment in a facility for more than ninety days. IND. CODE § 12-26-7-1(2) (2016).

2. Appellate jurisdiction in such appeals lies first with the Indiana Court of Appeals and not with the Indiana Supreme Court. *See* IND. R. APP. P. 4-5 (2018).

3. While the focus of this article is on temporary commitments under Indiana Code Chapter 12-26-6, the arguments and reasoning of this article are equally applicable to twenty-four-hour immediate detentions and seventy-two-hour emergency detentions under, respectively, Indiana Code Chapters 12-26-4 and 12-26-5.

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of a mentally ill person without that person's consent.[4] In a typical scenario, a person exhibits erratic behavior in public, which leads to a mental health professional diagnosing that person with a mental illness and requesting the person be committed to a mental health facility for care and treatment. For example, in *H.F. v. Eskenazi Health*, H.F. spat in her husband's face and was admitted to a nearby hospital in a "manic" state.[5] A few months later, while at a hotel she "became disruptive and refused security's request to leave the premises."[6] When police then escorted her off the premises and to a police vehicle, she attempted to open the vehicle's door by "licking it."[7] Later that same night, she visited another hotel and again became disruptive.[8] Officers then escorted H.F. to Eskenazi Health Midtown Community Mental Health ("Eskenazi"), a local mental health clinic.[9] There, a psychiatrist diagnosed H.F. as bipolar and attempted to treat her, but she refused to take her prescribed medication and continued her disruptive behavior.[10]

A few days later, Eskenazi petitioned the trial court for H.F.'s involuntary commitment.[11] At an ensuing hearing before the court, H.F.'s psychiatrist testified that H.F. had exhibited symptoms of delusions and illogical thoughts; that H.F. did not sleep while in Eskenazi's care; that H.F. attempted to engage her husband in sexual intercourse in front of Eskenazi's staff; and that H.F. had refused to take her prescribed medications.[12] H.F.'s psychiatrist further testified that H.F. was gravely disabled and, without treatment, she presented a danger to herself.[13] In light of that evidence, the trial court ordered H.F. to be temporarily committed at Eskenazi for a period not to exceed ninety days.[14] H.F.'s story is, again, a typical fact pattern that results in a person's temporary involuntary commitment.

III. APPELLATE REVIEW OF TEMPORARY COMMITMENTS

H.F., like many similarly situated persons, sought appellate review of her temporary commitment.[15] However, by the time her appeal had been fully briefed for review by the Indiana Court of Appeals, her temporary commitment had

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4. IND. CODE §§ 12-26-6-1 to -11 (2016).

5. H.F. v. Eskenazi Health, No. 49A02-1602-MH-335, 2016 WL 4585868, at *1 (Ind. Ct. App. Sept. 2, 2016).

6. *Id.*

7. *Id.*

8. *Id.*

9. *Id.*

10. H.F. v. Eskenazi Health, No. 49A02-1602-MH-335, 2016 WL 4585868, at *1 (Ind. Ct. App. Sept. 2, 2016).

11. *Id.*

12. *Id.*

13. *Id.*

14. *Id.*

15. H.F. v. Eskenazi Health, No. 49A02-1602-MH-335, 2016 WL 4585868, at *1 (Ind. Ct. App. Sept. 2, 2016).

expired.[16] Indeed, in some cases, more than one full year has elapsed between a trial court's temporary commitment order and the ensuing judgment of the Court of Appeals.[17] Indiana case law is clear that "a case is deemed moot when no effective relief can be rendered to the parties before the court."[18] As the Indiana Supreme Court has stated, when an appeal is moot the general rule is that "the case will be dismissed" unless an exception to that general rule applies.[19] One such exception allows the court on appeal to reach the merits of an otherwise moot appeal "when the case involves questions of 'great public interest.'"[20] For this exception to apply, the issues on appeal must be "likely to recur."[21]

For example, in *In re Lawrance*, the parties before the Indiana Supreme Court asked that court to consider "whether the parents of a patient in a persistent vegetative state may authorize the withdrawal of artificially provided nutrition and hydration from their never-competent daughter."[22] However, during the appeal, the daughter died.[23] In light of her death, the court concluded that it could "no longer provide the requested relief to the parties" and, as such, the appeal was moot.[24] Nonetheless, the court held that it should decide the case on the merits because the issue presented was of great public interest.[25] In reaching that conclusion, the court stated:

> The public interest at stake is demonstrated in part by the great number of high quality amicus briefs submitted to this Court. These briefs suggest that, irrespective of the death of the patient in this litigation,

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16. *Id.* at *2.

17. *E.g.*, J.M. v. Ne. Ctr., Inc. (*In re* J.M.), 62 N.E.3d 1208, 1208-10 (Ind. Ct. App. 2016). Indiana Appellate Rule 14.1, which provides for expedited appeals in limited circumstances, does not apply to appeals from temporary commitments. IND. R. APP. P. 14.1 (2018). Accordingly, under the usual rules of appellate procedure, the trial court reporter generally has forty-five days to file the transcript after the committed person has filed her notice of appeal. IND. R. APP. P. 11(B) (2018). Once the transcript has been filed, the parties then have a total of seventy-five days to file their briefs, assuming no extensions are requested or given. IND. R. APP. P. 45(B) (2018). And, once the Indiana Court of Appeals has issued its decision, no action can be taken on that decision until it is certified, which generally happens thirty days after the hand down, assuming no petitions for rehearing or transfer are filed. IND. R. APP. P. 65(E) (2018).

18. *In re* Lawrance, 579 N.E.2d 32, 37 (Ind. 1991).

19. *Id.*

20. *Id.* (quoting Ind. Educ. Emp't Relations Bd. v. Mill Creek Classroom Teachers Ass'n, 456 N.E.2d 709, 711-12 (Ind. 1983)). Some opinions of the Indiana Court of Appeals refer to this exception as the "great public importance" exception. *E.g.*, *In re* J.B., 766 N.E.2d 795, 799 (Ind. Ct. App. 2002).

21. *Lawrance*, 579 N.E.2d at 37.

22. *Id.* at 34.

23. *In re* Lawrance, 579 N.E.2d 32, 36-37 (Ind. 1991).

24. *Id.* at 37.

25. *Id.*

> many Indiana citizens, health care professionals, and health care institutions expect to face the same legal questions in the future. We are also persuaded to proceed because of the high caliber of the findings and analysis in [the trial court's] orders. In light of [the daughter's] death, however, this Court no longer need address all of the issues in the case as presented by the parties.[26]

The Indiana Supreme Court has not had the occasion to apply those principles to an appeal from a temporary commitment order. However, the Court of Appeals has had numerous opportunities to consider the law of mootness as applied to temporary commitment appeals. In particular, on twenty-four occasions the Court of Appeals has considered whether an appeal from a temporary commitment order was moot.[27]

In *In re J.B.*, the initial and leading opinion on the matter, the Court of Appeals, relying on *Lawrance*, declared that appeals from expired temporary commitment are moot.[28] However, the court went on to hold as follows:

> The question of how persons subject to involuntary commitment are treated by our trial courts is one of great importance to society. Indiana statutory and case law affirm that the value and dignity of the individual facing commitment or treatment is of great societal concern. *See* IND. CODE § 12-26-5-1 (establishing procedures for seventy-two-hour commitment); IND. CODE § 12-26-6-2 (establishing procedures for ninety-day commitment); In re Mental Commitment of M.P., 510 N.E.2d 645, 646 (Ind. 1987) (noting that the statute granting a patient the right to refuse treatment "profoundly affirms the value and dignity of the individual and the commitment of this society to insuring humane treatment of those we confine"). The instant case involves the proof necessary for involuntary commitment . . . Th[is is an issue] of great public importance and [is] likely to recur, so we will address [it] here.[29]

Thus, the Court of Appeals reached the merits of the question on appeal under the great public interest exception to the general rule that moot cases will be dismissed.

The Court of Appeals' analysis in *J.B.* has been followed in nearly every subsequent temporary commitment appeal. In eleven of those subsequent appeals, the Court of Appeals concluded in a for-publication opinion that the validity of the temporary commitment was a moot question on appeal but, nonetheless, the

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26. *Id.* (quoting City of Jeffersonville v. Louisville & Jeffersonville Bridge Co., 83 N.E. 337, 340 (Ind. 1908)).

27. This number is based on a Westlaw search of all Indiana case law using the terms "commitment" and "moot!," which returned 178 cases as of February 26, 2018. Of those 178 cases, seventy-four were civil appeals. Of those seventy-four cases, twenty-four were temporary commitment appeals that discussed the law of mootness.

28. *In re* J.B., 766 N.E.2d 795, 798 (Ind. Ct. App. 2002).

29. *Id.* at 798-99.

great public interest exception justified reaching the merits of the issue on appeal.[30] On twelve occasions, the Court of Appeals undertook an identical analytical approach but in a not-for-publication memorandum decision,[31] even though Indiana Appellate Rule 65(A) states that an opinion of the Court of Appeals "shall be published . . . if the case . . . involves a legal or factual issue of . . . substantial public importance."[32]

On only one occasion has the Court of Appeals dismissed an appeal from a temporary commitment order as moot.[33] In that appeal, only the appellant had filed a brief for the Court of Appeals to review, and the Court of Appeals based its decision to dismiss the appeal on its inability to conduct "a more thorough

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30. M.L. v. Eskenazi Health/Midtown Mental Health CMHC (*In re* M.L.), 80 N.E.3d 219, 222 (Ind. Ct. App. 2017); M.E. v. Dep't of Vet. Affairs (*In re* M.E.), 64 N.E.3d 855, 859 n.3 (Ind. Ct. App. 2016); *In re* J.M., 62 N.E.3d 1208, 1210 (Ind. Ct. App. 2016); R.P. v. Optional Behav. MHS (*In re* R.P.), 26 N.E.3d 1032, 1035 (Ind. Ct. App. 2015); T.K. v. Dep't. of Vet. Affairs (*In re* T.K.), 993 N.E.2d 245, 247-48 (Ind. Ct. App. 2013); G.Q. v. Branam, 917 N.E.2d 703, 706 (Ind. Ct. App. 2009); Bradbury v. Comprehensive Mental Health Servs. (*In re* Bradbury), 845 N.E.2d 1063, 1064 n.1 (Ind. Ct. App. 2006); M.Z. v. Clarian Health Partners (*In re* M.Z.), 829 N.E.2d 634, 637 (Ind. Ct. App. 2005); M.M. v. Clarian Health Partners (*In re* M.M.), 826 N.E.2d 90, 94 n.3 (Ind. Ct. App. 2005); *In re* Steinberg, 821 N.E.2d 385, 387 n.2 (Ind. Ct. App. 2004); Golub v. Giles (*In re* Golub), 814 N.E.2d 1034, 1036 n.1 (Ind. Ct. App. 2004).

31. *In re* S.C., 49A04-1608-MH-1802, 2017 WL 410233, at *1 n.2 (Ind. Ct. App. Jan. 31, 2017); H.F. v. Eskenazi Health, No. 49A02-1602-MH-335, 2016 WL 4585868, at *2 (Ind. Ct. App. Sep. 2, 2016); R.S. v. Gallahue Mental Health Servs. (*In re* R.S.), No. 49A02-1405-MH-357, 2015 WL 143988, at *1 (Ind. Ct. App. Jan. 12, 2015); G.M. v. Columbus Reg'l Hosp. Mental Health Facility (*In re* G.M.), No. 03A01-1312-MH-533, 2014 WL 4181719, at *1 n.1 (Ind. Ct. App. Aug. 25, 2014); E.L. v. Ind. Univ. Health Bloomington Hosp. (*In re* E.L.), No. 53A01-1402-MH-66, 2014 WL 3906078, at *2 (Ind. Ct. App. Aug. 11, 2014); N.F. v. Wishard Health Servs., No. 49A02-1304-MH-306, 2013 WL 6795118, at *2 (Ind. Ct. App. Dec. 23, 2013); S.I. v. Midtown CMHC (*In re* S.I.), No. 49A05-1304-MH-146, 2013 WL 5533143, at *2 (Ind. Ct. App. Oct. 7, 2013); T.S. v. Vet. Affairs Med. Ctr. (*In re* T.S.), No. 49A02-1009-MH-990, 2011 WL 1483745, at *1 n.1 (Ind. Ct. App. Apr. 19, 2011); J.G. v. Cmty. Hosp. N./Gallahue Mental Health Servs. (*In re* J.G.), No. 49A02-1008-MH-835, 2011 WL 379414, at *2 n.1 (Ind. Ct. App. Feb. 7, 2011); E.L. v. Wishard Health Servs. (*In re* E.L.), No. 49A02-0707-CV-549, 2008 WL 352199, at *2 n.1 (Ind. Ct. App. Feb. 11, 2008); *In re* M.P., No. 57A03-0708-CV-407, 2008 WL 162792, at *2 n.1 (Ind. Ct. App. Jan. 17, 2008); *In re* R.K., No. 49A05-0701-CV-14, 2007 WL 3132701, at *2 n.1 (Ind. Ct. App. Oct. 29, 2007).

32. This is not to suggest that the Court of Appeals was incorrect in its publication decision of those twelve appeals. Indeed, the court's decision to not publish those decisions is understandable because the legal issues and fact patterns of many of those appeals would have added little, if anything, to Indiana's existing body of law if the decisions had been published. *See* IND. R. APP. P. 65(A); *compare J.M.*, 62 N.E.3d at 1210-11, *with J.B.*, 766 N.E.2d at 799-800.

33. E.L. v. Ind. Univ. Health Bloomington Hosp. (*In re* E.L.), No. 53A05-1311-MH-571, 2014 WL 2567152, at *2 (Ind. Ct. App. June 9, 2014).

review" in light of that fact.[34] In reaching its conclusion, the court expressly acknowledged that the appeal was, nonetheless, "[a]n issue . . . of great public importance."[35] And, as a not-for-publication memorandum decision, the court's decision has no precedential value.[36]

In sum, in a typical appeal from a temporary commitment order, the court on appeal will hold that the appeal is moot. However, instead of dismissing the appeal, the court will routinely reach the merits under the great public interest exception.

IV. PROBLEMS WITH THE CURRENT APPROACH TO APPELLATE REVIEW OF TEMPORARY COMMITMENTS

The analytical approach pervasive in Indiana's temporary commitment appeals is problematic. Again, the analytical approach in these appeals began with *J.B.* and has been routinely followed since. In *J.B.*, the court categorically declared that an appeal from an expired temporary commitment is moot but, nonetheless, may be considered on its merits because "[t]he question of how persons subject to involuntary commitment are treated by our trial courts is one of great importance to society."[37] The analytical framework established by the court in *J.B.* presents three critical problems.

First, the *J.B.* court's assessment that expired temporary commitment appeals are moot because the court on appeal cannot "render effective relief" to the appellant is not clearly correct.[38] To be sure, the Court of Appeals cannot order an end to an already expired commitment. But the relief the court may grant to an appellant is not so limited.[39] For example, should the court determine that a commitment order was incorrectly entered, the court may direct that that commitment be removed from the appellant's court and medical records.[40]

Such collateral relief could be meaningful to an appellant. In other contexts, the Indiana Supreme Court has held that the potential for "harmful collateral consequences" is enough to avoid having an appeal being declared moot.[41] For example, in *S.D.*, the court considered whether a child-in-need-of-services ("CHINS") appeal was moot when the child had been returned to the parent's care and the CHINS case had been closed.[42] The court held that the appeal was not moot.[43] In reaching its holding, the court emphasized that "a CHINS finding can relax the State's burden for terminating parental rights" if the State were to

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34. *Id.* at *4.
35. *Id.*
36. IND. R. APP. P. 65(D) (2018).
37. *In re* J.B., 766 N.E.2d 795, 798 (Ind. Ct. App. 2002).
38. *Id.*
39. *See* IND. R. APP. P. 66(C)(10) (2018).
40. *See, e.g.*, *id.*
41. *In re* S.D., 2 N.E.3d 1283, 1290 (Ind. 2014).
42. *Id.*
43. *Id.*

one day seek that option against the parent.[44] The court also noted that "a prior CHINS finding may have adverse job consequences . . . , such as precluding [a parent] from employment with any [Department of Child Services] contractor."[45] Further, such a finding might prohibit a parent "from becom[ing] a licensed foster parent."[46] Thus, while reversal of the CHINS adjudication would not change the child's placement or the case's status, "[r]eversal . . . still afford[ed the parent] meaningful relief by lifting those collateral burdens."[47] Accordingly, the court held that the appeal was not moot.[48]

Similarly, in temporary commitment appeals the Court of Appeals has explained that a "history of mental illness requiring hospitalizations" is probative of whether a person is "gravely disabled and should be involuntarily committed."[49] Indeed, in numerous temporary commitment appeals the Court of Appeals has discussed the appellant's history of involuntary commitments.[50] Appellees, in defending orders for temporary commitments, have likewise argued that a history of involuntary commitments is relevant information for the court on appeal to consider.[51] Practice guides also recognize that a "history of mental illness requiring hospitalizations" has been found to support subsequent involuntary commitments.[52] And this is to say nothing of any social stigma that might accompany a valid order of temporary commitment.[53] Thus, the *J.B.* court's assessment that expired temporary commitment appeals are moot because the court on appeal cannot order the end to an already expired commitment is unnecessarily restrictive of the court's authority to grant relief on appeal and does not take into account the potential for harmful collateral consequences that may arise from a record of temporary commitments.

Second, by routinely following the *J.B.* court's declaration that expired temporary commitment appeals are moot but nonetheless subject to review under the great-public-interest exception, Indiana's appellate courts have misapplied

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44. *Id.*

45. *Id.*

46. *In re* S.D., 2 N.E.3d 1283, 1290 (Ind. 2014). CHINS proceedings, like temporary commitment proceedings, are confidential by statute. *See* IND. CODE § 31-39-1-2 (2017).

47. *S.D.*, 2 N.E.3d at 1290.

48. *Id*.

49. Golub v. Giles, 814 N.E.2d 1034, 1039 (Ind. Ct. App. 2004).

50. *E.g.*, H.F. v. Eskenazi Health, No. 49A02-1602-MH-335, 2016 WL 4585868, at *1 (Ind. Ct. App. Sept. 2, 2016); R.S. v. Gallahue Mental Health Servs. (*In re* R.S.), No. 49A02–1405–MH–3572015, 2015 WL 143988, at *1 (Ind. Ct. App. Jan. 12, 2015).

51. *E.g.*, T.S. v. Logansport State Hosp. (*In re* T.S.), No. 79A05-1406-MH-260, 2014 WL 7402136, at *11-12 (Ind. Ct. App. Nov. 10, 2014).

52. 19 IND. L. ENCYCLOPEDIA MENTAL HEALTH § 12.

53. To be sure, under Indiana law a committed person's mental health records are confidential. IND. CODE § 16-39-2-3 (2016). And, to protect the committed person's identity, Indiana's appellate courts refer to the person committed only by her initials. *E.g.*, J.M. v. Ne. Ctr., Inc. (*In re* J.M.), 62 N.E.3d 1208, 1208 (Ind. Ct. App. 2016).

Indiana's mootness doctrine and allowed an exception to swallow the rule. The rule in moot cases is that the case "will be dismissed."[54] The exception for cases of great public interest might justify a case of first impression, such as in *Lawrance*, but that limited exception does not justify excluding in perpetuity an entire class of cases from being dismissed as moot.[55] In other words, if the *J.B.* court's declaration that appeals from expired temporary commitments are necessarily moot was correct, a practitioner would expect to see the vast majority of those appeals dismissed.

But that is not how Indiana's appellate courts routinely decide such appeals. Rather, as twenty-three of the twenty-four post-*J.B.* opinions and memorandum decisions of the Indiana Court of Appeals demonstrate, the court instead routinely reaches the merits of the appeal under the great-public-interest exception regardless of the actual facts or legal issues presented by an appellant. Thus, the great-public-interest exception has swallowed the rule to dismiss moot appeals when the appellant is appealing an expired temporary commitment.

Third, the conclusion that expired temporary commitment appeals are categorically moot is problematic because, if Indiana's appellate courts were to apply to these appeals the rule that moot appeals are to be dismissed, persons who have been temporarily committed would be denied their right, through no fault of their own, under Article 7, Section 6 of the Indiana Constitution to one appeal. Article 7, Section 6 protects "in all cases an absolute right to one appeal." As the Indiana Supreme Court has explained, "Indiana is particularly solicitous of the right to appeal,"[56] and "Hoosiers consider the right to an appeal one of the tools indispensable to meaningful participation in the judicial process."[57] But one's right to an appeal "would mean little if it could be short-circuited" by operation of law before the appeal is complete.[58]

Indeed, Indiana's case law under Article 7, Section 6 strongly suggests that review of the merits of temporary commitment appeals is preserved notwithstanding the expiration of the commitment. In *Galloway v. State*, the Indiana Supreme Court explained that "[a]n impossible standard of review under which appellate courts merely 'rubber stamp' the fact finder's determinations, no matter how unreasonable, would raise serious constitutional concerns because it would make the right to an appeal illusory."[59] Similarly, the Indiana Supreme Court has held that court-imposed financial barriers to a party's access to the appellate process cannot deprive that party of his constitutional right to one appeal.[60]

Holding that expired temporary commitment appeals are always moot is not consistent with Article 7, Section 6. Such a holding, in effect, insulates an entire

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54. *In re* Lawrance, 579 N.E.2d 32, 37 (Ind. 1991).
55. *See, e.g.*, *id.*
56. C.A.B. v. J.D.M. (*In re* C.B.M.), 992 N.E.2d 687, 692 (Ind. 2013).
57. Campbell v. Criterion Grp., 605 N.E.2d 150, 158 (Ind. 1992).
58. *C.B.M.*, 992 N.E.2d at 692.
59. Galloway v. State, 938 N.E.2d 699, 709 (Ind. 2010).
60. *Campbell*, 605 N.E.2d at 157-58.

class of trial court judgments, no matter how unreasonable a particular judgment may be, from appellate review. This does more than "make the right to an appeal illusory";[61] it wholly denies the right for that class of cases. As the Indiana Supreme Court stated in *Galloway*, such a standard "would raise serious constitutional concerns" under Article 7, Section 6.[62]

Further, the basis for the expiration of the temporary commitment prior to the appeal is a predetermined standard of the Indiana General Assembly, not a personal waiver or failure to act.[63] For purposes of appellate review, the time limitations imposed by our involuntary commitment statutes are analogous to financial barriers to court access imposed by court rule. That is, the fact that an appellant cannot afford the court-required costs of having the record transcribed is not a basis for denying her right to appeal.[64] Similarly, that one cannot obtain, as a practical matter, appellate review of a temporary commitment before the statutory expiration of the ninety days ought not be a basis for denying the appellant her right to appellate review of that judgment. Accordingly, insulating temporary commitments from appellate review by categorically declaring them moot raises serious concerns under Article 7, Section 6.

In sum, the current analytical approach of Indiana's appellate courts to temporary commitment appeals is suspect. The case on which the current approach is premised, *J.B.*, does not seem to account for potentially harmful collateral consequences from temporary commitments. Further, the *J.B.* court's analysis has resulted in an exception to the mootness doctrine swallowing the rule that such appeals will be dismissed. And, finally, the *J.B.* court's approach is constitutionally suspect as it suggests that persons who are subject to temporary commitments are not entitled to their right to one appeal under Article 7, Section 6 of the Indiana Constitution.

V. A WAY FORWARD

Indiana's appellate courts should reconsider the analytical framework in which temporary commitment appeals are decided. The current analytical approach has not clearly accounted for harmful collateral consequences, has created an exception that has swallowed the general rule for moot cases, and is

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61. *Galloway*, 938 N.E.2d at 709.

62. *Id.*

63. *Cf.* Clark v. State, 506 N.E.2d 819, 821 (Ind. 1987) (holding that one may waive the right to one appeal under Article 7, Section 6). This could also plausibly be viewed as a problem created by Indiana's Rules of Appellate Procedure as the expedited appeals process outlined in Indiana Appellate Rule 14.1 does not apply to ninety-day temporary commitments. *See* IND. R. APP. P. 14.1 (2018). However, even if Rule 14.1 were amended to apply to temporary commitments, or if temporary commitment appeals were otherwise routinely expedited, it is difficult to envision a rule amendment or other expedited process that would capture twenty-four-hour or seventy-two-hour detentions.

64. *See* Campbell v. Criterion Grp., 605 N.E.2d 150, 157-58 (Ind. 1992).

constitutionally suspect.

A better approach would be for Indiana's appellate courts to declare that temporary commitment appeals are not moot for one of two reasons, or both. First, the fact of a temporary commitment carries with it potentially harmful collateral consequences. The Indiana Supreme Court has made it clear that such consequences are sufficient to avoid having an appeal declared moot in Indiana.[65] As such, the current analytical approach should be replaced by an approach that recognizes the potential for harmful collateral consequences that may arise from temporary commitments. Under that approach, appeals from expired temporary commitments are not moot.[66]

Second, declaring all temporary commitment appeals moot denies those appellants their right to one appeal, which is protected under Article 7, Section 6 of the Indiana Constitution. Stated another way, Article 7, Section 6 prohibits temporary commitment appeals from being declared moot as a class. Thus, in lieu of or in addition to recognizing the potential for harmful collateral consequences, the current analytical approach should be replaced by an approach that ensures that the appellant in an expired temporary commitment appeal receives her protected right to one appeal.

In sum, temporary commitment appeals are not moot, and Indiana's appellate courts should undertake a new analytical framework to these appeals.

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65. *In re* S.D., 2 N.E.3d 1283, 1290 (Ind. 2014).

66. *See id.*