VIRGINIA:

In the Supreme Court of Virginia held at the Supreme Court Building in the City of Richmond on Thursday the 1st day of April, 2021.

PRESENT: All the Justices

Damon McLeod, Appellant,

against Record No. 191009
Circuit Court No. CL19000238-00

Commonwealth of Virginia, Appellee.

Upon an appeal from a judgment rendered by the Circuit Court of the City of Staunton.

Upon consideration of the record, briefs, and argument of counsel, the Court is of opinion that the judgment below should be affirmed.

On April 3, 2019, a special justice granted a petition pursuant to Code § 37.2-817 for the involuntary admission and inpatient treatment (the "Order for Treatment") of Damon McLeod ("McLeod"). According to the Order for Treatment, the General District Court (the "GDC") found that McLeod met the criteria set forth in Code § 37.2-817(C) for involuntary admission and treatment. The GDC determined that McLeod had a mental illness and, because of his mental illness, there was a substantial likelihood that "he would suffer serious harm due to his lack of capacity to protect himself from harm or to provide for his basic human needs" in the near future. The Order for Treatment ordered McLeod's involuntary admission to Western State Hospital for a period not to exceed 30 days.

On April 11, 2019, McLeod was transferred from Western State Hospital to Mary Washington Hospital. Then, on April 12, 2019, McLeod appealed the Order for Treatment to the Circuit Court of the City of Staunton ("circuit court") pursuant to Code § 37.2-821. McLeod was discharged from Mary Washington Hospital on April 17, 2019.

According to McLeod, the circuit court had scheduled a de novo hearing for April 18, 2019, as required by Code § 37.2-821. McLeod also claims that the circuit court sua sponte

cancelled that hearing upon learning of his discharge. McLeod further alleges that his attorney objected to the hearing's cancellation via letter to the circuit court dated April 22, 2019. This letter is not part of the circuit court record. Neither the circuit court nor the GDC have record of the April 22, 2019 letter. Nevertheless, McLeod filed a copy of this letter in his appeal to this Court. The letter contradicts McLeod's allegation because it states that "[w]hen we contacted the Clerk's office my office was advised that a hearing would not be scheduled since he was already released." According to the Commonwealth, the circuit court removed the scheduled hearing from its docket because McLeod was discharged from the hospital prior to the hearing date.

McLeod filed a "Brief in Support of Appeal" in the circuit court on May 5, 2019. He argued that from "both a statutory analysis and precedent set by the Supreme Court of Virginia [in *Paugh v. Henrico Area Mental Health & Dev. Servs.*, 286 Va. 85 (2013)], a [Code § 37.2]-821 appeal is a valid avenue for an individual to appeal a commitment order, regardless of whether the commitment is ongoing or if they have previously been discharged and released."

The circuit court held a hearing on June 25, 2019. At the hearing, the parties stipulated that McLeod no longer met the criteria for involuntary admission. Consequently, McLeod argued that the circuit court was required to vacate the Order for Treatment and dismiss the petition under *Paugh*. In response, the Commonwealth argued that Code § 37.2-821 only applies to appeals of a continuing commitment or treatment order, and the appeal should be dismissed as moot because McLeod was discharged prior to the hearing.

In a letter opinion dated June 28, 2019, the circuit court distinguished this case from *Paugh*. Specifically, the circuit court cited the concurrence in *Paugh*, which stated that "because the Commonwealth failed to object or assign cross-error to the circuit court's use of Code § 37.2-821 rather than Code § 37.2-846(a), the incorrect application of Code § 37.2-821 is now the law of the case." *Paugh*, 286 Va. at 92 (Mims, J. concurring). In this case, the circuit court found that the "Commonwealth did object at the [h]earing to the application of [Code] § 37.2-821, arguing that this appeal is an appeal separate and distinct from the expedited de novo appeal procedure set forth in [Code] § 37.2-821" (emphasis in original). The circuit court explained that this case was similar to *Paugh* insofar as the only consequences remaining at the time of the hearing were collateral to the initial Order for Treatment. Therefore, it found that "[Code] § 37.2-821 is inapplicable and [Code] § 37.2-846(A) provides the proper means for Mr. McLeod

to challenge his [Order for Treatment]." In fact, the circuit court found that "[h]ad McLeod pursued his remedy under [Code] § 37.2-846(A), the proper inquiry would have been whether his commitment was according to law on the day the [Order for Treatment] was entered rather than on the day of the [h]earing." The circuit court then dismissed McLeod's appeal of the Order for Treatment. This appeal followed.

This Court reviews a circuit court's interpretation of statutes de novo. *Paugh*, 286 Va. at 88. The interpretation of Code § 37.2-821 is at issue in this appeal.

As pertinent to this appeal, Code § 37.2-821(A) (2019) states that:

> Any person involuntarily admitted to an inpatient facility or ordered to mandatory outpatient treatment pursuant to §§ 37.2-814 through 37.2-819 or certified as eligible for admission pursuant to § 37.2-806 shall have the right to appeal the order to the circuit court in the jurisdiction where he was involuntarily admitted[] . . . . An appeal shall be filed within 10 days from the date of the order and shall be given priority over all other pending matters before the court and heard as soon as possible, notwithstanding § 19.2-241 regarding the time within which the court shall set criminal cases for trial.

Code § 37.2-821(B) states that the "appeal shall be heard de novo" and "[a]n order continuing the involuntary admission shall be entered only if the criteria in § 37.2-817 are met at the time the appeal is heard."

McLeod's first assignment of error asserts that the circuit court violated his due process rights by "not providing an immediate hearing following the [Code § 37.2-]821 appeal." The procedure outlined by the concurring opinion in *Paugh* satisfies due process. Therefore, McLeod suffered no violation of his due process rights.

McLeod's second assignment of error contends that the circuit court "incorrectly applied the concurring opinion in *Paugh*" to "create an impossible standard for any Appellant seeking relief." We agree with the views expressed in the concurring opinion in *Paugh* and, accordingly, the circuit court did not err in its legal conclusion.

At the June 25 hearing, the Commonwealth objected to the application of Code § 37.2-821 because no controversy remained as to the continuation of McLeod's involuntary admission. McLeod was released on April 17 and his commitment order expired 30 days after April 3. At the time of the June 25 hearing, McLeod was not involuntarily committed and did not remain subject to an unexpired commitment order. Therefore, Code § 37.2-821 was inapplicable at the

June 25 hearing. For the foregoing reasons, the circuit court properly dismissed McLeod's appeal of the Order for Treatment pursuant to Code § 37.2-821.

This order shall be certified to the Circuit Court of the City of Staunton.

A Copy,

Teste:

Clerk