

2011 IL App (2d) 100805
No. 2-10-0805
Order filed November 2, 2011

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IN THE
APPELLATE COURT OF ILLINOIS
SECOND DISTRICT

<i>In re</i> JOHN T., Alleged to be a Person)	Appeal from the Circuit Court
Subject to Involuntary Treatment)	of Kane County.
)	
)	No. 10-MH-14
)	
(The People of the State of Illinois,)	Honorable
Petitioner-Appellee, v. John T.,)	Susan Clancy Boles,
Respondent-Appellant).)	Judge, Presiding.

JUSTICE HUTCHINSON delivered the judgment of the court.
Justices McLaren and Burke concurred in the judgment.

ORDER

Held: Respondent's appeal fit within the collateral-consequences exception to the mootness doctrine. We also reversed the trial court's order authorizing the involuntary administration of psychotropic medication to Respondent.

¶ 1 Respondent, John T., appeals from the trial court's order authorizing the involuntary administration of psychotropic medication for up to 90 days pursuant to section 2-107.1 of the Mental Health and Developmental Disabilities Code (Code) (405 ILCS 5/2-107.1(a-5)(5) (West 2008)). Respondent contends that (1) the State failed to prove by clear and convincing evidence that he lacked the capacity to make a reasoned decision whether to take the medication, and (2) he was denied due process when the testifying doctor did not provide a factual basis for his opinion that the

benefits of the requested medication outweighed the possible harm. For the reasons that follow, we reverse.

¶ 2

BACKGROUND

¶ 3 On July 16, 2010, a petition for the involuntary administration of psychotropic medication to respondent was filed with the trial court. On October 23, 2010, the trial court conducted a hearing on the State's petition. The State first called Dr. Romulo Nazareno, a staff psychiatrist at the Elgin Mental Health Center. Nazareno testified that he performed a psychiatric examination of respondent, and following that examination, diagnosed respondent with delusional disorder, persecutory and grandiose type. Nazareno testified that the disorder is considered a serious mental illness. Nazareno testified that one of the drugs he prescribed respondent was Benztrrophine, which if used in an excessive amount, can cause a number of side effects, including comas. On cross-examination, Nazareno stated that he had given respondent written notice of the side effects of Benztrrophine. The common law record also contains the petition indicating that Nazareno checked the "Yes" box next to the statement, "I have explained the risks and the intended benefits of the treatment to the patient/respondent and also have provided that information in written or printed form to the recipient."

¶ 4 The State next called respondent, who testified that he does not believe that he has a mental illness and that his "mind is at its best point now that it's ever been." Following the hearing, the trial court granted the petition and ordered the administration of the requested psychotropic medications for a period of 90 days. Respondent then brought this timely appeal.

¶ 5

ANALYSIS

¶ 6 Before addressing either of respondent's contentions on appeal, the issue of mootness must be discussed. This appeal is facially moot because the 90-day period covered by the trial court's

order has already expired. *In re Robert S.*, 213 Ill. 2d 30, 45 (2004). “An appeal is considered moot where it presents no actual controversy or where the issues involved in the trial court no longer exist because intervening events have rendered it impossible for the reviewing court to grant effectual relief to the complaining party.” *In re J.T.*, 221 Ill. 2d 338, 349-50 (2006). Generally, courts of review do not decide moot questions, render advisory opinions, or consider issues where the result will not be affected regardless of how those issues are decided. *In re Barbara H.*, 183 Ill. 2d 482, 491 (1998). Reviewing courts, however, recognize exceptions to the mootness doctrine, such as (1) the public-interest exception, applicable where the case presents a question of public importance that will likely recur and whose answer will guide public officers in the performance of their duties, (2) the capable-of-repetition exception, applicable to cases involving events of short duration that are capable of repetition, yet evading review, and (3) the collateral-consequences exception, applicable where the involuntary treatment order could return to plague the respondent in some future proceedings or could affect other aspects of the respondent’s life. *In re Alfred H.H.*, 233 Ill. 2d 345, 355-62 (2009); *J.T.*, 221 Ill. 2d at 350; *In re Wathan*, 104 Ill. App. 3d 64, 66 (1982).

¶ 7 The collateral-consequences exception applies here. This being respondent’s first involuntary treatment order, there are collateral consequences that might plague respondent in the future. Compare *In re Linda K.*, 407 Ill. App. 3d 1146, 1150 (2011) (collateral-consequences exception applied because it was the respondent’s first order for the involuntary administration of psychotropic medication), with *Alfred H.H.*, 233 Ill. 2d at 362-63 (because the respondent had multiple prior involuntary commitments and was a felon, there were no collateral consequences that would stem solely from the present adjudication; every collateral consequence that could be identified already existed as a result of the respondent’s previous adjudications and felony conviction). The evidence shows that respondent suffers from a mental illness that cannot be

stabilized without medication, making it likely that respondent will need psychotropic medication long-term. Thus, it appears that respondent will very likely be subject to future proceedings and that his past involuntary treatment could adversely affect him at that time. See *Alfred H.H.*, 233 Ill. 2d at 362 (collateral-consequences exception applies where reversal could provide a basis for a motion *in limine* that would prohibit any mention of the hospitalization during the course of another proceeding).

¶ 8 Turning to the merits, respondent first contends that the State failed to prove that he lacked the capacity to make a reasoned decision whether to take the medication because it failed to present any evidence that he was provided with written information regarding the benefits of and alternatives to the requested medication. The forced administration of psychotropic medication is authorized only if the State demonstrates by clear and convincing evidence that, among other things, the respondent “lacks the capacity to make a reasoned decision about the treatment.” 405 ILCS 5/2-107.1(a-5)(4)(E) (West 2008). “An individual has the capacity to make treatment decisions for himself when, based upon conveyed information concerning the risks and benefits of the proposed treatment and reasonable alternatives to treatment, he makes a rational choice to either accept or refuse the treatment.” *In re Israel*, 278 Ill. App. 3d 24, 36 (1996). Section 2-102(a-5) of the Code requires that “[i]f the services include the administration of electroconvulsive therapy or psychotropic medication, the physician or the physician’s designee shall advise the recipient, in writing, of the side effects, risks, and benefits of the treatment, as well as alternatives to the proposed treatment, to the extent such advice is consistent with the recipient’s ability to understand the information communicated.” 405 ILCS 5/2-102(a-5) (West 2008). Strict compliance with section 2-102(a-5) is required, and the failure to comply is not subject to harmless-error analysis. *In re Nicholas L.*, 407 Ill. App. 3d 1061, 1072 (2011). We recently held that the failure to provide a

recipient with written information regarding alternative treatments necessitates reversal of a trial court's order for the involuntary administration of psychotropic medication. *Nicholas L.*, 407 Ill. App. 3d at 1073.

¶ 9 At the hearing on the State's petition, Nazareno testified that he provided respondent with "written material on the medications" he wished to administer to respondent. On cross-examination, Nazareno stated that he provided respondent with written notice that one of the side-effects of Benztropine was comas. No other evidence was presented indicating what information was included in the written information that Nazareno gave to respondent. There was no evidence presented that Nazareno provided respondent with written information specifically on the benefits of the requested medications or on alternative treatments.

¶ 10 The State contends that the petition contained in the common-law record remedied any deficiencies in the evidence presented at the hearing. Specifically, the petition indicates that Nazareno checked the "Yes" box next to the statement, "I have explained the risks and the intended benefits of the treatment to the patient/respondent and also have provided that information in written or printed form to the recipient." In addition, the petition states that less restrictive treatments, such as counseling, group therapy, and hospital milieu, were offered but ineffective. Although it is true that the petition states that the benefits and side-effects of the medications were discussed with respondent and that certain other treatments were attempted, it certainly does not provide an informative discussion of these issues. More important, the petition was not referenced by the State during the hearing on the petition. At no time did the State ask the trial court to take judicial notice of the petition and its contents, nor did it refer the trial court to the petition to supplement Nazareno's testimony. "A reviewing court must determine sufficiency of the evidence at the hearing based upon the evidence presented to the trial court." *In re Laura H.*, 404 Ill. App. 3d 286, 291

(2010). Accordingly, because the State failed to present any evidence that respondent was provided with written information regarding the benefits of and alternatives to the requested medications, we reverse.

¶ 11 Because we reverse on this basis, we need not address respondent's contention that his due process rights were violated when Nazareno did not provide a factual basis for his opinion that the benefits of the requested medications outweighed the potential harm.

¶ 12 **CONCLUSION**

¶ 13 The judgment of the circuit court of Kane County is reversed.

¶ 14 Reversed.