

NOTICE: This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

IN THE
APPELLATE COURT OF ILLINOIS
SECOND DISTRICT

THE PEOPLE OF THE STATE)	Appeal from the Circuit Court
OF ILLINOIS,)	of Lake County.
)	
Plaintiff-Appellee,)	
)	
v.)	No. 08—CF—3783
)	
RONEX MUTESHA,)	Honorable
)	Christopher R. Stride,
Defendant-Appellant.)	Judge, Presiding.

JUSTICE BIRKETT delivered the judgment of the court.
Justices McLaren and Hudson concurred in the judgment.

ORDER

Held: (1) As defendant had been found fit, his challenge to the trial court's previous finding of unfitness was moot: in light of his mental-health history, the collateral-consequences exception did not apply; to the extent that defendant challenged the trial court's factual findings or exercise of discretion, the capable-of-repetition exception did not apply, but that exception did apply to defendant's issue of statutory interpretation; (2) despite supreme court language indicating the contrary, the appointment of an expert of defendant's choosing to evaluate defendant's fitness was not mandatory but rather was discretionary.

Defendant, Ronex Mutesha, appeals the trial court's order finding him unfit for sentencing for his conviction of aggravated battery to a peace officer (720 ILCS 5/12—4(b)(18) (West 2008)). The State contends that Mutesha has since been found fit, making the appeal moot. Mutesha,

however, argues that exceptions to the mootness doctrine apply. We determine that most of Mutesha's arguments are moot without an applicable exception. However, to the extent Mutesha argues that section 104—13(e) of the Code of Criminal Procedure of 1963 (725 ILCS 5/104—13(e) (West 2008)) mandates the appointment of an additional expert of the defendant's choosing, the exception for issues that are capable of repetition yet evading review applies, but Mutesha's argument fails on the merits. Accordingly, we affirm.

I. BACKGROUND

Mutesha was convicted based on an incident outside of the offices of International Profits and Assessments (IPA), an organization that he had lost a lawsuit against. Before the incident, Mutesha made phone calls to IPA, stating that he was Jesus Christ and John Kennedy and claiming that a judge took a bribe in the lawsuit. Mutesha then arrived at IPA and, when approached by police officers, he spat on one of them, leading to the aggravated battery charge. A jury later found Mutesha guilty.

Before trial, Mutesha, who had a history of psychiatric hospitalizations, but who was not currently medicated, was evaluated by psychologist Karen Chantry of the psychological services division of the circuit court. The evaluation was for the purpose of assessing psychological functioning and making treatment recommendations. It was not to determine fitness to stand trial, and no findings in regard to fitness were made.

Chantry reported that Mutesha was irritable and would dip into delusional-like thinking, but otherwise was able to concentrate, was alert, and was oriented. She also concluded that Mutesha denied his personal problems, symptoms, and negative feelings, and was fairly self-centered, egocentric, arrogant, and boastful. She reported that Mutesha could be momentarily charming, but

had expectations of entitlement, was autocratic, and was quite grandiose. He showed signs of affective disorder or paranoia if humiliated. Chantry found mild symptoms of a delusional disorder, but not enough for a full diagnosis. The assessment indicated a narcissistic personality disorder. Chantry wrote that Mutesha could benefit from therapy and psychotropic medications to stabilize his mood and to deal with aspects of his thinking that get derailed.

After trial, the court ordered a presentence investigation report (PSI) that would include any relevant mental health evaluations. Mutesha moved for a new trial and, during the hearing on the matter, his counsel noted that jail personnel were not administering medications to Mutesha.

On January 16, 2009, Mutesha sent a letter to the trial court, stating that his name meant “almighty God understand all” or “Messiah” and that the jail was his launching pad for a mission on planet earth. He wrote that there was evidence that did not get shown at trial, that witnesses were coached and permitted to lie on the stand, and that God would have found him not guilty.

The PSI stated that Mutesha had a history of mental health issues, including four hospitalizations, two of which were involuntary, and that he had previously been diagnosed as bipolar/manic with psychosis. The PSI also included a follow-up report from Chantry, who found that Mutesha did not recognize the consequences of what happened in court. She wrote that Mutesha was upset with her previous report and believed that everyone was lying to him. She reported that Mutesha had an expansive and argumentative mood, grandiose delusional thinking, compromised concentration and thinking, and poor judgment and insight. However, he was alert and oriented. Chantry found that Mutesha needed psychotropic medication and that, outside of jail, Mutesha posed a risk of harm to himself or others without medication. Chantry reported that Mutesha believed that the trial court was going to overturn the jury verdict, and it was not clear whether that belief was the

result of delusion or whether Mutesha did not understand the court system. Therefore, she concluded that there was an open question of fitness for sentencing.

On June 5, 2009, the trial court found, over objection, that there was a *bona fide* doubt of fitness and ordered a fitness evaluation. Mutesha's counsel requested that the evaluation be done outside of the court's psychological services division and that it be audio or video taped. The requests were denied, but the court ordered that a person other than Chantry perform the evaluation.

Dr. Anthony Latham conducted the evaluation. Mutesha often refused to answer questions during the evaluation and went into a tirade about the previous reports and evaluations. Latham found that Mutesha was fixated on his beliefs that the court allowed witnesses to lie and that his counsel was inappropriately appointed. Latham wrote that Mutesha could name the charges against him but did not understand how he was found guilty. Latham found that Mutesha was hostile and agitated, and that his thought process was plagued by paranoid ideation. Mutesha suffered manic and psychotic episodes, but lacked insight into his condition or need for treatment. At the time of the evaluation, he was highly paranoid. Latham concluded that Mutesha did not possess rational thought necessary to cooperate with his attorney concerning mitigation evidence or to appeal the guilty verdict. He recommended that Mutesha be found unfit for sentencing and committed to a mental health center where he could be treated. He found a fair probability that Mutesha could attain fitness within a year.

On July 1, 2009, Mutesha's counsel moved for the appointment of an expert outside of the court's psychological services division. That motion was denied. On August 5, 2009, Mutesha filed a *pro se* motion to disregard the fitness reports, which was also denied.

On September 4, 2009, a fitness hearing was held. Mutesha stated that the hearing was improper because the judge was not impartial and the prosecutor, doctors, and witnesses would lie. He said that he was not represented by his counsel and that he was representing himself. The court told Mutesha that he could not represent himself when there was a *bona fide* doubt about fitness. Mutesha also moved for a change of venue, which was denied.

Latham testified consistently with his report and stated his continuing belief that Mutesha was unfit for sentencing because he lacked a conceptualization or understanding of how he was found guilty and had a delusional belief that the court allowed witnesses to lie. In response to questions from the court about Mutesha's understanding of trial participants and related matters, Latham stated that he was concerned because Mutesha believed that the whole process was part of a conspiracy and because Mutesha had a basic mistrust of his counsel based on a belief that counsel, whom he thought was trying only to protect her career. Latham admitted that delusional behavior and bipolar or psychotic disorders would not necessarily make a person unfit, nor would mere dissatisfaction with the outcome of trial.

Mutesha's trial counsel testified that Mutesha made unrealistic requests of her, but she never had a concern about his understanding of the role of the jury or of the participants in the proceedings. She never asked for a fitness evaluation.

Mutesha testified and explained the roles of the attorneys, judge, jury, grand jury, and what happened at the trial. He discussed a previous plea offer and his limited knowledge of the sentencing range, including that incarceration was possible. He said that he was not delusional, but that people did lie at his trial and his counsel was grossly ineffective. Mutesha moved to call experts who had evaluated him in the past. The motion was denied because those evaluations were not relevant.

The court found Mutesha unfit. The court stated that, although Mutesha gave a more or less accurate recitation of the roles of the participants at trial and the proceedings, he did not have a rational understanding of why he was found guilty, which demonstrated a lack of understanding of the adversarial system. Mutesha's motion to reconsider was denied, and he appeals. On appeal, both parties state that Mutesha has been restored to fitness and is awaiting sentencing.

II. ANALYSIS

Mutesha argues that the court erred by finding him unfit and that it erred by denying his request for a second fitness evaluation by an expert of his choice. The State contends that the issues are moot and that no exceptions to the mootness doctrine apply. Mutesha disagrees and contends that several exceptions apply.

“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: (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 defendant in some future proceedings or could

affect other aspects of the defendant's life. *In re Alfred H.H.*, 233 Ill. 2d 345, 355-62 (2009); *J.T.*, 221 Ill. 2d at 350. Mutesha argues that two of these exceptions apply to him—the collateral-consequences exception and the exception for issues capable of repetition, yet evading review.

The collateral-consequences exception allows for appellate review when a defendant has suffered, or is threatened with, an actual injury that is likely to be redressed by a favorable judicial decision. *Alfred H.H.*, 233 Ill. 2d at 361. When the stigma of an involuntary commitment may confront the defendant in the future, the collateral-consequences exception will apply, such as when the defendant has no prior involuntary commitments. See, e.g., *In re Meek*, 131 Ill. App. 3d 742, 745 (1985) (as the case appeared to be the respondent's first involuntary commitment, court found that the collateral-consequences exception applied). However, when the defendant has previously been involuntarily committed, the exception generally does not apply, because the argued collateral consequences already existed and would not be removed by any decision on the merits. See, e.g., *Alfred H.H.*, 233 Ill. 2d at 363 (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).

Here, the collateral-consequences exception is inapplicable, because any negative consequences that Mutesha might suffer as a result of the trial court's finding that he was unfit and from his involuntary treatment would otherwise exist due to his previous instances of mental health treatment, including instances of involuntary commitment. See *id.* at 362-63. Mutesha notes that his case is different, because his previous inpatient mental health treatments were not court-ordered.

But the record shows that two of his four previous hospitalizations were involuntary. Accordingly, the collateral consequences exception does not apply.

In regard to the exception for issues capable of repetition, yet evading review, the exception has two requirements. “First, the challenged action must be of a duration too short to be fully litigated prior to its cessation.” *Id.* at 358. “Second, there must be a reasonable expectation that ‘the same complaining party would be subjected to the same action again.’ ” *Id.* (quoting *Barbara H.*, 183 Ill. 2d at 491). “This means that the present action and a potential future action must have a substantial enough relation that the resolution of the issue in the present case would have some bearing on a similar issue presented in a future case involving the respondent.” *In re Val Q.*, 396 Ill. App. 3d 155, 160 (2009) (citing *Alfred H.H.*, 233 Ill. 2d at 360). In cases where the defendant challenges the specific facts that were established during the hearing, the exception generally does not apply, because those facts would necessarily be different in any future commitment hearing and would have no bearing on similar issues presented in subsequent cases. See *id.* at 160-61; see also *Alfred H.H.*, 233 Ill. 2d at 360. However, when the defendant raises a purely legal question, such as an issue of statutory interpretation, the exception may apply because the defendant will likely again be found unfit or subject to involuntary treatment and the court will likely again commit the same alleged errors. See *In re Jonathan P.*, 399 Ill. App. 3d 396, 401 (2010).

Here, the challenged action was obviously too short to be fully litigated during the pendency of the order. See *Alfred H.H.*, 233 Ill. 2d at 358. But, in regard to Mutesha’s argument that the trial court erred in finding him unfit, or that it abused its discretion when it denied his request to appoint an additional expert of his choosing, he argues only that the trial court erred in its factual findings. Those facts would differ in any future case and, thus, there is not a substantial likelihood that the

issue presented in the instant case, and any resolution of it, would have some bearing on a similar issue presented in a subsequent case. See *id.* at 360. Thus, we cannot grant Mutesha meaningful relief on this issue. Indeed, he has been found fit for trial, which was his stated goal all along.

However, Mutesha also argues a purely legal issue. Relying on the first district case of *People v. Vallo*, 323 Ill. App. 3d 495, 506 (2001), and on *People v. Kinion*, 97 Ill. 2d 322, 335 (1983), he contends that, despite the presence of discretionary language, section 104—13(e) mandates that a defendant be appointed an expert of his or her choosing to evaluate fitness.

Because Mutesha has a significant history of mental health issues, he could again become unfit and, because his argument is a matter of statutory interpretation, the court would likely again decide that it had discretion on the decision, rather than find that section 104—13 mandated the appointment of an additional expert. Accordingly, this issue falls under the exception to the mootness doctrine for issues that are capable of repetition yet evading review. However, Mutesha's argument fails on the merits.

When an issue of fitness arises, section 104—13(a) requires the court to order an evaluation of the defendant by one or more licensed physicians, clinical psychologists, or psychiatrists chosen by the court. 725 ILCS 5/104—13(a) (West 2008). Section 104—13(e) provides:

“Upon request by the defense and if the defendant is indigent, the court may appoint, in addition to the expert or experts chosen pursuant to subsection (a) of this Section, a qualified expert selected by the defendant to examine him and to make a report as provided in Section 104—15. Upon the filing with the court of a verified statement of services rendered, the court shall enter an order on the county board to pay such expert a reasonable fee stated in the order.” 725 ILCS 5/104—13(e) (West 2008).

The cardinal rule of statutory construction is to ascertain and give effect to the legislature's intent, and the plain language of the statute is the best indication of that intent. *Acme Markets, Inc. v. Callanan*, 236 Ill. 2d 29, 37-38 (2009). A court must give statutory language its plain and ordinary meaning, and a court cannot read limitations or conditions into a statute when none are expressed. *In re Application of the County Treasurer*, 351 Ill. App. 3d 244, 248 (2004). "Where the language is unambiguous, the statute must be given effect without resort to other aids of construction." *Krautsack v. Anderson*, 223 Ill. 2d 541, 553 (2006). "[T]he word 'may' ordinarily connotes discretion." *Id.* at 554.

In *Vallo*, the First District determined that the trial court abused its discretion when it denied the defendant's motion for the appointment of an expert when the court-appointed expert refused to discuss the defendant's medical records with him out of concern that she would not be paid and had not offered any opinion on whether the defendant was fit at the time of trial. The court noted in passing that, in *Kinion*, our supreme court indicated that, despite discretionary language in section 104—13(e), that section mandated the appointment of at least one expert of the defendant's choice. *Vallo*, 323 Ill. App. 3d at 506 (citing *Kinion*, 97 Ill. 2d at 335).

Kinion involved recovery of court-appointed attorney and expert-witness fees. There, the defendant sought to recover fees from the State, the trial court ordered payment, and the State appealed. Addressing whether a \$250 limitation on fees applied, the court noted the existence of section 104—13(e), stating:

"Limiting a private attorney to \$250 for expert testimony in a case in which the public defender would have reasonably been required to spend more would result in a windfall to the county because private counsel had been appointed. Such a result seems arbitrary and

unfair, and its effect would no doubt be to encourage at least some private attorneys who have already devoted time and effort to a case to refrain from calling additional experts to testify or to seek leave to withdraw should the costs of trial begin to appear high. We do not believe the legislature intended to bring this about, particularly in light of the fact that the Code of Criminal Procedure of 1963 contains parallel provisions, effective at the time the experts in question here were engaged, mandating the appointment of at least one medical expert of defendant's choice to examine the defendant at the county's expense and without any limit as to the amount of the expense whenever the defendant's physical or mental fitness is at issue." *Kinion*, 97 Ill. 2d at 335-336.

Although *Kinion* used broad language about "mandating" the appointment of an expert of the defendant's choosing, that was not at issue in the case, and it is clear that the court was citing to section 104—13(e) in relation to the issue of whether the State must pay for appointed experts—something that is clearly mandated by that section. But in regard to the appointment of additional experts, the plain language of section 104—13(e) leaves that initial decision to the discretion of the court. Our supreme court has not clearly held otherwise in a case where the issue was actually before it. Accordingly, we apply the plain language of the statute and find that the court had discretion to deny Mutesha's request for the appointment of an additional expert of his choosing.

III. CONCLUSION

We determine that the appeal is moot and that exceptions to the mootness doctrine do not apply except as to Mutesha's statutory interpretation argument. In regard to that argument, the trial

No. 2—09—1042

court had discretion over the decision whether to appoint an additional expert. Accordingly, the judgment of the circuit court of Lake County is affirmed.

Affirmed.