

**NOTICE**  
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2011 IL App (4th) 110165-U

Filed 10/26/11

NO. 4-11-0165

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

In re: LEE O., a Person Found Subject to Administration	)	Appeal from
of Psychotropic Medication,	)	Circuit Court of
THE PEOPLE OF THE STATE OF ILLINOIS,	)	Sangamon County
Petitioner-Appellee,	)	No. 11MH95
v.	)	
LEE O.,	)	Honorable
Respondent-Appellant.	)	Esteban F. Sanchez,
	)	Judge Presiding.

JUSTICE APPLETON delivered the judgment of the court.  
Justices Turner and Pope concurred in the judgment.

**ORDER**

¶ 1 *Held:* Where the State sufficiently complied with certain statutory requirements, the circuit court's judgment ordering the involuntary administration of psychotropic medication is affirmed.

¶ 2 Respondent, Lee O., appeals from the circuit court's order finding him subject to involuntary administration of psychotropic medication pursuant to section 2-107.1 of the Mental Health and Developmental Disabilities Code (Mental Health Code) (405 ILCS 5/2-107.1 (West 2010)). He argues that the court's judgment should be reversed because he was not advised in writing of the available treatment alternatives as mandated by statute. Finding the State sufficiently complied with the statutory requirements, we affirm.

¶ 3 I. BACKGROUND

¶ 4 In January 2011, Ghassan Bitar, respondent's psychiatrist at McFarland Mental

Health Center, filed a petition, seeking to involuntarily administer psychotropic medication to respondent. The petition alleged respondent (1) suffered from a mental illness, namely psychosis not otherwise specified, and (2) objected to the administration of the requested medication, but lacked the capacity to make a reasoned decision to do so.

¶ 5 At the February 2011 hearing on the petition, Bitar testified that respondent suffers from auditory hallucinations, grandiosity, and paranoia. He responds to voices in his head by screaming and yelling. He has been threatening and aggressive with staff and other patients. On one occasion, he received "emergency forced medication" due to his aggression. Bitar explained that respondent (1) refused to take psychotropic medication, (2) lacked capacity to make a reasoned decision regarding medication, and (3) failed to acknowledge his mental illness.

¶ 6 Prior to being admitted to McFarland, respondent had been a patient at BroMenn Hospital in Bloomington. He was involved in an altercation with a convenience-store clerk and was arrested. After being in jail a few days, he was transferred to BroMenn for a mental-health evaluation. Thereafter, he was admitted and then transferred to McFarland.

¶ 7 Bitar explained that his staff was forced to medicate respondent for cellulitis, an infection under the skin, because respondent was refusing antibiotics. The doctor also prescribed and has been forcing the emergency administration of the following psychotropic medications: Zyprexa or Haldol, Ativan, and Benadryl. According to Bitar, respondent's hygiene and demeanor has improved with the medication.

¶ 8 Bitar opined that, because respondent showed mild improvement with the forced medication, he requested the circuit court allow him to involuntarily administer Zyprexa (5 to 30 milligrams orally or by injection daily), along with Ativan, and Benadryl. He further requested that

the court authorize the involuntary administration of the following alternative psychotropic medications, if respondent did not show improvement: (1) Haloperidol (5 to 40 milligrams orally or by injection daily), (2) Risperdal (1 milligram to 8 milligrams orally daily), (3) Risperdal Consta (25 milligrams to 50 milligrams by injection every two weeks), (4) Geodon (20 to 240 milligrams orally or 10 to 40 milligrams by injection daily), and (5) Abilify (5 to 30 milligrams orally daily). Bitar believed that this medication would alleviate respondent's hallucinations, paranoid ideation, and grandiosity. Bitar added that respondent had recently been given Zyprexa, Ativan, and Haldol with no adverse side effects.

¶ 9 Additionally, Bitar requested the following testing and procedures necessary for the safe and effective administration of the treatment medication: (1) complete blood count; (2) complete metabolic profile; (3) lipid profile; (4) thyroid function test; (5) an electrocardiogram; and (6) urine analysis. He acknowledged that the suggested medications had possible side effects, though he did not provide any specific information.

¶ 10 Bitar explained that he had discussed the benefits and side effects of the proposed treatment with respondent. On this topic, the following exchange occurred:

"Q. [prosecutor]: Did you give [respondent] a copy of the benefits and side effects to all the medication you're requesting?

A. Yes.

Q. And when was the first time you talked to him about this?

A. I talked to him—I started talking to him about the medication from the first time he got admitted, the first time I saw him, January 7.

Q. Okay.

A. We started talking about treatment option and I ask him if he would be willing to medication and I would provide short explanation of the side effect. And then he would tell me, I really don't think I need medication, but then let me think about it, and he would ask for side effect sheet. So one possibly two or three occasion, I provided him sheet for different medications that he asked for."

Bitar explained that he had given respondent a copy of the petition, a list of all medications he was requesting, and an explanation of the benefits and side effects for each. The State introduced into evidence, without objection, the written materials provided to respondent. Respondent repeatedly told Bitar he did not need medication. In Bitar's opinion, the benefits of the medication outweighed the side effects and, he believed there were no less-restrictive treatment options that would be appropriate for respondent. By answering "yes" to a question posed by the prosecutor, Bitar testified that "other less restricted services [had] been explored." Bitar noted that respondent was not a good candidate for group or individual therapy and, therefore, he agreed, that "all other forms of treatment would be inappropriate at this time."

¶ 11 Respondent testified he does not take the requested medication because he "feel[s] [he's] well competent." He said: "If I had no medical treatment, what is perjury? A lie on the stand. I'm not stupid and I wasn't born yesterday." He said he believed he "should be let go." When asked if he believed he had a mental illness, he responded: "Not really." Counsel asked him to clarify what he meant and he said: "No, I don't. To be acute with the question, no, I don't."

¶ 12 After considering this evidence and arguments of counsel, the circuit court found respondent subject to involuntary administration of the psychotropic medication for a period not to exceed 90 days as requested by Bitar. This appeal followed.

¶ 13 II. ANALYSIS

¶ 14 A. Mootness

¶ 15 Initially, we note this case is moot. The circuit court entered the order on February 4, 2011, and limited its enforceability for a period not to exceed 90 days. The 90-day period has passed. Therefore, before we can address the merits of respondent's appeal, we must first determine whether any exception to the mootness doctrine applies.

¶ 16 An otherwise moot issue may be reviewed if it falls into one of the three generally accepted exceptions to the mootness doctrine: (1) the public-interest exception, (2) the capable-of-repetition-yet-evading-review exception, and (3) the collateral-consequences exception. *In re Alfred H.H.*, 233 Ill. 2d 345, 355-61 (2009). Of these, we accept the State's concession and find this appeal falls within the second-established exception—the capable-of-repetition-yet-evading-review exception. To fit within this exception, an appeal must meet two criteria: (1) the challenged action must be of a duration too short to be fully litigated prior to its cessation; and (2) there must be a reasonable expectation that "the same complaining party would be subjected to the same action again." *Alfred H.H.*, 233 Ill. 2d at 358, quoting *In re Barbara H.*, 183 Ill. 2d 482, 491 (1998). "[T]here must be a substantial likelihood that the issue presented in the instant case, and any resolution thereof, would have some bearing on a similar issue presented in a subsequent case." *Alfred H.H.*, 233 Ill. 2d at 360.

¶ 17 There is no question that the first criteria has been met. As noted, the order was



compliance with *all* of section 2-102(a-5) is necessary to protect the liberty interests of the mental-health treatment recipient. See also *In re Linda K.*, 407 Ill. App. 3d 1146, 1151 (2011). We have held that a physician's verbal discussion with a respondent was insufficient to satisfy the requirements of section 2-102(a-5). *Dorothy J.N.*, 373 Ill. App. 3d at 336; *Linda K.*, 407 Ill. App. 3d at 1151-52.

¶ 22 In this case, the record clearly supports the State's position that it had sufficiently proved Bitar complied with the requirements of section 2-102(a-5) (405 ILCS 5/2-102(a-5) (West 2010)). Bitar testified that, not only had he provided respondent, in writing, with the side effects, risks, and benefits of the medication he was primarily requesting, he also testified that he had provided the same on all of the alternative medications. The common law record before us supports the doctor's testimony. Included in the record is a 48-page exhibit, introduced by the State, and admitted without objection by respondent at the hearing, consisting of the required information for *all* of the medications proposed by the doctor, including the alternatives to the proposed treatment. Thus, respondent's argument that the State had failed to prove that respondent was not provided with the required written information about the alternatives to the proposed treatment is without merit, as the record contradicts his assertion.

¶ 23 III. CONCLUSION

¶ 24 For the foregoing reasons, we affirm the circuit court's judgment.

¶ 25 Affirmed.