NOTICE
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NO. 4-10-0552 Order Filed 4/7/11

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

In re: Gary R., a Person Found Subject to Administration of Psychotropic Medication,	)	Appeal from Circuit Court of Sangamon County No. 10MH606
THE PEOPLE OF THE STATE OF ILLINOIS, Petitioner-Appellee,	)	
v.	)	Honorable Esteban F. Sanchez, Judge Presiding.
GARY R., Respondent-Appellant.	)	

JUSTICE TURNER delivered the judgment of the court.
Justices Steigmann and Appleton concur in the judgment.

ORDER

Held: (1) Where respondent had a long history of mental illness and lacked insight into that illness, it was likely he would again face an involuntary-medication petition, and thus the capable-of-repetition-yet-avoiding-review exception to the mootness doctrine applied.

(2) Where the State only presented evidence respondent received written notification of the proposed medications' side effects, the State's evidence was insufficient to prove respondent lacked capacity to make a reasoned decision.

On July 13, 2010, Dr. Aura Eberhardt filed a petition for the involuntary administration of psychotropic medications to respondent, Gary R. After a July 16, 2010, hearing, the trial court granted the petition.

Respondent appeals, contending the State failed to prove he lacked capacity to make a reasoned decision (405 ILCS

5/2-107.1(a-5)(4)(E) (West 2008)) since he did not receive written information about the risks and benefits of the proposed treatment and its alternatives as required by section 2-102(a-5) of the Mental Health and Developmental Disabilities Code (Mental Health Code) (405 ILCS 5/2-102(a-5) (West 2008)). We reverse.

I. BACKGROUND

Dr. Eberhardt's petition stated respondent had bipolar affective disorder, type one, mixed with psychosis, and, due to his mental illness was suffering from paranoia and unable to care for his hygiene. According to the petition, respondent had exhibited symptoms of his mental illness since 1976. Moreover, the petition stated respondent had been treated with psychotropic medications in the past that had improved his condition. The petition alleged respondent lacked the capacity to make a reasoned decision about his treatment because he had no insight into his illness. The petition indicated Dr. Eberhardt had explained the risks and intended benefits of the treatment to respondent and provided that information in written form to him. The petition listed first choice medications of olanzapine, Haldol, Depakote, Cogentin, and Ativan and the following list of alternatives: risperidone, Seroquel, Prolixin, lithium, Neurontin, and Tegretol. In the common-law record, the petition is followed by 27 pages of information regarding the aforementioned medications.

At the July 16, 2010, hearing, the State only presented

the evidence of Dr. Eberhardt. The only testimony relevant to the issue on appeal is the doctor's affirmative answer to the following question: "Did you or a staff member hand a written list of all side affects [*sic*] to the patient?" At the conclusion of the hearing, the trial court granted the petition and allowed the administration of the medications for 90 days.

On July 21, 2010, respondent filed a notice of appeal in sufficient compliance with Illinois Supreme Court Rule 303 (eff. May 30, 2008), and thus this court has jurisdiction under Illinois Supreme Court Rule 301 (eff. Feb. 1, 1994). See *In re Steve E.*, 363 Ill. App. 3d 712, 717, 843 N.E.2d 441, 445 (2006) (proceedings under the Mental Health Code (405 ILCS 5/1-100 *et seq.* (West 2004)) are civil matters).

II. ANALYSIS

A. Mootness

Respondent recognizes his case is moot as the order's 90-day period has expired. Generally, Illinois courts do not address moot questions. *In re Alfred H.H.*, 233 Ill. 2d 345, 351, 910 N.E.2d 74, 78 (2009). However, our supreme court has recognized the following three exceptions to the mootness doctrine may apply in mental-health cases: (1) the public-interest exception, (2) the capable-of-repetition-yet-avoiding-review exception, and (3) the collateral-consequences exception. See *Alfred H.H.*, 233 Ill. 2d at 355-61, 910 N.E.2d at 80-83. Respondent contends his

issue falls under the public-interest and capable-of-repetition-yet-avoiding-review exceptions.

1. *Public-Interest Exception*

The following three criteria must be met for the application of the public-interest exception: " '(1) the question presented is of a public nature; (2) there is a need for an authoritative determination for the future guidance of public officers; and (3) there is a likelihood of future recurrence of the question.' " *In re Laura H.*, 404 Ill. App. 3d 286, 289, 936 N.E.2d 801, 804 (2010) (quoting *Alfred H.H.*, 233 Ill. 2d at 355, 910 N.E.2d at 80).

Here, respondent cannot meet the second requirement. His sole argument is almost identical to one of the issues in *Laura H.* There, we addressed, *inter alia*, compliance with section 2-102(a-5) of the Mental Health Code (405 ILCS 5/2-102(a-5) (West 2008)) and the sufficiency of the evidence showing compliance with said section. *Laura H.*, 404 Ill. App. 3d at 290-92, 936 N.E.2d at 805-07. The petition in this case was heard before this court's decision in *Laura H.*, and thus the parties and the trial court did not have the benefit of that decision. Accordingly, we find no need for guidance on this issue since we recently addressed it in *Laura H.*

2. *Capable-of-Repetition-Yet-Avoiding-Review Exception*

The two elements of the capable-of-repetition-yet-

avoiding-review exception to the mootness doctrine are (1) "the challenged action must be of a duration too short to be fully litigated prior to its cessation" and (2) a reasonable expectation must exist " 'the same complaining party would be subjected to the same action again.' " *Alfred H.H.*, 233 Ill. 2d at 358, 910 N.E.2d at 82 (quoting *In re Barbara H.*, 183 Ill. 2d 482, 491, 702 N.E.2d 555, 559 (1998)). Clearly, respondent has met the first element as the order only lasted for a 90-day period. See *Alfred H.H.*, 233 Ill. 2d at 358, 910 N.E.2d at 82.

As to the second element, respondent must show a substantial likelihood "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, 910 N.E.2d at 83. In *Alfred H.H.*, 233 Ill. 2d at 360, 910 N.E.2d at 83, the supreme court found the respondent failed to meet his burden where he raised the issue of whether the specific facts established during the hearing on his commitment petition were sufficient to find he was a danger to himself or others. The *Alfred H.H.* court noted the respondent did not raise a constitutional argument or challenge a statute's interpretation. Moreover, the respondent failed to provide a clear indication of how a resolution of the issue would be of use to him in future litigation. *Alfred H.H.*, 233 Ill. 2d at 360, 910 N.E.2d at 83.

Here, respondent's sufficiency-of-the-evidence argument does relate to an issue of statutory compliance. Moreover, respondent has a long history of mental illness and treatment for that illness. That coupled with respondent's lack of insight into his illness makes it likely he will again be the subject of an involuntary-administration-of-psychotropic-medication petition. Thus, unlike in *Alfred H.H.*, a substantial likelihood does exist that a resolution of respondent's sole issue would have some bearing on a similar issue presented in a subsequent case.

Accordingly, we find respondent has shown his issue falls under the capable-of-repetition-yet-avoiding-review exception to the mootness doctrine.

B. Receipt of Written Information

Under section 2-107.1(a-5)(4) of the Mental Health Code (405 ILCS 5/2-107.1(a-5)(4) (West 2008)), psychotropic medication may be administered only if "it has been determined by clear and convincing evidence that all of the [enumerated] factors are present." One of the factors is the respondent lacked capacity to make a reasoned decision. See 405 ILCS 5/2-107.1(a-5)(4)(E) (West 2008). "Before a patient can make a reasoned decision about medication, it is first necessary to be informed about the risks and benefits of the proposed course of medicine." (Internal quotation marks omitted). *In re Louis S.*, 361 Ill. App. 3d 774, 780, 838 N.E.2d 226, 232 (2005) (quoting *In re John R.*, 339

Ill. App. 3d 778, 783, 792 N.E.2d 350, 354 (2003)). Thus, this court held the State must present clear and convincing evidence at the involuntary-treatment hearing of compliance with section 2-102(a-5) of the Mental Health Code. *Louis S.*, 361 Ill. App. 3d at 779-80, 838 N.E.2d at 231-32.

Section 2-102(a-5) of the Mental Health Code (405 ILCS 5/2-102(a-5) (West 2008)) provides, in pertinent part, the following:

> "If 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."

Respondent contends the State did not prove compliance with section 2-102(a-5) at his hearing. When reviewing the sufficiency of the evidence, this court will not reverse the trial court's determination unless it was against the manifest weight of the evidence. *Laura H.*, 404 Ill. App. 3d at 290, 936 N.E.2d at 805. The State concedes its evidence was insufficient

on this matter.

At respondent's hearing, Dr. Eberhardt only testified respondent received a written list of the side effects. The State presented no other evidence of compliance with section 2-102(a-5). "This court has emphasized not only does section 2-102(a-5) require written notification of the proposed treatment's side effects, it also requires written notification of risks, benefits, and alternatives to the proposed treatment." (Internal quotation marks omitted.) *Laura H.*, 404 Ill. App. 3d at 290-91, 936 N.E.2d at 805 (quoting *In re Dorothy J.N.*, 373 Ill. App. 3d 332, 336, 869 N.E.2d 413, 416 (2007)). Since the State failed to present any evidence respondent was informed in writing of the (1) risks and benefits of the proposed treatment and (2) the alternatives to the proposed treatment, the trial court's involuntary-treatment order was against the manifest weight of the evidence. See *Laura H.*, 404 Ill. App. 3d at 291, 936 N.E.2d at 806.

Additionally, we note the written medication material contained in the common-law record contains the same deficiencies as those in *Laura H.*, 404 Ill. App. 3d at 292, 936 N.E.2d at 806-07. Thus, actual compliance with section 2-102(a-5) was also not present in this case.

III. CONCLUSION

For the reasons stated, we reverse the trial court's

judgment.

Reversed.