

NOTICE
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NO. 4-10-0193

Filed 1/27/11

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

In re: HAROLD S., a Person Found)	Appeal from
Subject to Involuntary Admission,)	Circuit Court of
THE PEOPLE OF THE STATE OF ILLINOIS,)	Champaign County
Petitioner-Appellee,)	No. 10MH4
v.)	
HAROLD S.,)	Honorable
Respondent-Appellant.)	Heidi N. Ladd,
)	Judge Presiding.

JUSTICE POPE delivered the judgment of the court.
Presiding Justice Knecht and Justice Turner concurred
in the judgment.

ORDER

Held: (1) Respondent's appeal is not moot because it falls under the public-interest exception to the mootness doctrine where (a) a strong likelihood exists respondent will face future commitment petitions, (b) the issues raised here are likely to recur without an opportunity for review because of the short duration of the 90-day commitment periods, and (c) an authoritative interpretation of the statutory requirements will guide public officers in the future.

(2) While section 3-810 of the Mental Health Code requires the preparation of a written report, the testimony presented in this case was both detailed and extensive and substantially contained the same information required by the statute.

(3) We affirm because respondent did not object to the absence of a written predispositional report and the testimony could be relied upon in place of that report.

On March 1, 2010, the State filed a petition for involuntary admission against respondent, Harold S. On March 5, 2010, the trial court convened a hearing and granted the petition. Respondent appeals, arguing (1) his appeal is not moot

because it falls under the capable-of-repetition-yet-evading-review exception to the mootness doctrine, and (2) the testimony at trial did not satisfy the requirements found in section 3-810 of the Mental Health and Developmental Disabilities Code (Mental Health Code) (405 ILCS 5/3-810 (West 2008)). We affirm.

I. BACKGROUND

On March 1, 2010, Jennifer Watters, a registered nurse working at Pavilion Psychiatric Hospital (Pavilion Hospital), filed a petition for involuntary, judicial admission against respondent, Harold S. The petition included allegations respondent heard voices, hallucinated, repeatedly injured himself, and had suicidal tendencies.

On March 5, 2010, the trial court held a hearing on the petition for involuntary admission. The State's first witness was Dr. Martin Repetto. Repetto testified he was a board-certified psychiatrist currently working as the medical director at Pavilion Hospital. Repetto stated he first treated respondent on February 11, 2010, and saw respondent every weekday thereafter.

Repetto testified respondent had previously lived at a group home in Decatur, Illinois. Repetto noted on the day before respondent was admitted to Pavilion Hospital, he became violent and aggressive toward the staff at the group home. Respondent then jumped a fence and ran into traffic. Repetto testified respondent was subsequently taken to the emergency room, where he

stated he heard voices commanding him to kill himself.

Repetto continued by discussing respondent's symptoms and behavior during his time at Pavilion Hospital. Repetto stated respondent was initially diagnosed as suffering from psychosis and mood problems. Repetto testified respondent had rapid mood swings where he would initially feel "down and withdrawn," and later he would become agitated and violent. Repetto explained, "[d]uring these episodes he becomes extremely agitated, loud. He starts banging his head against the wall, or punching himself with his own fists." Repetto stated he personally observed defendant bang his head into a wall, which caused a dent in the wall. Repetto added the hospital staff reported respondent had banged his head into the wall on more than 10 occasions and punched himself in the head approximately 10 times.

Repetto then discussed respondent's psychiatric history. Repetto explained respondent consistently experienced auditory hallucinations, paranoid delusions, agitation, and some suicidal thoughts. Repetto also noted respondent sniffed gas at some point, resulting in brain damage. Repetto testified respondent had a history of multiple suicide attempts and numerous psychiatric hospitalizations. Repetto testified he did not believe respondent had any family. However, respondent has a state guardian who helped respondent with his finances and

placement. Repetto stated he had not talked to any family members about respondent's situation.

Repetto testified he personally diagnosed respondent with schizo-affective disorder, bipolar type. Repetto also stated he included a diagnosis of psychosis based on brain damage respondent suffered when he sniffed gas.

Repetto noted he had many conversations with respondent trying to explain his mental illness, without success. Repetto stated, "unfortunately [respondent] has a very limited insight into the severity of his mental illness." Repetto explained respondent did not understand the reasons for his treatment and why it was necessary for him to take his medications everyday.

Repetto testified respondent is currently taking numerous medications: four different mood stabilizers, including Depakote, Lamictal, and Tegretol; two antipsychotic medications, Risperdal and Seroquel; and a tranquilizer, Clonazepam. Repetto added respondent also received doses of an antipsychotic (Haldol), and a tranquilizer (Ativan), during periods of agitation. Repetto admitted respondent did not respond well to the drug treatment.

Repetto testified he believed respondent was a danger to himself and to others. Repetto noted respondent had a history of numerous suicide attempts. Repetto also stated the hospital staff had to intervene on different occasions to prevent respondent from harming others. Repetto stated it was "quite likely" this type of

behavior would repeat.

Repetto stated respondent was making legitimate attempts to harm himself. Repetto noted respondent's behavior was "severe," and he appeared to be acting impulsively. Repetto testified respondent was not looking for an audience or seeking attention. Repetto also emphasized if respondent was not in an inpatient psychiatric unit, he would likely succeed in killing himself.

Repetto stated respondent only had a limited ability to provide for his basic needs. Repetto also stated he did not believe respondent would take his medications without direction based on his limited insight regarding his mental problems. Repetto testified if respondent was not treated, he would continue to deteriorate and would likely succeed in committing suicide.

Repetto concluded his testimony by providing the trial court with his recommendation regarding treatment. Repetto stated outpatient treatment was not appropriate for respondent. Repetto admitted respondent's prognosis was poor even with proper treatment because of the chronic nature of respondent's illness. Repetto also admitted respondent would require psychiatric care for the rest of his life. Repetto requested the court continue respondent's inpatient treatment at Pavilion Hospital or at McFarland State Hospital based on concerns for respondent's safety and his inability to use outpatient treatment.

On cross-examination, Repetto admitted he had been unable to obtain respondent's medical records. Repetto also admitted he had not been able to contact any of respondent's family members. However, Repetto stated respondent's legal guardian, Sharron Payne of the Butler County Public Administrator's office in Poplar Bluff, Missouri, had been contacted.

The State's next witness was Alma Daugherty. Daugherty stated she had worked as a registered nurse at Pavilion Hospital for 14 months. She stated she cared for respondent for two weeks, while simultaneously caring for approximately 14 other patients. She described her duties as giving medicine, helping patients with their dinner, and trying to convince patients to participate in programs at the hospital. Daugherty also specified she administered medication when respondent was agitated.

The State asked Daugherty to describe respondent's behavior. Daugherty stated respondent was normally passive, when he was not agitated. She also noted respondent usually appeared quiet and withdrawn. Daugherty testified respondent would remain in his room or walk up and down the hallway quietly. Daugherty testified she would attempt to have conversations with respondent, but his responses were very limited. Daugherty stated respondent had slurred speech at times. However, she did note respondent made a few comments indicating he wanted to go home to see his family.

Daugherty admitted respondent would take his medication most of the time. However, she noted during periods when respondent was becoming agitated, he would initially refuse to take his medication. Daugherty stated she would then "give him space," and, after 10 minutes, respondent would take his medication. Daugherty testified she observed no pattern regarding respondent's refusal to take his medication.

Next, Daugherty described respondent's behavior during periods of agitation. Daugherty stated she observed respondent agitated on three different occasions. She stated his behavior was consistent leading up to his periods of agitation. Daugherty testified respondent would become very quiet in the hallway. She noted he would then stare sharply at the hospital personnel. When asked if anything was wrong, respondent would state he was hearing voices and then start banging his head, or alternatively, he would say he wanted to go home and then start banging his head. Daugherty testified respondent would not stop banging his head until support personnel restrained him. She also stated she had to administer the "as-needed" medications, Ativan or Haldol, after respondent was restrained.

On cross-examination, Daugherty stated respondent did not consistently express a desire to go home. She clarified respondent only made this comment one time while she cared for him. She also admitted he did not appear agitated the previous

evening when she cared for respondent.

The next State witness was Thomas Simmons. Simmons stated he worked as a mental-health technician at Pavilion Hospital. He described his duties as assisting patients with their daily activities, including taking them to group activities, helping patients feed themselves, and attending to their personal hygiene.

Simmons stated he had worked with respondent five or six times over the prior two weeks. Simmons noted he observed respondent in an agitated state on four different occasions. Simmons testified respondent made threatening gestures toward him at different times but never actually attempted to strike him.

Simmons also stated he observed respondent bang his head on the wall on three different occasions. Simmons noted respondent struck the wall with enough force to cause a red mark on his forehead. Simmons stated when respondent experienced these periods of agitation, the hospital staff would attempt to restrain him. Simmons noted respondent reacted to these attempts by gesturing at the staff in a threatening manner. However, once a staff member placed a hand on respondent, he would quickly comply.

Simmons then discussed a specific incident where respondent attempted to harm himself and acted violently toward the staff. On February 28, 2010, respondent was standing at the nurse's station and informed a nurse he was going to harm himself.

Simmons stated respondent then quickly walked to his room. Simmons followed and found respondent kneeling over the toilet. Simmons stated he attempted to calm respondent by talking to him, but respondent would not be dissuaded. Simmons stated respondent counted down from 10 and then submerged his head in the toilet. Simmons testified he hit his support code button as he heard respondent gurgling for air. Simmons stated he then grabbed respondent's shoulders and pulled his head out of the toilet.

Simmons testified respondent cursed at him and threatened physical violence against Simmons if he interfered again. Simmons stated respondent then submerged his head in the toilet a second time, and Simmons again pulled respondent out. Simmons stated respondent then chased Simmons out of the room. This sequence repeated two or three more times.

Simmons testified support staff arrived on the scene shortly thereafter. However, respondent ran back into his room, closed his door, and pushed his body against the door from the inside. Simmons stated he and the support staff responded by forcing their way into the room. Upon their entry, respondent attempted to punch Simmons and another member of the support staff. Simmons testified respondent did not make contact with either punch, and they were able to place hands on respondent, at which time, he quickly complied. Simmons' testimony concluded, and the State rested. Defense counsel presented no witnesses

during the hearing.

After hearing closing arguments, the trial court concluded respondent was a danger to himself and others. The court noted the testimony showed respondent repeatedly tried to injure himself and also threatened violence against the support staff at Pavilion Hospital. The court also took note of respondent's psychiatric history and brain damage. The court stated it was apparent from the testimony that outpatient treatment would be unsuccessful. The court admitted it was unlikely respondent would respond to treatment but noted respondent's safety and well-being would be secured by placing him in a treatment facility. The court concluded respondent's mental illness and his lack of insight into his condition made it impossible for him to care for himself without assistance. The court then ordered respondent committed to Pavilion Hospital or, alternatively, McFarland Mental Health Center for 90 days.

This appeal followed.

II. ANALYSIS

A. Mootness

The trial court entered the commitment order on March 5, 2010, and limited the enforceability of the order to a period not to exceed 90 days. The 90-day period has passed. As a result, this case, like the majority of involuntary-admission cases where

the order extends for only 90 days, is moot. Thus, before we can address the merits of respondent's appeal, we must first determine whether any exception to the mootness doctrine applies. Respondent argues his appeal is not moot because it falls under the capable-of-repetition-yet-avoiding-review exception to the mootness doctrine. However, we find this appeal falls within the public-interest exception.

B. Public-Interest Exception

The public-interest exception to the mootness doctrine allows a reviewing court to consider an otherwise moot case where: (1) the question presented is of a public nature, (2) an authoritative determination is needed to guide public officials, and (3) there is a likelihood the question will recur. *In re Alfred H.H.*, 233 Ill. 2d 345, 355, 910 N.E.2d 74, 80 (2009). In this case, we are not being asked to review the sufficiency of the evidence. Instead, this case involves the procedural requirements of respondent's admission under section 3-810 of the Mental Health Code. See *Alfred H.H.*, 233 Ill. 2d at 356, 910 N.E.2d at 81. "Involuntary admission procedures implicate substantial liberty interests." *In re Robinson*, 151 Ill. 2d 126, 130, 601 N.E.2d 712, 715 (1992). "The procedures that must be followed before an individual, who is suffering from a mental illness, is ordered to be involuntarily admitted for treatment is a matter of public concern." *In re Robert F.*, 396 Ill. App. 3d 304, 311, 917 N.E.2d

1201, 1206 (2009) (citing *In re Mary Ann P.*, 202 Ill. 2d 393, 402, 781 N.E.2d 237, 243 (2002)); *In re Andrew B.*, 386 Ill. App. 3d 337, 340, 896 N.E.2d 1067, 1070 (2008) (procedures courts must follow to authorize involuntary commitment involve matters of substantial public concern).

Respondent argues the trial court erred because it failed to consider all of the section 3-810 requirements prior to ordering his commitment. Specifically, respondent contends the court erred by involuntarily committing him without a written report as required by section 3-810. 405 ILCS 5/3-810 (West 2008). Given the facts of this case and respondent's numerous past commitments, there is a strong likelihood respondent will face future commitment petitions. Because of the short duration of the 90-day commitment periods, the issues raised here are likely to recur without an opportunity for review. As a result, "an authoritative determination regarding the interpretation of [the section 3-810 requirements] will be helpful in the future guidance of public officers." *Robert F.*, 396 Ill. App. 3d at 311, 917 N.E.2d at 1206 (citing *In re Philip E.*, 385 Ill. App. 3d 278, 282, 895 N.E.2d 33, 39 (2008)). Accordingly, we find the public-interest exception applies.

C. Section 3-810 Requirements

Section 3-810 of the Mental Health Code provides the

following:

"Before disposition is determined, the facility director or such other person as the court may direct shall prepare a *written* report including information on the appropriateness and availability of alternative treatment settings, a social investigation of the respondent, a preliminary treatment plan, and any other information which the court may order. The treatment plan shall describe the respondent's problems and needs, the treatment goals, the proposed treatment methods, and a projected timetable for their attainment. If the respondent is found subject to involuntary admission, the court shall consider the report in determining an appropriate disposition." (Emphasis added.) 405 ILCS 5/3-810 (West 2008).

We note the legislature did not always require a written report. In *Robinson*, the supreme court noted section 3-810 of the Mental Health Code "requires a relatively detailed report" and believed "the legislature intended the report to be in written form." *Robinson*, 151 Ill. 2d at 132-33, 601 N.E.2d at 716. In 1993, the legislature amended section 3-810 to require a

written report. See 405 ILCS 5/3-810 (West 1994) (as amended by Pub. Act 88-484, §10 (eff. September 10, 1993) (1993 Ill. Laws 4237, 4247)).

The purpose of the written report is to provide the trial court with background information about respondent's mental illness, treatment needs, social-support systems, and possible treatment alternatives. The court uses this information to place respondent in the least-restrictive treatment setting while still providing respondent with the necessary treatment. The preparation of a written report also provides the respondent with notice of the grounds for commitment instead of learning the basis at the commitment hearing. Such notice could allow the respondent to call his own expert at the hearing to challenge the report.

In this case, respondent did not object to the lack of a written predispositional report. If the respondent does not object to the lack of a written report during the involuntary-commitment proceeding, the trial court can rely on testimony at trial to satisfy the requirements found in section 3-810. *Robinson*, 151 Ill. 2d at 134, 601 N.E.2d at 717 ("oral testimony containing the information required by the statute can be an adequate substitute for the presentation of a formal, written report"). Thus, "strict compliance with section 3-810 is required only when the legislative intent cannot otherwise be achieved." *Robinson*, 151 Ill. 2d at 134, 601 N.E.2d at 717.

Here, the testimony during the involuntary-commitment hearing provided the trial court with the same information that would have been contained in the written report, *i.e.*, the appropriateness and availability of alternative-treatment settings, a social investigation, and a preliminary treatment plan. During the hearing, Repetto clearly described the possible treatment alternatives. He noted respondent could not be successfully treated in an outpatient setting because he had limited insight into his mental problems. Repetto also stated respondent would likely harm himself without constant supervision. Therefore, the only viable alternative in respondent's case was an inpatient setting with constant supervision.

Next, Repetto provided the trial court with information about respondent's social-support systems. He stated respondent previously lived in a group home in Decatur, Illinois. Repetto also mentioned he had been unable to contact respondent's family and did not believe respondent, in fact, had any family. Repetto added Pavilion Hospital personnel had successfully contacted respondent's legal guardian.

Finally, Repetto provided the trial court with a sufficient description of the treatment plan for respondent. Repetto testified he diagnosed respondent with schizo-affective disorder, bipolar type, combined with psychosis resulting from brain damage caused by inhalation of gas fumes. Repetto also informed the

court respondent would require constant supervision to prevent him from harming himself or others. Repetto noted any treatment would likely be only moderately successful based on the chronic nature of respondent's condition. Therefore, the ultimate goal of treatment was to provide respondent with a safe environment where he would receive his medication and where he could be observed and cared for by mental-health professionals.

While cursory testimony is not a substitute for a written report (*In re Robin C.*, 395 Ill. App. 3d 958, 965, 918 N.E.2d 1284, 1289 (2009)), the testimony presented in this case was both detailed and extensive. In addition, the testimony substantially contained the same information required by the statute. Because respondent did not object to the absence of a written predispositional report, this testimony could be relied upon in place of the report. See *Robinson*, 151 Ill. 2d at 134, 601 N.E.2d at 717.

We recognize the trial court never specifically mentioned the treatment alternatives prior to ordering respondent's commitment to a mental-health-care facility. See 405 ILCS 5/3-811 (West 2008) (the court shall consider alternative mental-health treatment facilities and shall order the least-restrictive alternative for treatment). However, this omission, by itself, does not prove the court did not properly consider all of the treatment alternatives.

As stated, Repetto's testimony was very detailed and extensive. The testimony clearly showed respondent was in dire need of constant supervision to ensure he did not harm himself. Our review of the record shows the trial court gave considerable thought to respondent's condition and determined a controlled treatment setting was the only realistic option. Respondent was in no condition to be discharged to a less restrictive placement. The testimony provided the court with sufficient information to make an informed decision regarding the available treatment alternatives.

We note respondent has undergone multiple past commitments. Given the facts of this case, respondent will likely face future commitment hearings. The legislature has determined a *written* report is necessary prior to involuntarily committing an individual. Such written reports should be submitted to and considered by the court in any future commitment proceedings.

III. CONCLUSION

For the reasons stated, we affirm the trial court's judgment.

Affirmed.