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NO. 4-10-0283

Order Filed 3/8/11

IN THE APPELLATE COURT  
OF ILLINOIS  
FOURTH DISTRICT

In re: LINDA K., a Person Found	)	Appeal from
Subject to Involuntary Admission and	)	Circuit Court of
Administration of Psychotropic	)	Sangamon County
Medication,	)	No. 10MH200
THE PEOPLE OF THE STATE OF ILLINOIS,	)	
Petitioner-Appellee,	)	
v.	)	Honorable
Linda K.,	)	Steven H. Nardulli,
Respondent-Appellant.	)	Judge Presiding.

JUSTICE STEIGMANN delivered the judgement of the court. Justices Appleton and Myerscough concurred in the judgment.

**ORDER**

*Held:* (1) The collateral-consequences exception to the mootness doctrine applied to the trial court's involuntary treatment order and (2) when seeking an order to involuntarily administer psychotropic medication, the failure of a treatment provider to advise the recipient, in writing, of the side effects, risks, benefits, and alternatives to the proposed medications violated section 2-102(a-5) of the Mental Health and Developmental Disabilities Code (405 ILCS 5/2-102(a-5) (West 2008)). Accordingly, the trial court's judgment was reversed.

Following multiple hearings that took place in March 2010, the trial court found respondent, Linda K., subject to involuntary treatment (405 ILCS 5/2-107.1 (West 2008)).

Respondent appeals, arguing that the trial court's judgment should be reversed because (1) the State failed to provide the statutorily mandated written information about the

risks, benefits, and alternatives of the proposed treatment, and (2) the court erred by accepting her treating doctor's opinion concerning the benefits of her proposed medication because the doctor failed to give a factual basis for his opinion that (a) the benefits of the treatment outweighed the harm and (b) other, less restrictive, services had been explored and found inappropriate. Because we agree with respondent's first argument, we reverse.

#### I. BACKGROUND

In March 2010, Sriehri Patibandla, respondent's psychiatrist at McFarland Mental Health Center, filed a petition seeking to involuntarily administer psychotropic treatment to respondent. The petition alleged that respondent suffered from "a serious mental illness or developmental disability"--namely, delusional disorder "NOS." The petition also indicated that according to the information and history known to Patibandla, respondent had not previously received psychotropic medication. The petition requested the following medications: (1) Geodon (40 to 160 milligrams per day, orally), (2) Geodon (10 to 40 milligrams per day, intramuscularly), and (3) Ativan (2 to 8 milligrams per day, orally/intramuscularly).

At two hearings on the petition held later in March 2010, Patibandla testified that respondent had been diagnosed with delusional disorder. As a result of that mental illness,

respondent was committed to McFarland because she had previously been found unfit to stand trial on two counts of forgery and believed, among other things, that (1) the counts against her had been dismissed by the supreme court, (2) she knew "what [she] refer[s] to as Black's Law," (3) she would not eat, (4) she had been on the news, and (5) her caseworker was keeping her from speaking to the Attorney General.

Patibandla further testified that the suggested psychotropic medications had possible side effects, including weight gain, increase in blood sugar, feeling tired, muscle stiffness, and tardive dyskinesia. Thereafter, the following exchange occurred between the prosecutor and Patibandla:

Q. [PROSECUTOR] \*\*\* Have you had occasion to discuss with [respondent] the benefits and side effects of the treatment you're requesting in the petition?

A. Yes. I have tried.

Q. And specifically, did you try to talk with her on March 8[, ] 2010[, ] about the treatment?

A. Yes, I have.

Q. And have you tried other dates to talk with her as well?

A. Yes, I have.

\*\*\*

Q. Did you \*\*\* or a staff person give her a written list of the side effects of the medications?

A. Yes, I have.

Q. And did she accept them in her hand?

A. Yes, she did.

Patibandla then explained that he had explored other, less-restrictive services and determined that they were inappropriate for respondent because of her mental illness.

Respondent testified that she had never previously taken medications and believed that she did not need them. When asked why she did not want to take the prescribed medication, respondent testified as follows:

"Because I don't need the medication.

When I got here, I was forced, I was locked, this is why this is called illegal evidence. This is it. It's illegal evidence to take a human being, lock them up in \*\*\* a jail \*\*\* and make them see a doctor to instate [sic] them on a medication, meaning that it's illegal evidence, meaning that that is the law \*\*\*. You cannot take a person; that's what they did with me.

They arrested me for a warrant that has no face value, meaning that the face value to the warrant was no good. There's no prima facie value in it, meaning there's two laws on that. One is suppression, the other one \*\*\* is a suppression, meaning that it's [...]."

Based on this evidence, the trial court found respondent subject to involuntary administration of the following psychotropic medications for a period not to exceed 90 days: Geodon (40 to 160 milligrams per day, orally), Geodon (10 to 40 milligrams per day, intramuscularly), and Ativan (2 to 8 milligrams per day, orally/intramuscularly). The court also authorized the alternative use of Haldol (5 to 30 milligrams per day), Zyprexa (10 to 30 milligrams per day), Risperdal (1 to 10 milligrams per day), Abilify (5 to 30 milligrams per day), and Seroquel (100 to 800 milligrams per day), as well as certain blood panels and tardive-dyskinesia monitoring.

This appeal followed.

## II. ANALYSIS

### A. The Mootness Doctrine and This Case

Initially, we note that this appeal is moot. The underlying judgment, entered by the trial court on March 19, 2010, was limited to 90 days, which have passed. However, an

issue raised in an otherwise moot appeal may be reviewed when (1) addressing the issues involved is in the public interest; (2) the case is capable of repetition, yet evades review; or (3) the petitioner will potentially suffer collateral consequences as a result of the trial court's judgment. *In re Alfred H.H.*, 233 Ill. 2d 345, 355-61, 910 N.E.2d 74, 80-83 (2009).

The third exception to the mootness doctrine, known as the collateral-consequences exception, allows for appellate review even though a court order has ceased because a respondent has suffered, or is threatened with, an actual injury traceable to the petitioner and will likely be redressed by a favorable judicial decision. *Alfred H.H.*, 233 Ill. 2d at 361, 910 N.E.2d at 83. "The collateral-consequences exception applies to a first involuntary-treatment order." *In re Joseph P.*, Nos. 4-10-0346, 4-10-0347, slip op. at 8 (Ill. App. Dec. 22, 2010). Where the record (1) does not indicate that the respondent has ever been subject to an order for the involuntary administration of medication and (2) it appears that the respondent will very likely be subject to future proceedings that would be adversely impacted by such involuntary treatment, the collateral-consequences exception applies. *In re Wendy T.*, \_\_\_ Ill. App. 3d \_\_\_, \_\_\_, 940 N.E.2d 237, 241-42 (2010).

In this case, the record does not show that respondent has ever been subject to an order for involuntary administration

of medication. Further, respondent's condition indicates that she would very likely be subject to future proceedings that would be adversely impacted by her past involuntary treatment. Thus, we conclude that the collateral-consequences exception applies.

B. Respondent's Claim That the State Failed To Provide Certain Statutorily Mandated Information in Writing

Respondent argues that the State failed to prove by clear and convincing evidence that she lacked capacity to make a reasoned decision about the proposed treatment because she was not provided the statutorily mandated written information about the risks, benefits, and alternatives of the proposed treatment. We agree.

Generally, we review a trial court's order permitting the involuntary administration of psychotropic medication under the manifest-weight-of-the-evidence standard. *In re Louis S.*, 361 Ill. App. 3d 774, 779, 838 N.E.2d 226, 231 (2005). Under this standard, we will reverse a court's judgment only when the opposite conclusion is apparent or the court's findings are unreasonable, arbitrary, or not based on the evidence. *Louis S.*, 361 Ill. App. 3d at 779, 838 N.E.2d at 231.

Pursuant to section 2-107.1 of the Mental Health Code, psychotropic medication may be administered when the trial court has determined by clear and convincing evidence that each of the following factors are present.

"(A) That the recipient has a serious

mental illness or developmental disability.

(B) That because of said mental illness or developmental disability, the recipient currently exhibits any one of the following:

(i) deterioration of his or her ability to function, as compared to the recipient's ability to function prior to the current onset of symptoms of the mental illness or disability for which treatment is presently sought, (ii) suffering, or (iii) threatening behavior.

(C) That the illness or disability has existed for a period marked by the continuing presence of the symptoms set forth in item (B) of this subdivision (4) or the repeated episodic occurrence of these symptoms.

(D) That the benefits of the treatment outweigh the harm.

(E) That the recipient lacks the capacity to make a reasoned decision about the treatment.

(F) That other less[-]restrictive services have been explored and found inappropriate.

(G) If the petition seeks authorization for testing and other procedures, that such testing and procedures are essential for the safe and effective administration of the treatment." 405 ILCS 5/2-107.1(a-5) (4) (A) through (a-5) (4) (G) (West 2008).

However, the Mental Health Code goes further. Section 2-102 of the Mental Health Code also provides as follows:

"If the services included the administration of \*\*\* 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."

(Emphasis added.) 405 ILCS 5/2-102(a-5)  
(West 2008).

In *In re Dorothy J.N.*, 373 Ill. App. 3d 332, 336, 869 N.E.2d 413, 416 (2007), this court explained that strict compliance with *all* of section 2-102(a-5) is necessary to protect the liberty interests of the mental-health-treatment recipient. In *Dorothy J.N.*, we held that verbally advising the recipient of the

side effects of the proposed medication was insufficient.

*Dorothy J.N.*, 373 Ill. App. 3d at 336, 869 N.E.2d at 416.

Here, the State acknowledges that respondent was not provided a written statement of the alternatives to the proposed treatment but nonetheless claims that Patibandla's testimony that no feasible alternatives to the medication were available was sufficient to comply with the Mental Health Code. It is not. Although it appears that the State met its burden under section 2-701.1 of the Mental Health Code, as our holding in *Dorothy J.N.* demonstrates, the Mental Health Code requires more. As we stated in *Dorothy J.N.*, strict compliance with *all* of section 2-102(a-5) is also required, including the mandate that the list of alternatives be in writing.

Given that the psychotropic medication at issue in this case is frequently used in such cases, perhaps the prosecutors could assist the attending physicians in preparing in advance a written description regarding that medicine that would comply with section 2-102(a-5) of the Mental Health Code. Then, to comply with the statute, all that the physician need do would be to hand that description to the patient. For more detail on this procedure, see *Dorothy J.N.*, 373 Ill. App. 3d at 338-39, 869 N.E.2d at 418 (Steigmann, P.J., specially concurring) (outlining the procedure for complying with section 2-102(a-5) of the Mental Health Code).

Because respondent was not advised in writing of the side effects, risks, benefits, and alternatives to the proposed medications, we conclude that the trial court's judgment must be reversed. See *Dorothy J.N.*, 373 Ill. App. 3d at 336, 869 N.E.2d at 416 (quoting *Louis S.*, 361 Ill. App. 3d at 780, 838 N.E.2d at 232) ("'the right to written notification is not subject to harmless-error analysis' and \*\*\* strict compliance with the procedural safeguards of the Mental Health Code [are] necessary to protect the liberty interests involved)."

Because we have concluded that the State failed to provide respondent the statutorily mandated written information about the risks, benefits, and alternatives of the proposed treatment, we need not address respondent's remaining contention.

### III. CONCLUSION

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

Reversed.