



¶ 5 On March 26, 2010, the circuit clerk issued a notice of the hearing to the respondent. However, the record does not contain a notice of the hearing to the respondent's defense counsel. The hearing was held on April 13, 2010. At the hearing, Dr. Mahmood testified regarding the respondent's physical and mental behavior. The respondent also testified on his own behalf.

¶ 6 At the end of the hearing, the circuit court granted the petition and entered an order authorizing the administration of the proposed psychotropic medication for a period not to exceed 90 days. The respondent filed this timely appeal.

¶ 7 ANALYSIS

¶ 8 On appeal, the respondent argues (1) that the circuit court violated his due process rights because the State did not present clear and convincing evidence to support the petition, (2) that the circuit court's order must be reversed because there was no notice sent to the respondent's defense counsel, and (3) that this case is not moot because it falls within a recognized exception to the mootness doctrine.

¶ 9 In response, the State has filed a confession of error, stating that the statutorily required notice was not given to the respondent's defense counsel.

¶ 10 Initially, we note that the case is moot. The circuit court entered an order allowing the administration of the psychotropic medication for up to 90 days. However, the 90 days have expired. In general, the courts do not consider moot issues. *In re Alfred H.H.*, 233 Ill. 2d 345 (2009). However, "[t]here are three established mootness exceptions: (1) the public[-]interest exception; (2) the capable-of-repetition-yet-avoiding-review exception; and (3) the collateral[-]consequences exception." *In re Daryll C.*, 401 Ill. App. 3d 748, 752 (2010).

¶ 11 The respondent argues that the case meets all the mootness exceptions. Since we agree that the case meets the capable-of-repetition-yet-avoiding-review exception

to the mootness doctrine, we do not address the other available exceptions.

¶ 12 The capable-of-repetition-yet-avoiding-review exception is a two-prong test. The action must be of the type that cannot be litigated within its short duration, and there must be a reasonable expectation of a reoccurrence of this action against the respondent in the future. *In re Alfred H.H.*, 233 Ill. 2d at 358.

¶ 13 In the instant case, the involuntary administration of psychotropic medication order was only for 90 days, which is too short of a duration for it to be fully litigated before the expiration of the order. Moreover, the respondent's involuntary commitment provides a reasonable expectation that he could be reviewed for the involuntary administration of the medicine again, and the record actually establishes that the order would be up for review periodically. Moreover, in a future action against the respondent for the involuntary administration of psychotropic medication, the issue of statutory compliance presented here is substantially likely to resurface. Therefore, our review of the circuit court's order is proper under this exception to the mootness doctrine, and we can address the merits of the appeal.

¶ 14 Because the State is in agreement that no notice was provided to the respondent's defense counsel, we will first address that issue. The Mental Health and Developmental Disabilities Code (Code) allows for the filing of a petition for the administration of psychotropic medicine. 405 ILCS 5/1-100 *et seq.* (West 2006). However, it states that the notice of a hearing must be provided as follows: "The petitioner shall deliver a copy of the petition, and notice of the time and place of the hearing, to the respondent, his or her attorney, any known agent or attorney-in-fact, if any, and the guardian, if any, no later than 3 days prior to the date of the hearing." *Id.* at § 2-107.1(a-5)(1).

¶ 15 "Illinois courts have consistently held that an order of involuntary treatment

will not stand when notice pursuant to the Mental Health Code is not given to the criminal defense attorney of a respondent who is institutionalized as unfit to stand trial." *In re Eric H.*, 399 Ill. App. 3d 831, 834 (2010). The supreme court has also previously held as follows: "In the absence of any restrictive language in the statute, we believe respondent's criminal defense attorney qualifies as a party to whom notice is due. In the very least, criminal counsel was a 'known agent,' and thus should have been given notice of this proceeding." *In re Robert S.*, 213 Ill. 2d 30, 57 (2004).

¶ 16 Here, the Code required that notice of the hearing be given to the respondent's defense counsel. The respondent was entitled to have his defense counsel notified of the petition and the hearing. The record establishes that notice was not sent to the respondent's defense counsel. Thus, since the statutorily required notice was not given to the respondent's defense counsel, we conclude that the circuit court's order must be reversed. In light of our conclusion, we will not address the other issues raised by the respondent.

¶ 17 CONCLUSION

¶ 18 For the foregoing reasons, we reverse the circuit court's order granting the petition to administer involuntary psychotropic medication.

¶ 19 Reversed.