

NOTICE

Decision filed 02/24/11. The text of this decision may be changed or corrected prior to the filing of a Petition for Rehearing or the disposition of the same.

NO. 5-10-0004

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

NOTICE

This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

<i>In re</i> NICHOLAS L., Alleged to Be a Person Subject to Involuntary Admission)	Appeal from the Circuit Court of Randolph County.
)	
)	
(The People of the State of Illinois, Petitioner- Appellee, v. Nicholas L., Respondent- Appellant).)	No. 09-MH-245
)	
)	Honorable
)	William A. Schuwerk, Jr.,
)	Judge, presiding.

JUSTICE WELCH delivered the judgment of the court.
Justices Goldenhersh and Wexstten concurred in the judgment.

R U L E 2 3 O R D E R

Held: Where the written report required by section 3-810 of the Mental Health and Developmental Disabilities Code is absent, oral testimony that does not contain the specific information demanded by the statute cannot be substituted for the lack of the required written report, and the circuit court's order of involuntary commitment is reversed.

The respondent, Nicholas L., appeals from the trial court's order that he be involuntarily committed for 90 days. On appeal, the respondent argues, *inter alia*, that the State failed to file the report required by section 3-810 of the Mental Health and Developmental Disabilities Code (Mental Health Code) (405 ILCS 5/3-810 (West 2008)). He asks this court to reverse the circuit court's order of involuntary commitment and grant any other relief which this court deems proper under the circumstances.

The State confesses error regarding this issue and does not address any other issues raised by the respondent. The respondent's contentions and the State's concession are well-taken and we grant the requested relief.

BACKGROUND

On December 2, 2009, a petition for the involuntary commitment of the respondent was filed in the circuit court. A hearing on the petition was held on December 23, 2009. During the hearing, Tracy Mott, a licensed clinical social worker, testified for the State regarding her meeting with the respondent. She testified that the respondent had been restrained due to aggressive behavior in two situations but had not been restrained since December 4, 2009. Mott also testified that the respondent was voluntarily taking his medication but had a history of noncompliance. In addition, she testified she felt that the respondent would discontinue his medication if not within a structured setting and that this would increase the likelihood that he would harm himself or others. Mott concluded her testimony by stating she felt that the respondent met the criteria for an involuntary commitment. The record shows that no section 3-810 report was filed and that the respondent's counsel did not object to the absence of this report at the hearing. Subsequently, the circuit court ordered the respondent to be committed for 90 days. The respondent then filed this timely appeal.

ANALYSIS

Initially, we first note that this case is moot. The respondent's involuntary commitment order expired on March 25, 2010. Therefore, this court would not be able to grant effectual relief to either party. 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).

The statutory issue addressed here is one that falls within an exception to the mootness doctrine. 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.

In the instant case, the involuntary commitment 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 history of mental illness provides a reasonable expectation that he could be reviewed for involuntary commitment again. Moreover, in a future action against the respondent for an involuntary commitment, 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.

On appeal, the respondent argues that the State did not comply with statutory guidelines. An involuntary commitment is governed by the Mental Health Code (405 ILCS 5/1-100 *et seq.* (West 2008)). Section 3-810 of the Mental Health Code requires that a written report be filed that includes alternative treatment options, a social investigation of the respondent, and a beginning treatment plan. *Id.* at §3-810. This report is filed before the disposition is determined, and the court should consider the report when determining its ruling. *Id.* However, if a report is not filed and the respondent fails to object to its absence, then oral testimony may be permitted to satisfy the reporting requirement. *In re Robinson*, 151 Ill. 2d 126, 135 (1992). "The State satisfies the requirements of section 3-810 absent a formal written report only when the testimony provides the specific information required by the language of the statute." *In re Alaka W.*, 379 Ill. App. 3d 251, 270 (2008). "The complete failure to comply with section 3-810 of the Mental Health Code is reversible error." *In re Lawrence S.*, 319 Ill. App. 3d 476, 484 (2001).

Here, the record substantiates that no written report was filed. Furthermore, the State

concedes that no report was filed and that the oral testimony did not contain the statutorily required information. We agree that the information provided by Mott's testimony was not sufficient to meet the reporting requirements of section 3-810 of the Mental Health Code. There was no testimony of any alternative treatments or a preliminary treatment plan as required by the statute. Thus, we conclude that the reversal of the circuit court's involuntary commitment order is warranted. In light of our decision to reverse, we need not address the respondent's other contentions.

CONCLUSION

For the foregoing reasons, we reverse the circuit court's order of the involuntary commitment of the respondent.

Reversed.