

confined at the Dixon Correctional Center and was admitted to the Chester Mental Health Center as an involuntary admission. James W. had been incarcerated at the Dixon Correctional Center on a parole violation for the failure to register as a sex offender. The admission to the Chester Mental Health Center was based on James W. being deemed dangerous to the community if released.

On November 20, 2008, David Dunker filed a petition for the involuntary admission of James W. The petition was filed under the provision of the Code that allows a patient to continue to be subject to involuntary admission (405 ILCS 5/3-813 (West 2008)). According to the certificate attached to the petition, James W. had an extensive criminal record, including convictions for robbery, aggravated battery, possession of a controlled substance, attempted murder, and aggravated sexual assault.

The certificate was signed by A. Gesmundo, a psychiatrist. Dr. Gesmundo marked on the petition that he believed that James W. was a person subject to an involuntary admission and in need of immediate hospitalization. According to the certificate, James W. also had multiple psychiatric admissions since 1986:

"[James W.] has been diagnosed as Schizophrenia, Paranoid Chronic, and has been treated with various antipsychotic medications. He has remained chronically psychotic. He has systematized delusions that others don't like him, are messing him up, and periodically acts on his delusions and gets aggressive towards others. He also is preoccupied about having a sexually transmitted disease of syphilis, for which he demands to have PCN shots/Wycillin and gets agitated when he cannot get it. He remains very paranoid. He does not believe he has a mental illness and has problems with medication compliance off and on. Since his admission he has not qualified for transfer to a less restrictive facility. He often demands for his transfer, but his behavior and mental status have not stabilized to justify any transfer."

The certificate continued that since his last commitment on June 11, 2008, James W. has "started to exhibit his usual somatic delusions about having urinary tract infections/having blood in the urine" and "was also getting paranoid such as his peers are staring at him." The certificate noted that after a crush-and-observe order was discontinued, James W. acted aggressively towards other patients, including breaking another patient's nose. The certificate concluded that without structure and supervision, James W. was unlikely to comply with his treatment and would be likely to physically harm others.

At the hearing on the petition, the sole witness was Jamia Klausing, a licensed clinical social worker, who testified on behalf of the State. Klausing had interviewed James W., reviewed his file, and talked to members of his treatment team. Klausing testified that James W.'s first admission to the Department of Human Services was in 1986 and that he had a total of 10 admissions. Klausing testified that she was able to currently diagnose James W. with chronic schizophrenia, paranoid type, and antisocial personality disorder. Klausing described James as paranoid with somatic delusions and poor insight into his condition, poor judgment, and noncompliant with medication. Klausing stated that James W. had been physically aggressive to other patients in several incidents over the previous six months. Klausing testified that James W. was taking several medications but that he would not continue to take them if he were released from the facility. Klausing was of the opinion that James W. was a person subject to an involuntary admission, and Klausing recommended that he be hospitalized for a further 180 days for treatment.

On cross-examination, Klausing admitted that in May 2008 there had been some talk of transferring James W. to a different facility. Klausing stated that at that time, James W. was taken off the crush-and-observe program but that he was placed back under the program after he started "cheeking" his medication.

At the conclusion of the hearing, the court stated the following:

"Okay. Based on the evidence, the Court finds that [James W.] is a person subject to involuntary admission. Order of the Court he be hospitalized [by the] Department of Human Services for a period not to exceed 180 days."

Respondent appeals.

ANALYSIS

James W. was not afforded due process. First, the State failed to present evidence that the petitioned-for confinement was the least restrictive form of treatment. See 405 ILCS 5/3-811 (West 2008). Second, the trial court failed to issue written findings of fact and conclusions of law. See 405 ILCS 5/3-816 (West 2008).

The Code requires the least restrictive treatment. 405 ILCS 5/3-811 (West 2008). Section 3-811 mandates, "The court shall order the least restrictive alternative for treatment which is appropriate." 405 ILCS 5/3-811 (West 2008). Hospitalization is a drastic measure, and the failure to evaluate the potential of less intrusive alternatives violates both the statutory protection and the due process rights of respondents. *In re Phillip E.*, 385 Ill. App. 3d 278, 286, 895 N.E.2d 33, 42 (2008)

The State failed to present any evidence that hospitalization was the least restrictive treatment setting. Klausung's testimony regarding the history of James W.'s confinement was insufficient. The State did not offer a treatment plan into evidence, nor did the State offer evidence regarding the available alternatives, the investigation of those alternatives, or the appropriateness of the alternatives for James W. This error was compounded by the trial court's failure to issue a finding on alternative treatments. See *In re Lance H.*, 402 Ill. App. 3d 382, 389, 931 N.E.2d 734, 741 (2010).

On appeal, respondent appropriately quotes *In re Phillip E.*, 385 Ill. App. 3d 278, 286, 895 N.E.2d 33, 42 (2008). The admonishment issued by this court in *In re Phillip E.* applies to the case at hand:

"From a review of Cindy Stoll's testimony, there was absolutely no proof that continued hospitalization in Chester Mental Health Center was the least restrictive alternative available to Phillip E. at that stage of his mental health treatment. Without such testimony or any other evidence, we have no idea on what the trial court based its decision.

While the evidence that could have been introduced might well have supported the ongoing commitment ordered by the trial judge, there simply was no such evidence in this case. With no evidence on this point, the trial court's order violates Phillip's due process rights. The trial court's August 8, 2007, judgment is therefore reversible on this basis as well." *In re Phillip E.*, 385 Ill. App. 3d 278, 286, 895 N.E.2d 33, 42 (2008).

James W. was also denied due process by the trial court's failure to issue findings of facts and conclusions of law. Section 3-816(a) provides that a final order for involuntary treatment "shall be in writing and shall be accompanied by a statement on the record of the court's findings of fact and conclusions of law." 405 ILCS 5/3-816(a) (West 2008). The State's contention that this was a procedural defect that was waived by respondent is unconvincing. This court has recently, and repeatedly, noted that this requirement protects liberty interests and requires strict compliance. *In re Lance H.*, 402 Ill. App. 3d 382, 387, 931 N.E.2d 734, 739 (2010); *In re James S.*, 388 Ill. App. 3d 1102, 1107, 904 N.E.2d 1072, 1077 (2009). James W. was denied due process and suffered prejudice.

The strength of the State's response on appeal lies not in the record of the proceedings but in the need for this court to issue an opinion. First, the State contends that respondent failed to file a proper notice of appeal. The State, however, filed no motion to dismiss the appeal and cannot point to any prejudice from the procedure used by respondent. See *People v. Clark*, 268 Ill. App. 3d 810, 813, 645 N.E.2d 590, 593 (1995); *People v. Kellerman*, 342

Ill. App. 3d 1019, 1023, 804 N.E.2d 1067, 1071 (2003).

The State also contends that the appeal is moot and not subject to any exceptions for review. The case at hand, however, appears capable of repetition yet evading review. The appeal is not limited to the specific facts contested during the hearing. See *In re Alfred H.H.*, 233 Ill. 2d 345, 359, 910 N.E.2d 74, 82 (2009). Indeed, the State responded to the issues of constitutional magnitude presented on appeal by emphasizing James W.'s criminal history and by asserting he would likely be subject to continuing confinement.

A more complex legal question is whether this appeal calls for the application of the public-interest exception. This court recently applied the public-interest exception in the case of *In re Lance H.*, 402 Ill. App. 3d 382, 387, 931 N.E.2d 734, 739 (2010). In *In re Lance H.*, this court called for strict compliance with the Code in order to avoid constitutional infirmities similar to those found in the case at hand. *In re Lance H.*, 402 Ill. App. 3d at 387, 931 N.E.2d at 739. *In re Lance H.* was issued after the filing of the briefs in the case at hand.

In re Lance H. admonished the State to follow the procedures outlined in the Code and provide due process to respondents. In light of the admonitions to the State given in *In re Lance H.*, this court refrains from issuing a published opinion but reiterates the need to comply with statutory requirements and to be ever vigilant against abuses of power. *In re Lance H.*, 402 Ill. App. 3d at 390, 931 N.E.2d at 742.

Accordingly, the order of the circuit court is hereby reversed.

Reversed.