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2012 IL App (4th) 110731-U

Filed 4/6/12

NO. 4-11-0731

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

In re: Brenda Q., a Person Found Subject to)	Appeal from
Involuntary Admission,)	Circuit Court of
THE PEOPLE OF THE STATE OF ILLINOIS,)	Sangamon County
Petitioner-Appellee,)	No. 11MH648
v.)	
BRENDA Q.,)	Honorable
Respondent-Appellant.)	Esteban F. Sanchez,
)	Judge Presiding.

JUSTICE COOK delivered the judgment of the court.
Justices Appleton and Knecht concurred in the judgment.

ORDER

¶ 1 *Held:* We grant Legal Advocacy's motion to withdraw as counsel pursuant to *Anders v. California*, 386 U.S. 738 (1967). Respondent's appeal was not moot because it fell under the collateral-consequences exception to the mootness doctrine. However, respondent failed to raise any meritorious issues on appeal.

¶ 2 This appeal comes to us on the motion of Legal Advocacy Service, a division of the Illinois Guardianship and Advocacy Commission (Legal Advocacy), to withdraw as counsel on appeal because no meritorious issues can be raised in this case, pursuant to *Anders v. California*, 368 U.S. 738 (1967), extended to civil matters by *In re Keller*, 138 Ill. App. 3d 746, 486 N.E.2d 291 (1985), applied to appeals of involuntary admission orders by *In re Juswick*, 237 Ill. App. 3d 102, 604 N.E.2d 528 (1992). For the following reasons, we grant Legal Advocacy's motion and affirm the trial court.

¶ 3

I. BACKGROUND

¶ 4 Respondent, Brenda Q., was admitted to the intensive care unit of Memorial Medical Center (Memorial) to be treated for chest pains, weakness, dehydration, and confusion. Respondent had been off her psychotropic medications for approximately 20 to 30 days when she was admitted to Memorial. On July 26, 2011, Memorial transferred respondent to the mental health unit. On July 27, 2011, respondent's mother, Mary Q., filed a petition to have respondent involuntarily admitted for treatment. Prior to Mary's filing, but also on July 27, 2011, a psychiatrist at Memorial examined respondent and completed a medical certificate. Mary filed the medical certificate with the petition for involuntary admission.

¶ 5 The trial court set the commitment hearing for July 29, 2011. The hearing was continued to August 5, 2011. However, the record reflects the hearing took place at 9 a.m. on August 12, 2011. Dr. Hasanat, respondent's treating psychiatrist, testified he first examined respondent around July, 28, 2011, or July 29, 2011, shortly after her admittance to the mental health unit. However, Dr. Hasanat did not execute a certifying examination and did not file a medical certificate until 8:40 a.m. on August 12, 2011.

¶ 6 Dr. Hasanat testified respondent had a history of psychiatric illness and was first diagnosed with paranoid schizophrenia approximately 28 years ago. He testified respondent experienced persecution delusion and somatic delusion, had poor insight, and loosely associated thoughts. Respondent believed she was tortured as a newborn because she was deprived a medicine commonly given to all newborns—what respondent refers to an "eligibility" drug. She further believed she was still being deprived of this drug, and thought she could be relieved of her suffering if she was given the drug.

¶ 7 Dr. Hasanat testified respondent was taking a fraction of her medications while at Memorial, was eating, sleeping, showering on her own, and caring for her personal hygiene. However, Dr. Hasanat testified he believed respondent to was unable to provide for her basic physical needs so as to guard herself from serious harm and needed to be hospitalized to prevent her from harming herself or others. Dr. Hasanat opined that respondent could not live on her own, in a nursing home, or a group setting due to her need for monitoring and assessment of her psycho-pathological issues. He also testified that hospitalization was the least restrictive treatment alternative and recommended that respondent be admitted to a state facility, such as McFarland Mental Health Center, for up to 90 days.

¶ 8 Jerry Moorman, respondent's boyfriend of 16 years, also testified at the hearing. Moorman testified that he lives in the apartment above respondent and visits her daily. He testified that respondent stopped taking her psychotropic medications prior to entering the intensive care unit at Memorial because of the medicine's negative side effects. Moorman believed respondent's immediate release was inappropriate and thought respondent would benefit from remaining hospitalized and continuing on the dosage of medicine prescribed to her.

¶ 9 The trial court granted the petition for the involuntary admission of respondent.

¶ 10 On August 16, 2011, respondent filed a notice of appeal, and the trial court appointed Legal Advocacy as counsel for respondent. Legal Advocacy filed a motion to withdraw as counsel pursuant to *Anders v. California*, 386 U.S. 738 (1967), alleging (1) no justiciable issues were presented for review and (2) no meritorious grounds can be raised that warrant relief for respondent. Our records show respondent was provided notice of the motion. On our own motion, we gave respondent leave to file additional points and authorities in her

behalf on or before December 21, 2011, and she has not done so. After examining the record in accordance with our duties under *Anders*, we grant Legal Advocacy's motion and affirm the trial court's ruling.

¶ 11

II. ANALYSIS

¶ 12 Legal Advocacy addresses two potential issues for review in its motion to withdraw as counsel: (1) whether recognized exceptions to the mootness doctrine apply and (2) whether respondent's procedural rights were violated when she was involuntarily admitted for treatment. We address each in turn.

¶ 13

A. Exceptions to the Mootness Doctrine

¶ 14 The trial court entered the commitment order on August 12, 2011, 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 is moot. 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 respondent 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). We discuss each in turn.

¶ 15

1. *Public-Interest Exception*

¶ 16 The public-interest exception permits review of otherwise moot cases when (1) the question is of a public nature; (2) there is a need for an authoritative determination for the future guidance of public officials; and (3) the question is likely to recur in the future. *Alfred H.H.*, 233 Ill. 2d at 355, 910 N.E.2d at 80.

¶ 17

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 3-610 and section 3-611 of the Mental Health and Developmental Disability Code (Mental Health Code) (405 ILCS 5/3-610, 3-611 (West 2010)). 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 regulate the involuntary admission of a person suffering from a mental illness is a matter of public concern. *In re Robert F.*, 396 Ill. App. 3d 304, 311, 917 N.E.2d 1201, 1206 (2009). See also *In re Andrew B.*, 386 Ill. App. 3d 337, 340, 896 N.E.2d 1067, 1071 (2008) (procedures courts must follow to authorize involuntary commitment involve matters of substantial public concern).

¶ 18 Because respondent has a 28-year history of chronic paranoid schizophrenia and has been admitted for treatment in the past, there is a possibility respondent will again face involuntary commitment proceedings. However, we conclude that an authoritative determination for the future guidance of public officials is not necessary as the procedural issues raised by respondent have already been addressed in previous appellate decisions. See *In re Nau*, 153 Ill. 2d 406, 416-20, 607 N.E.2d 134, 139-41 (1992) (providing statutory interpretation of the notice provision of section 3-611 of the Mental Health Code); *In re George O.*, 314 Ill. App. 3d 1044, 1048-49, 734 N.E.2d 13, 17-18 (2000) (interpreting the procedural requirements of section 3-610 of the Mental Health Code). The public-interest exception to the mootness doctrine does not apply in this case.

¶ 19 *2. Capable-of-Repetition-Yet-Evading-Review Exception*

¶ 20 The capable-of-repetition-yet-evading-review exception applies when (1) the action is too short to be fully litigated prior to the expiration of the underlying order and (2) a

reasonable expectation exists that the complaining party will be subject to the same action in the future. *Alfred H.H.*, 233 Ill. 2d at 358, 910 N.E.2d at 82.

¶ 21 Respondent meets the first criteria of the capable-of-repetition-yet-evading-review exception. Respondent's involuntary medication order was limited to 90 days, causing the order to be of such short duration that it could not have been fully litigated prior to its expiration. However, respondent does not meet the second requirement of the exception. Respondent has to show a substantial likelihood that a resolution of the procedural issues in this case will "have some bearing on a similar issue in a later case." *In re Joseph P.*, 406 Ill. App. 3d 341, 346, 943 N.E.2d 715, 720 (2010). Whether respondent's procedural rights were violated is a fact-based determination and will not likely have an impact on future litigation. Therefore, the capable-of-repetition-yet-evading-review exception does not apply in this case. See *Joseph P.*, 406 Ill. App. 3d at 346, 943 N.E.2d at 720 (where the proceedings at issue involved fact-based determinations concerning the respondent's condition at that time, and where later proceedings would include a fresh evaluation of the respondent's condition in the future, the capable-of-repetition-yet-evading-review exception did not apply).

¶ 22 *3. Collateral-Consequences Exception*

¶ 23 The last exception to the mootness doctrine is the collateral-consequences exception which has been held to apply to mental health cases, and is decided on a case-by-case basis. *Alfred H.H.*, 233 Ill. 2d at 362, 910 N.E.2d at 84. This exception allows for appellate review even though an order has expired because respondent has suffered, or is threatened with, an actual injury traceable to petitioner that is likely to be redressed by a favorable judicial decision. *Alfred H.H.*, 233 Ill. 2d at 361, 910 N.E.2d at 83. Although the Illinois Supreme Court

has recognized that mere reversal "will not, in itself, purge a respondent's mental health records of any mention of the admission or treatment, that is not the same as saying that there is no effect whatsoever." *Alfred H.H.*, 233 Ill. 2d at 362, 910 N.E.2d at 84. Reversal could have several benefits, such as affecting respondent's ability to seek employment and preventing respondent's hospitalization from being mentioned in a subsequent proceeding. *Alfred H.H.*, 233 Ill. 2d at 362, 910 N.E.2d at 84.

¶ 24 In a case where the respondent has previously been involuntarily committed or has prior felony convictions, collateral consequences have already attached. *Joseph P.*, 406 Ill. App. 3d at 346, 943 N.E.2d at 720. However, in case where the respondent is subject to involuntary admission for treatment for the first time, collateral consequences have not yet attached, and the exception applies. See *Joseph P.*, 406 Ill. App. 3d at 346, 943 N.E.2d at 720.

¶ 25 The record fails to establish whether respondent has previously been involuntarily admitted for treatment. Although respondent has a long-standing history of mental illness, this appears to be her first involuntary treatment order. We conclude the collateral-consequences exception applies as it is possible that respondent will experience collateral consequences from the order. Therefore, we proceed to determine whether respondent presents any meritorious issues on appeal.

¶ 26 B. Procedural Deficiencies

¶ 27 On appeal, respondent challenges (1) the timeliness of a psychiatric examination after her admittance to the mental health unit at Memorial, (2) the timeliness of her commitment hearing, and (3) the lack of formal service concerning the continuance of her hearing date. Legal Advocacy contends these deficiencies went unnoticed in the trial court and respondent herself

recognizes that these procedural deficiencies, individually or cumulatively, likely do not warrant reversal.

¶ 28 1. *Section 3-610 Psychiatric Examination*

¶ 29 Respondent first alleges that she did not have a certifying examination by a psychiatrist within 24 hours of her admittance as required by section 3-610 of the Mental Health Code. Therefore, pursuant to section 3-610, respondent should have been released. See 405 ILCS 5/3-610 (West 2010) (if respondent is not examined or the examiner does not execute a certificate within 24 hours after admission, "respondent shall be released forthwith"). The record reflects that Dr. Hasanat did not conduct a certifying examination until 8:40 a.m. on August 12, 2011, which was filed with the trial court that same day, well after the 24-hour period. However, the record also reflects that respondent did not address the untimeliness of this examination and certification at trial.

¶ 30 "[A] respondent subject to involuntary commitment should not be allowed to participate in a hearing on the merits only to obtain a new hearing by complaining of a procedural defect. Such a respondent forfeits any objection when not made at trial." *Joseph P.*, 406 Ill. App. 3d at 347, 943 N.E.2d at 720-21. Respondent did not object to the examination at trial and therefore forfeits her right to now complain of such error.

¶ 31 However, we have held that such procedural deficiencies may be reviewed under a theory analogous to the plain-error exception to forfeiture. *Joseph P.*, 406 Ill. App. 3d at 347, 943 N.E.2d at 721. Such a review is appropriate where "the evidence is closely balanced or when an error is so fundamental a [respondent] may have been deprived of a fair hearing." *Joseph P.*, 406 Ill. App. 3d at 347, 943 N.E.2d at 721. We do not find plain error analysis is appropriate

here. We agree with Legal Advocacy that the evidence was not closely balanced in this case. The State presented significant testimony from Dr. Hasanat and respondent's boyfriend concerning her need for involuntary admission.

¶ 32 Further, we do not conclude respondent was deprived of a fair hearing. Although the certifying examination did not take place until August 12, 2011, Dr. Hasanat testified that he examined respondent the day after her admission—either July 28, 2011, or July 29, 2011—and every weekday after that (sometimes more than once a day). Dr. Hasanat's testimony indicates that respondent would not have been released had he executed and filed an after-admission examination certificate within 24 hours. According to Dr. Hasanat, respondent's conditions had slightly improved, but she was not ready for release because she was unable to provide for her basic physical needs so as to guard herself from serious harm. The results of an after-admission examination certificate would have been the same as the certificate Dr. Hasanat filed on August 12, 2011.

¶ 33 *2. Commitment Hearing*

¶ 34 On July 27, 2011, the trial court appointed counsel to represent respondent and set a hearing date for July 29, 2011. On July, 29, 2011, the court continued the hearing for August 5, 2011. However, the record reflects that the hearing occurred on August 12, 2011, 14 days after the originally scheduled hearing date. Respondent contends that pursuant to section 3-611 of the Mental Health Code, a hearing should have been set and held within five days after the petition for involuntary admission was filed (405 ILCS 5/3-611 (West 2010)).

¶ 35 As we have previously held, section 3-800(b) of the Mental Health Code allows the trial court to grant a continuance on its own motion or on the motion of one of the parties so

long as that continuance does not exceed 15 days. See 405 ILCS 5/3-800(b) (West 2010) (continuances may not extend beyond 15 days); *Joseph P.*, 406 Ill. App. 3d at 350, 943 N.E.2d at 723 (hearing set for April 23, 2010, and continued to April 30, 2010, did not exceed 15 days and was therefore within the time frame provided by the statute). Although respondent's hearing did not take place within 5 days after the involuntary admission petition was filed, her hearing was properly continued for no more than 15 days. Therefore, respondent cannot argue on appeal her hearing was untimely.

¶ 36

3. *Notice of Hearing*

¶ 37 Finally, respondent asserts that neither she nor her guardian received notice of the August 12, 2011, hearing as required by section 3-611 of the Mental Health Code. See 405 ILCS 5/3-611 (West 2010) (notice of the time and place of the hearing shall be served upon the respondent). However, the record shows proof of service on respondent for the July 29, 2011, hearing. Where the record shows respondent received actual notice of the proceedings and a commitment order was issued upon clear and convincing evidence after a hearing on the merits, the involuntary admission order is still deemed valid even if the record reflects that respondent did not receive formal notice. *In re Splett*, 143 Ill. 2d 225, 230-31, 572 N.E.2d 883, 885-86 (1991).

¶ 38

Respondent's involuntary admission order is valid. Respondent received notice of the initial hearing and was present by counsel at the August 12, 2011, hearing. Respondent's counsel cross-examined the witnesses and argued the merits of the case. Further, respondent did not challenge the notice at the hearing and was not prejudiced by the lack of formal notice. Therefore, a reversal is unwarranted as the purpose behind section 3-611's notice requirement

was satisfied. See *Nau*, 153 Ill. 2d at 419, 607 N.E.2d at 140 (where the respondent received notice that provided her an opportunity to prepare for the hearing and be heard on the matter, the purpose of section 3-611 was satisfied and reversal based on a defect in notice was unwarranted).

¶ 39

III. CONCLUSION

¶ 40 After reviewing the record consistent with our responsibilities under *Anders*, we agree with Legal Advocacy that respondent can raise no meritorious issues on appeal. We grant Legal Advocacy's motion to withdraw as counsel for respondent and affirm the trial court's judgment.

¶ 41 Affirmed.