

NOTICE
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2012 IL App (4th) 110827-U

Filed 3/21/12

NO. 4-11-0827

IN THE APPELLATE COURT
OF ILLINOIS
FOURTH DISTRICT

In re: DAVID E., a Person Found Subject to Involuntary Admission,)	Appeal from
THE PEOPLE OF THE STATE OF ILLINOIS,)	Circuit Court of
Petitioner-Appellee,)	Sangamon County
v.)	No. 11MH747
DAVID E.,)	Honorable
Respondent-Appellant.)	Brian Otwell,
)	Judge Presiding.

PRESIDING JUSTICE TURNER delivered the judgment of the court.
Justices Steigmann and Pope concurred in the judgment.

ORDER

¶ 1 *Held:* Where this case is moot and no justiciable issues exist, we grant the motion to withdraw as counsel filed by the Guardianship and Advocacy Commission (GAC).

¶ 2 In August 2011, a petition for involuntary admission of respondent, David E., was filed. In September 2011, the trial court ordered him to be hospitalized for a period not to exceed 90 days. Thereafter, GAC was appointed to represent him on appeal.

¶ 3 On appeal, GAC moves to withdraw its representation of respondent pursuant to *Anders v. California*, 386 U.S. 738 (1967), contending any appeal in this cause would be meritless. We grant GAC's motion and affirm the trial court's judgment.

¶ 4 I. BACKGROUND

¶ 5 A psychiatric evaluation indicated respondent's sister is his legal guardian. Due to

the length of his mental illness, respondent has had 12 psychiatric admissions. After being admitted five times in Seattle, he was first admitted to McFarland Mental Health Center (McFarland) in 2000. After several more admissions, he was again admitted to McFarland in November 2007 but was transferred to Chester Mental Health Center (Chester) because of "unprovoked aggressive behavior." While at McFarland, respondent threatened to kill his peers, jumped on the back of the clinical director and placed him in a stranglehold, and spit on and threatened to kill staff. At Chester, respondent refused medications and meals at times. After being admitted to McFarland on August 10, 2011, respondent submitted a discharge request on August 23, 2011.

¶ 6 On August 30, 2011, in response to respondent's request for discharge under section 3-408, Dana Wilkerson, a social worker, filed a petition for the involuntary admission of respondent pursuant to section 3-601 of the Mental Health and Developmental Disabilities Code (Mental Health Code) (405 ILCS 5/3-402, 3-601 (West 2010)). The petition alleged respondent had a mental illness and was in need of immediate hospitalization for the prevention of various harms. The petition also alleged respondent was a long-term recipient of mental-health services, had a significant history of aggression, lacked insight, and had recently refused medication.

¶ 7 On September 9, 2011, the trial court held a hearing on the petition. Dr. Aura Eberhardt testified respondent, aged 49 years, has been diagnosed with chronic paranoid schizophrenia. He has "paranoid delusions" and "disorganized thought processes." He was admitted to McFarland in November 2007 and then Chester in October 2008. He returned to McFarland in August 2011.

¶ 8 Dr. Eberhardt testified respondent was unable to understand his need for treatment

and would be a threat to himself or to others if he was not treated on an inpatient basis. A treatment plan had been formulated and set forth September 8, 2011, as the target date for respondent's goals. Dr. Eberhardt also stated she considered the possibility of respondent living on his own or in a nursing or group home. Neither situation would be appropriate based on his psychiatric condition because he was "non-compliant with treatment, show[ed] no insight, [and] he has been threatening the mental health technician." Dr. Eberhardt believed hospitalization was the least-restrictive treatment alternative. She recommended respondent be involuntarily admitted for a period not to exceed 90 days.

¶ 9 On cross-examination, Dr. Eberhardt testified respondent had not tried to hurt himself since he returned to McFarland. Moreover, he had been eating, taking showers, and maintaining a healthy weight.

¶ 10 Respondent testified his name was St. Alphonsus Liguori. He also stated he "was makeshifted [*sic*] into this body 20 minutes ago before [he] came to this subsequented [*sic*] meeting." He stated he did not want to go to Chester because "[t]hey put a makeshift bomb down [his] throat twelve times." He believed 13 years at Chester "destroyed [his] mind." He had no plan on hurting himself or others.

¶ 11 The trial court found respondent was subject to involuntary admission and ordered him to be hospitalized for a period not to exceed 90 days. This appeal followed.

¶ 12 II. ANALYSIS

¶ 13 The *Anders* procedure has been found to be applicable in the context of an appeal from an involuntary-commitment order. *In re Juswick*, 237 Ill. App. 3d 102, 104, 604 N.E.2d 528, 530 (1992). GAC has filed a motion to withdraw as counsel and has attached to the motion

a supporting memorandum pursuant to *Anders*. GAC stated it sent a copy of the motion and the supporting memorandum to respondent. This court granted respondent leave to file additional points and authorities on or before February 27, 2012. Respondent has not done so. Based on an examination of the record, we conclude, as has GAC, that no meritorious issues are presented for review and any appeal would be without merit.

¶ 14 Appellate counsel acknowledges the 90-day commitment order entered on September 9, 2011, has expired, and thus this appeal is moot. Counsel, however, contends exceptions to the mootness doctrine might apply in this case.

¶ 15 Generally, courts "do not decide moot questions, render advisory opinions, or consider issues where the result will not be affected regardless of how those issues are decided." *In re Alfred H.H.*, 233 Ill. 2d 345, 351, 910 N.E.2d 74, 78 (2009).

"Reviewing courts, however, recognize exceptions to the mootness doctrine, such as (1) the public-interest exception, applicable where the case presents a question of public importance that will likely recur and whose answer will guide public officers in the performance of their duties, (2) the capable-of-repetition exception, applicable to cases involving events of short duration that are capable of repetition, yet evading review, and (3) the collateral-consequences exception, applicable where the involuntary treatment order could return to plague the respondent in some future proceedings or could affect other aspects of the respondent's life."

In re Wendy T., 406 Ill. App. 3d 185, 189, 940 N.E.2d 237, 241

(2010).

¶ 16 Counsel argues this case could fall under the public-interest exception to the mootness doctrine. Under this exception, a court may consider a moot case where "(1) the question presented is of a public nature; (2) there is a need for an authoritative determination for the future guidance of public officers; and (3) there is a likelihood of future recurrence of the question." *Alfred H.H.*, 233 Ill. 2d at 355, 910 N.E.2d at 80. This exception is to be " 'narrowly construed and requires a clear showing of each criterion.' [Citation.]" *Alfred H.H.*, 233 Ill. 2d at 355-56, 910 N.E.2d at 80.

¶ 17 Involuntary-commitment proceedings have been found to be matters of public interest and questions of strict compliance with the Mental Health Code's statutory procedures have been found to involve matters of public importance, both of which make the public-interest exception applicable. *In re James H.*, 405 Ill. App. 3d 897, 903-04, 943 N.E.2d 743, 749 (2010). Counsel contends the issue of the State's compliance with section 3-810 of the Mental Health Code (405 ILCS 5/3-810 (West 2010)) will likely recur in the future and a decision will guide the State in filing dispositional reports. However, the issue involving compliance with section 3-810 has been analyzed in other appellate cases. See *In re Robinson*, 151 Ill. 2d 126, 131-36, 601 N.E.2d 712, 715-17 (1992); *In re Daryll C.*, 401 Ill. App. 3d 748, 755-57, 930 N.E.2d 1048, 1054-56 (2010); *In re Robin C.*, 395 Ill. App. 3d 958, 964-65, 918 N.E.2d 1284, 1289-90 (2009); *In re Alaka W.*, 379 Ill. App. 3d 251, 269-72, 884 N.E.2d 241, 255-58 (2008); *In re Louis S.*, 361 Ill. App. 3d 763, 771-72, 838 N.E.2d 218, 224-25 (2005). Thus, there is little need for an additional determination to guide public officials in the future. The public-interest exception does not apply.

¶ 18 Counsel also states the capable-of-repetition exception might apply. To fall under this exception, two criteria must be met: " '(1) the challenged action is in its duration too short to be fully litigated prior to its cessation and (2) there is a reasonable expectation that the same complaining party would be subjected to the same action again.' " *James H.*, 405 Ill. App. 3d at 901, 943 N.E.2d at 747 (quoting *In re Barbara H.*, 183 Ill. 2d 482, 491, 702 N.E.2d 555, 559 (1998)).

¶ 19 Given that the involuntary-commitment order here was set to last only 90 days, it could not have been fully litigated prior to its expiration. Thus, the only question "is whether there is a reasonable expectation respondent will be subject personally to the same action again." *James H.*, 405 Ill. App. 3d at 901, 943 N.E.2d at 748. As stated in *Alfred H.H.*, 233 Ill. 2d at 360, 910 N.E.2d at 83, "there must be a substantial likelihood that the issue presented in the instant case, and any resolution thereof, would have some bearing on a similar issue presented in a subsequent case."

¶ 20 Respondent would not be able to meet his burden in this case. His claim on appeal would be the State failed to present an adequate dispositional report as required by section 3-810 of the Mental Health Code because the target date for attainment of goals was one day before the commitment hearing. However, he could not explain how a resolution of whether the State presented sufficient evidence regarding the predispositional report and the date on the treatment plan would have any bearing on any subsequent case involving his involuntary admission or treatment. As any determination as to the sufficiency of the predispositional report and the testimony at the hearing would not likely have any impact on future litigation, the capable-of-repetition exception does not apply.

¶ 21 The collateral-consequences exception "applies where the respondent could be plagued in the future by the adjudication at issue." *In re Joseph P.*, 406 Ill. App. 3d 341, 346, 943 N.E.2d 715, 720 (2010). The exception only applies to a first involuntary-treatment order. *Joseph P.*, 406 Ill. App. 3d at 346, 943 N.E.2d at 720. "If a respondent had previous involuntary commitments or felony convictions, collateral consequences would have already attached and are not attributable to the commitment at issue. Thus, the collateral-consequences exception would not apply." *Joseph P.*, 406 Ill. App. 3d at 346, 943 N.E.2d at 720.

¶ 22 In the case *sub judice*, respondent has been involuntarily committed and medicated on multiple occasions. Thus, the collateral-consequences exception does not apply. Because none of the recognized exceptions to the mootness doctrine would apply here, we would dismiss this appeal as moot. Accordingly, as any appeal in this cause would be without merit, GAC is granted leave to withdraw as counsel.

¶ 23 III. CONCLUSION

¶ 24 For the reasons stated, we grant GAC's motion and affirm the trial court's judgment.

¶ 25 Affirmed.