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NOS. 4-12-0277, 4-12-0279 cons.

FILED
November 29, 2012
Carla Bender
4th District Appellate
Court, IL

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

In re: MARVIN T., a Person Found Subject to Administration of Psychotropic Medication, THE PEOPLE OF THE STATE OF ILLINOIS, Petitioner-Appellee, v. (No. 4-12-0277) MARVIN T., Respondent-Appellant.	)	Appeal from Circuit Court of Sangamon County No. 12MH229
In re: MARVIN T., a Person Found Subject to Involuntary Admission, THE PEOPLE OF THE STATE OF ILLINOIS, Petitioner-Appellee, v. (No. 4-12-0279) MARVIN T., Respondent-Appellant.	)	No. 12MH217 Honorable Esteban F. Sanchez, Judge Presiding.

JUSTICE KNECHT delivered the judgment of the court.
Justices Steigmann and Appleton concurred in the judgment.

ORDER

¶ 1 *Held:* The appellate court granted appointed counsel's motions to withdraw where respondent's case was moot and did not fall into any of the exceptions to the mootness doctrine.

¶ 2 This appeal comes to us on motions of the Legal Advocacy Service of the Illinois Guardianship and Advocacy Commission (Legal Advocacy) to withdraw as counsel on appeal pursuant to *Anders v. California*, 386 U.S. 738 (1967), as extended to civil matters by *In re Keller*, 138 Ill. App. 3d 746, 486 N.E.2d 291 (1985), because no meritorious issues can be raised in this case.

¶ 3 For the following reasons, we grant Legal Advocacy's motions and dismiss respondent's appeals as moot.

¶ 4 I. BACKGROUND

¶ 5 On March 16, 2012, Linda Morrison, a qualified mental health professional, filed a petition for the involuntary commitment of respondent, Marvin T., in Sangamon County case No. 12-MH-217. Police arrested respondent after he damaged a police dispatcher's car and threatened a postal worker. On March 15, 2012, a Macoupin County judge ordered respondent to submit to a medical examination at McFarland Mental Health Center (McFarland). Police transported respondent to McFarland later that day.

¶ 6 On March 20, 2012, respondent's treating psychiatrist at McFarland, Dr. Santosh Shrestha, filed a petition for involuntary administration of psychotropic medication in Sangamon County case No. 12-MH-229. That day, the trial court appointed an attorney to represent respondent and set a hearing on both petitions for March 23, 2012. On March 23, 2012, the parties appeared before the court and presented the following evidence.

¶ 7 A. Petition For Involuntary Admission Proceedings (Case No. 4-12-0279)

¶ 8 Shrestha testified respondent had been diagnosed with paranoid schizophrenia and had been hospitalized at least five times. He described respondent as paranoid, delusional, and threatening. Based on (1) the damage respondent caused to the police dispatcher's car, and (2) threats respondent made to Shrestha and other staff members, Shrestha opined respondent was reasonably expected to inflict serious physical harm on himself or others and needed hospitalization to prevent him from doing so. Shrestha acknowledged, however, respondent had not physically attacked anyone at McFarland, nor had he tried to hurt himself.

¶ 9 Shrestha testified he considered and ruled out the possibility of respondent living on his own or in a group home based on respondent's aggressive behavior. He believed hospitalization was the least restrictive alternative for respondent and recommended respondent be involuntarily admitted for a period not to exceed 90 days.

¶ 10 On this evidence, the trial court stated it found the State had proved its petition by clear and convincing evidence, to which respondent replied, "I disagree," and began cursing. The court did not make further oral findings of fact. The court's March 23, 2012, written "Order for Treatment or Discharge" found respondent a person subject to involuntary admission and "FURTHER ORDERED THAT he/she shall be hospitalized in a Department of Human Services mental health or developmental center, which is the least restrictive environment currently appropriate and available." The court ordered respondent hospitalized for a period not to exceed 90 days.

¶ 11 B. Petition For Involuntary Administration Of Psychotropic Medication Proceedings (Case No. 4-12-0277)

¶ 12 The trial court then addressed Shrestha's petition for involuntary administration of psychotropic medication. Shrestha testified respondent did not acknowledge, understand, or have any insight into his mental illness. Respondent refused treatment by psychotropic medication. Shrestha opined respondent did not have the capacity to give informed consent to make reasoned decisions about treatment. He also opined respondent exhibited a deterioration in his ability to function. He explained five or six months earlier, respondent had been living in the community and "was following up with outpatient psychiatry." However, in November 2011, he stopped taking his medications. Shrestha testified respondent suffered from his mental illness in

that respondent was aggressive, delusional, and psychotic. Further, due to his mental illness, respondent had recently engaged in threatening behavior, breaking a parked car's bumper and headlights and threatening a postal worker, staff members, and Shrestha.

¶ 13 Shrestha's petition requested as a first choice medication Haloperidol, to be taken orally or by injection, at a dosage of .5 milligrams to up to 100 milligrams per day. He also requested Haloperidol Decanoate, to be taken intramuscularly at a dosage of 50 milligrams every two to four weeks, up to 450 milligrams every month.

¶ 14 Shrestha explained Haloperidol is a medication used to treat psychosis. Possible side effects of Haloperidol include nausea, vomiting, and extrapyramidal symptoms (EPS) like tremors, dystonia, and muscle twitching. Haloperidol Decanoate can also cause pain or bruising associated with the intramuscular injection. Respondent had been taking Haloperidol and Haloperidol Decanoate until November 2011, and it allowed him to "live on his own for quite some time." Shrestha's records indicated respondent may have "possibly developed some EPS symptoms" when taking Haloperidol.

¶ 15 Shrestha's petition also requested as first choice medications (1) Lorazepam, to treat respondent's agitation, (2) Diphenhydramine, an antihistamine used to treat agitation and EPS, (3) Benztropine, to treat EPS, and (4) Divalproex Sodium, a mood stabilizer used to treat psychosis, agitation, and irritability. Shrestha explained Lorazepam could cause sedation, dizziness, or confusion, and Diphenhydramine could cause dry mouth, constipation, confusion, dizziness, and sedation. Possible side effects of Benztropine include dry mouth, constipation, and confusion, and possible side effects of Divalproex Sodium include sedation, confusion, and pancreatitis. Shrestha's records indicated respondent had previously taken Lorazepam and

Benztropine and did not experience negative side effects. Respondent had not recently taken Diphenhydramine or Divalproex Sodium.

¶ 16 The petition requested Olanzapine, Risperidone, and Risperidone Consta as alternative medications to Haloperidol. Shrestha testified in addition to causing the same side effects as Haloperidol, Olanzapine can increase glucose or cholesterol. Respondent previously benefitted "somewhat" from taking Olanzapine. Shrestha explained Risperidone caused similar side effects as Olanzapine, and Risperidone Consta caused similar side effects as Haloperidol Decanoate. Shrestha did not believe respondent had previously taken Risperidone or Risperidone Consta. In addition to requesting medications, Shrestha's petition also requested certain tests and procedures to ensure the safe and effective administration of the medication.

¶ 17 Shrestha attempted to discuss the benefits, risks, and side effects of the requested medications with respondent, but respondent responded by "threatening" Shrestha "in some way." Respondent did take a written list of the medications' side effects, admitted as People's exhibit No. 1, but Shrestha did not know whether he read through it.

¶ 18 Shrestha opined the benefits of the medication outweighed the potential side effects. He explored less restrictive services, attempted to speak to respondent about these services, and provided respondent a written list of alternative treatments. Again, respondent responded by threatening Shrestha. Shrestha opined medication was the least restrictive alternative available for respondent and other forms of treatment would be inappropriate because of respondent's aggressive and threatening behavior.

¶ 19 During Shrestha's testimony, respondent requested the trial court allow him to talk to his attorney, and the court went into recess. When the proceedings resumed, respondent's

attorney indicated respondent had become upset and did not wish to return to the courtroom. The court excused respondent's absence based on his attorney's representation.

¶ 20 On this evidence, the trial court granted the petition, finding the State had proved the petition by clear and convincing evidence. The court's written order for administration of involuntary treatment contained factual findings.

¶ 21 C. The Appeals

¶ 22 On March 27, 2012, respondent filed notices of appeal, challenging both the involuntary commitment and involuntary treatment orders. The court appointed Legal Advocacy to represent respondent in both cases. This court docketed respondent's involuntary admission case as case No. 4-12-0279 and docketed respondent's involuntary treatment case as case No. 4-12-0277.

¶ 23 On July 3, 2012, Legal Advocacy filed motions to withdraw in both cases, attaching to its motions briefs conforming to the requirements of *Anders*, 386 U.S. 738, as extended to civil matters by *Keller*, 138 Ill. App. 3d at 747-48, 486 N.E.2d at 292. This court consolidated respondent's cases on appeal and allowed respondent leave to file additional points and authorities by August 3, 2012. Respondent has not done so. After examining the record and executing our duties in accordance with *Anders*, we grant Legal Advocacy's motions to withdraw.

¶ 24 II. ANALYSIS

¶ 25 Legal Advocacy contends no meritorious argument can be raised on appeal in either case No. 4-12-0279 or case No. 4-12-0277. With respect to case No. 4-12-0279, Legal Advocacy concludes it would be frivolous to argue (1) the State failed to prove by clear and

convincing evidence respondent's involuntary admission was warranted, (2) the trial court's failure to make factual findings requires reversal, or (3) a recognized exception to the mootness doctrine applies. In case No. 4-12-0277, Legal Advocacy claims it cannot raise a meritorious argument (1) any procedural deficiencies warrant reversal, (2) the State failed to prove the involuntary administration of medication petition by clear and convincing evidence, and (3) any exception to the mootness doctrine applies. Because we agree both cases are moot, we need not address Legal Advocacy's substantive arguments

¶ 26 Respondent's 90-day commitment and administration of medication orders expired on their own terms on June 20, 2012. Respondent's case is moot. Generally, Illinois courts do not decide moot questions or render advisory opinions. *In re Alfred H.H.*, 233 Ill. 2d 345, 351, 910 N.E.2d 74, 78 (2009). However, we will consider an otherwise moot case where it falls into a recognized exception. Here, Legal Advocacy contends respondent's case does not fall into any of the following three mootness exceptions: (1) the collateral consequences exception, (2) the capable-of-repetition-yet-evading-review exception, or (3) the public interest exception. We agree.

¶ 27 A. Collateral Consequences

¶ 28 Legal Advocacy first concludes the collateral consequences exception does not apply.

¶ 29 The collateral consequences exception to the mootness doctrine allows a reviewing court to consider an otherwise moot case where the involuntary admission or treatment " 'could return to plague the respondent in some future proceedings or could affect other aspects of the respondent's life.' " *In re Charles H.*, 409 Ill. App. 3d 1047, 1053, 950 N.E.2d 710, 715

(2011) (quoting *In re Val Q.*, 396 Ill. App. 3d 155, 159, 919 N.E.2d 976, 980 (2009)). The exception does not apply where the record indicates the respondent has previously been subject to an involuntary-treatment or involuntary-admission order because any collateral consequences have already attached. *Charles H.*, 409 Ill. App. 3d at 1053, 950 N.E.2d at 715; *In re Joseph P.*, 406 Ill. App. 3d 341, 346, 943 N.E.2d 715, 720 (2010).

¶ 30 Shrestha testified respondent had previously been hospitalized at least five times. We note at least two of those hospitalizations were involuntary, as this court affirmed respondent's involuntary admission orders on appeal. *In re Marvin. T.*, No. 4-06-0047 (Aug. 24, 2006) (unpublished order under Supreme Court Rule 23); *In re Marvin. T.*, No. 4-06-0891 (May 31, 2007) (unpublished order under Supreme Court Rule 23). Any collateral consequences have already attached and respondent's case does not fall within the collateral-consequences exception.

B. Capable Of Repetition, Yet Evading Review

¶ 31 Legal Advocacy next concludes respondent's case does not fall into the capable-of-repetition-yet-evading-review exception. To fall into this exception, (1) the challenged action must be too short in its duration to be fully litigated prior to its cessation, and (2) a reasonable expectation must exist the same complaining party will be subjected to the same action again. *In re Barbara H.*, 183 Ill. 2d 482, 491, 702 N.E.2d 555, 559 (1998). "[T]he respondent's burden when arguing the capable-of-repetition-but-avoiding-review exception is to show a substantial likelihood the issue presented by him, and resolution thereof, would have some bearing on a similar issue in a later case." *Joseph P.*, 406 Ill. App. 3d at 346, 943 N.E.2d at 720.

¶ 32 Here, the resolution of respondent's potential claims would not affect any future proceedings involving respondent. The trial court entered its March 2012 order based on its

findings as to respondent's condition in March 2012. Thus, "[a]ny future proceedings would entail a fresh evaluation of [respondent's] particular condition existing at that time." *Joseph P.*, 406 Ill. App. 3d at 346, 943 N.E.2d at 720.

¶ 33 Based on the foregoing, we conclude the capable-of-repetition-yet-avoiding-review exception does not apply.

¶ 34 C. Public Interest

¶ 35 Finally, Legal Advocacy contends respondent's case does not fall into the public interest exception.

¶ 36 The public interest exception allows a reviewing court to consider an otherwise moot case when (1) the question presented is of public nature, (2) a need exists for an authoritative determination for the future guidance of public officers, 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. "This exception must be construed narrowly and established by a clear showing of each criterion." *In re Andrew B.*, 237 Ill. 2d 340, 347, 930 N.E.2d 934, 938 (2010)

¶ 37 First, respondent's potential sufficiency-of-the-evidence arguments do not fall into the public interest exception. See *Alfred H.H.*, 233 Ill. 2d at 356-58, 910 N.E.2d at 81-82 (concluding the public-interest exception did not encompass respondent's appeal because respondent's appeal involved only questions concerning the sufficiency of the evidence).

¶ 38 In addition, the trial court's failure to make factual findings is not an issue that arises frequently on appeal so as to require an authoritative determination, nor is the issue likely to recur. See *In re Laura H.*, 404 Ill. App. 3d 286, 289, 936 N.E.2d 801, 804-05 (2010) (noting because this court had previously addressed similar questions regarding compliance with a

section of the Mental Health and Developmental Disabilities Code (Mental Health Code) but the question had arisen again, (1) a need for guidance existed and (2) the issue was likely to recur in other mental-health cases.). Our court has made clear the procedural mechanisms outlined in the Mental Health Code are not mere technicalities (see *Joseph P.*, 406 Ill. App. 3d at 351, 943 N.E.2d at 724), further persuading us the trial court is unlikely to make factual omissions in the future.

¶ 39 Prior Illinois decisions have already resolved the potential issues respondent could raise relating to (1) whether the petitioner's failure to give three-days' notice of the hearing amounted to a due process violation, and (2) whether the trial court's failure to make a finding of substantial risk of harm before excusing respondent from the proceedings requires reversal. See *In re C.E.*, 161 Ill. 2d 200, 225-27, 641 N.E.2d 345, 356-57 (1994) (a trial court's failure to strictly comply with notice requirements does not amount to a due process violation where the respondent had (1) notice of the proceedings and (2) ample opportunity to prepare a defense); *In re Perona*, 294 Ill. App. 3d 755, 760, 690 N.E.2d 1058, 1062 (1998) (a court is not required to make a finding of substantial risk of harm). Therefore, no need for an authoritative determination of those issues arises.

¶ 40 Based on the foregoing, we agree with Legal Advocacy no colorable argument can be made respondent's case falls within an exception to the mootness doctrine.

¶ 41 III. CONCLUSION

¶ 42 After reviewing the record consistent with our responsibilities under *Anders*, we agree with Legal Advocacy respondent's case is moot. We grant Legal Advocacy's motion to withdraw as counsel for respondent and dismiss respondent's appeal.

¶ 43 No. 4-12-0277, Appeal dismissed.

¶ 44 No. 4-12-0279, Appeal dismissed.