

2013 IL App (2d) 120584-U
No. 2-12-0584
Order filed August 1, 2013

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).

IN THE
APPELLATE COURT OF ILLINOIS
SECOND DISTRICT

<i>In re</i> FRANK B., Alleged to be a Person)	Appeal from the Circuit Court
Subject to Involuntary Admission)	of Du Page County.
)	
)	No. 12-MH-98
)	
)	Honorable
(The People of the State of Illinois, Petitioner-)	Paul M. Fullerton,
Appellee, v. Frank B., Respondent-Appellant).)	Judge, Presiding.

JUSTICE HUTCHINSON delivered the judgment of the court.
Justices Schostok and Hudson concurred in the judgment.

ORDER

¶ 1 *Held:* (1) The trial court properly authorized respondent's involuntary admission, as the State proved by clear and convincing evidence that he had a qualifying mental illness and could not provide for his basic physical needs; (2) respondent lacked standing to challenge section 1-119(2) of the Mental Health Code on the ground that it permitted his admission even where family or friends were willing and able to assist him in living safely in freedom, as the evidence did not establish that respondent's family members in fact were willing and able.

¶ 2 On May 11, 2012, following a hearing, the trial court ordered the involuntary commitment of Frank B., under section 1-119(2) of the Mental Health and Developmental Disabilities Code (the Code) (405 ILCS 5/1-119(2) (West 2010)). Frank timely appeals, arguing (1) that the State failed to prove by clear and convincing evidence that Frank had a qualifying mental illness, and (2) that

the State failed to prove by clear and convincing evidence that Frank could not provide for his basic physical needs so as to guard himself from serious harm. In the alternative, Frank argues that section 1-119(2) of the Code is unconstitutional. For the reasons that follow, we affirm.

¶ 3

I. BACKGROUND

¶ 4 On May 4, 2012, the State petitioned for the involuntary commitment of Frank, who was being detained at Linden Oaks Hospital (Linden Oaks) and submitted written notice of his desire to be discharged. A hearing took place on May 11, 2012, and the following testimony was presented.

¶ 5 Dr. Manjari Kumar, who the parties stipulated was an expert in psychiatry, testified that she first met with Frank on April 28, 2012, a day after he was admitted to Linden Oaks, and that she had met with him almost every day since then. According to Dr. Kumar, Frank suffered from “psychosis, which is the delusional disorder paranoid type.” Frank “has this delusional thinking about sending all the money to strangers to [*sic*] Nigeria.” Frank told her that “he has lost a lot of money, and he is about to give this \$20 million to someone in Vegas. That his partner needed it, and that they had some kind of business, and he was sending a lot of money.” Frank approached the wife of another patient and asked her to deposit money into his account. Frank threatened to sue Dr. Kumar, along with his “behavior health therapist” and Linden Oaks.

¶ 6 When asked whether Frank was able to take care of himself, Dr. Kumar responded that Frank “does not have any insight into his behavior, and that can put him in danger when he goes to ask for money from other people.” When asked whether an inpatient setting was the least restrictive environment in which Frank’s psychosis could be treated, Dr. Kumar responded: “He can be stabilized on medication, his behavior may improve, and then the next goal will be for the

placement.” She recommended that Frank later be moved to an intermediate care facility (ICF). She explained:

“[Frank] had extensive neuropsychological testing, and in addition to having a delusional disorder, he is also found to struggle with dementia, Alzheimer type, and that is something that has also been detected in him.”

Dr. Kumar opined that Frank would remain in an ICF “[f]or a very long time or forever, depending on how the dementia will be responding, and the paranoid disorder, how does that interact with his dementia.” She stated that an ICF or outpatient treatment was not presently appropriate “[d]ue to his delusional disorder and dementia.” She stated that Frank was “not able to make informed medical, legal and psychological decisions” and that it was “quite likely” that Frank’s judgment regarding financial decisions would remain poor even upon stabilization.

¶ 7 On cross-examination, Dr. Kumar testified that she had not seen any documents concerning Frank’s financial accounts. She did not know how much money Frank had, how much he received from his pension, or whom he called on the phone. Frank took Abilify to treat the delusional disorder and Aricept to treat dementia. Frank was compliant in taking his medication. Dr. Kumar said that her opinion that Frank was unable to make medical and legal decisions was based on the neuropsychological testing that was conducted. Thereafter the following colloquy occurred:

“Q. Can you specifically say what your opinion is based on that he can’t make decisions for himself and needs 24 hour care, other than to just generally say the testing, I am asking for anything more specific.

A. He has great difficulty with his memory, but the memory testing was done. The immediate recall was one out of three, and long-term memory, he wasn't able to tell me anything about himself.”

The court inquired: “Doctor, based on—as a result of [Frank’s] mental illness, do you believe he is unable to provide for his basic, physical needs?” Dr. Kumar responded, “Yes.” Counsel then asked whether Frank could feed and clothe himself, and Dr. Kumar responded, “Yes.”

¶ 8 Evelyn B., Frank’s wife, testified that Frank was retired and collected Social Security and a pension. They used to own a home, but they lost it to foreclosure. She had no knowledge of or control over their finances. At some point she learned that Frank was making investments with individuals in Nigeria, but he would not give her any information. (At this point, the court noted for the record that Evelyn had filed an emergency petition for guardianship on the morning of the hearing and that the court had continued the petition pending the outcome of the mental health hearing.) Evelyn believed that Frank had made some foolish investments. They did not have any money left, except for a small amount in savings. They currently lived in a condominium owned by her daughter and son-in-law. She was not sure what they were responsible for paying, possibly the taxes, association fees, and utilities. Frank had not paid the utility bills for two or three months. Frank received \$1,600 in Social Security and \$600 from his pension every month. Evelyn also received Social Security. They received enough money to live on. They used to be able to go out for dinner, but they could no longer afford to “because of the money.” Frank had never physically threatened her.

¶ 9 On cross-examination, Evelyn testified that she did not agree with how Frank had been spending his money. She was not sure what he had done with his money over the last three months,

but she knew that he had been dealing with somebody. Frank had no money to live on. She had not seen any documents concerning his financial dealings and she did not know who his business associates were. She and Frank did not pay rent to her daughter, but they did pay taxes. She was not sure if Frank had paid the taxes or not. Frank always dealt with her son-in-law.

¶ 10 Frank testified that he was 73 years old. He was a retired insurance salesman with Aetna. According to Frank, he was starting a business with his partner, Steven Brown, whom he had known for 20 years. Over those 20 years, he had invested money, along with his partner, in various projects. He estimated that he had invested about half a million dollars. They had had a hard time and lost money. His partner owed him a lot of money. In addition, Frank testified that he was awarded an estate by a dying Nigerian woman, whom he had never met. He sent \$1,500 to someone who was supposedly handling the estate transaction, but it turned out that the person was a thief.

¶ 11 Frank further testified that he lived in a condo owned by his daughter. He had agreed to pay the utilities, condo association fees, and rent. He had not made the payments but he intended to. He testified:

“We’re supposed to pay rent, yes. I have not paid that stuff but my plan is to pay that stuff. I got this money coming from my partner. I got money coming from this other deal I have been working on. As far as I’m concerned at this point [the money from Nigeria] is still available.”

He testified: “The problem I have had since I have been here is I haven’t been able to do any business with anybody. I haven’t talked to anybody on the telephone.” Frank testified that he received \$1,666 per month in Social Security and \$640 per month from his pension. In the past few months, he spent the money on food and the “business situation.”

¶ 12 On cross-examination, Frank testified that he was trying to do his best with the money. He stated: “I am this close to getting it done, if in fact these guys are not scammers.” When asked whether he intended on paying the association fees and other bills, he stated: “I am going to take care of everything. It’s money—if this is taken care of, I will have plenty of money to take care of everything.” He further stated: “I’ll go back to work if I have to.”

¶ 13 Sandy Davenport-Belushi, a clinical therapist at Linden Oaks, testified that she had seen Frank every day since his admission. She had several conversations with Frank regarding his financial status. He told her that he was contacted on the Internet by a Nigerian woman. When he called her, he was put in touch with a Nigerian diplomat, who represented the woman. The woman was going to give Frank her multi-million-dollar estate as long as he continued to make regular payments to the Nigerian diplomat. Frank believed that it was a legitimate deal. Davenport-Belushi believed that Frank suffered from a mental illness, which caused him to be unable to take care of himself financially. Frank had threatened to sue her. She had witnessed him become very agitated and angry, especially when discussing his financial investments.

¶ 14 On cross-examination, Davenport-Belushi testified that Frank had “distorted thinking.” She did not believe that the Nigerian situation was valid. She had never met Frank’s business partners. Although she had seen Frank get angry, he had never threatened to hurt her.

¶ 15 Following closing arguments, the trial court ruled as follows:

“The burden of proof, as both counsels have pointed out, in this case is clear and convincing evidence, and the Court needs to make two determinations. The Court does believe that [Frank] does suffer from mental illness. The Court is convinced of that. With respect to that mental illness, the Court does not believe, and I don’t think the State has not [*sic*] carried its

burden to show that [Frank] would be reasonably expected to harm himself or others, physically harm himself or others in the near future.

However, the other prongs of that test, whether he is able to provide for his own basic, physical needs so as to guard himself from his own physical harm, and while it's true that [Frank] can apparently dress himself and feed himself and take care of that nature, it's clear, the Court is convinced by clear and convincing evidence that [Frank] does have a substantial impairment with respect to his thought process, his perceptions of reality, his stability, his judgment, his behavior severely impacts his ability to cope with life's ordinary demand.

Counsel for the State is correct, but for the generosity of his children, [Frank] would be out on the street right now. And that is, the Court is convinced, that is because of the these [*sic*] alleged financial investments and alleged partnership, which, with respect to these financial investments, the Court is well aware of the scams that go on with alleged Nigerian princesses or princes going to give you money, but in order to get money, you have to give money.

There has been testimony the Court has heard that [Frank] has given over \$10,000 just in that regard. The testimony about this partner who is located in Las Vegas is that [Frank] has given over \$500,000 over a period of years and that he is owed \$20 million and that he hadn't received dime one yet. It lacks credibility. So for these reasons the court is going to grant the petition of the State."

The court ordered that Frank be involuntarily committed for 30 days. The record reveals that Frank was discharged 18 days later.

¶ 16 Frank timely appealed.

¶ 17

II. ANALYSIS

¶ 18 Frank argues that the State failed to prove, by clear and convincing evidence, (1) that Frank had a qualifying mental illness and (2) that Frank could not provide for his basic physical needs so as to guard himself from serious harm. In the alternative, Frank argues that section 1-119(2) of the Code is unconstitutional. In response, the State argues that the appeal is moot. Notwithstanding mootness, the State maintains that it met its burden of proof and that the statute is constitutional.

¶ 19 As an initial matter, we note that there is no dispute that the case is moot. The trial court's commitment order was for a period not to exceed 30 days, and that period has long since passed. Thus, the commitment order, whether valid or not at the time issued, can no longer serve as the basis for an adverse action against Frank. See *In re Barbara H.*, 183 Ill. 2d 482, 490 (1998). As a general rule, Illinois 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 (2009). However, in conceding that his appeal is moot, Frank argues that his case falls within all of the following exceptions to the mootness doctrine: the public-interest exception; the capable-of-repetition-yet-evading-review exception; and the collateral-consequences exception. Whether an exception to the mootness doctrine applies is a question of law reviewed *de novo*. *Id.* at 350.

¶ 20 We agree with Frank that the collateral-consequences exception applies here. “[T]he collateral-consequences exception [is] applicable where the involuntary [commitment] order could return to plague the respondent in some future proceedings or could affect other aspects of the respondent’s life.” *In re Val Q.*, 396 Ill. App. 3d 155, 159 (2009). The collateral-consequences

exception is generally applicable where the respondent has never been (1) subject to an order for involuntary commitment or (2) convicted of a felony. See *Alfred H.H.*, 233 Ill. 2d at 362-63 (because the respondent had multiple prior involuntary commitments and was a felon, there were no collateral consequences that would stem solely from the present adjudication; every collateral consequence that could be identified already existed as a result of the respondent's previous adjudications and felony conviction); *In re Joseph P.*, 406 Ill. App. 3d 341, 347 (2010) (where a respondent had not been previously forcibly medicated or convicted of a felony, collateral consequences had not attached). Here, the record does not show any prior involuntary commitments or felony convictions. Thus, we will apply the collateral-consequences exception and address the merits of Frank's appeal.

¶ 21 A trial court's decision in an involuntary-admission proceeding is given great deference and will not be set aside by the reviewing court, unless it is against the manifest weight of the evidence. *In re Alfred H.*, 358 Ill. App. 3d 784, 788 (2005). "A judgment is against the manifest weight of the evidence only when an opposite conclusion is apparent or when findings appear to be unreasonable, arbitrary, or not based on evidence." *Id.* Under section 1-119(2) of the Code, a "[p]erson subject to involuntary admission on an inpatient basis" means:

"(2) A person with mental illness who because of his or her illness is unable to provide for his or her basic physical needs so as to guard himself or herself from serious harm without the assistance of family or others, unless treated on an inpatient basis[.]" 405 ILCS 5/1-119(2) (West 2010).

"Mental illness" under the Code is defined as:

“[A] mental, or emotional disorder that substantially impairs a person’s thought, perception of reality, emotional process, judgment, behavior, or ability to cope with the ordinary demands of life, but does not include a developmental disability, dementia or Alzheimer’s disease absent psychosis, a substance abuse disorder, or an abnormality manifested only by repeated criminal or otherwise antisocial conduct.” 405 ILCS 5/1-129 (West 2010).

Under section 3-808 of the Code, “[n]o respondent may be found subject to involuntary admission on an inpatient or outpatient basis unless that finding has been established by clear and convincing evidence.” 405 ILCS 5/3-808 (West 2010).

¶22 Frank argues that the State failed to prove, by clear and convincing evidence, that he suffered from a “mental illness.” See 405 ILCS 5/1-129 (West 2010). Frank challenges Dr. Kumar’s diagnosis of psychosis and argues that, rather than delusional, he was merely gullible. “For a medical opinion as to the existence of a mental illness to be clear and convincing, it is sufficient if the expert indicates the basis of his diagnosis by having directly observed a respondent on several occasions.” *In re Tuman*, 268 Ill. App. 3d 106, 111-12 (1994). Dr. Kumar diagnosed Frank with “psychosis, which is the delusional paranoid type.” She stated that he “has this delusional thinking about sending all the money to strangers.” She also diagnosed Frank with “dementia, Alzheimer type.” Dr. Kumar testified that she had met with Frank almost every day since his admission to Linden Oaks and that her diagnosis was based on her clinical evaluation of Frank and the confirmation from neuropsychological testing. The parties stipulated that Dr. Kumar was an expert in psychiatry, and her testimony concerning the diagnosis was unrebutted. Based on this testimony, we conclude that the trial court’s conclusion that Frank suffered from a mental illness was not against the manifest weight of the evidence.

¶ 23 Frank next contends that the State failed to prove by clear and convincing evidence that Frank was “unable to provide for his *** basic physical needs so as to guard himself *** from serious harm without the assistance of family or others, unless treated on an inpatient basis[.]” 405 ILCS 5/1-119(2) (West 2010). To determine whether a person can provide for his basic physical needs, this court has considered whether he can obtain his own food, shelter, and medical care, whether he has a place to live, whether he can function in society, and whether he has an understanding of money and a concern for it as a means of sustenance. See *In re Rovelstad*, 281 Ill. App. 3d 956, 968 (1996).

¶ 24 Here, Dr. Kumar testified that Frank was “not able to make informed medical, legal and psychological decisions.” Although she agreed that he was able to feed and clothe himself, that did not, without more, establish that he could guard himself from serious harm. Although Frank argues that Dr. Kumar “provided no link to mental illness, nor even details as to why [Frank’s] unwise financial moves affected his ability to meet his minimum basic needs,” this argument is tenuous at best. Contrary to Frank’s argument, the testimony established that Frank had lost his home due to foreclosure and was living in a condominium owned by his daughter and son-in-law. The evidence further established that, although Frank had agreed to pay the utilities, condominium association fees, and rent, he had not made any of the payments. Evelyn testified that, other than a small amount in savings, they had no money. It is clear that Frank did not recognize the necessity of using his money to meet his basic needs. Moreover, he was not merely exhibiting an inability to manage his finances; he was, as a result of his delusional thinking, choosing to send large amounts of money to unknown individuals, to his and Evelyn’s ultimate detriment. Frank acknowledged his agreement to pay the utilities, condo association fees, and rent, but agreed that he was not making the payments due his “business situation.” Frank’s testimony makes clear that he fully intended on continuing

with the alleged business transactions and ignoring his basic needs. Frank's testimony bolsters Dr. Kumar's testimony concerning Frank's ability to make informed medical, legal, and psychological decisions. Based on the foregoing, we conclude that the trial court's decision to involuntarily commit Frank was not against the manifest weight of the evidence.

¶ 25 The cases relied on by Frank to support his argument that “[a]n inability to properly handle finances does not rise to the level of ‘serious harm’ to warrant involuntary [commitment]” do not warrant a different conclusion. In *In re Schumaker*, 260 Ill. App. 3d 723 (1994), we reversed the respondent's involuntary commitment, based, in part, on our finding that the testimony was insufficient to establish that the respondent was unable to provide for her basic physical needs so as to guard herself from serious harm. *Id.* at 729-30. There, the only expert testimony in support of the respondent's commitment was that the respondent might not be able to maintain a job and that her ability to manage money was questionable. *Id.* at 726. We held that “the decision to confine an individual through involuntary commitment should not be based solely on the speculative harm that might result from a person's inability to secure employment and balance a checkbook.” *Id.* at 730. Here, unlike in *Schumaker*, the testimony noted above established much more than Frank's inability to balance a checkbook.

¶ 26 Frank also relies on *In re Torski C.*, 395 Ill. App. 3d 1010 (2009). In that case, the Fourth District addressed the constitutionality of section 1-119(1) of the Code, which allowed for the involuntary commitment of an individual with a mental illness who was

“reasonably expected to engage in dangerous conduct which may include threatening behavior or conduct that places that person or another individual in reasonable expectation of being harmed.” 405 ILCS 5/1-119(1) (West 2008).

Section 1-104.5 of the Code defined “dangerous conduct” as “threatening behavior or conduct that places another individual in reasonable expectation of being harmed.” 405 ILCS 5/1-104.5 (West 2008). The court found that the definition of “dangerous conduct” was unconstitutionally vague. *Torski*, 395 Ill. App. 3d at 1024-27. In so holding, the court stated that “the magnitude of the harm should be more narrowly defined. This statute, as written, does not preclude the entire gamut of psychological, emotional, or financial harm, regardless of the severity.” *Id.* at 1025. Contrary to Frank’s argument, that case did not preclude consideration of financial harm; rather, it took issue with the statute’s failure to adequately define the type or magnitude of harm. *Id.* at 1027. (Section 1-119(1) of the Code now specifically refers to “physical harm.” See 405 ILCS 5/1-119(1) (West 2010)). In any event, *Torski* involved section 1-119(1) of the Code, which is not at issue here.

¶ 27 Last, Frank argues that section 1-119(2) of the Code violates his substantive due process rights, because it requires him to meet his basic physical needs “without the assistance of family or others” (405 ILCS 5/1-119(2) (West 2010)), in violation of *O’Connor v. Donaldson*, 422 U.S. 563, 576 (1975), which states: “[A] State cannot constitutionally confine without more a nondangerous individual who is capable of surviving safely in freedom by himself or with the help of willing and responsible family members or friends.” In response, the State argues that Frank forfeited the issue by failing to raise it below. In the alternative, the State argues that there was no testimony that Frank would have had the assistance of family or friends, thus implying the absence of standing.

¶ 28 We must first address whether the claim is forfeited, based on Frank’s failure to raise the issue below. Frank cites *People v. Bryant*, 128 Ill. 2d 448, 454 (1989), for the proposition that a constitutional challenge to a statute can be raised at any time. However, “subsequent cases have held a constitutional challenge to a *criminal* statute may be raised at any time.” (Emphasis in original.)

In re Charles H., 409 Ill. App. 3d 1047, 1054 (2011). Nevertheless, in *Charles H.*, the Fourth District addressed an otherwise forfeited constitutional challenge to section 1-119(1) of the Code, because it found that “the imposition of an involuntary-commitment order implicates substantial liberty interests.” *Id.* at 1055. The court found unconstitutional a former commitment standard premised on “dangerous conduct.” *Id.* at 1057. This court has also considered an otherwise forfeited constitutional challenge to a civil statute. In *Forest Preserve District of Du Page County v. First National Bank of Franklin Park*, 401 Ill. App. 3d 966 (2010), we held that “[a]n appellate court may permit a party to file a late notice pursuant to [Illinois Supreme Court] Rule 19 [(eff. Aug. 1, 1986)] and address the constitutionality of a statute for the first time on appeal if the purpose of the rule (providing the Attorney General with the meaningful opportunity to participate) has been served, and the opposing party is not prejudiced because it was aware of the constitutional nature of the claim.” *Id.* at 994. Here, the record reveals that Frank provided the requisite notice and that the State was aware of the nature of the claim. Accordingly, Frank’s failure to raise the issue below is not a bar to his claim.

¶ 29 Although forfeiture is not a bar to Frank’s constitutional challenge, we need not reach the merits, because Frank does not have standing. “The purpose of the doctrine of standing is to ensure that courts are deciding actual, specific controversies, and not abstract questions or moot issues.” *In re M.I.*, 2013 IL 113776, ¶ 32 (quoting *In re Marriage of Rodriguez*, 131 Ill. 2d 273, 279-80 (1989)). “In order to have standing to bring a constitutional challenge, a person must show himself to be within the class aggrieved by the alleged unconstitutionality.” *Id.* Here, although Frank was living at his daughter’s condominium prior his admission at Linden Oaks, there was no evidence presented that his daughter was willing and able to assist him in meeting his needs. Instead, the

evidence established that Frank had agreed that he would pay the utilities, condominium association fees, and rent, yet he had not made any of the payments. In addition, Evelyn testified that she had no money with which to care for Frank. Given that there was no testimony that Frank would have had the assistance of family or others, he does not have standing to challenge the statute on that basis.

¶ 30

III. CONCLUSION

¶ 31 For the reasons stated, we affirm the order of the circuit court of Du Page County.

¶ 32 Affirmed.