

**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).

2013 IL App (3d) 120669-U

Order filed October 17, 2013

---

IN THE  
APPELLATE COURT OF ILLINOIS  
THIRD DISTRICT

A.D., 2013

<i>In re</i> RUTH K.,	)	Appeal from the Circuit Court
	)	of the 21st Judicial Circuit,
a Person Found Subject to Involuntary	)	Kankakee County, Illinois,
Administration of Medication	)	
	)	
(The People of the State of Illinois,	)	
	)	Appeal No. 3-12-0669
Petitioner-Appellee,	)	Circuit No. 12-MH-36
	)	
v.	)	
	)	
Ruth K.,	)	Honorable
	)	Ronald J. Gerts,
Respondent-Appellant).	)	Judge, Presiding.

---

JUSTICE CARTER delivered the judgment of the court.  
Justices Lytton concurred in the judgment.  
Justice McDade dissented.

---

**ORDER**

¶ 1 *Held:* (1) Despite the appeal being moot, an exception to the mootness doctrine applied and allowed review of respondent's claims. (2) The State sufficiently established that it provided respondent with the necessary written information about her proposed treatment. (3) The State presented clear and convincing evidence that respondent lacked the capacity to make a reasoned decision about her treatment.

¶ 2 Respondent, Ruth K., appeals from the trial court's order authorizing the involuntary administration of psychotropic medication pursuant to section 2-107.1 of the Mental Health and Developmental Disabilities Code (Mental Health Code). See 405 ILCS 5/2-107.1 (West 2012). Respondent argues that: (1) although her appeal is moot, her claims fall within at least one of the exceptions to the mootness doctrine; (2) the State failed to establish that it informed her in writing of the risks, benefits, and alternatives of the proposed treatment; and (3) the State failed to prove by clear and convincing evidence that she lacked the capacity to make a reasoned decision about her treatment. We find that this case falls within at least one of the exceptions to the mootness doctrine. After considering the merits of this appeal, we affirm.

¶ 3 **FACTS**

¶ 4 On May 25, 2012, the State filed a petition on behalf of respondent's treating psychiatrist, Dr. Dawit Amare, to begin the involuntary treatment of respondent with psychotropic medications, including risperidone, Abilify, and Seroquel. See 405 ILCS 5/2-107.1 (West 2012). On May 29, 2012, the trial court allowed the State to add the medication Risperdal Consta to the petition as an alternative to risperidone. The court then conducted a hearing on the petition.

¶ 5 Amare testified that respondent suffered from schizoaffective disorder, which causes a person to experience hallucinations, delusions, and paranoia. Respondent has had this diagnosis for at least three years, because she was hospitalized in 2010 for exhibiting symptoms of this disorder.

¶ 6 Respondent had been living in a nursing home, but was hospitalized on May 8, 2012, due to aggressive behavior and for failing to take her antipsychotic medications. Respondent was admitted again on May 23, 2012, based on her refusal to take her medications, which resulted in

her assaulting a staff member at the nursing home with respondent's bible. At the hospital, respondent continued to refuse her medications and was loud, belligerent, uncontrollable, not easily redirected, and "hyper-religious." A few days prior to the hearing, respondent was given a Geodon shot because her behavior was uncontrollable. Respondent also exhibited delusional thoughts, where she believed the people around her were the devil and she listed which demonic power each patient had in the hospital. Additionally, respondent refused to meet with her medical physician or take her diabetes and blood pressure medications. Respondent, however, continued to take Klonopin for her anxiety.

¶ 7 Amare suggested that respondent be administered risperidone, an antipsychotic medication for patients with schizoaffective disorder used to decrease delusions and paranoia. Respondent was previously on risperidone, and it successfully reduced her symptoms. At the time of the hearing, respondent refused to take risperidone. Alternative antipsychotic medications Amare suggested were Abilify and Seroquel, which were recommended substitutes if respondent could not tolerate risperidone. With regard to Seroquel, respondent initially agreed to take it, noting that she had taken it in the past and knew the dosage. However, when provided with the medication, respondent refused it. A third alternative medication Amare suggested was Risperdal Consta, which was an intramuscular injection that could be used in the event that respondent refused to take oral medication. Amare had taken the potential harmful effects of the medications into consideration in making the treatment recommendation. Amare noted that blood work or an electrocardiogram would be necessary to ensure that respondent did not have an adverse reaction to the medications.

¶ 8 With regard to these particular medications, Amare testified that he had discussed the

benefits and risks with respondent. Amare noted that in discussing the medications with respondent, she usually dismissed the discussion and was not willing to consider them. Amare further testified that he had informed respondent in writing of the possible risks and benefits of these medications.

¶ 9 Amare believed that respondent should be on the proposed medication due to her aggressive and violent behavior. Respondent believed that the people around her were possessed and would harass people at the nursing home and hospital by trying to convert them to her religion. Respondent had good hygiene and had been eating; however, her ability to function and care for herself had deteriorated. Amare opined that, without medication, respondent's ability to function would continue to deteriorate. For example, when Amare met with respondent, she refused to discuss her treatment or look at him. Respondent merely quoted scriptures from the bible, and kept stating "you are the enemy, the enemy will be defeated and you have no power over me." Amare opined that respondent needed to be medicated for her own safety and the safety of others around her.

¶ 10 Respondent testified that she was 59 years old and had been in a nursing home for four years. Respondent stated that she was diagnosed with schizoaffective disorder because she had paranoia 15 or 20 years ago. Respondent was prescribed Stelazine and Imipramine and believed she had been healed of her paranoia. Respondent last took psychotropic medication two months prior to the hearing, at which point she informed Amare that she no longer felt schizophrenic and wanted to stop taking risperidone. Respondent claimed to receive no benefits from the medication, noting that she prayed to God and he would not let the medication do anything to her.

¶ 11 When taking risperidone, respondent felt ill, lay around in bed, and had a poor appetite, and her hair fell out. These symptoms subsided when she stopped taking the medication.

Respondent was also able to interact with others and claimed not to have a problem getting along with other residents or patients. Respondent admitted having a problem with the staff at the hospital because they were rude and confrontational, and they refused to administer medications that respondent took.

¶ 12 Respondent denied attacking anyone at the nursing home. Respondent claimed that she went to the nurses's station and for no reason they started "jumping all over [her]." A counselor stepped in between respondent and the nurses, putting her arm down on the half door of the nurses's station. Respondent explained that when she reached up to put her bible on the door, it barely touched the counselor's elbow. The counselor, however, told the nurses that respondent attacked her by hitting her arm with the bible. Respondent also denied harassing anyone at the nursing home, noting that she only discussed her religious beliefs with them if they brought up the topic.

¶ 13 Respondent testified that she received documentation about the medication, but did not reference which medication. Respondent stated that she received the information after asking for it at the nurses's station. Respondent acknowledged reading the paperwork. Respondent stated that at the time of the hearing, she had been taking risperidone for approximately four years, but as of two months before the hearing, she began refusing to take it. Respondent had never taken Abilify before and did not receive any documentation about it. Respondent also stated that a few days earlier, one of the doctors asked her if she had any trouble sleeping and suggested Seroquel. Respondent agreed to the recommendation. Respondent then went to the nurses's station to get a

printout on the medication and determined that the primary reason for taking the drug was for schizophrenia and bipolar disorder, not to sleep, and she refused to take it. Respondent had taken Seroquel in the past, and it made her "dopey." When asked about Risperdal Consta, respondent said that she had never heard of it.

¶ 14 Respondent explained that she refused to see her medical physician because when she was previously in the hospital, he refused to see her in the psychiatric ward, and that upset her. Respondent further explained that she refused to take one of the two blood pressure and one of the two diabetes medications because when she was on both, her blood pressure and blood sugar were too low. Respondent acknowledged that she needed to take her medications to manage her heart disease, blood pressure, and diabetes. Respondent further acknowledged that she needed to take Klonopin to manage her anxiety disorder. Respondent did not believe she would harm herself or others if she refused to take the psychotropic medications recommended by Amare, noting that she was not an aggressive person and whoever asserted this had lied.

¶ 15 After hearing the evidence, the trial court granted the petition to involuntarily administer risperidone, Abilify, Seroquel, and Risperdal Consta to respondent for a period of time not to exceed 90 days. The court found that Amare did not lie as respondent suggested, noting that respondent also claimed that the staff at the nursing home had lied about her.

¶ 16 On June 25, 2012, respondent filed a motion to reconsider, claiming she was not advised in writing of the side effects of the recommended medications. On August 2, 2012, the trial court denied the motion, stating that the issue was moot because respondent had already been discharged from hospitalization and that without a transcript of the testimony it would not find that respondent was not correctly advised. Respondent appeals.

¶ 17

## ANALYSIS

¶ 18

### I. Mootness

¶ 19 Initially we note this appeal is moot, as the order for respondent's involuntary treatment has since expired. Nevertheless, respondent argues that her case falls within one of the recognized exceptions to the mootness doctrine, thereby allowing this court to consider her substantive claims.

¶ 20 Exceptions to the mootness doctrine include: (1) the public interest exception; (2) the exception for issues capable of repetition yet avoiding review; and (3) the collateral consequences exception. *In re Alfred H.H.*, 233 Ill. 2d 345 (2009). Whether an exception to the mootness doctrine applies is a question of law reviewed *de novo*. *Id.*

¶ 21 The State concedes that this case falls within the exception for issues capable of repetition yet avoiding review. We agree. Pursuant to that exception, a court may consider a moot case if: (1) the action being challenged is too short in duration to be fully litigated prior to its cessation; and (2) there is a reasonable expectation that the same complaining party would be subject to the same action again. *In re Vanessa K.*, 2011 IL App (3d) 100545.

¶ 22 Here, the first element is met because the challenged 90-day order was of such a brief duration that it could not have been fully litigated before it expired. *Id.* Additionally, the second element is also met because respondent's claims are capable of repetition in a future proceeding for involuntary treatment given her mental health issues. See *id.*; *In re Richard C.*, 329 Ill. App. 3d 1090 (2002). Moreover, this case also falls within the collateral consequences exception, because this is the first time respondent has been subject to an involuntary treatment order, which could adversely affect her in future proceedings. See *In re Val Q.*, 396 Ill. App. 3d 155 (2009)

(applying collateral consequences exception to respondent's first involuntary treatment order).

Therefore, we will consider the merits of respondent's appeal.

¶ 23 II. Written Notification

¶ 24 Respondent first argues that the State failed to establish that it informed her in writing of the risks, benefits, and alternatives of the proposed treatment pursuant to section 2-102(a-5) of the Mental Health Code.

¶ 25 Section 2-102(a-5) of the Mental Health Code provides:

"If the services include the administration of electroconvulsive therapy or psychotropic medication, the physician or the physician's designee shall advise the recipient, in writing, of the side effects, risks, and benefits of the treatment, as well as alternatives to the proposed treatment, to the extent such advice is consistent with the recipient's ability to understand the information communicated." 405 ILCS 5/2-102(a-5) (West 2012).

¶ 26 At the hearing on the involuntary treatment petition, the State must present clear and convincing evidence of compliance with this section. *In re Laura H.*, 404 Ill. App. 3d 286 (2010). Even when a respondent is verbally advised about the benefits and risks of a medication and refuses to take it, she is entitled to written information. *Vanessa K.*, 2011 IL App (3d) 100545. Whether substantial compliance with a statutory provision has taken place is a question of law, which we review *de novo*. *Laura H.*, 404 Ill. App. 3d 286.

¶ 27 Here, Amare testified that his proposed treatment for respondent included risperidone. Three alternative medications he recommended were Abilify, Seroquel, and Risperdal Consta. After explaining each of the four medications to the court, Amare testified that he had informed respondent in writing of the possible risks and benefits of these medications. Although Amare

did not individually list the four medications when he stated that respondent received written notice, his testimony supports the conclusion that he provided respondent with the risks and benefits for all of the proposed medications, which included the alternatives.

¶ 28 Despite respondent's testimony that she did not receive written information on Abilify and had never heard of Risperdal Consta, it was for the trial court to determine which version of events was more credible. Accordingly, we find that the State sufficiently proved compliance with the written notice requirement of section 2-102(a-5) of the Mental Health Code.

¶ 29 III. Capacity to Make a Reasoned Decision

¶ 30 Respondent next argues that the State failed to prove by clear and convincing evidence that she lacked the capacity to make a reasoned decision about whether to take the psychotropic medication. See 405 ILCS 5/2-107.1(a-5)(4)(E) (West 2012).

¶ 31 Psychotropic medications may be administered only if the State proves by clear and convincing evidence that, among other things, the respondent lacked the capacity to make a reasoned decision about her treatment. See 405 ILCS 5/2-107.1(a-5)(4)(E) (West 2012). An individual has the capacity to make treatment decisions for herself when, based upon conveyed information concerning the risks and benefits of the proposed treatment and reasonable alternatives to treatment, she makes a rational choice to either accept or refuse the treatment. *In re Israel*, 278 Ill. App. 3d 24 (1996). We will not reverse an order allowing the involuntary administration of psychotropic medication unless the trial court's findings are against the manifest weight of the evidence. *In re C.S.*, 383 Ill. App. 3d 449 (2008). A decision is against the manifest weight of the evidence only if the opposite conclusion is apparent or the findings are unreasonable, arbitrary, or not based on the evidence. *Id.*

¶ 32 Respondent argues that the State failed to prove she lacked the capacity to make a reasoned decision because she did not receive written information regarding the medications. See 405 ILCS 5/2-102(a-5) (West 2012); *In re Tiffany W.*, 2012 IL App (1st) 102492-B (finding that only after respondent has been provided with written notice could it be determined whether he lacked the capacity to make a reasoned decision). However, because we have already determined that the State complied with section 2-102(a-5) of the Mental Health Code, we find that respondent received the necessary information from which to make a reasoned decision.

¶ 33 Additionally, respondent argues that the evidence failed to establish she lacked capacity because Amare provided no medical opinion on respondent's capacity and the evidence did not support a finding that she lacked capacity. Defendant cites *In re Schumaker*, 260 Ill. App. 3d 723 (1994), to claim that explicit medical testimony is required on this element. In *Schumaker*, the psychiatrist's testimony failed to establish that respondent was reasonably expected to be a serious danger to herself or others, because he failed to render his opinion on the matter and his testimony lacked sufficient facts to support such a finding. See *id.* By contrast, in the instant case, although Amare did not specifically state that respondent lacked the capacity to make a reasoned decision, his testimony was sufficiently detailed to support this conclusion.

¶ 34 With regard to respondent's general argument that the State failed to prove she lacked the capacity to make a reasoned decision, a court should consider the following factors:

- "(1) The person's knowledge that he has a choice to make;
- (2) The person's ability to understand the available options, their advantages and disadvantages;
- (3) Whether the commitment is voluntary or involuntary;

(4) Whether the person has previously received the type of medication or treatment at issue;

(5) If the person has received similar treatment in the past, whether he can describe what happened as a result and how the effects were beneficial or harmful; and

(6) The absence of any interfering pathological perceptions or beliefs or interfering emotional states which might prevent an understanding of legitimate risks and benefits." *Israel*, 278 Ill. App. 3d at 37.

¶ 35 No single factor is dispositive, and the court should consider any other relevant factors. *Id.*

¶ 36 As to the first factor, respondent knew that she could choose whether to take the medication. This is evident from respondent's agreement to take Klonopin for her anxiety disorder, but refusal to take other psychotropic, blood pressure, and diabetes medications. Respondent relies heavily on this factor to assert that she was treated like a person who had capacity. However, since no single factor is dispositive, we will not place the majority of the weight on the fact that respondent knew she could refuse medications. See *id.*

¶ 37 With respect to the second factor, respondent understood the adverse side effects of both risperidone and Seroquel. However, the evidence indicated that respondent was unable to understand the advantages of any of the proposed medications, asserting that she was no longer paranoid or schizophrenic. Additionally, respondent refused to discuss her proposed treatment with Amare or consider the medications. As such, respondent did not fully understand her options with regard to these medications.

¶ 38 Regarding the third factor, it was respondent's refusal of her psychotropic medication and

aggressive behavior in the nursing home which led to her involuntary commitment in the hospital.

¶ 39 As to the fourth and fifth factors, respondent testified to previously taking risperidone and Seroquel. Amare testified that respondent had most recently taken risperidone, which successfully reduced her schizophrenic symptoms. Despite this, respondent maintained that she received no benefit from risperidone or Seroquel, noting that it made her feel lethargic. Additionally, contrary to Amare's testimony, respondent asserted that without the medication, she was not aggressive and had no problem getting along with other residents or patients.

¶ 40 With respect to the sixth factor, Amare testified respondent exhibited delusional thoughts, aggression, and uncontrollable behavior, which impaired her ability to function and care for herself. Amare opined that without the medication, respondent's condition would continued to deteriorate. Moreover, respondent's explanation for refusing the medication was in part due to the side effects, but also because she thought she was cured and indicated that God would not let the medication have an effect on her.

¶ 41 Given the circumstances of this case and application of the *Israel* factors, we find that the State sufficiently established that respondent lacked the capacity to make a reasoned decision regarding her medication. See *Vanessa K.*, 2011 IL App (3d) 100545 (finding that after evaluating the relevant factors, respondent's impaired state of mind, refusal to discuss medications, deteriorating state, and successful treatment in the past favored involuntary treatment). Based on the evidence, it was reasonable for the trial court to conclude that respondent could not make a rational choice to refuse medication based on the legitimate risks and benefits of the proposed medications. Accordingly, we find that the trial court's

determination was not against the manifest weight of the evidence, and we affirm the order of involuntary administration of psychotropic medication.

¶ 42

#### CONCLUSION

¶ 43 For the foregoing reasons, the judgment of the circuit court of Kankakee County is affirmed.

¶ 44 Affirmed.

¶ 45 JUSTICE McDADE, dissenting.

¶ 46 The majority has found that the State sufficiently established (1) that respondent, Ruth K. was timely provided the requisite written information about her proposed treatment and (2) that she lacked capacity to make a reasoned decision about that treatment. For the reasons that follow, I respectfully dissent.

¶ 47 The Risperdal Consta was not included in the list of medications until the State moved to add it at the beginning of the hearing and the trial court added it to the list. Ruth K. was given no information about that psychotropic drug (written or otherwise) at that time, there was no recess taken so she could become familiar with the drug, and she testified that she had never heard of it. Nor did Dr. Amare ever testify that he had previously provided her with written information about that particular drug.

¶ 48 The State concedes in its brief "that the majority of existing caselaw requires strict compliance with section 2-105(a-5)." It then argues that "*while respondent was not notified in writing of all of the possible alternative medications*, that minor omission should not taint compliance with section 2-105(a-5)." (Emphasis added.) The basis for the State's argument is that Risperidone was "her primary medication" and that she had acknowledged that she was

given written information about that. That is, however, not true. Her testimony was that she had written information about Seroquel because she secured it herself from the nursing station. She did testify that she had been taking Risperidone but had discontinued it because of negative side effects. Thus the State's argument is not grounded on correct facts. Moreover, the State has cited no authority supporting either its suggestion that past experience with a medication is a proper substitute under the statute for written information or its argument that we can and should accept partial compliance with the statute. Those arguments are waived.

¶ 49 Even if the argument were not waived, failure to provide written information about all of the proposed medications is not a "minor omission" at all. As respondent pointed out in both her opening and reply briefs, where there is no proof that she received written information about all four drugs ordered, the State cannot prove lack of capacity to make a reasoned decision to take or refuse psychotropic medication by clear and convincing evidence. *Tiffany W.*, 2012 IL App (1<sup>st</sup>) 102492-B, ¶¶ 16,22; *Nicholas L.*, 407 Ill. App. 3d 1061, 1073 (2011). Proof of such lack of capacity is required by 405 ILCS 5/2-107.1(a)(4)(A) (West 2012).

¶ 50 For these reasons, I could not find the State has not met its burden and, therefore, dissent from the majority's contrary decision.