

**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) 120670-U

Order filed May 30, 2013

---

IN THE  
APPELLATE COURT OF ILLINOIS  
THIRD DISTRICT

A.D., 2013

|                                       |   |                               |
|---------------------------------------|---|-------------------------------|
| <i>In re</i> PATRICIA V.,             | ) | Appeal from the Circuit Court |
|                                       | ) | of the 21st Judicial Circuit, |
| (The People of the State of Illinois, | ) | Kankakee County, Illinois,    |
|                                       | ) |                               |
| Plaintiff-Appellee,                   | ) |                               |
|                                       | ) | Appeal No. 3-12-0670          |
| v.                                    | ) | Circuit No. 12-MH-42          |
|                                       | ) |                               |
| Patricia V.,                          | ) |                               |
|                                       | ) | Honorable Ronald J. Gerts,    |
| Defendant-Appellant).                 | ) | Judge, Presiding.             |

---

JUSTICE SCHMIDT delivered the judgment of the court.  
Justices Holdridge and Lytton concurred in the judgment.

**ORDER**

¶ 1 *Held:* Respondent's appeal from her involuntary commitment pursuant to section 3-813 (405 ILCS 5/3-813) (West 2010)) is moot and does not fall into any recognized exception to the mootness doctrine. Appeal dismissed.

¶ 2 On July 11, 2012, the Kankakee County circuit court found that respondent, Patricia V., suffered from mental illness and could cause harm to herself and others. The trial court ordered that respondent be involuntarily admitted to a psychiatric hospital for a period not to exceed 90

days.

¶ 3 Respondent appeals, claiming: the State did not prepare a dispositional report and failed to meet all of the requirements of section 3-810 of the Mental Health and Developmental Disabilities Code (the Mental Health Code); the State failed to prove that respondent was provided a copy of the petition pursuant to section 3-206 of the Mental Health Code; and the State failed to prove that hospitalization was the least restrictive alternative for treatment. 405 ILCS 5/3-810, 3-206 (West 2010). While conceding that the issue is moot, respondent contends that her claims fall within at least one of the exceptions to the mootness doctrine that would allow this court to review the involuntary commitment.

¶ 4 We dismiss the appeal as moot.

¶ 5 BACKGROUND

¶ 6 A petition seeking involuntary hospitalization filed in the circuit court of Kankakee County on June 9, 2012, alleged that respondent had verbally and physically threatened staff at the nursing home where she resides and had threatened to kill herself.

¶ 7 The record reveals that the portion of the petition that requires a staff signature and acknowledgment that respondent was provided with a copy of the petition and rights of admittee within 12 hours of admission, pursuant to section 3-609, was left blank (405 ILCS 5/3-609 (West 2010)). Respondent's counsel objected on this ground; the trial court overruled the objection, finding that testimony could be elicited to show that respondent had been informed of the contents of the petition.

¶ 8 The State's first witness was Dr. Zaw Win, a psychiatrist at Riverside Hospital. Dr. Win

has been respondent's treating physician for 2½ years. He treated respondent both at Kankakee Terrace, the nursing home where respondent resides, and at Riverside Hospital during her court-ordered hospitalization. Dr. Win diagnosed respondent with schizophrenia, paranoid type.

While at Kankakee Terrace, respondent became agitated and aggressive. She screamed at and threatened the staff. He opined that respondent would physically harm someone, or put someone in reasonable apprehension of being harmed if not treated on an inpatient basis. A less secure setting was not in respondent's best interest. Dr. Win also believed that respondent was unable to provide for her basic physical needs. In addition to paranoid schizophrenia, respondent suffered from a seizure disorder and high blood pressure, but was not taking medication for either of these conditions while at Riverside.

¶ 9 Respondent's counsel waived her presence at the end of the hearing. The trial court found that the State proved respondent suffered from a mental illness, could harm herself or others, was unable to protect herself outside a secure environment, and that the nursing home was not sufficiently secure. The trial court's order directed that respondent was subject to involuntary admission at Riverside Hospital for a period not to exceed 90 days from the date of the order.

¶ 10 Respondent filed a motion to reconsider, claiming that the trial court's order should be vacated due to a violation of section 3-609 of the Mental Health Code (405 ILCS 5/3-609 (West 2010)). The trial court denied respondent's motion based on mootness, finding that on the date of the hearing on the motion to reconsider, respondent was no longer a patient at Riverside Hospital.

¶ 11 This timely appeal followed.

¶ 12

## ANALYSIS

¶ 13 As an initial matter, we note that there is no dispute that the underlying case is moot. The trial court's commitment order was for a period not to exceed 90 days, and that period has long since passed. Indeed, the issue was already moot when the trial court heard respondent's motion to reconsider on August 2, 2012, as it found that respondent was no longer a patient at Riverside Hospital. Thus, the commitment order, whether valid or not at the time issued, can no longer serve as the basis for an adverse action against respondent. *In re Barbara H.*, 183 Ill. 2d 482, 490 (1998).

¶ 14 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) (citing *In re Mary Ann P.*, 202 Ill. 2d 393 (2002); *Barth v. Reagan*, 139 Ill. 2d 399 (1990)). However, in conceding her appeal is moot, respondent alleges that her case falls within one of the recognized exceptions to the mootness doctrine that would allow this court to consider her substantive claims.

¶ 15 For her substantive claims, respondent argues that the State did not prepare a dispositional report and failed to meet all of the requirements of section 3-810 of the Mental Health Code; the State failed to prove that respondent was provided a copy of the petition pursuant to section 3-206 of the Mental Health Code; and the State failed to prove that hospitalization was the least restrictive alternative for treatment. 405 ILCS 5/3-810, 3-206 (West 2010).

¶ 16 Respondent contends that her claims fall within one or all of the following exceptions to

the mootness doctrine: the "public interest" exception; the "capable of repetition yet avoiding review" exception; and the collateral consequences exception. Whether an exception to the mootness doctrine applies is a question of law reviewed *de novo*. *In re Alfred H.H.*, 233 Ill. 2d at 350. For the reasons set out below, we find respondent's appeal fails to satisfy any exception to the mootness doctrine.

¶ 17 I. Public Interest Exception

¶ 18 Respondent first argues that the public interest exception applies. The specifics of how the exception applies to respondent's case are lost on this court. She seems only to argue that because her case involves compliance with section 3-810 of the Mental Health Code, this case implicitly presents a public question. 405 ILCS 5/3-810 (West 2010).

¶ 19 For the public interest exception to apply, the following three requirements must be satisfied: "(1) the existence of a question of public importance; (2) the desirability of an authoritative determination for the purpose of guiding public officers in the performance of their duties; and (3) the likelihood that the question will recur." *In re Christopher P.*, 2012 IL App (4th) 100902, ¶20. The public interest exception is "narrowly construed and requires a clear showing of each criterion." *In re Marriage of Peters-Farrell*, 216 Ill. 2d 287, 292 (2005) (citing *In re India B.*, 202 Ill. 2d 522, 543 (2002)).

¶ 20 Respondent's appeal does not present an issue of a public nature. Respondent cites generally to *In re Robin C.*, 395 Ill. App. 3d 958, 963 (2009), a recently decided case out of this district that determined cases involving compliance with section 3-810 of the Mental Health Code present questions of a public nature because this court's determination will be of assistance

to the State in filing future dispositional reports. We acknowledge that there exists some case law that stands for the proposition that questions of strict compliance with the Mental Health Code's statutory procedures have been found to involve matters of public importance to which the public interest mootness exception applies. *In re Andrew B.*, 386 Ill. App. 3d 337, 340 (2008) (citing *In re A.W.*, 381 Ill. App. 3d 950, 955 (2008)).

¶ 21 However, such a broad generalization would all but obliterate the notion of mootness. See *In re Alfred H.H.*, 233 Ill. 2d 345, 357 (2009). If we were to determine that every case involving the proper compliance with the statutory provisions of the Mental Health Code would fall within the public interest exception to the mootness doctrine, then every such case would warrant appellate review.

¶ 22 *In re Alfred H.H.*, 233 Ill. 2d 345 (2009), is helpful to our analysis. In that case, respondent claimed that the first criterion of the public interest exception was met because involuntary mental health proceedings are matters of public interest. *Id.* at 356. Respondent cited to *In re Stephenson*, 67 Ill. 2d 544 (1977), claiming that *Stephenson* and the cases cited therein support the proposition that this court "has deemed involuntary mental health proceedings to be matters of public interest." In finding that respondent's argument on that factor was overly broad, the *Alfred H.H.* court found:

"Though mental health cases do have the potential to deprive respondents of significant liberties, this only addresses the public nature of the class of cases; it does nothing to examine the public nature of the issue presented within this appeal. The question presented in this case

is whether the evidence was sufficient to involuntarily commit respondent to a mental health facility." *Alfred H.H.*, 233 Ill. 2d at 356.

¶ 23 In the instant case, respondent challenges the sufficiency of the State's evidence regarding whether hospitalization at Riverside was the least restrictive alternative. Sufficiency of the evidence claims are inherently case-specific reviews that do not present the kinds of broad public interest issues that were present in cases such as *Stephenson* (holding that the resolution of existing uncertainties as to the burden of proof borne by the State in involuntary commitment proceedings "contribute to the efficient operation of our system of justice"). *Stephenson*, 67 Ill. 2d at 549-50. That notwithstanding, we find the record replete with testimony that sufficiently proves hospitalization was the least restrictive treatment alternative for respondent.

¶ 24 We also find that the State's failure to strictly adhere to every provision of the Mental Health Code does not transform respondent's claim into an issue of public nature. See *In re James H.*, 405 Ill. App. 3d 897, 902 (2010) (finding that while the State failed to strictly comply with some provisions the Code, the interpretation of the statute and the constitutional requirements where such a failure occurred have already clearly been determined, and prior case law established that this error is harmless); *Matter of Luker*, 255 Ill. App. 3d 367, 370 (1993) (holding that while compliance with section 3-609 should certainly be done, nothing in the Mental Health Code indicates that failure to do so would render subsequent proceedings void. Further, failure to comply with section 3-609 might be error, but error is waived if not properly brought to the attention of the trial court.).<sup>1</sup>

---

<sup>1</sup> Respondent urges this court to remember that she was not present at the hearing, so failure to

¶ 25 Similarly, the respondent, as the party asserting justiciability, failed to demonstrate that there is a need to make an authoritative determination for future guidance of public officers. This case simply " 'does not present a situation where the law is in disarray or there is conflicting precedent.' " *In re Alfred H.H.*, 233 Ill. 2d at 358 (citing *In re Adoption of Walgreen*, 186 Ill. 2d 362, 365-66 (1999)). There is a plethora of case law analyzing the State's compliance with the various provisions the Mental Health Code, and nothing we decide in the instant case would add to or distinguish it. See *In re James H.*, 405 Ill. App. 3d 897 (2010); *In re Tommy B.*, 372 Ill. App. 3d 677 (2007); *In re Louis S.*, 361 Ill. App. 3d 763 (2005).

¶ 26 Finally, we once again follow the holding of *In re Alfred H.H.* and find that even if the prior two criteria had been met, there is no substantial likelihood that the material facts that give rise to respondent's claims are likely to recur either as to her or anyone else. Any future commitment proceedings "must be based on the current condition of the respondent's illness" and the "decision to commit must be based upon a fresh evaluation of respondent's conduct and

---

provide her proof of service and statement of rights upon her admission in accordance with section 3-609 of the Mental Health Code was prejudicial. In reality, testimony from the hearing indicates that her attorney attempted to introduce himself to her and explain his role as her attorney. Respondent was agitated, did not want to have any conversation with her attorney, and walked away. Her attorney took these actions as respondent's desire not to participate in the hearings. Thus, respondent was on notice of the proceedings and actively chose not to participate. Failure to comply with section 3-609 is harmless in this instance. See *Matter of Luker*, 255 Ill. App. 3d 367, 370-71 (1993).

mental state." (Internal quotation marks omitted.) *In re Houlihan*, 231 Ill. App. 3d 677, 682-83 (1992). As such, it is unlikely that our determination here regarding respondent's least restrictive alternative treatment, or the hospital's failure to complete that specific section of the commitment petition, would have any impact on future litigation.

¶ 27 II. Capable of Repetition Yet Avoiding Review

¶ 28 Respondent also argues that the State's failure to strictly comply with sections 3-609 and 3-810 of the Mental Health Code renders her appeal "capable of repetition yet avoiding review" and, therefore, reviewable by this court.

¶ 29 Where a case involves an event of short duration capable of repetition yet evading review, Illinois courts have held it may qualify for review even if otherwise moot. *In re A Minor*, 127 Ill. 2d 247, 258 (1989). Two criteria must be met in order to receive the benefit of this exception: "(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." *In re Barbara H.*, 183 Ill. 2d 482, 491 (1998).

¶ 30 As there is no dispute that the commitment order in question here could not have been fully litigated prior to its expiration, the only question to be determined is whether there is a reasonable expectation respondent will be subject to the same action again. See *In re James H.*, 405 Ill. App. 3d 897, 901 (2010).

¶ 31 Respondent concedes that the facts of a future case involving her involuntary commitment would differ from those in the instant case, but contends that compliance with sections 3-810 and 3-609 of the Mental Health Code would have "some bearing" on a future

commitment case. See *In re Robin C.*, 395 Ill. App. 3d at 963; 405 ILCS 5/3-810, 3-609 (West 2010). We disagree. Like the court in *James H.*, we, too, find that while "the petition lacks strict adherence to the statute, prior case law has established this error is harmless." *In re James H.*, 405 Ill. App. 3d at 902.

¶ 32

### III. Collateral Consequences

¶ 33 Finally, respondent argues that her case falls within the collateral consequences exception to the mootness doctrine. This argument is without merit.

¶ 34 This exception applies where the respondent could be plagued in the future by the adjudication at issue. *In re James H.*, 405 Ill. App. 3d 897, 902 (2010) (citing *In re Alfred H.H.*, 233 Ill. 2d at 361). Essentially, if respondent is faced with civil commitment again, a prior adjudication would provide a history of mental illness that could work against her. See *Id.* at 903. Indeed, the supreme court recognized "a host of potential legal benefits" that could accrue if an order for civil commitment is reversed, such as a motion *in limine* that would prohibit any mention of the hospitalization during the course of another proceeding. *Alfred H.H.*, 233 Ill. 2d at 362. However, 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. *James H.*, 405 Ill. App. 3d at 903; see also *Alfred H.H.*, 233 Ill. 2d at 362-63.

¶ 35 No identifiable collateral consequences exist that would warrant application of the exception here. Respondent acknowledges that she has at least one prior psychiatric hospitalization. The record does not indicate whether or not this hospitalization was the result of

an involuntary commitment order. As the party claiming application of the exception, respondent has the burden of proving the collateral consequences that would trigger it. She has failed to do so. Regardless, we find that whether or not the hospitalization was involuntary is of little consequence given the facts present here. The respondent is 66 years old and, due to her diagnosis of paranoid schizophrenia, has been in the care of a long-term nursing home for several years. It is highly unlikely that this adjudication will have any bearing on a future proceeding involving respondent. Even if the commitment was reversed, respondent would still be in the care of the nursing home, as testimony elicited at the hearing indicates that she has been unable to live independently or take care of herself without assistance for many years. We, therefore, find that the collateral consequences exception does not apply to the facts of this case, and respondent's appeal is moot.

¶ 36

#### CONCLUSION

¶ 37 For the foregoing reasons, we find the respondent's appeal is moot.

¶ 38 Appeal dismissed.