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2013 IL App (4th) 130207-U

NO. 4-13-0207

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED  
November 5, 2013  
Carla Bender  
4<sup>th</sup> District Appellate  
Court, IL

|  |   |                  |
|--|---|------------------|
| In re: PATRICK S., a Person Found Subject to | ) | Appeal from      |
| Involuntary Admission,                       | ) | Circuit Court of |
| THE PEOPLE OF THE STATE OF ILLINOIS,         | ) | Sangamon County  |
| Petitioner-Appellee,                         | ) | No. 13MH94       |
| v.   | ) |                  |
| PATRICK S.,                                  | ) | Honorable        |
| Respondent-Appellant.                        | ) | April Troemper,  |
|  | ) | Judge Presiding. |

PRESIDING JUSTICE STEIGMANN delivered the judgment of the court. Justices Harris and Holder White concurred in the judgment.

**ORDER**

- ¶ 1 *Held:* The appellate court affirmed the trial court's order for involuntary admission of the respondent.
- ¶ 2 In October 2012, respondent, Patrick S., was involuntarily admitted to McFarland Mental Health Center (McFarland). In December 2012, respondent's status at McFarland became that of a voluntary inpatient. On February 7, 2013, respondent requested to be discharged from McFarland. The next day, Kara Restagno, a licensed clinical social worker at McFarland, filed a petition for the involuntary admission of respondent pursuant to section 3-600 of the Mental Health and Developmental Disabilities Code (405 ILCS 5/3-600 (West 2012)). Following a March 1, 2013, hearing, the trial court granted the petition and ordered respondent to be involuntarily admitted for a term of 90 days.

¶ 3 Respondent appeals, arguing that we should reverse the trial court's order because (1) Restagno improperly filed—and the State improperly prosecuted—the petition under section 3-600 of the Code instead of section 3-403 of the Code (405 ILCS 5/3-403 (West 2012)) and (2) the court violated section 3-901(a) of the Code (405 ILCS 5/3-901(a) (West 2012)) by failing to direct notice of the hearing to respondent's sister, Candice Farley. Although we agree that the State and the court mishandled several aspects of this case, we conclude that those errors do not require reversal.

¶ 4 I. BACKGROUND

¶ 5 In October 2012, respondent moved from a nursing home facility to McFarland as an involuntary inpatient. In December 2012, respondent voluntarily remained at McFarland as an inpatient. On February 7, 2013, respondent submitted a written notice of his desire to be discharged from McFarland in accordance with section 3-403 of the Code.

¶ 6 On February 8, 2013, Restagno filed a petition seeking the involuntary admission of respondent. Restagno checked a box on the form petition that indicated she brought the petition pursuant to section 3-600 of the Code. Restagno alleged in the petition that respondent was a person with a mental illness who (1) because of his mental illness was reasonably expected, unless treated on an inpatient basis, to engage in conduct placing himself or another in physical harm or in reasonable expectation of physical harm; (2) because of his mental illness was unable to provide for his basic physical needs and guard himself from serious harm without the assistance of family or others, unless treated on an inpatient basis; (3) refused treatment or did not adequately adhere to prescribed treatment; (4) because of the nature of his mental illness was unable to understand his need for treatment; (5) if not treated on an inpatient basis was

reasonably expected, based on his behavioral history, to suffer mental or emotional deterioration; (6) was reasonably expected, after such deterioration, to meet the criteria of allegations 1 and 2 (above); and (7) was in need of immediate hospitalization for the prevention of such harm.

¶ 7 Restagno's petition listed Farley as respondent's "spouse, parent, guardian, or substitute decision maker." Restagno included Farley's address and telephone number in the petition.

¶ 8 Restagno attached to the petition (1) respondent's February 7, 2013, written request for discharge from McFarland; (2) a certificate of examination completed by licensed clinical social worker Valerie Bales; (3) a certificate of examination completed by psychiatrist Rachel Harlan Link; (4) respondent's individual treatment plan, which included descriptions of respondent's mental health issues and proposed goals for treatment; and (5) a "proof of service for involuntary admission," which indicated that respondent designated Farley to receive copies of the petition. Both Bales and Harlan Link indicated on their certificates that they examined respondent on February 8, 2013. Restagno certified that she mailed a copy of the petition to Farley.

¶ 9 On the same day that Restagno filed the petition, the trial court entered an order scheduling a hearing on the petition for February 15, 2013. The court's order did not direct the clerk to serve Farley with notice of the hearing. On February 15, on the State's motion, the court entered an order continuing the hearing to March 1, 2013. Again, the order did not direct the clerk to serve Farley with notice of the hearing

¶ 10 At the March 1, 2013, hearing, the trial court considered testimony from respondent and respondent's treating psychiatrist, Harlan Link, and accepted into evidence the

social investigation, psychiatric history, and treatment plan prepared by Restagno. Because respondent does not challenge the sufficiency of the evidence presented at the hearing, we decline to review the facts relating to respondent's mental illness. Suffice it to say, the evidence of respondent's severe mental illness and his need for involuntary inpatient admission was clear and convincing. Following the hearing, the court ordered respondent involuntarily hospitalized in a Department of Human Services mental health or development center for a period of 90 days.

¶ 11 This appeal followed.

¶ 12 II. ANALYSIS

¶ 13 Respondent argues that we should reverse the trial court's order because (1) Restagno improperly filed the petition under section 3-600 of the Code instead of section 3-403 of the Code and (2) the court violated section 3-901(a) of the Code by failing to direct notice of the hearing to Farley.

¶ 14 A. Mootness

¶ 15 Because the trial court's order expired by its own terms in June 2013, this appeal is moot. Respondent argues that we should reach the merits of the appeal because the capable-of-repetition-yet-evading-review exception (see *In re Alfred H.H.*, 233 Ill. 2d 345, 358, 910 N.E.2d 74, 82 (2009)) and the public interest exception (see *Id.* at 355-56, 910 N.E.2d at 80) to the mootness doctrine apply. The State concedes that the public interest exception applies. We accept the State's concession and address respondent's arguments in turn.

¶ 16 B. Standard of Review

¶ 17 Because the facts are not disputed and the only issue is whether the proceedings conformed to the procedural requirements of the Code, our review is *de novo*. *In re Alaka W.*,

379 Ill. App. 3d 251, 259, 884 N.E.2d 241, 247 (2008).

¶ 18 C. Restagno's Failure To Cite the Proper Provision of the Code  
Was Harmless

¶ 19 Respondent argues that the trial court's involuntary admission order requires reversal because Restagno indicated that she brought her petition under section 3-600 of the Code instead of section 3-403 of the Code. Although we agree that Restagno should have brought the petition under section 3-403 of the Code, we conclude that this error does not require reversal.

¶ 20 Section 3-403 of the Code provides as follows:

"A voluntary recipient shall be allowed to be discharged from the facility at the earliest appropriate time, not to exceed 5 days, excluding Saturdays, Sundays and holidays, after he gives any treatment staff person written notice of his desire to be discharged unless he either withdraws the notice in writing or unless within the 5 day period a petition and 2 certificates conforming to the requirements of paragraph (b) of Section 3-601 and Section 3-602 are filed with the court. Upon receipt of the petition, the court shall order a hearing to be held within 5 days, excluding Saturdays, Sundays and holidays, and to be conducted pursuant to Article IX of this Chapter. Hospitalization of the recipient may continue pending further order of the court." 405 ILCS 5/3-403 (West 2012).

Because respondent was a voluntary recipient of inpatient care who submitted a written request for discharge, Restagno should have brought her petition under section 3-403. Although the form petition that Restagno filed contained a check box for this option, Restagno checked the box that indicated she brought the petition under section 3-600 of the Code.

¶ 21 Despite Restagno's failure to check the appropriate box on the petition, the petition and hearing otherwise conformed to the procedural requirements applicable to proceedings under section 3-403 of the Code. Section 3-403 of the Code requires the facility to discharge a voluntary inpatient within five days of the receipt of his written request for discharge unless the court receives a petition and two certificates conforming to the requirements of paragraph (b) of section 3-601 of the Code (405 ILCS 5/3-601(b) (West 2012)) and section 3-602 of the Code (405 ILCS 5/3-602 (West 2012)). Restagno's petition conformed to section 3-601(b) of the Code and Bales' and Harlan Link's certificates conformed to section 3-602 of the Code.

¶ 22 Section 3-403 further provides that the hearing be conducted pursuant to article IX of chapter 3 of the Code (405 ILCS 5/3-900 *et seq.* (West 2012)). Section 3-901(b) of the Code requires the trial court to make the following determination at a hearing conducted pursuant to section 3-403 of the Code:

"The court shall determine whether the recipient is: (i) subject to involuntary admission on an inpatient basis; (ii) subject to involuntary admission on an outpatient basis; or (iii) not subject to involuntary admission on either an inpatient or outpatient basis. If the court finds that the recipient is not subject to involuntary admission on an inpatient or outpatient basis, the court shall enter

an order so finding and discharging the recipient." 405 ILCS 5/3-901(b) (West 2012).

As with proceedings for involuntary admission under section 3-600 of the Code, the court may order involuntary admission under section 3-403 of the Code only if it finds by clear and convincing evidence that the respondent is subject to such involuntary admission. 405 ILCS 5/3-808 (West 2012). In this case, the court found by clear and convincing evidence that respondent was subject to involuntary admission on an inpatient basis.

¶ 23 Had Restagno filed a petition for involuntary admission under section 3-403, the trial court would have been empowered to enter the same order, based on the same factual findings, under the same standard of proof. For this reason, we conclude that Restagno's failure to indicate the proper section of the Code under which she brought her petition does not require reversal of the court's order. We note that although the court did not hold a hearing on Restagno's petition within five days of receipt of the petition, as section 3-403 of the Code requires, the record reveals no objection to the State's motion for a continuance, and respondent does not challenge the timeliness of the hearing on appeal.

¶ 24 D. The Trial Court's Failure To Direct Notice of the Hearing To Farley Does Not Require Reversal

¶ 25 The State concedes that the trial court should have directed notice of the hearing to Farley because respondent designated her to receive such notice. See 405 ILCS 5/3-901(a) (West 2012). The State argues, however, that the court's failure to provide notice to Farley does not require reversal. We agree.

¶ 26 In *In re Todd K.*, 371 Ill. App. 3d 539, 541-42, 867 N.E.2d 1104, 1107 (2007),

this court held that the trial court's failure to notify the respondent's guardian of the involuntary admission hearing did not require reversal of the court's order. In that case, the respondent's guardian received a copy of the petition but did not receive notice of the time and place of the hearing. *Id.* We held that the guardian's absence from the hearing did not prejudice the respondent because the "respondent's guardian was aware of the situation as he received a copy of the petition and was contacted for the treatment plan." *Id.* at 541, 867 N.E.2d at 1107.

Because the guardian was aware of the proceeding, "he had the chance to assist the respondent, and the failure to formally notify him of the time and date of the hearing was harmless." *Id.* at 542, 867 N.E.2d at 1107. We reach the same conclusion in this case.

¶ 27 The record reflects that Farley lives in Schaumburg, Illinois. She has provided information relating to respondent's mental health history to his treatment providers on multiple occasions. The psychiatric investigation report states that Farley "MAY have power of attorney." (Emphasis in original.) Respondent's individual treatment plan, attached to Restagno's petition, states, "Guardian would like for [respondent] to return to the Chicago[-]land area, but with his dx [(diagnosis)] of TBI [(traumatic brain injury)] and MI [(mental illness)], finding placement at a LTC [(long term care facility)] is limited."

¶ 28 The record also reflects that respondent has a history of traumatic brain injury, stroke, seizure disorder, bipolar disorder, schizophrenia, and a myriad of serious physical ailments. He has been institutionalized for most of the past 30 years and has been unable to spend time outside of a hospital due to his aggressive and occasionally violent behavior. The evidence in the case leaves no doubt that placement with Farley is not a viable option for respondent, nor would her presence at the hearing have affected the trial court's judgment as to

respondent's need for involuntary admission.

¶ 29 Given the overwhelming evidence of respondent's mental illness and his need for intensive inpatient commitment and treatment, we conclude that Farley's absence from the hearing did not prejudice respondent. See *In re Nau* 153 Ill. 2d 406, 419, 607 N.E.2d 134, 140 (1992) (reversal of a commitment order is not warranted based upon a procedural defect if the defect was harmless, as the purpose of the statute was met). Accordingly, the trial court's failure to notify Farley of the hearing does not require reversal of the involuntary admission order.

¶ 30 As a final matter, although we conclude that the procedural irregularities in this case do not require reversal, we reiterate that "[a] total disregard for the requisite procedures should not be condoned." *In re Joseph P.*, 406 Ill. App. 3d 341, 351, 943 N.E.2d 715, 724 (2010). As we said in *Joseph P.*, "[t]his is another in a series of mental-health cases from Sangamon County where procedural deficiencies permeate the record." *Id.* As we did in that case, we once again point to the special concurrence in *In re Dorothy J.N.*, 373 Ill. App. 3d 332, 338-39, 869 N.E.2d 413, 417-19 (2007) (Steigmann, P.J., specially concurring). See generally *In re Andrew B.*, 237 Ill. 2d 340, 354-55, 930 N.E.2d 934, 942-43 (2010) (citing Presiding Justice Steigmann's special concurrence and collecting other cases). We again urge the Sangamon County State's Attorney, the public defender, and the Guardianship and Advocacy Commission to work collaboratively to provide training, develop a flowchart, and improve the process. See *Joseph P.*, 406 Ill. App. 3d at 352, 943 N.E.2d at 724. The General Assembly has set forth the procedural requirements of the Code with sufficient detail and clarity. Given the fundamental liberty interests at stake in involuntary admission proceedings, everyone involved should exercise the utmost care to ensure compliance with the statutorily mandated procedures.

III. CONCLUSION

¶ 31

¶ 32 For the foregoing reasons, we affirm the trial court's involuntary commitment order.

¶ 33 Affirmed.