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2014 IL App (3d) 130750-U

Order filed August 19, 2014

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IN THE  
APPELLATE COURT OF ILLINOIS  
THIRD DISTRICT

A.D., 2014

<i>In re</i> MARY M., a Person Found Subject to Involuntary Treatment	)	Appeal from the Circuit Court
	)	of the 21st Judicial Circuit
	)	Kankakee County, Illinois
(The People of the State of Illinois,	)	
	)	
Petitioner-Appellee,	)	Appeal No. 3-13-0750
	)	Circuit No. 13-MH-42
v.	)	
	)	
Mary M.,	)	Honorable
	)	Ronald J. Gerts,
Respondent-Appellant).	)	Judge, Presiding.

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PRESIDING JUSTICE LYTTON delivered the judgment of the court.  
Justices Carter and McDade concurred in the judgment.

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**ORDER**

¶ 1 *Held:* (1) Order granting petition for 90-day involuntary administration of medication reviewable under the capable-of-repetition-yet-avoiding-review exception to the mootness doctrine where respondent had a long history of mental health issues and many prior hospitalizations. (2) Trial court's order allowing psychiatrist to involuntarily administer medication to respondent must be reversed where respondent was not given written notice of the side effects, risks, and benefits of the treatment, as required by Mental Health Code.

¶ 2 Respondent Mary M.'s psychiatrist filed a petition for the involuntary administration of psychotropic medication, alleging that respondent lacked the capacity to make a reasoned

decision about her treatment. The trial court granted the petition and entered an order allowing the involuntary administration of medication to respondent. We reverse.

¶ 3 On July 23, 2013, respondent Mary M. was admitted to Riverside Hospital to be treated for mental illness. On August 7, 2013, respondent's treating psychiatrist, Dr. Shital Mehta, filed a petition for administration of psychotropic medications. The petition alleged that respondent suffers from "schizophrenia, paranoid type" and "lacks capacity to give informed consent to \*\*\* psychotropic medication." The petition requested that Dr. Mehta be allowed to administer psychotropic medication to respondent, including Haldol as a first choice and seven other medications as treatment alternatives.

¶ 4 At the hearing on the petition, Dr. Mehta testified that respondent was at Riverside Hospital on a "police hold" after threatening several people, including police officers and a judge. Dr. Mehta was treating respondent for schizophrenia, paranoid type, with acute exacerbation. According to Dr. Mehta, respondent had a "fairly extensive [mental health] history," including at least 20 admissions for mental health treatment.

¶ 5 Dr. Mehta developed a treatment plan for respondent that included psychotropic medication. Dr. Mehta recommended that respondent be given one or more of the following medications: Haldol Decanoate, Abilify, Risperdal, Seroquel, Zyprexa, Fanapt, and/or Latuda. Respondent took some medication, including Abilify, when she was initially admitted to Riverside Hospital but consistently refused to take Haldol. After about a week, respondent stopped taking any medication and became "angry and very volatile."

¶ 6 Dr. Mehta testified that respondent's capacity to make a reasoned decision about her treatment "fluctuates." Some days she has that ability, but other days, "when she doesn't take her medication, she deteriorates to such an extent that she does not have the capacity." Dr. Mehta never discussed with respondent the side effects of Haldol.

¶ 7 Respondent testified that she was arrested in July 2013, after she drove away from a police officer who stopped her for driving without a license plate. She was first taken to jail and then to Riverside Hospital. She does not want to take any of the medications that Dr. Mehta prescribed to her. She has taken some of the medications in the past and experienced side effects from them. She has been hospitalized for mental health issues before.

¶ 8 The trial court granted Dr. Mehta's petition and entered an order allowing Dr. Mehta to administer the following medications to respondent:

"Haldol Depot shot	50-200 mg
Resperdal Constra	25-50 mg
Resperdal P.O.	2-8 mg
Seroquel P.O.	100-800 mg
Zyprexa P.O.	10-30 mg
Abilify P.O.	5-30 mg
Fanapt	12-24 mg
Latuda	80-160 mg"

The order was entered on August 13, 2013, and was to remain in effect for 90 days. Respondent filed a motion to reconsider, which the trial court denied.

¶ 9 I. Mootness

¶ 10 Initially, we recognize that this case is moot because the trial court's 90-day order has expired. Generally, Illinois courts do not address moot questions. *In re Alfred H.H.*, 233 Ill. 2d 345, 351 (2009). However, there are three exceptions to the mootness doctrine: (1) the public interest exception, (2) the capable-of-repetition-yet-avoiding-review exception, and (3) the collateral-consequences exception. *Id.* at 355-61. Whether an exception to the mootness doctrine applies is a question of law that we review *de novo*. *Id.* at 350.

¶ 11 Respondent contends that the capable-of-repetition-yet-avoiding-review exception applies. 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, ¶ 14.

¶ 12 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. The second element is met because respondent's claims are capable of repetition in a future proceeding for involuntary treatment given her extensive mental health history, which includes many prior hospitalizations. See *id.* at ¶ 16. Thus, we will consider the merits of respondent's appeal.

¶ 13 II. Written Notice

¶ 14 Psychotropic medications may not be administered to a recipient of mental health services against her will until it has been established by clear and convincing evidence that "[t]he recipient lacks the capacity to make a reasoned decision about the medication." 405 ILCS 5/2-107.1(a)(4)(E) (West 2012). Before a respondent can make a "reasoned decision" about treatment, the respondent must be advised "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). Strict compliance with the notice procedures set forth in section 2-102(a-5) of the Mental Health Code (Code) is necessary "to secure the liberty interest that a respondent has in refusing invasive medication." *In re Katarzyna G.*, 2013 IL App (2d) 120807, ¶ 16.

¶ 15 If a respondent is not given the notice required by section 2-102(a-5), the State cannot establish that a respondent lacks the capacity to make a reasoned decision about treatment. *Id.*, ¶

17. Where the State fails to present evidence that the respondent received the required written notification, the trial court's order authorizing involuntary treatment must be reversed. See *In re David M.*, 2013 IL App (4th) 121004, ¶ 38; *In re Bobby F.*, 2012 IL App (5th) 110214, ¶ 21; *In re Laura H.*, 404 Ill. App. 3d 286, 291 (2010); *In re Alaka W.*, 379 Ill. App. 3d 251, 265 (2008).

¶ 16 Here, the State concedes that respondent was not provided with written notice of the potential side effects, risks and benefits of the proposed medication, as well as alternatives to the proposed treatment, as required by section 2-102(a-5) of the Code. 405 ILCS 5/2-102(a-5) (West 2012). Thus, we reverse the court's order.

¶ 17 The judgment of the circuit court of Kankakee County is reversed.

¶ 18 Reversed.