2015 IL App (2d) 130898-U
No. 2-13-0898
Order filed January 26, 2015

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

In re JANE A. G., Alleged to be a Person Subject to Involuntary Treatment.	)	Appeal from the Circuit Court of Kane County.
	)	No. 13-MH-120
(The People of the State of Illinois, Petitioner- Appellee v. Jane A. G., Respondent-Appellant).	)	Honorable Alice C. Tracy, Judge, Presiding.

JUSTICE BIRKETT delivered the judgment of the court.
Justices Hutchinson and Zenoff concurred in the judgment.

ORDER

¶ 1 *Held*: While moot, the respondent's claims could be addressed on appeal under the collateral-consequences exception to the mootness doctrine. Substantively, the doctor's testimony fulfilled the purpose of the statute requiring a written report including, pertinently, a social investigation and an assessment of the appropriateness and availability of alternative treatment settings.

¶ 2 Respondent, Jane A. G., appeals the judgment of the circuit court of Kane County, ordering her involuntary commitment to the Presence Mercy Medical Center (Presence Mercy). Respondent argues that the involuntary commitment process did not comply with statutory requirements, namely, the written report requirement of section 3-810 of the Mental Health Code (Code) (405 ILCS 5/3-810 (West 2012)), concerning the social investigation and the discussion of the appropriateness and availability of alternative treatment settings. We affirm.

¶ 3 I. BACKGROUND

¶ 4 We summarize the pertinent facts appearing of record. At some time before July 17, 2013, respondent's mother passed away. Respondent was living with her mother's boyfriend, and he appears to be her only connection with the community who might help respondent. On July 17, 2013, respondent voluntarily admitted herself to Presence Mercy. On July 31, 2013, respondent requested her discharge. A petition for respondent's involuntary admission was filed by her case manager alleging that respondent was mentally ill and unable to provide for her basic physical needs, that respondent was reasonably expected to inflict serious physical harm to herself or another, and that respondent was refusing treatment or not adequately adhering to treatment. At the August 6, 2013, hearing on the petition, the initial allegation that respondent was refusing treatment or not adequately adhering to treatment was stricken.

¶ 5 Dr. George Kalayil testified as the State's expert at the hearing on the petition for respondent's involuntary admission. Dr. Kalayil testified that, on August 4th, 2013, after three previously failed attempts, he interviewed respondent.

¶ 6 Dr. Kalayil described respondent as delusional, very agitated, and disorganized with her thoughts. Dr. Kalayil determined that respondent was experiencing paranoid delusions. As examples of her delusional thinking, Dr. Kalayil related that, during the interview, respondent stated the she believed that her mother's boyfriend was drugging her with medications; she also claimed to be in communication with California about messages of love. Additionally, respondent believed that Dr. Kalayil was engaged in an affair with the other psychiatrists, and she repeatedly stated that, daily, she needed six to seven flavored aspirin tablets to improve her mind.

¶ 7 Dr. Kalayil testified that respondent would typically stay in her room during most of the

day, and when she did interact with other patients, she acted inappropriately and antagonized them. Dr. Kalayil further testified that respondent would yell and scream at patients and staff. On August 1, 2013, respondent engaged in a physical altercation with staff, after which she was given medication to calm her.

¶ 8 Dr. Kalayil testified that he reviewed respondent's medical charts and discussed respondent with staff members, and he diagnosed respondent with paranoid schizophrenia. Dr. Kalayil opined that, unless respondent was treated on an inpatient basis, respondent would be reasonably expected to harm herself or others. Dr. Kalayil further opined that, unless respondent was treated on an inpatient basis, she would be unable to provide for her basic physical needs. Supporting this opinion, Dr. Kalayil testified that respondent was not taking care of her hygiene and had to be told to shower. Dr. Kalayil noted that respondent had no support in the community and would most likely be homeless if discharged, because the only person she could live with was her mother's boyfriend, whom respondent disliked and did not want to live with. Finally, Dr. Kalayil opined that, due to respondent's failure to acknowledge her mental illness and need for medication, respondent would likely be unable to obtain food or to recognize if she were seriously injured or needed medical care. In Dr. Kalayil's opinion, Presence Mercy was the least restrictive environment for respondent, because in any alternative environment, such as a group home or halfway house, she would likely pose a threat to her own and others' safety.

¶ 9 Dr. Kalayil testified that a treatment plan, consisting of medication, therapy, and daily education about mental illness, was developed to address respondent's condition. Dr. Kalayil testified that it could take up to three months to attain the treatment goals set out in the plan.

¶ 10 The trial court held that the State proved, by clear and convincing evidence, that respondent was reasonably expected to harm or to threaten to harm herself or others. The trial

court also held that the State proved, by clear and convincing evidence, that respondent would be unable to provide for her basic physical needs so as to guard herself from serious harm without the assistance of others unless treated on an inpatient basis. On August 6, 2013, the trial court ordered that respondent be involuntarily committed to Presence Mercy for treatment of her condition for a period of 90 days. Respondent timely appeals.

¶ 11 II. ANALYSIS

¶ 12 On appeal, respondent argues that, despite the clear requirement of section 3-810 of the Code (405 ILCS 5/3-810 (West 2012)), the State failed to produce a written report that included a social investigation and information about the appropriateness and availability of alternative treatment settings. Respondent concedes that her claim is moot, but argues that we may consider it under various exceptions to the mootness doctrine. Accordingly, we turn first to a consideration of the mootness doctrine and its applicability to this case, and then we will consider in turn the substantive issue raised by respondent as necessary.

¶ 13 A. Mootness and Exceptions

¶ 14 Initially, we note that this case is moot, because the August 6, 2013, order involuntarily committing respondent expired by its own terms no later than November 4, 2013. See *In re Alfred H.H.*, 233 Ill. 2d 345, 350 (2009). Generally, we will not decide moot questions, give an advisory opinion, or consider an issue where the outcome will not or cannot be affected no matter what is decided. *Id.* at 351. There are, however, three exceptions to mootness that are invoked in cases involving involuntary commitment that are commonly used to secure a reviewing court's consideration of the substantive issues raised. *Id*. The questions presented when considering whether an exception to mootness applies are purely legal and we review legal issues *de novo*. *Id.* at 350. The three exceptions are the public-interest exception (*id.* at 355), the

capable-of-repetition-yet-avoiding-review exception (*id.* at 358), and the collateral-consequences exception (*id.* at 361).

¶ 15 The public-interest exception allows a court to consider an otherwise moot case when: "(1) the question presented is of a public nature; (2) an authoritative determination of the question is desirable for the future guidance of public officers; and (3) the question is likely to recur." *In re Shelby R.*, 2013 IL 114994, ¶ 16. Under the capable-of-repetition exception: (1) the challenged action must be of a duration too short to be fully litigated prior to its cessation; and (2) there must be 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). Finally, the collateral-consequences exception allows for appellate review, even though a court order or incarceration has ceased, because a plaintiff has " 'suffered, or [is] threatened with, an actual injury traceable to the defendant and likely to be redressed by a favorable judicial decision.' " *Alfred H.H.*, 233 Ill. 2d at 361 (quoting *Spencer v. Kemna*, 523 U.S. 1, 7 (1998)). The collateral-consequences exception applies where "the stigma of an involuntary admission may confront respondent in the future." *Alfred H.H.*, 233 Ill. 2d at 362 (quoting *In re Splett*, 143 Ill. 2d 225, 228 (1991)). Respondent argues that we may consider her appeal under either the capable-of-repetition exception or the collateral-consequences exception. The State agrees with respondent that this appeal should be reviewed, but only under the collateral-consequences exception.

¶ 16 Even though the State concedes that the collateral-consequences exception applies here, we are not bound by a party's concession. *People v. Horrell*, 235 Ill. 2d 235, 241 (2009) (citing *Beacham v. Walker*, 231 Ill. 2d 51, 60 (2008)). Accordingly, we consider respondent's arguments concerning the collateral-consequences exception.

¶ 17 Respondent contends that the collateral-consequences exception applies because the instant action could adversely affect her life, such as by influencing employment or licensure decisions, and because there is no evidence in the record that she had previously been subject to an involuntary admission. In support, she cites *Alfred H.H.* for the proposition that the collateral-consequences exception applies when an involuntary admission adjudication could adversely affect other aspects of a respondent's life such as obtaining employment or a professional license. *Alfred H.H.*, 233 Ill. 2d at 362. Respondent also cites *In re Joseph P.*, 406 Ill. App. 3d 341, 346 (2010), for the proposition that the exception is applicable to a first-time involuntary-commitment order. *Joseph P.*, however, is no longer good law on that particular point.

¶ 18 In *In re Rita P.*, 2014 IL 115798, our supreme court expressly overruled *Joseph P.*, among others, stating:

> "Despite our clear statements in *Alfred H.H.* that application of the collateral consequences exception is decided on a case-by-case basis, even in cases arising under the Mental Health Code, some appellate court opinions have adopted the view that a first involuntary admission order or, as in this case, a first involuntary treatment order, is automatically reviewable under the collateral consequences exception. [Citations.]
>
> Application of the collateral consequences exception cannot rest upon the lone fact that no prior involuntary admission or treatment order was entered, or upon a vague, unsupported statement that collateral consequences might plague the respondent in the future. Rather, a reviewing court must consider all the relevant facts and legal issues raised in the appeal before deciding whether the exception applies. *Alfred H.H.*, 233 Ill. 2d at 364. Collateral consequences must be identified that 'could stem solely from the

present adjudication.' *Id.* at 363. Although *amicus curiae* argues that a first involuntary commitment or treatment order should always satisfy the collateral consequences exception, we adhere to our decision in *Alfred H.H.* and decline to adopt a blanket rule of appealability in such cases. Appellate court opinions that hold otherwise, including the opinion below, are overruled." *Id.* ¶¶ 33-34.

¶ 19 As the State's concession was based upon the fact that this was respondent's first involuntary commitment order, we reject it in light of our supreme court's admonition in *Rita P.* Nevertheless, respondent's argument that her involuntary commitment could result in future adverse consequences, such as obtaining employment or a professional license, satisfies the collateral-consequences exception as reiterated by *Rita P.* Specifically, as noted by our supreme court in *Alfred H.H.*:

"[T]here are a host of potential legal benefits to [the reversal of an involuntary commitment adjudication]. For instance, a reversal could provide a basis for a motion *in limine* that would prohibit any mention of the hospitalization during the course of another proceeding. Likewise, the reversal could affect the ability of a respondent to seek employment in certain fields." *Alfred H.H.*, 233 Ill. 2d at 362.

¶ 20 Accordingly, we hold that the collateral-consequences exception applies in this case. As a result of that determination, we need not address the other exceptions.

¶ 21 B. Compliance with Statutory Requirements

¶ 22 Turning to respondent's substantive issue, she argues that section 3-810 of the Code requires a written report and that the State did not strictly comply with the requirement, as there was no written report covering a social investigation or the appropriateness or availability of alternative treatment settings. The question of whether there has been substantial compliance

with a statutory provision is a question of law that is reviewed *de novo*. *In re Nicholas L.*, 407 Ill. App. 3d 1061, 1072 (2011). "The State is required to present clear and convincing evidence of compliance with [section 3-810]." *Id.* at 1072. Section 3-810 of the Code provides:

> "Before disposition is determined, the facility director or such other person as the court may direct shall prepare a written report including information on the appropriateness and availability of alternative treatment settings, a social investigation of the respondent, a preliminary treatment plan, and any other information which the court may order. The treatment plan shall describe the respondent's problems and needs, the treatment goals, the proposed treatment methods, and a projected timetable for their attainment. If the respondent is found subject to involuntary admission on an inpatient or outpatient basis, the court shall consider the report in determining an appropriate disposition." 405 ILCS 5/3-810 (West 2012).

¶ 23 The State argues that Dr. Kalayil's testimony at the hearing was sufficient to meet the "social investigation" and "the appropriateness and availability of alternative treatment settings" requirements of section 3-810. We agree.

¶ 24 In the absence of an objection from the respondent, oral testimony containing the information required by section 3-810 can be an adequate substitution for the predisposition report. *In re Lawrence S.*, 319 Ill. App. 3d 476, 484 (2001) (citing *In re Robinson*, 151 Ill. 2d 126, 134 (1992)).[1] Here, respondent did not object to the absence of a written predisposition

[1]We note that the trend, embodied in *Lawrence S.*, appears to be in favor of substantial compliance through testimony making up for any defects in the written report. We do not, however, definitively have to settle this question in all cases because respondent did not object.

report; therefore, we must determine whether the oral testimony and other evidence were adequate substitutes. See *In re Robert H.*, 302 Ill. App. 3d 980, 988 (1999).

¶ 25 Section 3-810 calls for specific information, including information on the appropriateness and availability of alternative treatment settings, a social investigation of the respondent, and a preliminary treatment plan describing the respondent's problems and needs, the treatment goals, and the proposed treatment methods, and a projected timetable for their attainment. 405 ILCS 5/3-810 (West 2012). "The State satisfies the requirements of section 3-810 absent a formal written report only when the testimony provides the specific information required by the language of the statute." *In re Alaka W.*, 379 Ill. App. 3d 251, 270 (3d Dist. 2008). We conclude that the evidence presented at the hearing was an adequate substitute for a written predispositional report and that the statute's purpose was met.

¶ 26 A review of Dr. Kalayil's testimony demonstrates that the requirements of section 3-810 were met. On August 4, 2013, after three failed attempts, Dr. Kalayil performed an evaluation of respondent. Dr. Kalayil learned that respondent's mother passed away recently, and that respondent voluntarily admitted herself to Presence Mercy. Respondent would stay in her room for the most of the day, she had extreme difficulty in behaving herself, she would physically hit staff members, and she routinely yelled at other patients and staff. Respondent made delusional statements about sending and receiving messages about love to California, and that she needed orange- or cherry-flavored aspirin to improve her mind. Respondent also believed that Dr. Kalayil was having an affair with the other psychiatrists.

¶ 27 Dr. Kalayil opined that, due to respondent's level of paranoia, he believed that she would likely harm herself or others if she did not receive inpatient treatment at the hospital. In support of this opinion, Dr. Kalayil testified that respondent was not taking care of her hygiene, and that

she would not be able to obtain food, to manage money, or to recognize if she needed medical assistance. Last, Dr. Kalayil opined that it was likely that respondent would be homeless if she were discharged, as she had no support in the community. In fact, according to Dr. Kalayil, respondent's only possible community placement was with her deceased mother's boyfriend, but respondent vehemently opposed living with him because she believed he was drugging her. Dr. Kalayil's testimony demonstrated clearly that the hospital was the most appropriate place for her, and that no other alternative treatment settings were available at the time due to the likelihood respondent would harm herself or others and her history of verbally and physically confronting staff and the other patients.

¶ 28 Based on the foregoing review of Dr. Kalayil's testimony, we hold that it satisfied the requirements of section 3-810. Dr. Kalayil's testimony covered respondent's history, her community contacts, the degree to which her mental illness threatened her own and others' safety, and it fulfilled the statute's requirement of providing the trial court with sufficient information from which to make a reasoned decision. Accordingly, we also hold that the State substantially complied with section 3-810, because the testimony at the hearing provided the information that section 3-810 required to be included in a written predispositional report.

¶ 29 III. CONCLUSION

¶ 30 For the foregoing reasons, the judgment of the circuit court of Kane County is affirmed.

¶ 31 Affirmed.