2015 IL App (5th) 120383-U

NO. 5-12-0383

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT



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| *In re* ROBIN V.Q., a Person Found Subject to Involuntary Admission | ) | Appeal from the Circuit Court of Madison County. |
| (The People of the State of Illinois, | ) | |
| Petitioner-Appellee, | ) | |
| v. | ) | No. 12-MH-95 |
| Robin V.Q., | ) | Honorable Stephen A. Stobbs, |
| Respondent-Appellant). | ) | Judge, presiding. |

JUSTICE SCHWARM delivered the judgment of the court.
Presiding Justice Cates and Justice Moore concurred in the judgment.

**ORDER**

¶ 1 *Held*: The circuit court's grant of the petition for involuntary admission is affirmed because the respondent did not show whether a private person or a government official failed to comply with section 3-606 of the Mental Health Code (405 ILCS 5/3-606 (West 2012)).

¶ 2 The respondent, Robin V.Q., appeals from the decision of the circuit court granting a petition for involuntary admission to Alton Mental Health Center. The respondent chiefly argues that the petition was defective because it failed to disclose the name, badge number, and employer of the transporting police officer as required by

section 3-606 of the Mental Health and Developmental Disabilities Code (the Mental Health Code) (405 ILCS 5/3-606 (West 2012)). For the reasons that follow, we affirm the judgment of the circuit court.

¶ 3 BACKGROUND

¶ 4 Sometime prior to July 27, 2012, the respondent confronted a MetroLink bus driver and attempted to steal the bus. The police were called, at which point the respondent fled into a field. The police apprehended the respondent and took him to St. Elizabeth's Hospital in Belleville, Illinois, for psychiatric evaluation. On July 27, 2012, the respondent was transferred to Alton Mental Health Center, located at 4500 College Avenue in Alton, Illinois.

¶ 5 On July 30, 2012, John Boss filed a petition for involuntary admission of the respondent to Alton Mental Health Center for further treatment and evaluation. On the petition, Boss stated that he is a "crisis intervention specialist." Boss also signed the petiton as "John Boss BA MHP." Boss listed his address as 12 N. 64th Street, Belleville, Illinois. Boss failed to fill out a portion of the petition that asked, "Did a peace officer detain respondent, take him or her into custody, and/or transport him or her to the mental health facility?" That section was further followed by clear directions to enter the officer's name, badge number, and employer if an officer had been involved. The petition was also witnessed by Mina Charepoo, M.D., who listed an address at 211 53rd Street, Belleville, Illinois.

¶ 6 The record contains two certificates by psychiatric professionals regarding the respondent's state of mind. The first certificate, prepared by Randy J. Jung, M.D., on

July 27, 2012, at St. Elizabeth's Hospital, noted that the respondent had been "refusing his medications" and was "very agitated, hostile, and delusional." The second certificate, prepared by Kanwal Mahmood, M.D., on July 30, 2012, at Alton Mental Health Center, noted the respondent's "history of psychiatric illness since 1979" and the respondent's "aggression-irritability, [inability] to take care of himself," and "behaviors endangering others." A notice prepared by Marla C. Harvey, RHA, H/M administrator, on July 30, 2012, noted that the respondent did not designate anyone to be notified of his involuntary commitment.

¶ 7 On August 7, 2012, the court held a hearing on the petition for involuntary admission. At the hearing, Sarah Brown Foiles, LCSW, the respondent's primary social worker at Alton Mental Health Center, testified that the police had apprehended the respondent and brought him to St. Elizabeth's Hospital for psychiatric evaluation. She testified that she was involved daily in the respondent's treatment. She testified that the respondent had been previously admitted for psychiatric evaluation at Alton Mental Health Center from December 1993 to January 1994. She further stated that the respondent had claimed he had been admitted for psychiatric evaluation to the VA hospital. Foiles stated that the respondent was "bipolar, manic type." She stated that when he came to Alton Mental Health Center, "he was invading staff's personal space, cursing, pointing, name calling, [making] racial slurs, [exhibiting] pressured speech, [was] difficult to re-direct, [was] disorganized, [and] didn't understand what led him to be admitted to Alton Mental Health Center." She also stated that the respondent had thrown

water pitchers at staff, slammed doors, and been generally irritable while at St. Elizabeth's Hospital.

¶ 8 Foiles described the treatment and medication provided to the respondent. She stated that he was receiving psychotropic medication at night and was prescribed 20 hours of "active treatment" to help him with anger management, coping skills, and other behavioral issues. Foiles testified that the respondent would be a threat to himself and to others if not committed. She testified that the respondent made a suicidal threat on August 1, 2012, and that he had made three suicide attempts in the past year and a half. She also believed his aggressiveness while hospitalized showed that he could be dangerous to others. Foiles had spoken with the respondent's landlord and learned that his apartment was subject to eviction proceedings. As such, the respondent could not return to the apartment at that time. She also prepared a report on August 6, 2012, regarding the respondent's mental health. Based on her observation, she recommended that the respondent continue to be hospitalized.

¶ 9 On cross-examination, Foiles stated that the respondent's behavior had improved during his hospitalization and that he was taking care of basic needs like eating, showering, and grooming. Further, she stated that the respondent received $1,800 a month and may be able to maintain an apartment if he continued to comply with his medication schedule. Foiles later stated, upon being recalled to the stand, that the respondent's landlord was seeking to work with the respondent to ensure that he could recover his personal property.

¶ 10 The respondent also testified at the August 7, 2012, hearing. Prior to testifying, the respondent frequently interjected during the proceedings. While testifying, he stated that he had not been taking his medication "because [his] medication is at home from the VA." However, the respondent admitted taking "the wrong medications" given by Alton Mental Health Center. He admitted he had received an eviction notice, but he claimed it was due to a fraudulent check written on his account. He claimed that he never threw a pitcher of water at St. Elizabeth's Hospital, though he had knocked a cup of coffee "off the door." He also admitted to striking another patient at Alton Mental Health Center on July 29, 2012, but he claimed he did so because he thought the other patient was "playing boxing." The respondent mentioned that he had "the disease," referring to his mental health issues, off and on since 1974. He stated that he did not want to hurt himself because he was "trying to be mayor of St. John's." He asked to be released in order to resolve his eviction issues and ensure he did not lose his personal property.

¶ 11 No one at the hearing discussed the fact that the petition failed to identify the officer or officers involved, nor were any motions filed prior to the hearing regarding this failure. On August 7, 2012, the circuit court entered an order committing the respondent for a period not to exceed 90 days. On August 28, 2012, the respondent was discharged from Alton Mental Health Center. On August 29, 2012, the respondent filed a notice of appeal.

¶ 12 ANALYSIS

¶ 13 Before addressing the merits of the appeal, we note that the respondent's commitment expired prior to his notice of appeal being filed. Thus, the respondent

concedes that the underlying case is moot. However, while appeals of mental health cases are evaluated on a case-by-case basis, "a specific appeal of a mental health case will usually fall within one of the established exceptions to the mootness doctrine." *In re Alfred H.H.*, 233 Ill. 2d 345, 355 (2009). The respondent argues that the "public interest" exception and the "capable of repetition yet avoiding review" exception apply in this case. The State concedes that the "capable of repetition" exception applies and further acknowledges that the "public interest" exception may apply. Because we cannot review this case unless an exception to the mootness doctrine applies, we consider both exceptions.

¶ 14 "The public interest exception allows a court to consider an otherwise moot case when (1) the question presented is of a public nature; (2) there is a need for an authoritative determination for the future guidance of public officers; and (3) there is a likelihood of future recurrence of the question." *In re Alfred H.H.*, 233 Ill. 2d at 355. This exception is " 'narrowly construed and requires a clear showing of each criterion.' " *Id*. at 355-56 (quoting *In re Marriage of Peters-Farrell*, 216 Ill. 2d 287, 292 (2005)). The capable-of-repetition exception "has two elements. First, the challenged action must be of a duration too short to be fully litigated prior to its cessation. Second, there must be a reasonable expectation that 'the same complaining party would be subjected to the same action again.' " *Id*. at 358 (quoting *In re Barbara H.*, 183 Ill. 2d 482, 491 (1998)).

¶ 15 We find that both the public interest and the capable-of-repetition exceptions to the mootness doctrine apply. First, the respondent's claim will depend upon whether the requirements of section 3-606 of the Mental Health Code are mandatory or directory.

This issue has not been considered in light of recent Illinois Supreme Court precedent and will impact how public officials and private citizens must handle future involuntary commitments. Thus, all three elements of the public interest exception are satisfied. Secondly, the 90-day statutory limit on involuntary commitments makes it impossible for an action challenging the grant of a petition to be challenged before the petition expires. See *In re Vanessa K.*, 2011 IL App (3d) 100545, ¶ 16. Further, it is possible that the respondent could be subject to another involuntary commitment in the future, especially because the respondent has had several hospitalizations and has a long history of mental illness. See *In re Steven T.*, 2014 IL App (5th) 130328, ¶ 10. Thus, both elements of the capable-of-repetition exception are satisfied. Because both exceptions to the mootness doctrine apply, we may review the respondent's claim.

¶ 16 Under section 3-606 of the Mental Health Code, a police officer may take a person into custody and transport him or her to a mental health facility "when the peace officer has reasonable grounds to believe that the person is subject to involuntary admission on an inpatient basis and in need of immediate hospitalization to protect such person or others from physical harm." 405 ILCS 5/3-606 (West 2012). "Upon arrival at the facility, the peace officer may complete the petition under Section 3-601." *Id*. "If the petition is not completed by the peace officer transporting the person, the transporting officer's name, badge number, and employer shall be included in the petition as a potential witness as provided in Section 3-601 of [the Mental Health Code]." *Id*. Section 3-606 allows both government officials and private persons to prepare the petition in place of a police officer. Here, it is undisputed that the police officer who transported the

respondent did not complete the petition. Further, Boss, the crisis intervention specialist who prepared the petition, left blank the section which would have included the officer's name, badge number, and employer.

¶ 17 Despite this error, the respondent did not raise this issue until after the circuit court had ruled on the petition for involuntary admission. The State therefore argues that the respondent has waived this issue on appeal. See *In re Nau*, 153 Ill. 2d 406 (1992). "However, under the plain error doctrine, this court may address a waived issue if the evidence is closely balanced or the error affects substantial rights." *In re Frances K.*, 322 Ill. App. 3d 203, 208 (2001). Because "[f]undamental liberty interests are involved in the involuntary administration of medication for mental health purposes *** we will consider this issue on the merits." *Id.* "[I]n mental health cases, strict compliance with the Code is compelling because liberty interests are involved." *In re James S.*, 388 Ill. App. 3d 1102, 1107 (2009). Thus, " '[n]oncompliance with statutory provisions of the Code renders a judgment entered under such circumstances erroneous and of no effect.' " *Id.* (quoting *In re Frances K.*, 322 Ill. App. 3d at 208). "Because this issue involves the interpretation of a statute, which is a question of law, the standard of review is *de novo*." *In re John N.*, 364 Ill. App. 3d 996, 998 (2006).

¶ 18 While courts have consistently reversed decisions due to a failure to comply with section 3-606 of the Mental Health Code, none of the previous cases on this issue have been directly analogous to the respondent's case. In *In re Joseph P.*, 406 Ill. App. 3d 341 (2010), *overruled on other grounds by In re Rita P.*, 2014 IL 115798, ¶¶ 33-34, the appellate court reviewed a failure to comply with section 3-606 under the plain error

doctrine and ultimately reversed. *Id.* at 348. However, the case had numerous procedural issues, and the court held that "the totality of the procedural irregularities in this case," and not any individual issue, "require[d] reversal." *Id.* at 351. In *In re John N.*, 364 Ill. App. 3d 996 (2006), the State confessed error in its failure to comply with section 3-606, and the court thus reversed the circuit court's order. *Id.* In *In re Demir*, 322 Ill. App. 3d 989 (2001), the respondent brought a motion to dismiss the petition based upon the State's failure to comply with section 3-606, and the appellate court found reversible error when the circuit court denied this motion. *Id.* In none of these cases did a respondent seek a plain-error review on the sole issue of failure to comply with section 3-606 after having failed to raise the issue before the circuit court. Thus, while these cases show that failure to comply with section 3-606 is reversible error under other circumstances, they do not necessarily clarify whether such a failure is reversible error in the respondent's case.

¶ 19 As noted earlier, section 3-606 permits both government officials and private persons to prepare the petition for involuntary admission if a peace officer does not prepare the petition. In a recent case, the Supreme Court of Illinois has clarified the standard for determining whether or not a governmental official's failure to follow the statutory instructions of the Mental Health Code is reversible error. In that case, the court explained that "the law presumes that statutory language issuing a procedural command to a governmental official is directory rather than mandatory, meaning that the failure to comply with a particular procedural step will not have the effect of invalidating the governmental action to which the procedural requirement relates." *In re James W.*, 2014

IL 114483, ¶ 35. However, the Supreme Court of Illinois further explained that two conditions can overcome that presumption: "(1) when there is negative language prohibiting further action in the case of noncompliance or (2) when the right the provision is designed to protect would generally be injured under a directory reading." *Id.* Here, both parties agree that the first condition is inapplicable. Thus, both parties agree that the issue we must determine is whether the right that section 3-606 is designed to protect would generally be injured under a directory reading.

¶ 20 However, we must first determine whether the petition to involuntarily admit the respondent was prepared by a government official or by a private person. The standard used by the Supreme Court of Illinois in *In re James W.* to determine whether or not a failure to follow instructions is reversible error only applies to "statutory language issuing a procedural command to a *governmental official*." (Emphasis added.) *In re James W.*, 2014 IL 114483, ¶ 35. This court has not found a standard to be used in similar situations where a private citizen has failed to follow instructions in the Mental Health Code. Thus, if the petition were prepared by a private person, we would need to decide what standard to apply.

¶ 21 Upon reviewing the record and without additional information, we cannot determine whether the individuals involved in preparing the petition were government officials or private persons. Based upon his brief, it appears the respondent believes that a person involved in the preparation of the petition is responsible for the failure to comply with section 3-606. The petition for involuntary admission was prepared by John Boss, a crisis intervention specialist who signed as "John Boss BA MHP." Boss did not

prepare the portion of the petition asking for the police officer's name, badge number, and employer. The petition was also witnessed by Mina Charepoo, M.D. Both Boss and Dr. Charepoo list street addresses that differ from that of Alton Mental Health Center. Further, neither Boss nor Dr. Charepoo state whether they are employed by the government or contracted with the government to act on behalf of the government in an official capacity. Thus, while Boss and Dr. Charepoo did not comply with section 3-606, the record does not show that either was acting as a government official.

¶ 22 The record contains three more documents that may have been part of the petition as well. However, the record is unclear as to whether these documents were part of the petition. Even assuming *arguendo* that these documents are part of the petition, they fail to show whether the petition was prepared by a private person or a government official. The first two documents are inpatient certificates regarding psychiatric examinations of the respondent. One was prepared by Randy J. Jung, M.D., at St. Elizabeth's Hospital, and the other was prepared by Kanwal Mahmood, M.D., at Alton Mental Health Center. However, the record does not indicate whether Dr. Jung or Dr. Mahmood were acting as government officials or if they were private citizens evaluating the respondent without government authority. The third document is a notice prepared by Marla C. Harvey, RHA, H/M administrator, stating that the respondent did not designate anyone to be notified of his involuntary commitment. The record does not state where Harvey worked or whether Harvey worked in a governmental capacity. Thus, even assuming these documents were attached to the petition, they fail to prove that one acting as a government official was involved in the petition.

¶ 23 One person in the record appears to be a government official. Sarah Brown Foiles, LCSW, did testify that she was the respondent's primary social worker while he was at Alton Mental Health Center. Foiles's employment at Alton Mental Health Center may be sufficient to consider her a governmental official. However, the record does not show that Foiles was in any way involved with the filing of the petition for involuntary admission. Thus, she could not have failed to comply with section 3-606 because she did not prepare or otherwise assist in the filing of the petition.

¶ 24 The record thus does not indicate that any person involved in the preparation of the petition was, in fact, a governmental official. "It is the duty of the appellant to present a complete record on appeal so that the reviewing court will be fully informed regarding the issues in the case, and any doubt arising from the incompleteness of the record must be resolved against the appellant." *Pierson v. University Orthopedics, S.C.*, 282 Ill. App. 3d 339, 344 (1996) (citing *In re Estate of McGaughey*, 60 Ill. App. 3d 150 (1978)). Because the respondent did not provide this court with a sufficient record, we cannot determine whether a governmental official failed to comply with section 3-606. We thus cannot apply the *James W.* standard. We also cannot determine whether the petition was prepared by private persons only. We decline to create a new legal standard for when a private person fails to comply with the Mental Health Code without a complete record. Therefore, we must affirm the decision of the circuit court.

¶ 25 CONCLUSION

¶ 26 For the reasons stated, we affirm the judgment of the circuit court of Madison County.

¶ 27 Affirmed.