2015 IL App (5th) 150064-U

NO. 5-15-0064

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

In re ROGER S., Alleged to Be a Person Subject to Involuntary Admission	)	Appeal from the Circuit Court of Madison County.
(The People of the State of Illinois,	)	
Petitioner-Appellee,	)	
v.	)	No. 15-MH-02
Roger S.,	)	Honorable Ben L. Beyers II,
Respondent-Appellant).	)	Judge, presiding.

JUSTICE CHAPMAN delivered the judgment of the court.
Justices Cates and Moore concurred in the judgment.

ORDER

¶ 1 *Held*: The respondent's appeal is dismissed as moot.

¶ 2 The respondent, Roger S., appeals from a judgment in which the circuit court found him to be a "person subject to involuntary admission on an inpatient basis" (see 405 ILCS 5/1-119 (West 2012)) and ordered hospitalization in a mental-health facility of the Illinois Department of Human Services for a period not to exceed 90 days (see 405 ILCS 5/3-813(a) (West 2012)). His appointed attorney on appeal, the Legal Advocacy Service (LAS), a division of the Illinois Guardianship and Advocacy Commission, has

filed with this court a motion to withdraw as counsel on the ground that no reasonable argument can be made in support of this appeal. See, *e.g.*, *In re Juswick*, 237 Ill. App. 3d 102, 104 (1992) (the procedure outlined in *Anders v. California*, 386 U.S. 738 (1967), is applicable to cases involving involuntary admissions to mental-health facilities). The respondent was given proper notice of the LAS's motion and was granted an opportunity to file a *pro se* brief, memorandum, or other document responding to the motion and supporting his appeal. He has not filed any document. This court has examined the LAS's motion, the supporting memorandum that accompanied it, and the entire record on appeal. For the following reasons, this court grants the LAS's motion to withdraw and dismisses the appeal as moot.

¶ 3 BACKGROUND

¶ 4 On January 2, 2015, Jennifer Gerling, a licensed clinical social worker at the Alton Mental Health Center (AMHC), filed in the circuit court of Madison County a petition for the emergency involuntary admission of the respondent on an inpatient basis. See 405 ILCS 5/3-601 (West 2012). The petition alleged that the respondent was a person with mental illness (1) who, because of his 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 being physically harmed (see 405 ILCS 5/1-119(1) (West 2012)); (2) who, because of his illness, was unable to provide for his basic physical needs so as to guard himself from serious harm without the assistance of family or others, unless treated on an inpatient basis (see 405 ILCS 5/1-119(2) (West 2012)); and (3) who (i) refused treatment or was not adhering adequately to prescribed treatment, (ii) because

of the nature of his illness, was unable to understand his need for treatment, and (iii) if not treated on an inpatient basis, was reasonably expected, based on his behavioral history, to suffer mental or emotional deterioration and was reasonably expected, after such deterioration, to meet the criteria of either paragraph (1) or (2) above (see 405 ILCS 5/1-119(3) (West 2012)). The petition further alleged that the respondent was in need of immediate hospitalization. According to the petition, the respondent was admitted to AMHC on February 27, 2013, after being found unfit to stand trial on a felony charge of disorderly conduct; he had a current diagnosis of schizoaffective disorder, bipolar type, and was being detained at AMHC.

¶ 5 On January 16, 2015, the circuit court held a hearing on the involuntary-admission petition. At the hearing's start, the court asked the respondent whether he understood that Barbara A. Goeben, who was seated next to him, was his attorney, and the respondent replied, "No, she's not my attorney. She wants to be my attorney." At that point, the court asked the respondent to explain why he did not want Goeben to be his attorney. The respondent replied as follows:

> "It would take a lot of time, but I'll do it in a parable. When they landed on the moon in 1969, the computer control was using up too much of the fuel. Just before they landed, the astronauts had to switch off the computer and man it manually, and they landed on the moon with only a few seconds of fuel.
>
> She only takes a few minutes to talk to you about your case. There's no way she can be prepared and know what I know about my case. That would be

like landing on the moon with the automatic pilot and you crash and die. I don't want that to happen. I did it in a parable. I don't know if that's okay."

¶ 6 The court asked the respondent whether he understood "the consequences" of representing himself. The respondent replied that he had heard that a person who represents himself has a fool for a client but he nevertheless did not want Goeben to represent him. "I don't mind her being next to me and maybe giving me some advice," the respondent added, "but I would like to be the one in control." The court replied that "it's probably best for everyone if we do something like that. If we let Ms. Goeben help you along a little bit here today, it's probably best for everybody." Goeben asked, "Just to clarify, he's representing himself, but if he has any questions he can ask me?" The court answered, "Well, I guess technically no. I think–I don't know that I can say per se that [the respondent] really has a full grasp of everything that's going on here today and probably does need some assistance, so that's my technical order." Goeben stated that she understood. The State called its sole witness, Jennifer Gerling.

¶ 7 Gerling testified that she was a licensed clinical social worker at AMHC. She was involved in the respondent's care and treatment, met with the respondent at least once per week, and reviewed his case daily as part of a clinical team. The respondent was admitted to AMHC on February 27, 2013, after being found unfit to stand trial for felony disorderly conduct in Franklin County. It was the respondent's first admission to AMHC, but he had been admitted to two other Illinois state mental health facilities on eight prior occasions. (Gerling did not mention, and nobody asked, whether the eight prior admissions were voluntary or involuntary.) The respondent had been diagnosed with

schizoaffective disorder, bipolar type. His current symptoms included delusions that the federal and state governments, state hospitals, the police, and local businesses were attempting to kill him through food poisoning, and "grandiose delusions that he is an inventor of many machines that are going to do great good in the world." The respondent's "affective" symptoms included severe agitation, "flight of ideas," and very disorganized thinking.

¶ 8 Gerling further testified that the respondent, during his time at AMHC, had engaged in "multiple aggressive acts." In June 2013, when a nurse offered him the use of a walker, he threw the walker at the nurse. In October 2013, he told a staff member that he would shoot her if he had a gun. In September 2014, he "attempted to hit the staff with his walker. He was placed in a physical hold and received emergency medications by injection." In November 2014, he "[got] into the staff's personal space, screaming at them. When they tried to redirect him, he threatened them, quote, 'you haven't seen anything yet.' " He expressed his dislike for another patient and stated that he wanted to "strangle him to death." He told staff that if he had a bomb, he would bomb the AMHC. According to Gerling, the Franklin County disorderly-conduct charge stemmed from an allegation that the respondent had placed a substance resembling a bomb outside a business. On December 10, 2014, at a hearing in Franklin County circuit court, the respondent became disruptive and called the judge and the attorneys "Nazis," resulting in his being removed from the courtroom. On December 21, 2014, the respondent "became agitated for some unknown reason" and "began yelling about biological weapons"; a nurse was called to intervene. On December 29, 2014, the respondent asked to take a

shower; when he was told that it was not shower time, he "began yelling at staff telling them that Illinois is the anti-Christ and full of biological weapons." On January 8, 2015, the respondent asked a staff member to read his mail to him, and as the staffer started to read, the respondent threw the mail at the staffer. The respondent was assigned to a medium-security unit with 24-hour supervision, for his own and others' safety.

¶ 9 For treatment, Gerling further testified, the respondent was being offered "psychosocial groups" that included anger management, coping skills, and "symptom management," as well as counseling and medications. However, the respondent was refusing all treatment, except for occasional attendance at meetings with his treatment team. Gerling opined that without inpatient treatment, the respondent would engage in conduct harmful to himself or others and would be unable to provide for his own basic needs. Early in his admission to AMHC, the respondent deteriorated to the point where he refused to eat, walk, or shower. "Medication petitions" were granted in November 2013 and February 2014. The respondent was given medications; his symptoms became less severe, and his ability to care for himself increased. However, the medication order expired, and a further medication petition was denied in May 2014. Medication stopped, and the respondent began to deteriorate again.

¶ 10 Gerling further testified that the respondent's treatment team recommended inpatient treatment including group therapy, counseling, and medication. The goal was to transfer him to a minimum-security unit or facility. However, Gerling opined that without medication, the respondent would be unable to participate in treatment or to

move to a lower-security unit or facility. According to Gerling, family members had filed for guardianship in the Franklin County circuit court.

¶ 11 After the State finished its direct examination of Gerling, the court asked attorney Goeben whether she had any questions for Gerling. At that point, the respondent stated that Goeben was not his attorney but merely wanted to be his attorney. The court responded as follows: "Okay. Well, we took that up at the beginning of the hearing, and I think that you need an attorney. I don't think that you're able to represent yourself right now." Attorney Goeben proceeded to cross-examine Gerling. Gerling acknowledged that in the weeks prior to the hearing, the respondent had been eating regularly and tending to his personal hygiene. During the two months prior to the hearing, the respondent had not hit anyone. The respondent did not have any intellectual disabilities and had been able to read every document that Gerling had given him. He had not been given emergency medications since early September 2014. Gerling did not consider the respondent a good candidate for outpatient services.

¶ 12 Attorney Goeben called the respondent to testify. When she asked the respondent whether he understood that the hearing was on a petition for involuntary admission, the respondent replied that he thought the hearing was to determine whether she would remain his attorney. Goeben and the court informed the respondent that the hearing was on the involuntary-admission petition, and he expressed understanding of that point.

¶ 13 Turning to the subject of the hearing, the respondent denied that he had attempted to hit an AMHC staffer with his walker; he merely lifted the walker and slammed it to the ground when two staffers approached him with a syringe. According to the respondent,

this action was not at all threatening to anyone. The respondent complained that "forced medication" was "very harmful" to him. The respondent also denied yelling at staffers, though he acknowledged that he sometimes spoke loudly due to a hearing problem. He denied ever threatening or hitting any staffer or anyone else. He specifically denied threatening the judge or the attorneys during his appearance in the Franklin County circuit court in December 2014. During that appearance, the respondent stated that "[he had] been a prisoner for more than two years, and they've used poison, toxic drugs, and food on me and biological weapons, which that [*sic*] is a true statement." He did not have an opportunity to speak with an attorney during that appearance. As he was leaving the courtroom, he said, " 'Sieg Heil, Nazis.' "

¶ 14 Some portions of the respondent's testimony had little or no apparent connection to the subject of the hearing. For example, the respondent referred to a magazine article concerning a book authored by Henry Kissinger, and described magazine articles concerning military aircraft, submarines, and a research study on "suggestive memory." The respondent apparently thought that these various magazine articles supported two points he wanted to make: (1) "realism matters", and (2) the AMHC's records concerning his behavior were "like lies put on steroids, way blown out of proportion."

¶ 15 The respondent stated that he did not have any desire to harm, and was not a danger to, himself or others. He considered himself capable of caring for himself, felt that hospitalization was harming him, and wanted to be discharged.

¶ 16 After the respondent finished testifying, attorney Goeben indicated to the court that she did not have any other witnesses. The court asked the respondent whether he had

"anything else" he wanted to say, and the respondent answered, "No." The court took the matter under advisement, and a recess was taken.

¶ 17 After the break, the circuit court announced that it found Gerling's testimony credible and the respondent's testimony incredible. The court further found that the State had proved that the respondent was a threat to himself or others, was unable to conduct his own affairs unless treated, and had been refusing treatment.

¶ 18 The court entered a written order finding the respondent a person subject to involuntary admission under each of the three statutory criteria alleged in the involuntary-admission petition. It ordered him to be hospitalized for a period not to exceed 90 days. The respondent filed a timely notice of appeal.

¶ 19 ANALYSIS

¶ 20 The circuit court's involuntary-admission order, which is the subject of this appeal, was entered on January 16, 2015. The order authorized hospitalization for no more than 90 days. More than 90 days have passed since the order was entered. Therefore, the order has expired by its own terms and no longer has any force or effect. This court cannot possibly grant any effectual relief to either party. Without doubt, this case has become moot. See, *e.g.*, *In re Alfred H.H.*, 233 Ill. 2d 345, 350 (2009). Generally, a reviewing court must refuse to decide a case that has become moot, unless the case falls within a recognized exception to the mootness doctrine. *Id.* at 351, 355.

¶ 21 The LAS has not addressed the issue of mootness. Neither its motion to withdraw as counsel nor its supporting memorandum of law includes any mention of mootness. The memorandum addresses only these two potential issues for review: (1) whether the

circuit court violated section 3-805 of the Mental Health and Developmental Disabilities Code (405 ILCS 5/3-805 (West 2012)) when it denied the respondent's request to represent himself, and (2) whether the State failed to meet its burden of proving by clear and convincing evidence that the respondent was subject to involuntary admission.

¶ 22 This court's own careful examination of the entire record on appeal has revealed that this case cannot properly be considered under any exception to the mootness doctrine. There are three recognized exceptions to the mootness doctrine, *viz.*: the collateral-consequences exception, the public-interest exception, and the capable-of-repetition-yet-evading-review exception. *In re Rita P.*, 2014 IL 115798, ¶ 24. At first blush, the collateral-consequences exception would appear to apply, for the involuntary-admission order could conceivably have consequences for the respondent in some future proceeding. See *In re Alfred H.H.*, 233 Ill. 2d at 361-62. The record on appeal does not indicate whether the respondent's eight prior admissions to mental health facilities were voluntary or involuntary. Therefore, there is a possibility that all of the prior admissions were voluntary and that the instant admission, *i.e.*, the admission that is the subject of this appeal, is the respondent's first involuntary admission. In the past, the appellate court has held that where an involuntary-admission order is the respondent's first, collateral consequences could plague him in the future and the collateral-consequences exception applied. See, *e.g.*, *In re Meek*, 131 Ill. App. 3d 742, 745 (1985).

¶ 23 However, in *In re Rita P.*, our supreme court made plain that "[a]pplication 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." *In re Rita P.*, 2014 IL 115798, ¶ 34. Instead, a reviewing court is obliged to "consider all the relevant facts and legal issues raised in the appeal before deciding whether the exception applies." *Id.* "Collateral consequences must be identified that could stem solely from the present adjudication. [Citation.]" (Internal quotation marks omitted.) *Id.*

¶ 24 In the instant case, the fact (or, strictly speaking, the possibility) that no prior involuntary-admission order was entered provides the only rationale for applying the collateral-consequences exception. Under *In re Rita P.*, that fact (or possibility) is clearly insufficient to invoke the exception. Meanwhile, this court cannot identify any collateral consequence that could stem solely from the adjudication at issue here. Therefore, the collateral-consequences exception does not apply to the case at bar.

¶ 25 The public-interest exception also does not apply. This 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. [Citation.]" (Internal quotation marks omitted.) *Id.* At a minimum, the first criterion is not satisfied here. The potential issues in this appeal, as identified by the LAS, would require extremely fact-specific reviews. They are not issues of a public nature, *i.e.*, of broad public interest, and their resolution would not have a significant effect on the public as a whole. See *id.* at 356-57. Because the first criterion

for the public-interest exception is clearly not satisfied, the two other criteria need not be discussed here.

¶ 26 Likewise, the capable-of-repetition-yet-evading-review exception does not apply to the case at bar. This exception has two criteria that must be satisfied: "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. [Citation.]" (Internal quotation marks omitted.) *Id.* at 358. Here, the first criterion surely is satisfied, given the length of time required to litigate an appeal. However, the second criterion is not satisfied. There is no substantial likelihood that resolution of the two potential issues in this case would have any bearing on a similar issue in a subsequent case. As previously noted, the two potential issues identified by the LAS are very fact-specific; their resolution would turn on the facts peculiar to this case. Neither of the two potential issues involves, say, a challenge to an interpretation of a statute that could be applied in a future case involving the respondent. See *id.* at 360.

¶ 27 Because this case is moot and no exception to the mootness doctrine is applicable, appointed counsel's motion to withdraw is granted and this appeal is dismissed.

¶ 28 Motion granted; appeal dismissed.