2016 IL App (1st) 151278-U
No. 1-15-1278
Order filed September 27, 2016

Second Division

IN THE

APPELLATE COURT OF ILLINOIS

FIRST DISTRICT

In re TERESA B., a Person Subject to Involuntary Treatment	)	Appeal from the Circuit Court of Cook County.
	)	No. 14-COMH-2775
	)	The Honorable
(The People of the State of Illinois, Petitioner-Appellee, v. Teresa B., Respondent-Appellant).	)	David A. Skryd, Judge, presiding.

PRESIDING JUSTICE HYMAN delivered the judgment of the court.
Justices Neville and Mason concurred in the judgment.

ORDER

¶ 1 *Held*: This appeal is dismissed as moot as neither the public interest exception to the mootness doctrine nor the exception for cases "capable of repetition, yet evading review" apply.

¶ 2 Although no longer committed, Teresa B. appeals from a 2014 order involuntarily committing her to inpatient mental health treatment for 90 days. The parties agree that Teresa's claims are now moot, as her commitment order expired. Teresa, however, insists that her appeal can be decided under either the public interest exception to the mootness

doctrine or the exception for cases "capable of repetition, yet evading review." *In re A Minor*, 127 Ill. 2d 247, 258 (1989).

¶ 3 Teresa asks that we reverse the commitment order because the trial court (i) denied her due process of law by improperly restricting her confrontation of the State's witnesses and exhibiting bias against her by acting as an advocate for the State, and (ii) abused its discretion by limiting her cross examination of the State's witnesses. She also challenges the sufficiency of the evidence.

¶ 4 As to her due process challenges, the public interest exception to the mootness doctrine does not apply as the controlling law is not in disarray or in conflict, and, accordingly, no authoritative determination on those issues is necessary. Nor does the "capable of repetition, yet evading review" exception apply. Teresa has not shown that she is personally likely to be subject to the same proceedings in the future. Therefore, no exception to the mootness doctrine applies, and we affirm the ruling of the trial court.

¶ 5 BACKGROUND

¶ 6 We need only briefly summarize the facts. After an adversarial hearing, trial court found that the State had demonstrated Teresa to be a person subject to involuntary admission to a psychiatric facility under section 1-119 of the Mental Health and Disabilities Code. 405 ILCS 5/1-119 (West 2010). The court ordered Teresa hospitalized at Mt. Sinai Hospital, where she was already an inpatient, having voluntarily admitted herself the previous month.

¶ 7 Teresa had herself admitted voluntarily after her stepmother, Linda B., who lived in the same apartment complex, called the police after learning that Teresa had thrown a table and other possessions out of her second-floor apartment into a garbage area behind the building.

¶ 8 At the hearing, the State called one of the responding officers, her stepmother, and Dr. Pradeep Rattan, Teresa's attending physician at Mt. Sinai. On cross examination, Teresa's counsel sought to impeach the officer by way of questions regarding his crisis intervention training and by use of another officer's incident report. The trial court ruled that the crisis intervention training was irrelevant to the proceedings. As to the incident report, the trial court ruled the report prepared by another officer could not be used to impeach the officer on the stand.

¶ 9 Linda testified that she saw Teresa's furniture in the alley behind Teresa's apartment, in an area customarily used for garbage. When asked by the State, and by Teresa's counsel, about what she had personally seen, Linda referred to what she had been told by the property manager. Teresa objected each time Linda gave hearsay testimony as to what she was told by the property manager, and each time the trial court overruled the objection.

¶ 10 Dr. Rattan testified as the expert witness for the State. He explained his diagnosis of schizoaffective disorder, based on Teresa's symptoms of delusions, disordered thought, and changes in mood and affect. Teresa had been verbally aggressive and threatening while admitted, but she had not exhibited any physically aggressive or suicidal behaviors. In the absence of treatment, he believed Teresa's delusional thoughts would remain, and her condition would deteriorate. Based on his understanding of her living conditions and behavior before admission, as well as the likelihood that she would act on delusional beliefs, Dr. Rattan opined that Teresa would pose a risk of harm to herself or others without inpatient treatment and medication.

¶ 11 The court found the State had met its burden of proving by clear and convincing evidence that Teresa posed a risk of harm to herself or others in the absence of treatment, and so was

subject to commitment under 405 ILCS 5/1-119 (1). The court further found that Teresa was not compliant with treatment, and, without treatment, could reasonably be expected to pose a risk of such harm in the future, making her subject to commitment under 405 ILCS 5/1-119 (3). The court ordered Teresa involuntarily committed for psychiatric treatment for 90 days. After a post-trial hearing, at which the court affirmed its involuntary commitment order, Teresa brought this appeal.

¶ 12 ANALYSIS

¶ 13 Mootness

¶ 14 Teresa is no longer involuntarily committed. Generally appellate courts do not decide moot questions, render advisory opinions, or consider issues that stay unaffected no matter how decided. *In re Barbara H.*, 183 Ill. 2d 482, 491 (1998). But, courts do recognize exceptions to the mootness doctrine. *In re Commitment of Hernandez*, 239 Ill. 2d 195 (2010) (courts of review will decide moot questions under limited circumstances); *Barbara H.*, 183 Ill. 2d at 491-92 (finding mental health patient's moot appeal could be decided on merits under exception to mootness doctrine). Our determinations as to which questions qualify for an exception to the mootness doctrine "must be conducted on a case-by-case basis . . . in light of the relevant facts and legal claims raised in the appeal." *In re Alfred H.H.*, 233 Ill. 2d 345, 364 (2009).

¶ 15 Teresa argues that her appeal falls under both the exception for injuries "capable of repetition, yet evading review" and the public interest exception. We conclude that Teresa's appeal does not satisfy either exception.

¶ 16 The "Capable of Repetition, Yet Evading Review" Exception

¶ 17 The exception for harms "capable of repetition, yet evading review" requires the presence of 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." *Alfred H.H.*, 233 Ill. 2d at 358 (citing *Barbara H.*, 183 Ill.2d at 491). This appeal satisfies the first prong because in "virtually every case" where a person is involuntarily committed, "the challenged commitment and medication orders will expire before appellate review can be completed ***." *Barbara H.*, 183 Ill. 2d at 492. The 90 to 180 days of an involuntary commitment order "are far too brief to permit appellate review." *Id.* at 491-92.

¶ 18 As to the second prong, likelihood of recurrence, Teresa argues simply that "this issue is likely to recur in the future." We have acknowledged that the legal questions of any involuntary commitment are almost always likely to recur. *See, e.g.*, *In re David D.*, 2013 IL App. 121004, ¶ 22 (explaining, "due to the short duration of an order for an involuntary admission, the issues raised *** are likely to recur without an opportunity for appellate review."). The cases which Teresa cites, however, do not apply the "capable of repetition, yet evading review" test, but instead discuss the third prong of the public interest exception, which also tests for "likelihood of recurrence of the question." *Alfred H.H.*, 233 Ill. 2d at 355. The distinction is important—the public interest exception measures likelihood of recurrence relative to the public in general, and is not specific to the appellant. *See id.* at 358 (public interest exception analysis considers whether facts are "likely to recur either as to [the respondent] or anyone else."). The "capable of repetition, yet evading review" exception, on the other hand, tests for the reasonable likelihood that the "respondent will *personally be subject* to the same action again." *Id.* at 359 (emphasis added).

¶ 19 While the issues raised on appeal are likely to recur for future respondents in involuntary commitment hearings, in regard to Teresa herself, she does not make even a bare assertion she may again be personally be subject to an involuntary commitment hearing, and we decline to independently speculate on her situation. As both elements are necessary, this exception does not apply.

¶ 20 The Public Interest Exception

¶ 21 Next, Teresa contends that her appeal satisfies the public interest exception to the mootness doctrine. Under the public interest exception, an appellate court may reach a moot issue only when "(1) the question at issue is of a substantial public nature; (2) an authoritative determination is needed for future guidance; and (3) the circumstances are likely to recur." *Felzak v. Hruby*, 226 Ill. 2d 382, 393 (2007) (citation omitted). This exception "is narrowly construed and requires a clear showing" on each element. *Commonwealth Edison Co.*, 2016 IL 118129, ¶ 13 (citing *Felzak*, 226 Ill. 2d at 393).

¶ 22 Teresa contends that her appeal satisfies the first element because she raises questions as to whether her commitment hearing satisfied the minimum requirements of constitutional due process. The State responds that the questions are "entirely fact specific." We agree with Teresa.

¶ 23 While the State correctly notes that questions about involuntary commitment proceedings do not automatically satisfy the public concern prong, we inquire into "the public nature of the [particular] issue presented" when deciding whether an issue is one of public concern. *Alfred H.H.*, 233 Ill. 2d at 356. Teresa has appealed her involuntary commitment order on grounds of constitutional due process and the sufficiency of the State's evidence against her. While Teresa's challenge to the sufficiency of the evidence is fact-specific, the due process

issues she raises are broader in scope than her own case, and raise questions of substantial public concern. *See Alfred H.H.*, 233 Ill. 2d at 356 ("Sufficiency of the evidence claims are inherently case-specific reviews," and do not raise issues of substantial public concern).

¶ 24 The procedures to be followed when compelling a person to enter a psychiatric facility involve "a matter of public concern, satisfying the first prong" of the public interest exception. *In re Karen E.*, 407 Ill. App. 3d 800, 804 (2011); *In re James H.*, 405 Ill. App. 3d 897, 903 (2010) ("Involuntary mental-health commitment proceedings are matters of public interest" for purposes of the public interest exception); *see also In re Robert S.*, 213 Ill. 2d 30, 46 (2004) (procedures courts must follow when involuntarily administering medication to mental health patients "involve matters of 'substantial public concern.' ") (Citing *In re Mary Ann P.*, 202 Ill. 2d 393, 402 (2002)). Every involuntary commitment implicates "a massive curtailment of liberty." *Vitek v. Jones*, 445 U.S. 480, 491 (1980). Procedural protections for respondents guard against the erroneous deprivation of an individual's liberty interests by "minimiz[ing] the possibility of confinement and its attendant consequences for individuals whose confinement is unnecessary for anyone's protection." *James H.*, 405 Ill. App. 3d at 903.

¶ 25 In *Alfred H.H.*, our supreme court distinguished sufficiency of the evidence challenges, which are "inherently case-specific," and therefore fail the public concern test, from "broad public interest issues" that may satisfy the test. *Alfred H.H.*, 233 Ill. 2d at 356-57. We have found questions as to the procedures required in mental health commitment hearings to involve "broad public interest issues," and therefore to satisfy the public concern prong. *See, e.g.*, *James H.*, 405 Ill.App.3d at 903. The questions Teresa raises on appeal involve issues of

law that go beyond the mere facts of her case and she has satisfied the first prong of the public interest exception.

¶ 26 Although Teresa raises questions of public concern, those questions only overcome the mootness bar if an authoritative determination is necessary for future guidance on an issue that is likely to recur. As we noted in our analysis of the "capable of repetition, yet evading review" exception, the issues involved in any involuntary commitment case will almost certainly recur. For that reason, the applicability of the public interest exception turns on a clear showing that an authoritative determination on the moot issues is necessary at this time.

¶ 27 Our supreme court has found a need for authoritative determination in cases where the issues were "longstanding and [had] not been resolved by the courts or the legislature." *Bonaguro v. County Officers Electoral Bd.*, 158 Ill. 2d 391, 396 (1994). An authoritative determination is only necessary "where the law is in disarray or there is conflicting precedent." *Alfred H.H.*, 233 Ill. 2d at 357 (quoting *In re Adoption of Walgreen*, 186 Ill. 2d 362, 365-66).

¶ 28 Teresa's due process arguments challenge the fairness of the commitment hearing on two distinct grounds. First, she argues that her counsel was unfairly restricted in her efforts to confront the State's witnesses on cross examination. We agree with the State that this argument fails the second prong of the public interest exception test. As Teresa points out, our courts have examined trial rulings on cross examination under both a constitutional standard and an abuse of discretion standard. She argues that the court's rulings limiting her cross examination violated the constitutional standard and also amounted to an abuse of discretion. We find existing precedent provides sufficient guidance on both standards and no

authoritative determination is necessary that would permit us to review this issue on the merits.

¶ 29 The constitutional right to confront witnesses applies in civil mental health involuntarily commitment hearings. *Vitek*, 445 U.S. at 494. The right to confront opposing witnesses exists under the Confrontation Clause, which applies only in criminal prosecutions, and the Fourteenth Amendment Due Process Clause. Teresa does not address what particular constitutional confrontation right was violated by the trial court, only the Due Process Clause could apply to her case.

¶ 30 The issue is whether the rulings of the trial court limiting impeachment of the State's witnesses (other than the impeachment of the officer which we address next) violate the Due Process Clause as a matter of law or constitute an abuse of the court's discretion. As to the former, the confrontation right contained in the Due Process Clause is not co-extensive with that of the Confrontation Clause. It is already established that a respondent has "some right to cross examine witnesses against him [or her]," but that this right is not absolute. *Lawrence S.*, 319 Ill. App. 3d at 483; *Gagliani*, 210 Ill.App.3d at 628. As to the latter argument, that the court abused its discretion, reaching the abuse of discretion argument would have us delve into the accuracy of the trial court's specific rulings. This is exactly the type of fact-intensive inquiry rejected as beyond the reach of the public interest exception because "case-specific reviews" do not pose questions of public concern. *Alfred H.H.*, 233 Ill. 2d at 356.

¶ 31 With respect to her confrontation of witnesses, Teresa also argues that the court abused its discretion by preventing her from cross examining one of the officers with another officer's incident report. This law is well settled.

¶ 32 Teresa cites *to People v. Cagle* for the proposition that a trial court violates due process when it prevents a party from confronting a police officer with a police report. *People v. Cagle*, 41 Ill. 2d 528 (1969). At trial, Teresa's counsel sought to use the incident report for impeachment. In *Cagle*, however, the defense had sought to impeach a police officer, not with another officer's report, as here, but with the report which the testifying officer had prepared. *See Cagle*, 41 Ill. 2d at 534. The *Cagle* court found a due process violation on the basis that the trial court had "den[ied] defense counsel the right to impeach [an officer's] testimony by the officer's own report." *Cagle*, 41 Ill. 2d at 534.

¶ 33 The authorities supporting the State's position, that the court properly denied Teresa from using the report for impeachment, are consistent with *Cagle*. Various authorities limit *Cagle*'s application to instances where a party seeks to impeach an officer with that officer's own report. In *Currie*, for instance, we held that "the testimony of a police officer cannot be impeached by the contents of a police report which he neither prepared nor signed." *People v. Currie*, 84 Ill. App. 3d 1056, 1060 (1980); *see also, e.g.*, *People v. Beard*, 271 Ill. App. 3d 320, 331 (1995) (police report can only be used to impeach report's author); *People v. Gagliani*, 210 Ill. App. 3d 617, 629 (1991) (same). Teresa makes no argument that *Cagle*, nor the trial court's ruling, conflicts directly with this authority, and we see no inconsistency among these holdings. Although the parties disagree on the issue's outcome, the controlling law is not "in disarray," nor is the precedent in conflict. Instead, the holdings of the relevant cases are congruent with each other. There is a lack of discord in the law that would permit us to decide an otherwise non-justiciable issue. *See Horace Mann Ins. Co. v. Brown*, 236 Ill. App. 3d 456, 461-63 (addressing admissibility of police report in civil case and finding that report was inadmissible double hearsay); *see also York v. El-Ganzouri*, 353 Ill. App. 3d 1, 19

(2004) (witness must be aware of and approve of contents of writing to be impeached with it); *Champion v. Knasiak*, 25 Ill. App. 3d 192, 201 (statements of others may not be used to impeach witness). Likewise, the Illinois Rules of Evidence, which address hearsay and impeachment, apply with equal force to criminal and civil cases, without regard to the liberty interests at stake. Hence, we find no need to render an authoritative decision on the issue of impeachment of a police officer by use of a police report.

¶ 34 Although Teresa raises several constitutional due process questions of substantial public concern, the law answering those questions is already clear, and so the public interest exception to the mootness doctrine does not apply.

¶ 35 Affirmed.