2016 IL App (2d) 150783-U
No. 2-15-0783
Order filed February 9, 2016



IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

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| *In re* ARIELLE T., Alleged to be a Person Subject to Involuntary Administration of Psychotropic Medication | ) | Appeal from the Circuit Court of Kane County. |
| | ) | No. 15 MH 77 |
| (The People of the State of Illinois, Petitioner-Appellee, v. Arielle T., Respondent-Appellant). | ) | Honorable Elizabeth Flood, Judge, Presiding. |

JUSTICE BIRKETT delivered the judgment of the court.
Justices Jorgensen and Burke concurred in the judgment.

**ORDER**

¶ 1 *Held*: The appeal is dismissed because the case is moot and no exception to the mootness doctrine applies.

¶ 2 Respondent, Arielle T., appeals the judgment of the trial court granting the State's petition for involuntary administration to her of psychotropic medication. She contends that the State failed to satisfy the statutory prerequisites for involuntary administration. For the following reasons, we dismiss the appeal as moot.

¶ 3 I. BACKGROUND

¶ 4 On July 6, 2015, Dr. Timothy Olenek, a psychiatrist at Elgin Mental Health Center (Elgin), filed a petition for involuntary administration of psychotropic medication to respondent, who was currently in treatment at Elgin. The petition stated as follows. Respondent was placed at Elgin after having been found unfit to stand trial. She was diagnosed with bipolor disorder, manic phase, with psychotic features, and her symptoms included agitation, rambling speech, and delusional thought. She had previous psychiatric hospitalizations. During her current hospitalization, she was administered olanzaprine to control mood and psychosis. She showed some improvement but was now refusing the drug. Olenek recommended further treatment with olanzapine plus aripiprazole, risperidone, valproic acid, and lorazepam—all to treat mood, psychosis, or anxiety. Olenek also recommended benztropine for treatment of side effects. In the case these medications were not effective, Olenek recommended several alternative medications.

¶ 5 The petition was heard on July 7, 2015. Olenek was the State's sole witness at the hearing. Respondent presented no witnesses. On July 17, the trial court issued an order authorizing a 90-day involuntary administration of the medications listed in the petition.

¶ 6 Respondent filed this timely appeal.

¶ 7 II. ANALYSIS

¶ 8 The State contends, and we agree, that this case is moot because the 90-day period authorized in the trial court's order has long passed. "An appeal is considered moot where it presents no actual controversy or where the issues involved in the trial court no longer exist because intervening events have rendered it impossible for the reviewing court to grant effectual relief to the complaining party." *In re J.T.*, 221 Ill. 2d 338, 349-50 (2006). "As a general rule, courts in Illinois do not decide moot questions, render advisory opinions, or consider issues

where the result will not be affected regardless of how those issues are decided." *In re Alfred H.H.*, 233 Ill. 2d 345, 351 (2009). "A court of review may, however, review a case under an exception to the mootness doctrine." *In re Lance H.*, 2014 IL 114899, ¶ 13. There are three recognized exceptions: (1) the public-interest exception; (2) the capable-of-repetition exception; and (3) the collateral consequences exception. *Alfred H.H.*, 233 Ill. 2d at 355-62; *People v. McCoy*, 2014 IL App (2d) 130632, ¶ 12.

¶ 9 Respondent invokes only the public-interest and capable-of-repetition exceptions. Neither applies here, however, given the nature of respondent's contentions on appeal.

¶ 10 Given the limited duration of commitment and treatment orders entered under the Mental Health and Developmental Disabilities Code (Code) (405 ILCS 5/1-100 *et seq.* (West 2014)), mootness issues frequently arise on appeal in mental health cases. In *Alfred H.H.*, the supreme court brought clarity to the operation of mootness exceptions in mental health cases. In that case, the trial court committed the respondent to a mental health facility for a period not to exceed 90 days. The respondent was released during the pendency of the appeal, and the appellate court dismissed the appeal as moot. *In re Alfred H.H.*, 379 Ill. App. 3d 1026, 1030 (2008). The supreme court agreed that the appeal was moot and that no exception applied. As an initial matter, the court denied the respondent's request to recognize a "*per se* exception to mootness that universally applies to mental health cases." *Alfred H.H.*, 233 Ill. 2d at 355. Instead, exceptions to the mootness doctrine would be applied on a case-by-case basis, as in other areas of the law. *Id.*

¶ 11 The court proceeded to find that none of the mootness exceptions applied. The court began with the public-interest exception, which applies when the following three elements are met: "(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." *Id.* The court noted that the 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 court found "overly broad" the respondent's suggestion that his case presented a question of a public nature because his liberty was at stake. *Id.* at 356. Infringement on liberty did not distinguish the respondent's case from the typical mental health case, and the court, as it noted, was not prepared to recognize a categorical exception to the mootness doctrine for mental health cases. *Id.* at 356. Each mental health case would stand on its own in the mootness inquiry, with the availability of an exception depending on the nature of the particular issue raised. The respondent's contention on appeal was that the State did not present sufficient evidence to justify his commitment. "Sufficiency of the evidence claims," however, "are inherently case-specific reviews that do not present *** broad public interest issues ***." *Id.* at 356-57. As contrasting examples, the court noted cases in which it settled questions about the Code's requirements. See *In re Splett*, 143 Ill. 2d 225, 231-32 (1991) (settling issue about the Code's notice provision); *In re Stephenson*, 67 Ill. 2d 544, 556 (1977) (deciding standard of proof for involuntary commitments). The court concluded that respondent did not meet the first element of the public-interest exception.

¶ 12 Moving to the second element of the exception, the court found that the respondent's case did not present a matter requiring an authoritative determination for future guidance. The court acknowledged the validity of the respondent's point that even cases presenting sufficiency-of-the-evidence questions have precedential value. The court noted, however, that if the threshold of future value were set so low, it would "virtually eliminate the notion of mootness." *Id.* at 357. As the respondent's case "[did] not present a situation where the law is in disarray or there is

conflicting precedent," (internal quotation marks omitted), it did not meet the second element. *Id.* at 358.

¶ 13 Finally, on the third element of the public-interest exception, the court found no likelihood that the question presented in the appeal would "recur either as to him or anyone else." *Id.* at 358. The court explained:

> "Any future commitment proceedings 'must be based on the current condition of the respondent's illness,' and the 'decision to commit must be based upon a fresh evaluation of the respondent's conduct and mental state.' (Internal quotation marks omitted.) Therefore, it is highly unlikely that a determination as to the sufficiency of the evidence in this case would have any impact on future litigation." *Id.* at 358.

¶ 14 The court moved on to examine the capable-of-repetition exception. "This 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 '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 The court found the first element met given the short duration of the order. On the second element, the respondent contended that he was " 'likely, based on his diagnosis and history, to face the same action again—*i.e.* a petition for involuntary admission.' " *Id.* at 359. (As the court noted, the respondent had received mental health treatment on several prior occasions, some of it by involuntary commitments. *Id.* at 347). The court refused to embrace this as a criterion, holding instead that the current action must bear "a substantial enough relation" to a possible future action "that the resolution of the issue in the present case would be likely to affect a future case involving [the same party]." *Id.* at 359. In other words, "there must

be a substantial likelihood that the issue presented in the instant case, and resolution thereof, would have some bearing on a similar issue presented in a subsequent case." *Id.* at 360. The respondent failed to meet this standard:

> "His claim on appeal is that the trial court lacked sufficient evidence to order his involuntary commitment. Respondent does not raise a constitutional argument or challenge the interpretation of the statute. Instead, he disputes whether the specific facts that were established during the hearing in this specific adjudication were sufficient to find respondent was a danger to himself or to others. There is no clear indication of how a resolution of this issue could be of use to respondent in future litigation. The court acknowledges that though it is possible that the resolution of such questions could be helpful to future litigants, we do not, as stated earlier, 'review cases merely to set precedent or guide future litigation.' " *Id.* (quoting *Berlin v. Sarah Bush Lincoln Health Center*, 179 Ill. 2d 1, 8 (1997)).

¶ 16 The court also examined the collateral-consequences exception, but we need not discuss that portion of the opinion because respondent does not argue that exception here.

¶ 17 Based on the supreme court's clear guidance in *Alfred H.H.*, we hold that neither the public-exception nor the capable-of-repetition exceptions applies here. A material fact under both exceptions is that respondent's claim on appeal is one of the sufficiency of the evidence. She claims that the State failed to carry its burden under section 2-107.1(a-5)(4) of the Code (405 ILCS 5/2-107.1(a-5)(4) (West 2014)), which states:

> "(4) Psychotropic medication and electroconvulsive therapy may be administered to the recipient if and only if it has been determined by clear and convincing evidence that all of the following factors are present. In determining whether a person meets the

criteria specified in the following paragraphs (A) through (G), the court may consider evidence of the person's history of serious violence, repeated past pattern of specific behavior, actions related to the person's illness, or past outcomes of various treatment options.

(A) That the recipient has a serious mental illness or developmental disability.

(B) That because of said mental illness or developmental disability, the recipient currently exhibits any one of the following: (i) deterioration of his or her ability to function, as compared to the recipient's ability to function prior to the current onset of symptoms of the mental illness or disability for which treatment is presently sought, (ii) suffering, or (iii) threatening behavior.

(C) That the illness or disability has existed for a period marked by the continuing presence of the symptoms set forth in item (B) of this subdivision (4) or the repeated episodic occurrence of these symptoms.

(D) That the benefits of the treatment outweigh the harm.

(E) That the recipient lacks the capacity to make a reasoned decision about the treatment.

(F) That other less restrictive services have been explored and found inappropriate.

(G) If the petition seeks authorization for testing and other procedures, that such testing and procedures are essential for the safe and effective administration of the treatment."

¶ 18 Respondent alleges several specific respects in which the State failed to meet the individual factors set forth in this section. She raises, however, no issue as to what these factors mean or how they are to be applied. This is no "situation where the law is in disarray or there is conflicting precedent" (internal quotation marks omitted) (*Alfred H.H.*, 233 Ill. 2d at 358). Nor does she "raise a constitutional argument or challenge the interpretation of the statute." *Id.* at 360. Respondent claims that she "raises questions about compliance with the requisite procedures and statutory mandates of [section 2-107.1]" and that these are matters of public interest. Respondent indeed does question the State's compliance with section 2-107.1, but her challenge is to the State's specific proof in this specific case. Such a challenge is different, *Alfred H.H.* recognizes, from questions with implications beyond the case at hand such as questions pertaining to the meaning of the Code. Resolving respondent's appeal would involve applying standards of uncontroverted meaning to a specific set of facts. As the court in *Alfred H.H.* made clear, the guidance that a fact-specific resolution may provide in future cases does not alone transform it into an issue of a public nature. The issue on appeal in this case is just as case-specific as the issue in *Alfred H.H.* Consequently, the public-interest exception does not apply.

¶ 19 The capable-of-repetition exception likewise is not satisfied here. While the durational element of the exception is met, respondent has not established "a reasonable likelihood that the issue presented in [this] case, and any resolution thereof, would have some bearing on a similar issue presented in a subsequent case." *Id.* at 360. She contends that, given her history of mental health treatment and of refusing medications, and her current residence at Elgin, her "circumstances are likely to recur without resolution before [the] case is rendered moot." The court in *Alfred H.H.*, however, rejected a like contention while acknowledging the respondent's history of mental health treatment including involuntary commitments. *Id.* at 347, 359. The

court did so based on what it regarded as the intrinsic limits on the application of fact-specific determinations to future cases: "Any future commitment proceedings 'must be based on the current condition of the respondent's illness,' and the 'decision to commit must be based upon a fresh evaluation of the respondent's conduct and mental state.' (Internal quotation marks omitted.) *Id.* at 358. Respondent provides us no reason to view involuntary administration cases any differently. Consequently, we hold that respondent has not met the capable-of-repetition exception.

¶ 20 Respondent cites several cases on the foregoing exceptions to the mootness doctrine. Some of the appellate court decisions he cites predate *Alfred H.H.* *E.g.*, *In re Cynthia*, 326 Ill. App. 3d 65 (2001). To the extent that they or any other appellate court decisions conflict with *Alfred H.H.*, we of course follow the latter. Respondent does not cite, nor have we found, any supreme court case that retreats from the holding in *Alfred H.H.* Respondent directs us to *Lance H.*, 2014 IL 114899, but that decision is entirely consistent with *Alfred H.H.* Though the issue in *Lance H.* was moot, the court reached the merits under the public-interest exception. The issue was whether the Code "requires the circuit court to act on an oral request for voluntary admission to a mental health facility during a proceeding for involuntary admission to the facility." *Id.* ¶ 11. This was "a question of statutory interpretation" and, therefore, an issue of public importance. *Id.* ¶¶ 11, 14. The underlying issue in *Alfred H.H.* was not of such a nature, nor is the issue in this appeal.

¶ 21 III. CONCLUSION

¶ 22 This case is moot because it presents no actual controversy. Neither of the exceptions to mootness cited by respondent applies. Consequently, we dismiss the appeal.

¶ 23 Appeal dismissed.