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2014 IL App (4th) 130046-U
NOS. 4-13-0046, 4-13-0047 cons.
IN THE APPELLATE COURT

FILED
June 4, 2014
Carla Bender
4th District Appellate
Court, IL

OF ILLINOIS

FOURTH DISTRICT

In re: SUNANTHA S., a Person Found Subject to)	Appeal from
Involuntary Admission,)	Circuit Court of
THE PEOPLE OF THE STATE OF ILLINOIS,)	Champaign County
Petitioner-Appellee,)	No. 13MH1
v. (No. 4-13-0046))	
SUNANTHA S.,)	
Respondent-Appellant.)	
-----)	
In re: SUNANTHA S., a Person Found Subject to)	No. 13MH2
Administration of Psychotropic Medication,)	
THE PEOPLE OF THE STATE OF ILLINOIS,)	
Petitioner-Appellee,)	
v. (No. 4-13-0047))	Honorable
SUNANTHA S.,)	Heidi N. Ladd,
Respondent-Appellant.)	Judge Presiding.

JUSTICE HOLDER WHITE delivered the judgment of the court.
Justices Pope and Turner concurred in the judgment.

ORDER

¶ 1 *Held:* The appellate court (1) dismissed as moot respondent's appeal of the trial court's involuntary-commitment order and (2) reversed the trial court's involuntary-administration-of-psychotropic-medication order, concluding the State failed to show it complied with the requirement that respondent be given complete written information about the side effects, risks, benefits, and alternatives to the proposed medications.

¶ 2 Following January 2013 hearings, the trial court found respondent, Sunantha S., subject to involuntary commitment (case No. 4-13-0046) and involuntary administration of psychotropic medication (case No. 4-13-0047).

¶ 3 Respondent appeals, arguing the involuntary (1) admission order should be reversed because she was not examined by a psychiatrist within 24 hours of admission and (2) administration order should be reversed because the State failed to prove respondent was provided with complete written information about the benefits, risks, and alternatives to the proposed medications.

¶ 4 For the reasons that follow, we dismiss as moot case No. 4-13-0046 and reverse the trial court's judgment in case No. 4-13-0047.

¶ 5 I. BACKGROUND

¶ 6 On January 3, 2013, Dr. Martin Repetto, a psychiatrist at Pavilion Hospital (Pavilion) filed a petition for administration of psychotropic medication. That same day, Lynn Griffith, respondent's case manager, filed a petition for the involuntary admission of respondent. In the petition, Griffith stated that on January 2, 2013, Mary Parkes, Pavilion's director of nursing, approached respondent after respondent was discharged but refused to leave the facility. Respondent attempted to both hit Parkes and spit in her face, stating, "I am Jesus and you will burn in a lake of fire. You will burn in hell." She also refused to eat, drink, tend to her hygiene, or allow her vitals to be taken, and she urinated and defecated on herself and then refused to take a blanket off her head to communicate. Griffith attached to her petition an inpatient certificate indicating Martin Repetto examined respondent on January 3, 2013, at 8:30 in the morning, and Repetto believed respondent should be subject to involuntary inpatient admission and was in need of immediate hospitalization.

¶ 7 Hearings on both petitions took place on January 8, 2013. Respondent refused to attend either hearing.

¶ 8 A. Petition-for-Involuntary-Commitment Hearing

¶ 9 Repetto, a board-certified psychiatrist, testified respondent was 61 years old. According to information Repetto obtained from the Jackson County sheriff's department, respondent was admitted to Pavilion after she tried to attack a neighbor and a police officer, who was conducting a welfare check, with a hatchet in December 2012. The officer subsequently arrested respondent and took her to jail, where she refused to eat or drink and acted "quite oppositional." Respondent was eventually transferred to Pavilion for psychiatric treatment.

¶ 10 As to the exact date when respondent was admitted to Pavilion, Repetto provided the following testimony:

"[RESPONDENT'S COUNSEL]: When she arrived first at the Pavilion, was she was [*sic*] admitted on December 29 about 0032 or 12:32 in the morning; is that correct?

[REPETTO]: Well, I am not sure. Again, as I told you, I was not in the facility at the time.

[RESPONDENT'S COUNSEL]: If there is a document in her chart that says she was admitted on December 29, 2012, at 0032, then that would be an accurate document; is that correct?

[REPETTO]: Well, December 29, 2012, and I have a January 2, 2013. Okay. I am not sure. What is your question?

[RESPONDENT'S COUNSEL]: There is a document that indicates that she was admitted into the Pavilion on December 29 at 0032; is that correct?

[REPETTO]: I don't know. I have a chart here. It says

January 2, midnight, 0032.

[RESPONDENT'S COUNSEL]: I am sorry?

[REPETTO]: I have a chart here that says admission

January 2, 2013.

[RESPONDENT'S COUNSEL]: Can you look through the chart a little bit farther near the back to find the document that states that she was admitted on December 29 at 0032?

[REPETTO]: Okay. December 30, probably so. Yeah. So yes."

¶ 11 Repetto first examined respondent for approximately 20 minutes on January 3, 2013, during which time respondent refused to answer any of Repetto's questions. Prior to his examination, Repetto received a report indicating respondent tried to attack the nursing director. According to Repetto, respondent continued to act "extremely psychotic and paranoid." Repetto explained that when he spoke to respondent on January 7, 2013, she told him she was working for the federal government, spying on the hospital and the staff, and that she was going to file a report. She also told Repetto that she was a teacher who had just returned from a trip to Paris, a general in the United States Army, and Jesus Christ. On the morning of the hearing, respondent said she was a neurosurgeon and she considered herself very healthy.

¶ 12 Upon her admission, Repetto diagnosed respondent with psychosis not otherwise specified (NOS). He explained the diagnosis of psychosis NOS is used when a patient presents clear symptoms of psychosis but "there is not enough information or clinical information on the patient," such as when a patient has only been examined once. Later, on January 7, 2013,

Repetto diagnosed respondent with schizophrenia, paranoid type, after meeting with her for approximately 40 minutes.

¶ 13 Repetto prescribed Zyprexa, an antipsychotic medication, but respondent refused to take it or to engage in any type of treatment. During her time at Pavilion, respondent's appetite had improved, although she was not eating full meals. Respondent refused to disclose information relating to her psychiatric history, but Repetto stated he understood respondent to have a long history of psychiatric problems and past hospitalizations based on the report prepared by Lynn Griffith. He also opined respondent lacked the ability to protect herself from serious harm in that she had "no insight whatsoever" and possessed "limited understanding" of what was taking place around her. In addition, he believed respondent was "most definitely" in danger of harming herself or others based on her attempts to attack her neighbor and a police officer. Repetto further stated he believed respondent could not provide for her basic physical needs or obtain necessary medical and psychiatric care if she were released. In Repetto's opinion, respondent was suffering as a result of her mental-health issues, and outpatient treatment would be inappropriate given that respondent lacked insight into the severity of her condition.

¶ 14 Repetto believed respondent's prognosis without inpatient treatment was "very poor." However, Repetto stated that with treatment, respondent could likely reach a level of functionality that would allow her to return home and resume her life. Repetto recommended respondent be transferred to McFarland State Hospital (McFarland), predicting she would need long-term inpatient treatment.

¶ 15 Mary Parkes testified that on January 2, 2013, she went in to speak with respondent as Pavilion was "getting ready to discharge" respondent, offering her assistance in

getting home. Respondent was covered with a blanket and refused to acknowledge Parkes' presence. When Parkes peeled the blanket from respondent's head, Parkes noticed respondent appeared unkempt and smelled like urine. Respondent then tried to both spit on and hit Parkes, telling her she would burn in hell and that respondent was Jesus. Parkes later learned respondent had been urinating and defecating in her bed.

¶ 16 On this evidence, the trial court found respondent was a person subject to involuntary admission in that she had a serious mental illness and, because of that illness, she was reasonably expected to inflict serious physical harm upon herself or another in the near future and was unable to provide for her basic physical needs. With respect to respondent's admission dates at Pavilion, the court found respondent was first admitted to Pavilion on December 29 and respondent's "admission started over" on January 2, after she was discharged. The court found immediate hospitalization was necessary to protect respondent and others and that it was the least-restrictive alternative for treatment. In a written order, the court ordered that respondent be hospitalized at Pavilion for up to 90 days, granting Pavilion authority to transfer respondent to McFarland if space became available.

¶ 17 B. Petition for Involuntary-Administration-of-Psychotropic-Medication Hearing

¶ 18 Immediately thereafter, the trial court held a hearing on the petition for involuntary administration of psychotropic medication. The court took judicial notice of Repetto's and Parkes' testimony in the involuntary-commitment hearing. Repetto also provided the following additional testimony. In his expert opinion, Repetto believed respondent lacked the ability to (1) make an informed and rational choice about whether to seek medical and psychiatric treatment for her condition, (2) understand she had a choice to make about whether to seek medical and psychiatric treatment, and (3) understand the treatment options available to her

and rationally weigh the risks and benefits of those options. Specifically, Repetto noted respondent possessed "significantly impaired insight" and diminished judgment due to her diagnosis. Repetto discussed with respondent the need for treatment, explaining the side effects, risks, and benefits of the medication he was proposing. Respondent replied she did not believe she needed medication.

¶ 19 Repetto testified about the medication he sought to administer, explaining his first-choice medication was Zyprexa, but he submitted a list of multiple medications because "it is very hard from the beginning of the treatment to know what medication the patient will tolerate and respond [to] better." Repetto's list included the following antipsychotic medications: Zyprexa (5 to 30 milligrams daily), Clozaril (25 to 150 milligrams daily), Haldol (5 to 10 milligrams daily), Geodon (20 to 120 milligrams daily), Risperdal (2 to 16 milligrams daily), and Thorazine (25 to 300 milligrams daily). Repetto explained the side effects of each medication, which included agitation, anxiety, tremors, and rigidity.

¶ 20 Repetto also sought permission to administer Benadryl (25 to 50 milligrams daily), Ativan (1 to 2 milligrams daily), Cogentin (1/2 to 2 milligrams daily), and Vistaril (25 to 100 milligrams daily), to be used to treat the antipsychotic medications' possible side effects. In addition, Repetto requested the ability to perform various laboratory tests, including a complete blood count, thyroid test, and urinalysis, to ensure respondent was receiving the correct level of medications and that she remained healthy. Repetto opined the benefits of the testing procedures and medications outweighed the risks and the testing procedures were essential for the safe and effect administrative of the treatment Repetto was proposing. Repetto also petitioned to be able to use restraints and seclusion as needed, explaining Pavilion only used physical restraints "when

the safety of the patient is in danger." According to Repetto, all of the individuals listed on the proposed order were licensed to administer the treatments Repetto proposed.

¶ 21 Repetto acknowledged he did not provide respondent a copy of the petition for administration of psychotropic medications and he did not know whether someone else presented her with a copy of the petition. He also did not attempt to discuss the benefits and side effects of 9 of the 10 medications listed in his petition, testifying he only discussed the need for and side effects of Zyprexa. Further, he only provided respondent a written list of Zyprexa's potential side effects, not a written list of the side effects of the other medications. Repetto stated that all of the psychotropic medications carried the risk of serious side effects such as tardive dyskinesia, heart failure, sudden death, and pneumonia.

¶ 22 On this evidence, the trial court granted the petition for involuntary administration of psychotropic medication, finding the evidence showed respondent suffered from schizophrenia, a serious medical illness, that caused a deterioration in her ability to function and made respondent engage in threatening behavior. The court entered a written order, effective for 90 days, consistent with its findings.

¶ 23 C. Notices of Appeal

¶ 24 Respondent filed notices of appeal, challenging both the involuntary-commitment and involuntary-treatment orders. This court docketed respondent's involuntary-admission case (No. 13-MH-1) as case No. 4-13-0046 and respondent's involuntary treatment case (No. 13-MH-2) as case No. 4-13-0047. We then consolidated the cases on appeal.

¶ 25 II. ANALYSIS

¶ 26 On appeal, respondent asserts the involuntary (1) admission order should be reversed because she was not examined by a psychiatrist within 24 hours of admission and (2)

administration order should be reversed because the State failed to provide respondent with complete written information about the benefits, risks, and alternatives to the proposed medications. We address respondent's claims in turn.

¶ 27 A. The Involuntary-Admission Proceedings (No. 4-13-0046)

¶ 28 Respondent argues the trial court erred by granting the petition for involuntary admission because she was not examined by a psychiatrist within 24 hours of her admission. As respondent acknowledges, the 90-day commitment order has expired, and therefore, her appeal is moot. See *In re Barbara H.*, 183 Ill. 2d 482, 490, 702 N.E.2d 555, 559 (1998) (A case is moot when the original judgment no longer has any force or effect.). Generally, Illinois courts do not decide moot questions, render advisory opinions, or consider issues where the result will not be affected regardless of how the issues are decided. *In re Alfred H.H.*, 233 Ill. 2d 345, 351, 910 N.E.2d 74, 78 (2009). However, our supreme court has recognized the following three mootness exceptions that may apply in mental-health cases: (1) the public-interest exception, (2) the capable-of-repetition-yet-evading-review-exception, and (3) the collateral-consequences exception. *Alfred H.H.*, 233 Ill. 2d at 355-63, 910 N.E.2d at 80-84.

¶ 29 Here, the State concedes that the collateral-consequences exception applies to respondent's involuntary-admission case because, although respondent has prior psychiatric hospitalizations, the record does not indicate those hospitalizations were involuntary. After this case was submitted, our supreme court issued its decision in *In re Rita P.*, 2014 IL 115798, and as a result, for the reasons discussed below, we reject the State's concession.

¶ 30 Under the collateral-consequences exception, appellate review is permissible "where collateral consequences survive the expiration or cessation of a court order that are likely to be redressed by a favorable judicial determination." *Id.* ¶ 31. In *Alfred H.H.*, the supreme

court recognized that reversal of a mental health admission or treatment order could provide a "host of potential legal benefits." *Alfred H.H.*, 233 Ill. 2d at 362, 910 N.E.2d at 84. Specifically, a reversal could (1) serve as the basis for a motion *in limine* that would prohibit any mention of hospitalization during the course of another proceeding and (2) affect the ability of a respondent to seek employment in certain fields. *Id.* The supreme court concluded the exception did not apply to the respondent's case because, given that respondent had multiple prior involuntary commitments and a prior felony conviction, any identifiable collateral consequence "already existed." *Id.* at 363, 910 N.E.2d at 84.

¶ 31 Recently, in *Rita P.*, the supreme court reiterated that application of the collateral-consequences exception should be "decided on a case-by-case basis." *Rita P.*, 2014 IL 115798,

¶ 33. Thus, the supreme court stated as follows: "[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. Rather, a reviewing court must consider all the relevant facts and legal issues raised in the appeal before deciding whether the exception applies." *Id.* ¶ 34.

¶ 32 Here, respondent has not identified, nor are we able to ascertain from the record, any specific collateral consequences that stem solely from the trial court's involuntary-commitment order. Respondent's brief argues only that the collateral-consequences exception is available because respondent does not have a prior involuntary commitment or felony conviction and "collateral consequences of having once been subject to involuntary admission will attach to [respondent] and could be used against her in future proceedings." Based on the supreme court's admonition in *Rita P.*, we conclude this is insufficient to show the collateral-consequences exception applies.

¶ 33 Respondent also contends her case falls into the capable-of-repetition-yet-evading-review and public-interest exceptions. We disagree. The public-interest exception requires a respondent to show, among other things, that " 'the question presented is of a public nature.' " *Id.* ¶ 36 (quoting *In re Shelby R.*, 2013 IL 114994, ¶ 16, 995 N.E.2d 990). Case-specific inquiries do not present the types of broad public issues that are required for the public-interest exception to apply. *Id.* ¶ 36. Here, respondent's contention relating to her involuntary-admission order is that a psychiatrist did not examine her within 24 hours of admission. Respondent's contention turns on the specific facts of her case—namely, whether she was continuously admitted to Pavilion or discharged and then readmitted to Pavilion on January 2, 2013. Because this is a case-specific inquiry, we conclude respondent's appeal does not fall into the public-interest exception.

¶ 34 Likewise, given the fact-driven nature of respondent's appeal, the capable-of-repetition-yet-evading-review exception is also inapplicable. To fall into this exception, a reasonable expectation must exist that the same complaining party will be subjected to the same action again. *Alfred H.H.*, 233 Ill. 2d at 358, 910 N.E.2d at 82. In *Alfred H.H.*, the supreme court concluded the respondent failed to meet his burden of showing a substantial likelihood existed that the issue presented in his case would have some bearing on a similar issue presented in a subsequent case because the respondent's argument concerned "whether the specific facts that were established during the hearing *** 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." *Id.* at 360, 910 N.E.2d at 83.

¶ 35 As in *Alfred H.H.*, respondent fails to provide a clear indication of how the determination of whether she was continuously admitted or discharged and subsequently

readmitted on January 2, 2013, could be of use to her in a future case. Accordingly, we conclude the capable-of-repetition-yet-evading-review exception is inapplicable.

¶ 36 Because none of the recognized exceptions to the mootness doctrine apply, we dismiss respondent's appeal in case No. 4-13-0046 as moot.

¶ 37 B. The Involuntary-Administration Proceedings (No. 4-13-0047)

¶ 38 Respondent asserts the trial court erred by granting the petition for involuntary administration of psychotropic medication because the State failed to provide respondent with complete written information about the benefits, risks, and alternatives to the proposed medications.

¶ 39 Like respondent's involuntary-commitment order, the January 8, 2013, involuntary-treatment order expired on its own terms 90 days after it was entered; accordingly, respondent's involuntary-treatment appeal is moot. Respondent contends we may nonetheless review her appeal pursuant to either the public-interest or capable-of-repetition-yet-evading-review exceptions.

¶ 40 We agree that respondent's appeal falls within the capable-of-repetition-yet-evading-review exception. To fall into this exception, (1) the challenged action must be too short in duration to be fully litigated prior to its cessation, and (2) a reasonable expectation must exist that the same complaining party will be subjected to the same action again. *Barbara H.*, 183 Ill. 2d at 491, 702 N.E.2d at 559. As in *Alfred H.H.*, "there is no question that the first criteria has been met" because the involuntary-treatment order was limited to 90 days and appellate review could not have taken place prior to the order's expiration. *Alfred H.H.*, 233 Ill. 2d at 358, 910 N.E.2d at 82.

¶ 41 The second requirement is also satisfied. In *Alfred H.H.*, 233 Ill. 2d at 360, 910 N.E.2d at 83, the supreme court concluded the respondent failed to meet his burden of showing a substantial likelihood existed that the issue presented in his case would have some bearing on a similar issue presented in a subsequent case. In reaching its conclusion, the supreme court reasoned as follows: "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." *Id.*

¶ 42 Here, respondent's argument relates to an issue of statutory compliance—namely, whether the State proved compliance with section 2-102(a-5) of the Code (405 ILCS 5/2-102(a-5) (West 2012)). Moreover, given that Repetto testified respondent had a long history of psychiatric problems and past hospitalizations, it appears likely that respondent will face future involuntary-administration proceedings and thus, section 2-102(a-5) of the Code (405 ILCS 5/2-102(a-5) (West 2012)) will likely be applied to her again. Accordingly, we find respondent's appeal falls within the capable-of-repetition-yet-evading-review exception and we will thus consider the merits of respondent's appeal.

¶ 43 Respondent argues the trial court's involuntary-administration order should be reversed because the State failed to prove compliance with section 2-102(a-5) of the Code (405 ILCS 5/2-102(a-5) (West 2012)). We review *de novo* whether "substantial compliance with a statutory provision has taken place." *In re Laura H.*, 404 Ill. App. 3d 286, 290, 936 N.E.2d 801, 805 (2010).

¶ 44 Section 2-102(a-5) of the Code (405 ILCS 5/2-102(a-5) (West 2012)) provides as follows:

"If the services include the administration of electroconvulsive therapy or psychotropic medication, the physician or the physician's designee shall advise the recipient, in writing, of the side effects, risks, and benefits of the treatment, as well as alternatives to the proposed treatment, to the extent such advice is consistent with the recipient's ability to understand the information communicated."

¶ 45 This court has made clear that "[s]trict compliance with section 2-102(a-5) is necessary to protect the liberty interests of the mental-health treatment recipient." (Internal quotation marks omitted.) *In re David M.*, 2013 IL App (4th) 121004, ¶ 38, 994 N.E.2d 694. Here, Repetto testified he discussed the need for and side effects of Zyprexa with respondent and provided her a written list of the potential side effects of Zyprexa. He did not, however, discuss with or provide respondent written information about the side effects, risks, or benefits of the nine other proposed medications listed in the petition.

¶ 46 The State points out that the petition for involuntary administration of psychotropic medication, which it asserts Repetto signed, states "I affirm that I advised the individual, in writing, of the risks and benefits of the proposed treatment." The State contends Repetto's signature on the petition indicating written information was provided is proof compliance with section 2-102(a-5) of the Code took place. We reject the State's contention. First, we note Repetto's testimony directly contradicted the statement in the petition that he advised respondent, in writing, of the risks and benefits of each proposed treatment. Repetto

