NOTICE
Decision filed 12/08/14. The text of this decision may be changed or corrected prior to the filing of a Petition for Rehearing or the disposition of the same.

2014 IL App (5th) 120574-U

NO. 5-12-0574

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

NOTICE
This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

In re TRACEY C., Alleged to Be a Person Subject to Involuntary Treatment With Psychotropic Medication	)	Appeal from the Circuit Court of Madison County.
	)	No. 12-MH-140
(The People of the State of Illinois, Petitioner-Appellee, v. Tracey C., Respondent-Appellant).	)	Honorable Stephen A. Stobbs, Judge, presiding.

JUSTICE GOLDENHERSH delivered the judgment of the court.
Presiding Justice Cates and Justice Chapman concurred in the judgment.

ORDER

¶ 1 *Held*: Where the State failed to provide clear and convincing evidence that the respondent lacked decisional capacity to make a reasoned decision about the proposed treatment by failing to prove that it had provided her with the statutorily required information, the order of the circuit court is reversed.

¶ 2 The respondent, Tracey C., appeals from an order of the circuit court of Madison County finding her subject to involuntary administration of psychotropic medications according to section 2-107.1(a-5) of the Mental Health and Developmental Disabilities Code (Code) (405 ILCS 5/2-107.1(a-5) (West 2012)). The respondent argues that the circuit court's finding that she met the statutory criteria for forced administration of medication was against the manifest weight of the evidence. The State has filed a

confession of error. We find the respondent's contentions to be well-taken. For the reasons that follow, we reverse the order of the circuit court.

¶ 3 BACKGROUND

¶ 4 The respondent was admitted to Alton Mental Health Center (Alton) on October 4, 2012, after being found unfit to stand trial on charges of criminal damage to property and aggravated battery. Prior to being admitted to Alton, she was in jail, though the record does not indicate which jail she was in.

¶ 5 On November 7, 2012, the respondent's treating psychiatrist at Alton, Dr. Montani, filed a petition for the authority to administer involuntary psychotropic medication and necessary, supportive medical testing. According to the petition, the respondent had been diagnosed with schizophrenia and had exhibited: "a deterioration of [her] ability to function, *** suffering, ***" and "threatening behaviors." The petition listed three primary medications and their doses and three alternative medications and their doses. The petition stated that Dr. Montani had explained to the respondent the risks of the proposed treatment, the intended benefits of the proposed treatment, and alternative forms of treatment, and had provided that information to the respondent in written or printed form. Further, the petition indicated that Dr. Montani was requesting authorization for testing and procedures to be administered to the respondent.

¶ 6 The court held a hearing on the petition on November 27, 2012. Dr. Montani testified for the State as follows. He had been the respondent's treating psychiatrist since the respondent was admitted to Alton on October 4, 2012. The respondent was diagnosed with schizophrenia. While in jail, she refused to eat or bathe and exhibited significant

weight loss. She also smeared feces on all of the walls and floor of her cell. When she was admitted to Alton, she refused to eat or bathe. As a result, she was placed on emergency medication and her symptoms decreased. Dr. Montani then specified the medications he planned to use on the respondent, including the alternative medications and their doses. He did not testify as to whether the respondent had received written information about alternatives to medication, such as individual counseling or group therapy. In his testimony, Dr. Montani testified that such alternatives to medication were available, but did not believe those methods would be effective on the respondent.

¶ 7 The respondent testified that she had read the side effects and intended benefits of the proposed medications. The emergency medications made her tired and her sleeping patterns were abnormal.

¶ 8 The court entered an order authorizing the administration of psychotropic medication. In the order, the court found that the respondent exhibited: "a deterioration of her ability to function," and "suffering." From that order, the respondent appeals.

¶ 9 ANALYSIS

¶ 10 We begin by noting that this appeal is moot because the 90-day period authorized by the circuit court's order has expired. Nevertheless, we will address the questions raised in this appeal because they are capable of repetition yet might evade review because of the short duration of the orders and the respondent's continuing mental health issues. See *In re Joseph M.*, 405 Ill. App. 3d 1167, 1175 (2010).

¶ 11 The Code states that a recipient of mental health services shall be provided with adequate and humane care and services in the least restrictive environment, pursuant to

an individual service plan. 405 ILCS 5/2-102(a) (West 2012). Section 2-102(a-5) of the Code states that if the services include the administration of psychotropic medication, the physician shall: (1) 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, and (2) determine and state in writing whether the recipient has the capacity to make a reasoned decision about the treatment. 405 ILCS 5/2-102(a-5) (West 2012). If the recipient lacks the capacity to make a reasoned decision about the treatment, the treatment may be administered only pursuant to section 2-107 or 2-107.1 of the Code. 405 ILCS 5/2-102(a-5) (West 2012).

¶ 12 Medication may be administered to a recipient without her consent if and only if it has been determined by clear and convincing evidence that, *inter alia*, the recipient lacks the capacity to make a reasoned decision about treatment. 405 ILCS 5/2-107.1(a-5)(4)(E) (West 2012). Whether there was substantial compliance with a statutory provision is a question of law, which we review *de novo*. *In re Tiffany W.*, 2012 IL App (1st) 102492-B, ¶ 10. A reviewing court will not reverse a circuit court's determination about the sufficiency of the evidence unless such determination was against the manifest weight of the evidence. *Id.* A judgment is against the manifest weight of the evidence only where the opposite conclusion is apparent or where the findings appear to be unreasonable, arbitrary, or not based on the evidence. *Id.*

¶ 13 A patient's capacity to make treatment decisions for herself is based upon the conveyed information concerning the risks and benefits of the proposed treatment and

reasonable alternatives to treatment. *In re John R.*, 339 Ill. App. 3d 778, 785 (2003). The failure to provide the respondent with the statutorily mandated written information about the risks and benefits of the proposed treatment as well as the alternatives to the treatment amounts to reversible error because the respondent has not received all of the information necessary to make a rational choice. *In re Bobby F.*, 2012 IL App (5th) 110214, ¶ 18.

¶ 14 In this case, the State did not prove that the respondent was provided with any information about the alternatives to medication. Dr. Montani testified about the alternatives to medication but never said that he had given the respondent written information about those alternative forms of treatment. There was no way the respondent could have made a fully informed, reasoned decision about treatment without first having all of the information about the treatment before her. Because the State failed to present evidence that it fully complied with section 2-102(a-5) of the Code, the treatment order must be reversed.

¶ 15 CONCLUSION

¶ 16 For the foregoing reasons, the judgment of the circuit court of Madison County ordering the involuntary administration of medication for the respondent is reversed.

¶ 17 Reversed.