

NOTICE  
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2014 IL App (5th) 130089-U

NO. 5-13-0089

IN THE

APPELLATE COURT OF ILLINOIS

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).

FIFTH DISTRICT

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<i>In re</i> N.C., Alleged to Be a Person	)	Appeal from the Circuit Court of
Subject to Involuntary Treatment With	)	Madison County.
Psychotropic Medication	)	
	)	No. 13-MH-4
(The People of the State of Illinois, Petitioner-	)	
Appellee, v. N.C., Respondent-Appellant).	)	Honorable Stephen A. Stobbs,
	)	Judge, presiding.

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JUSTICE CHAPMAN delivered the judgment of the court.  
Justices Spomer and Schwarm concurred in the judgment.

**ORDER**

¶ 1 *Held:* Where the State failed to prove by clear and convincing evidence that the respondent lacked decisional capacity to make a reasoned decision about the proposed treatment and that the benefits of the treatment outweighed the harm, the judgment of the circuit court is reversed.

¶ 2 The respondent, N.C., appeals from the 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 and State's confession to be well-taken. For the reasons that follow, we reverse the order of the circuit court.

¶ 3

### BACKGROUND

¶ 4 On December 31, 2012, the respondent was admitted to Alton Mental Health Center (Alton) after being found unfit to stand trial on a charge of resisting a police officer. Prior to being admitted at Alton, the respondent had been hospitalized multiple times. She suffered from a psychotic disorder not otherwise specified, hepatitis C, and from the effects of a severe head trauma that she received from a car accident and childhood abuse.

¶ 5 On January 4, 2013, the respondent's treating psychiatrist, Dr. David Montani, filed a petition seeking an order authorizing the involuntary administration of psychotropic medication and necessary, supportive medical testing. The petition detailed the respondent's history of mental illness and treatment, her reasons for being at Alton, her actions against staff and inmates in jail and at Alton, and the various symptoms associated with her mental illness and brain trauma. The petition listed a total of four medications, Haldol D, Haldol, Ativan, and Benadryl, and two alternate medications, Risperdal in place of Haldol, and Invega Sustenna in place of Haldol D, to be either injected or given orally. The proposed dose, frequency, and mode of administration were set out in writing for each medication. The monitoring tests for each medication were detailed as well. The petition failed to set forth the potential side effects of any of the medications. The petition also included the following two statements, to which Dr. Montani marked "yes" next to each: "I have explained the risks and the intended benefits

of the treatment, as well as alternative forms of the treatment, to the recipient," and, "And I also have provided that information in written or printed form to the recipient." (Emphasis in original.)

¶ 6 The court held a hearing on the petition on January 29, 2013. Dr. Montani testified for the State as follows. He was the respondent's psychiatrist and had diagnosed the respondent as suffering from psychotic disorder, not otherwise specified. The respondent had a history of mental illness for about 16 years. Due to her brain trauma and mental illness, the respondent exhibited disorganized thinking which required the staff at Alton to remind her to bathe and eat. She also displayed an inability to focus, had nonreality-based conversations, and had frequent crying spells. Immediately prior to her admission to Alton, the respondent was in jail and frequently attempted to strike both jail staff and other inmates. When she was admitted to Alton, she attempted to strike nursing staff. As a result, the respondent was subjected to the administration of emergency medication. The results of the emergency medication were good.

¶ 7 Dr. Montani further testified about the psychotropic medications he wished to administer to the respondent. He gave their name, dosage, form of administration, and their benefits and side effects. He also provided the names, dosages, forms of administration, and side effects of the alternative medications he sought to administer. Dr. Montani testified that the intended benefits of the primary and alternative medications outweighed the risks and dangers associated with those medications. However, Dr. Montani did not present any details about the benefits of the individual alternative medications. When asked whether he explained the risks and intended benefits of each

primary and alternative medication to the respondent, Dr. Montani said he did, and that he also provided that information to the respondent in written form. However, the record is silent as to whether Dr. Montani provided written information about the risks and benefits of nonmedicinal forms of treatment. In his testimony, Dr. Montani explained that less-restrictive forms of treatment, such as individual counseling, group counseling, and psycho-education, had been attempted with the respondent but that they were not adequate and appropriate to treat her. Finally, Dr. Montani testified that the respondent did not have the capacity to make a reasonable decision about the medications because she was not able to rationally weigh the risks and benefits associated with the medications. Further, she did not understand that she had a mental illness. Her guardian agreed to the proposed treatment but she did not.

¶ 8 The respondent testified that she did not want to be forced to take medication, that she had been nice to everyone at the hospital, and that she did not want to hurt anyone, including herself, at Alton.

¶ 9 On January 29, 2013, the court entered an order granting the petition wherein the court found that the respondent was suffering and exhibited a deterioration of her ability to function. The court authorized the involuntary administration of psychotropic medication for a period of 90 days.

¶ 10 ANALYSIS

¶ 11 We begin by noting that this appeal is moot because the 90-day period authorized by the circuit court's order has expired. Generally, Illinois courts will not decide moot questions unless one of the three required exceptions to the mootness doctrine applies.

Those exceptions are (1) the public interest exception, (2) the capable-of-repetition-yet-evading-review exception, and (3) the collateral consequences exception. *In re Alfred H.H.*, 233 Ill. 2d 345, 355-62 (2009). The respondent argues that the collateral consequences exception applies because the record does not show that she had ever had an involuntary medication order entered against her prior to the order at issue in this case. The mere fact that a respondent has not been subject to a prior order for involuntary treatment is insufficient to invoke the collateral consequences exception. See *In re Rita P.*, 2014 IL 115798, ¶ 34. The respondent also argues that the public interest exception applies. Although sufficiency-of-the-evidence cases generally do not present the kind of broad public interest questions warranting review under the public interest exception (see *In re Alfred H.H.*, 233 Ill. 2d at 356-57), the exception has been applied where the issues raised had broader implications than ordinary sufficiency-of-the-evidence cases. *In re Joseph M.*, 405 Ill. App. 3d 1167, 1173 (2010) (citing *In re Eric H.*, 399 Ill. App. 3d 831, 833 (2010); *In re Robert F.*, 396 Ill. App. 3d 304, 311 (2009)). We need not consider whether the public interest exception applies in this case, however, because we find that the respondent's case is capable of repetition but evades review and thereby meets that exception to the mootness doctrine.

¶ 12 The capable-of-repetition exception applies when (1) the challenged action is too short in duration to be fully litigated prior to its cessation, and (2) there is a reasonable expectation that the same complaining party will be subjected to the same action again. *In re Barbara H.*, 183 Ill. 2d 482, 491 (1998).

¶ 13 This case meets the first requirement because the duration of the order is too short to be fully litigated prior to its cessation. By statute, involuntary medication orders last no more than 90 days (405 ILCS 5/2-107.1(a-5)(5) (West 2012)). This period of time is too brief for appellate review. *In re Barbara H.*, 183 Ill. 2d at 492. We also find that it is likely that the respondent will be subjected to the same action in the future. The record reveals that the respondent has had a history of mental illness for the past 16 years. Her treating psychiatrist testified at the hearing that the respondent has a tendency to stop taking her medication once she is released from care. Given this information, it is likely that the respondent will face a similar action in the future. See *In re Barbara H.*, 183 Ill. 2d at 492. Therefore, this case falls within the capable-of-repetition-but-evading-review exception to the mootness doctrine and we will review this case on its merits.

¶ 14 The respondent argues, and the State concedes, that the State failed to prove by clear and convincing evidence that (1) the benefits of the treatment outweighed the harm (405 ILCS 5/2-107.1(a-5)(4)(D) (West 2012)), and (2) the respondent lacked the capacity to make a reasoned decision about the treatment (405 ILCS 5/2-107.1(a-5)(4)(E) (West 2012)).

¶ 15 Section 2-102(a) of 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) 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).

¶ 16 Section 2-107.1(a-5) of the Code provides, *inter alia*, that medication may be administered to a recipient without her consent if and only if it has been determined by clear and convincing evidence that (1) the benefits of the treatment outweigh the harm, and (2) the recipient lacks the capacity to make a reasoned decision about the treatment. 405 ILCS 5/2-107.1(a-5)(4)(D) & (E) (West 2012). We will not reverse a circuit court's order permitting the involuntary administration of psychotropic medication unless it is against the manifest weight of the evidence. *In re C.S.*, 383 Ill. App. 3d 449, 451 (2008). Failure to provide the respondent with statutorily mandated written information about the risks and benefits of the proposed treatment as well as alternatives to the treatment amounts to reversible error because the respondent has not received all of the information in order to make a rational choice. *In re Bobby F.*, 2012 IL App (5th) 110214, ¶ 18. Further, the failure to provide the respondent with information about the benefits of treatment and alternative nonmedicinal forms of treatment amounts to reversible error. *In re Laura H.*, 404 Ill. App. 3d 286, 291-92 (2010).

¶ 17 In this case, Dr. Montani verbally confirmed that he explained to the respondent, both orally and in writing, the risks and intended benefits of each primary and alternative

medication. However, the State did not present any additional evidence that Dr. Montani or any other hospital personnel provided the respondent with written information about alternatives to the proposed treatment. Dr. Montani simply testified that nonmedicinal therapy had been attempted with the respondent but had been unsuccessful. Without being provided information regarding all of her options for treatment, the respondent could not have possibly made a reasoned decision about treatment. Because the State failed to prove that it had complied with section 2-102(a-5) of the Code, it failed to prove by clear and convincing evidence that the respondent lacked the decisional capacity to make a reasoned decision about the proposed treatment.

¶ 18 The State must prove by clear and convincing evidence that the benefits of proposed treatment outweigh the harm. *In re Larry B.*, 394 Ill. App. 3d 470, 475-76 (2009). To satisfy this requirement, the State must present evidence of the medication to be used, and failing to present such evidence results in reversible error. *In re Louis S.*, 361 Ill. App. 3d 774, 781 (2005). The State's witness must testify as to the benefits, side effects, and dosages of all the requested medications, including primary and alternative medications. *Id.* at 782. In *In re Larry B.*, the testifying psychiatrist testified without elaboration that the benefits outweighed the risks of the treatment. *In re Larry B.*, 394 Ill. App. 3d at 475-76. The court found that without more information, this testimony did not satisfy the statutory requirement regarding the risks and benefits. *Id.*

¶ 19 Here, the State did not provide evidence about the benefits and purpose of any of the alternative medications. Further, Dr. Montani only affirmed the State's question that the benefits of the treatment would outweigh the side effects. Dr. Montani did not

elaborate or even explain why and how the benefits of the treatment outweighed any of the harm. Therefore, we find that the State failed to provide by clear and convincing evidence that the benefits of the treatment outweighed the harm.

¶ 20

#### CONCLUSION

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

¶ 22 Reversed.