

2014 IL App (2d) 130800-U
No. 2-13-0800
Order filed May 8, 2014

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IN THE
APPELLATE COURT OF ILLINOIS
SECOND DISTRICT

<i>In re</i> ROBERT S., Alleged to be a Person)	Appeal from the Circuit Court
Subject to Involuntary Admission,)	of Kane County.
)	
)	No. 13-MH-107
)	
(The People of the State of Illinois,)	Honorable
Petitioner-Appellee, v. Robert S.,)	William Parkhurst,
Respondent-Appellant).)	Judge, Presiding.

PRESIDING JUSTICE BURKE delivered the judgment of the court.
Justices Schostok and Birkett concurred in the judgment.

ORDER

- ¶ 1 *Held:* Although the State did not strictly comply with section 3-601(b)(2) of the Mental Health Code, the evidence showed that the error was harmless and thus did not require reversal of the trial court's involuntary-admission order.
- ¶ 2 Respondent, Robert S., appeals the trial court's order involuntarily admitting him for treatment in the Department of Human Services (the Department). He contends that the petition seeking involuntary admission was insufficient because it did not list the names and addresses of family members or friends or state that a diligent inquiry was made to obtain that information as required by section 3-601(b)(2) of the Mental Health and Developmental Disabilities Code (Code) (405 ILCS 5/3-601(b)(2) (West 2012)). We affirm.

¶ 3

I. BACKGROUND

¶ 4 Respondent has an extensive history with the Department, beginning when he was 10 years old. He is a registered sex offender and suffers from bipolar disorder and dementia. He was transferred from the Dixon Correctional Center to the Chester Mental Health Center on December 11, 2009. On November 18, 2010, he was transferred to the Elgin Mental Health Center.

¶ 5 Respondent was found subject to involuntary admission on January 11, 2013. On July 10, 2013, his social worker filed a petition seeking his continued involuntary admission. The petition provided a space for the name and address of a spouse, parent, guardian, substitute decision maker, or close relative, or any friend who might have the names and addresses. The form also stated: “I made a diligent inquiry to identify and locate these individuals and the following describes the specific steps taken by me in making this inquiry.” In the space for the response, the social worker wrote: “Parents are deceased. Pt has had no contact with ex-wife or other family members.” The record in the appeal from respondent’s January 11, 2013, involuntary admission shows that, on the same line of the form in that case, a social worker wrote only that “Robert has no family.” We may take judicial notice of that record. See *People v. Davis*, 65 Ill. 2d 157, 161-65 (1976).

¶ 6 At a July 26, 2013, hearing, Dr. Eva Kurilo, a psychiatrist at the Elgin Mental Health Center, testified that she diagnosed respondent and opined that, because of his mental illnesses, he was reasonably expected to inflict serious physical harm on another. His mental illnesses also prevented him from providing for his basic physical needs, and the Elgin Mental Health Center was the least restrictive treatment environment.

¶ 7 Kurilo had not called a telephone number that she had for respondent's son, Steven. However, she said that the social worker most likely did so since it was her responsibility to deal with family members. Kurilo said that the staff had tried to call every number that respondent provided them with. However, respondent routinely gave them false information about family members. As part of his bipolar disorder, respondent exhibited grandiosity and believed that he had a Lake Forest home, when he actually did not. A social assessment in the record stated that respondent did not know where his ex-wife and son reside and that he has been estranged from all family for a long time.

¶ 8 During the hearing, respondent repeatedly spoke out of turn, used profanity to refer to Kurilo, and threatened to bring a lawsuit. He testified and gave an address in Lake Forest as his home. He said that his son had just gotten out of the military. He did not know what his son was doing at the present time, but believed that his son would help him if he needed assistance. Respondent also said that he had been married for about six months and that his wife could care for him. However, the record shows that respondent had been in a treatment facility that entire time.

¶ 9 After the hearing, the court entered an order involuntarily admitting respondent for a period not to exceed 180 days. Respondent appeals.

¶ 10 **II. ANALYSIS**

¶ 11 Respondent argues that the State failed to comply with section 3-601(b)(2) when it failed to list family members or in the alternative explain the steps taken in making an inquiry into how to contact them. Respondent recognizes that the matter is moot because the order was for 180 days, which time has passed. However, he argues that the exception for issues capable of repetition, yet evading review, applies.

¶ 12 “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). Generally, courts of review 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 Barbara H.*, 183 Ill. 2d 482, 491 (1998).

¶ 13 Reviewing courts, however, recognize exceptions to the mootness doctrine: (1) the public-interest exception, applicable where the case presents a question of public importance that will likely recur and whose answer will guide public officers in the performance of their duties, (2) the capable-of-repetition exception, applicable to cases involving events of short duration that are capable of repetition, yet evading review, and (3) the collateral-consequences exception, applicable where the order could have consequences for a party in some future proceedings. See *In re Alfred H.H.*, 233 Ill. 2d 345, 355-62 (2009). There is no *per se* exception to mootness that universally applies to mental health cases; however, most appeals in mental health cases will fall within one of the established exceptions. *Id.* at 355. Whether a case falls within an established exception is a case-by-case determination. *Id.*

¶ 14 With regard to the exception for issues capable of repetition, yet evading review, the exception has two requirements. “First, the challenged action must be of a duration too short to be fully litigated prior to its cessation.” *Id.* at 358. “Second, there must be a reasonable expectation that ‘the same complaining party would be subjected to the same action again.’ ” *Id.* (quoting *Barbara H.*, 183 Ill. 2d at 491). In a case where a party challenges the specific facts that were established during the proceedings, the exception generally does not apply, because the facts would necessarily be different in any future hearing and thus the present issue would have

no bearing on similar issues presented in subsequent cases. *In re Val Q.*, 396 Ill. App. 3d 155, 160-61 (2009); see also *Alfred H.H.*, 233 Ill. 2d at 360 (applying this rule to involuntary admission hearings). However, when a purely legal question is raised, such as an issue of statutory interpretation, the exception can apply because the trial court will likely again commit the same alleged errors. See *In re Jonathan P.*, 399 Ill. App. 3d 396, 401 (2010). Likewise, issues concerning statutory compliance could have a bearing on a subsequent case that involves the respondent. *In re Gloria C.*, 401 Ill. App. 3d 271, 276 (2010).

¶ 15 Here, there is no dispute that the matter is too short of duration to be fully litigated prior to its cessation. As to whether there is a reasonable expectation that respondent would be subjected to the same action again, the fact that respondent has been subject to involuntary admission on repeat occasions, and that social workers at his mental health facility have at least twice failed to list specific steps taken to locate family members, shows that the matter is likely to be repeated. The State argues that the matter is one of facts specific to the situation and likens it to a sufficiency-of-the-evidence claim. However, the issue that respondent raises is a matter of statutory compliance. Given that the form has been filled out in the same manner at least twice, the issue could have a bearing on subsequent cases involving respondent. Accordingly, the exception for issues capable of repetition, yet evading review, applies.

¶ 16 Respondent contends that the petition seeking his involuntary admission was statutorily defective because it did not list the names and addresses of family members or explain how a diligent inquiry was made to attempt to locate them.

¶ 17 Involuntary admission procedures represent the legislature's attempt to balance the individual's interest in liberty against society's dual interests in protecting itself from dangerous mentally ill persons and caring for those who are unable to care for themselves. *In re James*, 191

Ill. App. 3d 352, 356 (1989). The Code's procedural safeguards are not mere technicalities. *In re Luttrell*, 261 Ill. App. 3d 221, 230 (1994). Rather, they are essential tools to safeguard the liberty interests of respondents in mental health cases. *Id.* Because involuntary admission proceedings pose a grave threat to an individual's liberty interests, the Code's procedural safeguards should be narrowly construed. *In re La Touche*, 247 Ill. App. 3d 615, 618 (1993). Whether the State strictly complied with the procedural requirements of the Code is a question of law that we review *de novo*. *In re Leslie H.*, 369 Ill. App. 3d 854, 856 (2006).

¶ 18 Section 3-601(b)(2) of the Code states that a petition for involuntary admission shall include:

“The name and address of the spouse, parent, guardian, substitute decision maker, if any, and close relative, or if none, the name and address of any known friend of the respondent whom the petitioner had reason to believe may know or have any of the other names and addresses. If the petitioner is unable to supply any such names and addresses, the petitioner shall state that diligent inquiry was made to learn this information and specify the steps taken.” 405 ILCS 5/3-601(b)(2) (West 2012).

¶ 19 “A petition that does not list relatives or friends or indicate that a diligent inquiry was made to locate them is fatally defective under the Code.” *In re Denise C.*, 348 Ill. App. 3d 889, 892 (2004). The purpose of the statutory requirement is to ensure that the State makes every effort to contact a responsible family member or friend. *In re Joseph M.*, 405 Ill. App. 3d 1167, 1180 (2010). Thus, reversal is mandated where the error might have prejudiced the respondent, even where the respondent did not object in the trial court to the lack of the information in the petition. *In re Denise C.*, 348 Ill. App. 3d at 892. However, reversal is not required where the record shows no prejudice from the failure to name family or friends in the petition. See *In re*

Robin C. 385 Ill. App. 3d 523, 527-28 (2008). If it is reasonable to conclude from the evidence that the petitioner made diligent efforts to find family and friends and that willing or concerned family or friends could not be located, then prejudice will not be found. See *Denise C.*, 348 Ill. App. 3d at 892-93.

¶ 20 Here, there was no prejudice shown from the error. Evidence at the hearing demonstrated that a diligent inquiry was made to locate family members and that the inquiry was frustrated by respondent, who routinely gave false information. The record shows that respondent had been estranged from his family for a long time, and nothing, other than his own testimony, which lacked credibility, shows that family members were willing or able to take part in any proceedings involving him. Deviation from the Code does not require reversal of an involuntary admission order if curing the defects would have made no difference. *Robin C.*, 385 Ill. App. 3d at 527. Based on the evidence that a diligent inquiry was made and on the lack of credible evidence that respondent had family members who could be located, respondent was not prejudiced.

¶ 21

III. CONCLUSION

¶ 22 The petition was defective because it failed to list relatives or friends or indicate that a diligent inquiry was made to locate them. However, prejudice was not shown. Accordingly, the judgment of the circuit court of Kane County is affirmed.

¶ 23 Affirmed.