2011 IL App (1st) 102492-U

FIRST DIVISION
DATE 12/19/11

No. 1-10-2492

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

In re TIFFANY W., Alleged to be a person subject to involuntary psychotropic medication,	)	Appeal from the Circuit Curt of Cook County.
(THE PEOPLE OF THE STATE OF ILLINOIS,	)	
Petitioner-Appellee,	)	
v.	)	No. 10 COMH 1713R
TIFFANY W.,	)	Honorable Robert W. Bertucci,
Respondent-Appellant).	)	Judge Presiding.

JUSTICE HALL delivered the judgment of the court.
Presiding Justice HOFFMAN and Justice ROCHFORD concurred in the judgment.

O R D E R

¶ 1 *Held*: Appeal from order involuntarily administering psychotropic medication dismissed as moot where order expired after 90 days and mootness exceptions do not apply.

¶ 2 Respondent Tiffany W. seeks reversal of an order of the circuit court of Cook County subjecting her to the involuntary administration of psychotropic medication for a period of 90 days. She contends that the State did not comply with the notice requirements under section 2-102(a-5) of the Mental Health Code (Code) (405 ILCS 5/2-102(a-5) West 2008)) or establish the

elements necessary to administer medication to a non-consenting person under section 2-107.1 of the Code (405 ILCS 5/2-102(a-5) (West 2008)). She also contends that her appeal falls within recognized exceptions to the mootness doctrine.

¶ 3 The facts relevant to the present involuntary administration of medication order are not in dispute. Respondent is a 39-year-old army veteran who was diagnosed with schizophrenia in 1996 or 1997 and suffers from delusions and paranoia. She was treated at the "psych unit" of an army hospital for unidentified mental health reasons and has been hospitalized on multiple occasions since then, including at least three admissions in the past three years. In addition, while under the influence of cocaine, respondent fell from a ninth story window, permanently injuring her brain and spine. As a result, she is confined to a wheelchair and suffers from quadraparesis and dysarthria. Testimony from her father and her treating psychiatrist revealed that when respondent is taking psychotropic medication, she is able to live in her own home with the assistance of caregivers. However, without psychotropic medication, respondent becomes easily agitated, delusional, and is generally unable to care for herself.

¶ 4 Respondent stopped taking her medication about a year before the entry of the contested order and her behavior and demeanor diminished, resulting in her having delusions, including beliefs that she is either a man or God, frequent outbursts involving inappropriate and abusive language, and a decreased ability to care for her own hygiene or health. As a result, her treating psychiatrist sought court-ordered involuntary administration of psychotropic medication in order to treat her illness and improve the quality of her life, and expressed his belief that she did not have the capacity to decide for herself whether to take or refuse the medication. The circuit court agreed and ordered the administration of the medication. Respondent now challenges this order.

¶ 5 The record shows, and respondent concedes, that the order for involuntary administration of medication entered on July 29, 2010, was valid for 90 days and expired on September 29,

2010. As a result, this court's opinion as to the lawfulness of the contested order would not affect the outcome of the controversies presented and any decision rendered would be advisory in nature, thereby making her appeal moot. *In re Barbara H.*, 183 Ill. 2d 482, 490 (1998).

¶ 6 Generally, Illinois courts do not decide moot questions; however, respondent urges our consideration of the arguments raised in her appeal under one of three recognized exceptions to the mootness doctrine: public interest; capable of repetition yet evading review; and collateral-consequences. *In re Alfred H.H.*, 233 Ill. 2d 345, 351 (2009). We observe that there is no *per se* exception to the mootness doctrine that applies universally to mental health cases, and whether a case falls within an established exception to the mootness doctrine is determined case-by-case. *Alfred H.H.*, 233 Ill. 2d at 355.

¶ 7 Pursuant to the public interest exception, a reviewing court may consider an otherwise moot case when the question presented is of a public nature, an authoritative determination is needed for future guidance of public officers, and the question is likely to recur in the future. *Alfred H.H.*, 233 Ill. 2d at 355. The public interest exception is narrowly construed and requires a "clear showing" of each standard. *Alfred H.H.*, 233 Ill. 2d at 355.

¶ 8 We find the public interest exception inapplicable in this case because respondent raises an issue concerning the sufficiency of the evidence, a case-specific question that is not sufficiently of a public nature to trigger the public interest exception. *Alfred H.H.*, 233 Ill. 2d at 356-57. Respondent has also failed to "clearly show" that there is a substantial likelihood that the same set of material facts that gave rise to her present claim are likely to recur to her or anyone else. *Alfred H.H.*, 233 Ill. 2d at 358. It is certainly not clear that her condition and mental state would be the same as they were at the time of the hearing in this case. If, in the future, respondent were the subject of another involuntary administration of psychotropic medication order, resolution of that order would depend on an evaluation of her condition at that

future time. Therefore, the sufficiency of the evidence in the present case would not be dispositive of the sufficiency of the evidence in a future case. See *Alfred H.H.*, 233 Ill. 2d at 358.

¶ 9 Under the "capable of repetition yet avoiding review" exception, we may consider an otherwise moot case where the challenged action is of a duration too short to be fully litigated prior to its cessation and there is a reasonable expectation that the " 'same complaining party would be subjected to the same action again.' " *Alfred H.H.*, 233 Ill. 2d at 358, quoting *In re Barbara H.*, 183 Ill. 2d at 491. For the reasons to follow, we find that respondent has failed to establish that this exception applies to this case.

¶ 10 Although the time frame clearly satisfies the first element, respondent has not shown that there is a substantial likelihood that the issues presented in the present case would have any bearing on a similar issue presented in a subsequent case. *Alfred H.H.*, 233 Ill. 2d at 358. The record discloses that the circuit court found respondent's matter a "closer case than some," but granted the order based on respondent's then-present circumstances, including credible testimony from respondent's treating psychiatrist and her father as to respondent's deterioration since she stopped taking her medication voluntarily and observations that her mental state "just depends on the day and the situation." It is thus clear that a future proceeding would require a new evaluation of respondent's condition at that future time (*Alfred H.H.*, 233 Ill. 2d at 360), and we, accordingly, cannot say that the evaluation of her current circumstances will aid her in future litigation (*In re James H.*, 405 Ill. App. 3d 897, 902 (2011)).

¶ 11 Finally, respondent maintains that the collateral-consequences exception should apply to her case. Although this is a recognized exception applicable where the respondent could be plagued in the future by the adjudication at issue (*James H.*, 405 Ill. App. 3d at 902), the supreme court has stated that if the respondent had previous involuntary commitments or felony

convictions, then no collateral consequences can be identified that could stem solely from the present adjudication (*Alfred H.H.*, 233 Ill. 2d at 363).

¶ 12 Moreover, the supreme court has held that application of this exception is to be decided on a case-by-case basis (*Alfred H.H.*, 233 Ill. 2d at 362), rather than the bright-line standard for initial involuntary treatment orders adopted by our sister districts (*In re Charles H.*, 409 Ill. App. 3d 1047 (4th Dist 2009); *In re Wendy T.*, 406 Ill. App. 3d 185, 189-90 (2d Dist 2011)) ; *In re Daryll C.*, 401 Ill. App. 3d 748, 752-53 (3d Dist 2010)). As of this adjudication, this district has not adopted such a bright-line standard and we will continue to follow the directive of the supreme court and decide each situation on a case-by-case basis.

¶ 13 Here, the record suggests that this was respondent's first involuntary administration of medication order. Nonetheless, the specific facts of this case do not support our application of the collateral-consequences exception. The record shows that respondent has had multiple psychiatric admissions since 2002, including hospitalization in the "psych unit" during her tenure with the army and mental illness admissions at least three times in the past two years (*In re Merrilee M.*, 409 Ill. App. 3d 377, 378-79 (2011)), and, in 2003, a court appointed her father as her plenary guardian due to her disability. Thus, there are no identifiable collateral consequences that could stem solely from the present adjudication. *Alfred H.H.*, 233 Ill. 2d at 363.

¶ 14 In reaching this conclusion, we have examined the fourth district's decision in *In re Laura H.*, 404 Ill. App. 3d 286, 289-90 (2010), and the third district's recent decision in *In re Vanessa K.*, 2011 IL App (3d) 100545, ¶16, but find that they do not warrant a different result. The court in *Laura H.* applied the public interest exception, explaining that it had already addressed similar questions regarding compliance with section 2-102(a-5) and that the issue's recurrence indicated a need for guidance in this area and a likely future recurrence in other cases. *Laura H.*, 404 Ill. App. 3d at 289. We have already found that exception inapplicable to this case.

¶ 15 In *Vanessa K.*, 2011 IL App (3d) 100545, the court employed the rationale that respondent's history of noncompliance with maintaining medication and inability to reason rationally rendered it reasonable to expect that she would be subject to another petition for an involuntary administration of medication in the future. This, however, does not comport with the directive of the supreme court that there must be a "clear indication of how a resolution of this issue could be of use to respondent in future litigation" to satisfy this exception (*Alfred H.H.*, 233 Ill. 2d at 360), and given respondent's history, there is no such clear indication in this case.

¶ 16 For these reasons, we dismiss defendant's appeal as moot.

¶ 17 Appeal dismissed.