2013 IL App (2d) 121023-U
No. 2-12-1023
Order filed June 28, 2013

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

In re LARRY F., Alleged to be a Person Subject to Involuntary Treatment	)	Appeal from the Circuit Court of Kane County.
	)	No. 12-MH-68
(The People of the State of Illinois, Petitioner-Appellee, v. Larry F., Respondent-Appellant).	)	Honorable James C. Hallock, Judge, Presiding.

JUSTICE JORGENSEN delivered the judgment of the court.
Presiding Justice Burke and Justice Spence concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court properly authorized the involuntary administration of psychotropic medication: the court's findings that respondent lacked the capacity to make a reasoned decision and had deteriorated due to his mental illness were not against the manifest weight of the evidence, and the court did not err in applying the best-interests test rather than the substituted-judgment test.

¶ 2 Respondent, Larry F., appeals the trial court's order authorizing the involuntary administration of psychotropic medication for up to 90 days under section 2-107.1(a-5)(5) of the Mental Health and Developmental Disabilities Code (Code) (405 ILCS 5/2-107.1(a-5)(5) (West 2010)). Respondent contends that (1) the State failed to prove by clear and convincing evidence that he lacked the capacity to make a reasoned decision whether to take the medication; (2) the State

failed to demonstrate that his ability to function had deteriorated because of mental illness; and (3) the court erred in failing to apply a substituted judgment test to determine whether he would reject medication if competent. We affirm.

¶ 3 I. BACKGROUND

¶ 4 Respondent was found not guilty of first-degree murder by reason of insanity in connection with the death of his girlfriend. At the time of the crime, he suffered from delusions and paranoia. Respondent was remanded to the custody of the Department of Human Services and resided at the Elgin Mental Health Center (the Center) from December 2000 to August 2010, when he was granted conditional release. He had also had previous hospitalizations at the Center before 2000.

¶ 5 In 2012, respondent's conditional release was revoked after he tested positive for illegal drugs. Respondent was initially sent to jail for 25 days and then was returned to the Center. Respondent's psychiatrist, Dr. Faiza Kareemi, recommended that he take psychotropic medication. Respondent refused, and the State petitioned for an involuntary medication order under section 2-107.1. On August 17, 2012, a hearing was held. At the time of the hearing, a final determination of whether respondent was a person subject to involuntary commitment was still pending.

¶ 6 At the hearing, Kareemi testified that, when respondent was initially at the Center, he took psychotropic medications. However, from February 2003 until his conditional release in 2010, respondent was diagnosed as suffering from substance induced psychosis and was not treated with psychotropic medication, because such treatment was not appropriate for that condition. During that period, respondent's symptoms were in remission. Staff at the Center supported respondent's petition for conditional release, and he was released in August 2010 to a halfway house, without any medication requirements.

¶ 7 Kareemi reviewed records from Lutheran Social Services about respondent's condition while he was in the halfway house. She testified that the reports showed that his condition began to deteriorate as early as December 2010, just four months after the conditional release. While at the halfway house, he violated curfew, failed to maintain a steady job, could not afford to pay his program fee, was argumentative, and tested positive for illegal drugs. He was also disrespectful of staff and was hoarding items in his room to the point where he had clothes that had not been washed for months. Respondent had been told that, if his behavior did not change, he would be discharged from the facility.

¶ 8 Kareemi diagnosed respondent with bipolar I. Disorder, which is a serious mental illness characterized by the presence of manic, depressive, and psychotic symptoms. She reported that, ever since respondent returned to the Center, he manifested grandiosity, increases in goal directed activity, distractibility, pressured speech, decreased need for sleep, and paranoia and delusions where he accused staff members and patients of harassing him. Kareemi recommended medication because she believed that respondent's condition had deteriorated. Kareemi opined that the benefits of medication would outweigh their potential harms or side effects. She recommended that respondent be prescribed valproic acid, olanzapine, bupropion, and lorazepam, which were medications that he had taken in the past and two of which caused a dramatic improvement in his symptoms. At that time, he reported acne as a side effect. Kareemi attributed other side effects from his previous medication use, such as dry mouth, restlessness, blurred vision, and a stiff jaw, to Haldol and risperidone, which she was not seeking to prescribe to him now. Respondent also previously had elevated cholesterol, but it continued to be elevated when he was not taking medication. Kareemi

also sought approval of two additional medications that would be administered if respondent refused to take the four primary drugs orally.

¶ 9 Although respondent was initially cooperative when he first arrived back at the Center, he became suspicious when medication was recommended. He then refused treatment from Kareemi and became uncooperative with staff in regard to his clinical condition. Respondent told Kareemi that he did not suffer from bipolar disorder and that his problems were brought on by substance abuse. He also attributed suicidal thoughts and aggravated side effects from his previous use of the medications.

¶ 10 Respondent continued to cooperate with his case worker about issues unrelated to his treatment, but also continued to exhibit other problems. For example, Kareemi testified that respondent was refusing all psychiatric and medical treatment, including blood draws to monitor two medical conditions. He also exhibited threatening behavior and was argumentative, demanding, restless, and paranoid. Respondent believed that patients and staff were harassing him and that Kareemi was telling other patients to intimidate him. On one occasion, respondent mocked another patient as being evil. On another occasion, he called a patient crazy and stupid. He said that other patients had threatened to assault him and told a patient to stay away from him before anything happened. Respondent was violating the Center's phone policy and had problems with personal hygiene. Kareemi said that respondent had some of the same symptoms that were present when he committed the crime that led to his initial admission. He also previously had those symptoms when he was depressed and attempted suicide three times, including once when he overdosed on medication and was hospitalized for a week. She opined that respondent was isolating himself, was suffering due to his mental illness, and posed a risk of violence.

¶ 11 Kareemi opined that respondent did not have the ability to make a reasoned decision about taking medication, because his perception of reality was impaired. He further lacked insight into his clinical condition, because he believed that his symptoms were caused by substance abuse and he did not believe that he had a mental illness. Kareemi opined that it was highly unlikely that respondent would stabilize without medication.

¶ 12 Kareemi addressed the time respondent spent in jail, admitting that it was improper and that an illegal incarceration could make a person suspicious. However, Kareemi maintained that it would not impair a person's functioning. Kareemi did not attribute respondent's deterioration to the jail time. Kareemi also testified that she recommended inpatient treatment in the action involving the revocation of respondent's conditional release.

¶ 13 Respondent called Dr. Alexis Mermigas as a witness. Mermigas was a university fellow in forensic psychiatry. She had reviewed respondent's records and met with him twice for a total of about five hours. The record indicates that she did not review reports from the halfway house about respondent's condition while he was on conditional release. Mermigas found that respondent suffered from bipolar disorder, cannabis dependence, and personality disorder. She noted that respondent attributed all of his psychiatric stays or episodes to drug use.

¶ 14 Mermigas noted that, while respondent was at the Center, his psychotic symptoms completely remitted, although he remained argumentative, irritable, and selectively cooperative. Possible reasons were that he was taking antipsychotic medicine and he was away from illegal substances, and spontaneous remission could also sometimes occur. Respondent took essentially no medication from 2003 to 2010. When he was released, he was not required to take psychotropic medication and, after his release, he did not threaten anyone or harm himself. Mermigas stated that, to her

knowledge, respondent had also not threatened anyone or harmed himself since his return to the Center.

¶ 15 Mermigas discussed the potential side effects of some of the recommended medications and opined that the benefits of those medications did not outweigh the risks. She believed that respondent did not exhibit serious enough symptoms to warrant some of the medications and did not display symptoms that would be treated by others. She also discussed alternate treatments that could be used instead of medication. Mermigas opined that respondent understood his right to refuse medication, understood the benefits and harms, and was able to make a reasoned decision about the matter. However, she also stated that she did not believe that he had insight into his personality disorder. She further noted that she believed that respondent was confused about the bipolar diagnosis because he had been given a number of diagnoses over the years.

¶ 16 Respondent also called Dr. Stephen Dinwiddie as an expert. Dinwiddie was a professor of psychiatry and Mermigas's supervisor. He was also the medical director at the Center from 1996 to 2001. He met with respondent once for three hours and generally agreed with Mermigas's findings and diagnoses. However, he did not review reports from the halfway house about respondent's condition while he was on conditional release. Dinwiddie stated that respondent probably had some benefit from using psychotropic medication in the past, but he also believed that his illness was greatly exacerbated by use of marijuana. Dinwiddie disagreed with Kareemi that respondent's suspicions rose to the level of psychotic symptoms or true delusions. Dinwiddie opined that the recommended medications were inappropriate because the benefits did not outweigh the risks. He also opined that respondent had a solid understanding of the medications and could make

a reasoned decision about them. He further opined that respondent's time in jail worsened his symptoms.

¶ 17 The court found all of the experts credible. However, it placed greater weight on Kareemi's testimony as the treating physician. The court found that respondent had multiple serious mental illnesses and that he exhibited a deterioration in his ability to function because of those illnesses. The court found that the benefits of medication outweighed the harms, respondent lacked the capacity to make a reasoned decision about taking medication, and less restrictive alternatives had been explored. The court noted that there was no power of attorney executed in the case. The court then ordered the administration of psychotropic medication for a period not to exceed 90 days. Respondent appeals.

¶ 18 II. ANALYSIS

¶ 19 A. Exception to the Mootness Doctrine

¶ 20 The State argues that the matter is moot because the order for administration of medication was for 90 days and that time has passed. Respondent, however, contends that we should review the matter under either the collateral-consequences exception to the mootness doctrine or the exception for issues that are capable of repetition, yet evading review.

¶ 21 "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).

¶ 22 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); *In re J.T.*, 221 Ill. 2d at 350. 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. *In re Alfred H.H.*, 233 Ill. 2d at 355. Whether a case falls within an established exception is a case-by-case determination. *Id*.

¶ 23 "The collateral consequences exception allows a reviewing court to consider a case that is otherwise moot where an order for involuntary treatment 'could return to plague the respondent in some future proceedings or could affect other aspects of the respondent's life.' " *In re Rita P.*, 2013 IL App (1st) 112837, ¶ 10 (quoting *In re Val Q.*, 396 Ill. App. 3d 155, 159 (2009)). "For example, reversal of an involuntary treatment order could provide a basis for a motion *in limine* in a future proceeding that would prohibit any mention of the prior treatment." *Id*. "The exception applies to a first involuntary-treatment order (*In re Linda K.*, 407 Ill. App. 3d 1146, 1150 (2011)), but not where the respondent has previously been subject to involuntary treatment, since in those circumstances, any collateral consequences would have already attached (*Alfred H.H.*, 233 Ill. 2d at 362-63)." *Id*. When a respondent has not been previously subject to an order for involuntary administration of medication and has a diagnosis making him or her likely to be subject to future

proceedings that would be impacted by past involuntary treatment, the collateral-consequences exception applies. See *id*. ¶ 10.

¶ 24 Here, the record indicates that this is respondent's first involuntary medication order. Further, he is likely to be subject to future proceedings that would be impacted by his involuntary treatment. Accordingly, the collateral-consequences exception applies. See *id*.

¶ 25 B. Respondent's Capacity to Make Decisions about Medication

¶ 26 Respondent next contends that the State failed to prove by clear and convincing evidence that he lacked the capacity to decide whether to take psychotropic medication.

¶ 27 Section 2-107.1(a-5)(4) directs that the forced administration of psychotropic medication is authorized only if the court finds evidence of each of the following elements, by clear and convincing proof:

> "(A) That the recipient has a serious mental illness or developmental disability.
>
> (B) That because of said mental illness or developmental disability, the recipient currently exhibits any one of the following: (i) deterioration of his or her ability to function, as compared to the recipient's ability to function prior to the current onset of symptoms of the mental illness or disability for which treatment is presently sought, (ii) suffering, or (iii) threatening behavior.
>
> (C) That the illness or disability has existed for a period marked by the continuing presence of the symptoms set forth in item (B) of this subdivision (4) or the repeated episodic occurrence of these symptoms.
>
> (D) That the benefits of the treatment outweigh the harm.

(E) That the recipient lacks the capacity to make a reasoned decision about the treatment.

(F) That other less restrictive services have been explored and found inappropriate.

(G) If the petition seeks authorization for testing and other procedures, that such testing and procedures are essential for the safe and effective administration of the treatment." 405 ILCS 5/2-107.1(a-5)(4) (West 2010).

In determining whether respondent meets these criteria, we may consider respondent's history of serious violence, his repeated past pattern of specific behavior, his actions related to his illness, and past outcomes of various treatment options. *Id*. We observe that respondent was found not guilty by reason of insanity of murder, a violent crime, during which time he suffered from paranoia and delusions.

¶ 28 Clear and convincing evidence is defined as the quantum of proof that leaves no reasonable doubt in the mind of the fact finder as to the veracity of the proposition in question. *In re Israel*, 278 Ill. App. 3d 24, 35 (1996). As a reviewing court, we give great deference to the trial court's factual findings (*In re Kness*, 277 Ill. App. 3d 711, 718 (1996)), but we will reverse an order allowing the involuntary administration of psychotropic medication when the trial court's findings are against the manifest weight of the evidence (*In re John R.*, 339 Ill. App. 3d 778, 781 (2003).

¶ 29 "An individual has the capacity to make treatment decisions for himself when, based upon conveyed information concerning the risks and benefits of the proposed treatment and reasonable alternatives to treatment, he makes a rational choice to either accept or refuse the treatment." *Israel*, 278 Ill. App. 3d at 36. When determining whether an individual has the capacity to make a reasoned

decision whether to take psychotropic medication, the trial court should consider the following factors:

> "(1) The person's knowledge that he has a choice to make;
>
> (2) The person's ability to understand the available options, their advantages and disadvantages;
>
> (3) Whether the commitment is voluntary or involuntary;
>
> (4) Whether the person has previously received the type of medication or treatment at issue;
>
> (5) If the person has received similar treatment in the past, whether he can describe what happened as a result and how the effects were beneficial or harmful; and
>
> (6) The absence of any interfering pathologic perceptions or beliefs or interfering emotional states which might prevent an understanding of legitimate risks and benefits." *Id.* at 37.

None of these factors is dispositive, and other factors that are relevant should also be considered. *Id*.

¶ 30 Here, the trial court's findings were not against the manifest weight of the evidence. The court gave greater deference to Kareemi's testimony because she was the treating physician, and it was entitled to do so. Kareemi was also familiar with reports about respondent's behavior while at the halfway house, something the other experts had not reviewed. While the evidence showed that respondent knew that he had a choice about medication, Kareemi testified that he was unable to make a reasoned decision about the advantages and disadvantages of medication because his perception of reality was impaired. He further lacked insight into his clinical condition because he

believed that his symptoms were caused by substance abuse and he did not believe that he had a mental illness. The record shows that Kareemi believed that respondent was subject to involuntary treatment and nothing indicated that respondent was free to leave the Center. The record further shows that respondent previously received several of the medications prescribed and generally tolerated them well.

¶ 31 Respondent reported that he suffered various side effects and that the medications caused him to attempt suicide, but the record shows that most side effects were caused by other medications. Further, despite his assertions to the contrary, the record does not contain information to reasonably support respondent's contention that his suicide attempts were a result of side effects of his previous medication. At most, the record supports the conclusion that respondent experienced minor side effects from the medications Kareemi sought to administer, while the potential benefits of the medications were high.

¶ 32 Finally, Kareemi's testimony supported the determination that respondent had a pathological perception that interfered with his understanding of the risks and benefits of the medications. As previously noted, respondent did not believe that he had a mental illness and instead believed that his problems were caused by substance abuse. Meanwhile, he exhibited symptoms of the same type that were present when he committed the violent crime that led to his admission, including paranoid and delusional behavior. It is reasonable to conclude that such behavior would interfere with respondent's ability to understand the risks and benefits of taking medication. Accordingly, based on the above evidence, the trial court's finding that respondent lacked the capacity to make a reasoned decision was not against the manifest weight of the evidence.

¶ 33 C. Deterioration Because of Mental Illness

¶ 34 Respondent next contends that the State failed to prove by clear and convincing evidence that he exhibited a deterioration in his ability to function as a result of mental illness. Instead, respondent contends that any deterioration was the result of his illegal incarceration before he was returned to the Center.

¶ 35 Section 2-107.1(a)(4)(B) requires the State to demonstrate that the respondent, as a result of mental illness, (1) deteriorated in his or her ability to function, (2) was suffering, or (3) exhibited threatening behavior. 405 ILCS 5/2-107.1(a)(4)(B) (West 2010). Because the legislature used the word "or," the State needs to establish only one condition specified in section 2-107.1(a)(4)(B). See *People ex rel. Aramburu v. City of Chicago*, 73 Ill. App. 2d 184, 192 (1966).

¶ 36 Respondent points to testimony about the stresses jail time could cause, noting that he was unable to receive treatment there. However, the trial court gave weight to Kareemi's testimony, which was that respondent began to deteriorate as a result of mental illness before he was incarcerated. The record supports that determination, showing that respondent exhibited multiple problems while living at the halfway house. While the stress of jail might have exacerbated his symptoms, the record amply supports that it was not the sole cause of them. Accordingly, the trial court's determination was not against the manifest weight of the evidence. Further, Kareemi testified that respondent was suffering and exhibited threatening behavior because of his mental illness. Thus, whether his deterioration began before he was incarcerated or was caused by the incarceration would not be determinative. That he was currently suffering and exhibiting threatening behavior was also sufficient.

¶ 37 D. Failure to Use a Substituted Judgment Test

¶ 38 Finally, respondent contends that the court erred by failing to apply a substituted judgment test to determine what his wishes would be if he were competent.

¶ 39 Under the substituted judgment, a surrogate decision-maker attempts to establish, with as much accuracy as possible, what decision the patient would make if he were competent to do so. See *In re Estate of Longeway*, 133 Ill. 2d 33, 49 (1989). "Section 2-107.1 does not indicate whether a trial court should utilize the objective 'best interests' or the subjective 'substituted judgment' test." *Israel*, 278 Ill. App. 3d at 34 (citing 405 ILCS 5/2-107.1 (West 1994)). "[T]he supreme court has indicated that the trial court can consider the 'substituted judgment' of the patient and should, in fact, respect the competent wishes expressed by the mental health patient." *Id*. (citing *In re C.E.*, 161 Ill. 2d 200, 221 (1994)). "However, where the patient's competent wishes have not been clearly proven, the court should be guided by the more objective 'best interests' test." *Id*. The court is not required to apply the substituted judgment test. See *In re C.E.*, 161 Ill. 2d at 224.

¶ 40 Here, the trial court specifically considered respondent's wishes concerning the medications. The court noted that respondent had raised numerous objections to the medications, but it went on to conclude that respondent lacked capacity to decide the issue and that respondent's best interests would be served by the administration of the medications. The court further noted that there was no power of attorney in the case, and the record does not contain clear evidence of respondent's competent wishes. Thus, the court appropriately determined the matter using the best interests test. See *id*.

¶ 41 III. CONCLUSION

¶ 42 The trial court's determinations that respondent lacked the capacity to decide whether to take psychotropic medication and that his deterioration in his ability to function was a result of mental

illness were not against the manifest weight of the evidence. The court also appropriately used the best interests test when it ordered the involuntary administration of medication. Accordingly, the judgment of the circuit court of Kane County is affirmed.

¶ 43 Affirmed.