2015 IL App (2d) 140226-U
No. 2-14-0226
Order filed June 29, 2015

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

In re E.W., Alleged to be a Person Subject to Involuntary Treatment	)	Appeal from the Circuit Court of Lake County.
	)	No. 14-MH-14
	)	Honorable
(The People of the State of Illinois, Petitioner-Appellant, v. E.W., Respondent-Appellee).	)	John J. Scully, Judge, Presiding.

JUSTICE BIRKETT delivered the judgment of the court.
Justices Hutchinson and Hudson concurred in the judgment.

ORDER

¶ 1 *Held*: The State's appeal was moot because none of the exceptions to the mootness doctrine were applicable; accordingly the appellate court lacked jurisdiction to hear this appeal, requiring its dismissal.

¶ 2 The State appeals the judgment of the circuit court of Lake County, denying its petition to involuntarily administer psychotropic medication to respondent, E.W. The State argues that, while technically moot, the public-interest and capable-of-repetition exceptions to the mootness doctrine allow our review of this appeal. Substantively, the State argues that the Mental Health and Developmental Disabilities Code (Code) (405 ILCS 5/1-100 *et seq.* (West 2014)) does not prohibit the medication of a patient who lacks capacity to make a reasoned decision about his or her treatment by the expedient of simply offering the patient psychotropic medication in the

hopes that the patient will not demur from accepting the offered medication. The State contends that, even if a violation of the Code did occur, it should not result in the denial of its petition. The State also contends that the trial court did not properly analyze the issue of respondent's capacity by giving improperly short shrift to the testimony of respondent's attending physician and improperly crediting the physician's actions in attempting to treat respondent. We do not address the merits of the State's appeal because none of the exceptions to the mootness doctrine apply. As we lack jurisdiction due to mootness, we dismiss the appeal.

¶ 3 I. BACKGROUND

¶ 4 Dr. Laura Murphy, respondent's attending physician, testified that, at some time before January 29, 2014, respondent's family brought him to the Lake County Health Department. At that time, respondent was no longer taking his medication and had displayed aggressive and bizarre behaviors in his family's home. On January 29, 2014, police transferred respondent to Waukegan's Vista West Hospital, where he was in such an agitated state that he required chemical and physical restraints. Dr. Murphy testified that respondent had been previously admitted to Vista's adolescent unit.

¶ 5 Following respondent's January 29 admission, Dr. Murphy testified that respondent was uncommunicative, avoided social contact, and was generally unresponsive, but when responding, was inappropriate and nonsensical. Respondent also heard voices, was unhygienic, and generally did not cooperate with staff.

¶ 6 On February 7, 2014, the State filed a petition (February 7 petition) to involuntarily administer the antipsychotic medication, Proxilin, by injection, to respondent for a period of not longer than 90 days. Before the petition was ruled on, respondent was offered and took oral doses of Risperdal and trazodone. Four times over the course of five days, respondent accepted

the medications. Thus, on February 13, 2014, the State voluntarily dismissed its February 7 petition.

¶ 7 Immediately after the first petition's dismissal, respondent was still offered the medications, but he refused them. Dr. Murphy testified that respondent was offered medication every day, at least once a day, notwithstanding her opinion at the time of the hearing that respondent lacked capacity to make a reasoned decision about his treatment at all relevant times. Dr. Murphy opined that providing oral medication to a patient who took it without being forced to was preferable to an involuntary injection.

¶ 8 On February 19, 2014, the State filed a second petition (February 19 petition). The February 19 petition sought to administer the same drug during the same timeframe as the February 7 petition. On February 25, 2014, the trial court heard testimony and argument on the February 19 petition.

¶ 9 On February 27, 2014, after considering posttrial briefs and additional oral argument on the issue of capacity, the trial court denied the State's petition. The trial court held that the State failed to prove by clear and convincing evidence that respondent lacked the capacity to make a reasoned decision about the treatment. The court conceded that Dr. Murphy was motivated by respondent's best interest, but her actions contradicted her testimony regarding respondent's capacity. The trial court reasoned that had Dr. Murphy "truly, truly, truly believed" that respondent lacked capacity, she should not have offered respondent any sort of medication, but should have instead filed a petition for involuntary administration. Ultimately, the trial court held that, notwithstanding Dr. Murphy's opinion that respondent lacked capacity; she treated him as if he possessed capacity, and this prevented the State from meeting its burden of proof on the petition. The State timely appeals.

¶ 10 II. ANALYSIS

¶ 11 On appeal, the State argues that, while technically moot, the public-interest and capable-of-repetition exceptions both apply and allow us to review this appeal. The State also contends that the trial court misapplied section 2-102(a-5) of the Code (405 ILCS 5/2-102(a-5) (West 2014)), arguing that Dr. Murphy's decision to offer respondent medication does not contradict or diminish the credibility of her testimony that respondent lacked the capacity to make a reasoned decision about his treatment. We begin with the mootness doctrine.

¶ 12 A. Mootness Generally

¶ 13 "An appeal is moot when it involves no actual controversy or the reviewing court cannot grant the complaining party effectual relief." *Steinbrecher v. Steinbrecher*, 197 Ill. 2d 514, 522-23 (2001). However, there are three recognized exceptions to the mootness doctrine: (1) the public-interest exception; (2) the collateral-consequences exception; and (3) the capable-of-repetition exemption. *In re Alfred H.H.*, 233 Ill. 2d 345, 355-63 (2009). As mootness impacts our jurisdiction (*Patel v. Illinois State Medical Society*, 298 Ill. App. 3d 356, 364 n.5 (1998)), and because we have an "independent obligation to verify our jurisdiction over every appeal that is filed in this court," we consider whether any of the exceptions are applicable. *In re Application of the County Treasurer*, 351 Ill. App. 3d 244, 251 (2004).

¶ 14 B. The Public-Interest Exception

¶ 15 The public-interest exception to the mootness doctrine applies when (1) the question presented is of a public nature; (2) there is a need for an authoritative determination for the future guidance of public officers; and (3) there is a likelihood of future recurrence of the question. *Alfred H.H.*, 233 Ill. 2d at 355. This exception is narrowly construed and requires a clear

showing of each criterion. *Id.* at 355-56. The question of mootness, isolated from the underlying issue of capacity, is entirely a question of law, and is reviewed *de novo*. *Id.* at 350.

¶ 16 Here, we believe that the issue presented, namely, compliance with the Code, presents a matter of sufficiently public concern to fulfill the first criterion of the public-interest exception. *Alfred H.H.* suggests that cases such as this involve only issues of the sufficiency of the evidence. *Id.* at 356-57. A close reading of *Alfred H.H.*, however, shows that this principle is not well supported, either in *Alfred H.H.*, or in the case law generally. See *In re Rita P.*, 2014 IL 115798, ¶ 36 (holding that a court's resolution of the proper construction of a section of the Code affects medical proceedings, which is a matter of public concern); *In re Lance H.*, 2014 IL 114899, ¶ 14 (holding that the procedures that must be followed and the proofs that must be made before a court authorizes involuntary treatment is a matter of public concern); *In re Nicholas L.*, 407 Ill. App. 3d 1061, 1071 (2011) (holding that questions about compliance with the Code's procedures involve matters of public concern). Further, while there may be a sufficiency-of-the-evidence issue, it is more properly viewed as whether the State proved the criteria necessary to sustain its petition, while the parties' arguments regarding the public-interest exception concern Dr. Murphy's compliance with the Code. Because the public has a clear interest in assuring that its doctors are complying with the strictures of the law, we hold that the State has fulfilled the first criterion of the public-interest exception.

¶ 17 The remaining criteria, however, are squarely against the State. The second criterion, the need for an authoritative judgment in order to provide guidance, cannot be shown. The cases are legion covering the precise ground raised in this appeal. The State's own cited authority bears this point out. See, *e.g.*, *In re Gloria C.*, 401 Ill. App. 3d 271, 281-82 (2010) (collateral consequences analysis overruled in *Rita P.*, 2014 IL 115798, ¶ 34); *In re Lisa P.*, 381 Ill. App. 3d

1087, 1092-95 (2008); *In re E.L.*, 316 Ill. App. 3d 598, 606 (2000). Moreover, section 2-107.1 of the Code (405 ILCS 5/2-107.1 (West 2014)) provides a suitable remedy, allowing for successive petitions upon a change in circumstances. *In re Israel*, 278 Ill. App. 3d 24, 32-33 (1996) (citing *In re Connors*, 255 Ill. App. 3d 781, 784 (1994)). This tends to render most sets of circumstances case-specific. See *Alfred H.H.*, 233 Ill. 2d at 356-57.

¶ 18 Likewise, the third criterion, that the circumstances are likely to recur, cannot be shown. Here, Dr. Murphy treated respondent as possessing the capacity to make a reasoned decision about medical treatment. Yet, when he exercised that apparent capacity, Dr. Murphy opined to the court that he lacked the necessary capacity. We cannot say that a similar circumstance would be likely. Accordingly, we hold that the public-interest exception is unavailable under the circumstances of this case.

¶ 19 C. The Collateral-Consequences Exception

¶ 20 Next, the collateral-consequences exception applies when "collateral consequences survive the expiration or cessation of a court order that are likely to be redressed by a favorable judicial determination." *Rita P.*, 2014 IL 115798, ¶ 31. Here, the parties both concede that this exception is unavailable. We agree. The record shows that respondent had twice been admitted to the same hospital's adolescent unit prior to this most recent incident. "Simply stated, there is no collateral consequence that can be identified that could stem solely from the present adjudication." *Alfred H.H.*, 233 Ill. 2d at 363.

¶ 21 D. The Capable-of-Repetition Exception

¶ 22 Finally, for the capable-of-repetition exception to apply: (1) the challenged action must be of a duration too short to be fully litigated prior to its cessation; and (2) there must be a reasonable expectation that the same complaining party would be subjected to the same action

again. *Id.*, 233 Ill. 2d at 358. The first criterion is clearly present. Respondent's proposed treatment order extended for no more than 90 days. This is too short a time for appellate review to be completed. See Ill. S. Ct. R. 343(a) (eff. July 1, 2008) (total time for normal briefing alone is 84 days; this does not include time to prepare the record).

¶ 23 Respondent argues that the State forfeited its argument that the time was too short for appellate review. We disagree. We must review whether mootness applies, even if neither party raises the issue, because mootness is, properly considered, a question of jurisdiction. *Patel*, 298 Ill. App. 3d at 364 n.5 (1998) ("it is not appropriate to apply [forfeiture] to a mootness argument, because mootness is at its core a lack of jurisdiction"). Respondent also contends that the State's ability to file successive petitions obviates the short time frame and provides the opportunity of judicial review to such petitions. Respondent has not, however, supported this contention with relevant authority and has forfeited the argument (Ill. S. Ct. R. 341(h)(7) (eff. Feb. 6, 2013); moreover, the authority cited by respondent supports the idea that 90 days or even 180 days is too short a time in which to complete appellate review. *Alfred H.H.*, 233 Ill. 2d at 359 (the subject 90-day order was of such short duration that it could not have been fully litigated before its cessation).

¶ 24 The second criterion of the capable-of-repetition exception, however, cannot be demonstrated. In *Alfred H.H.*, the respondent disputed the sufficiency of specific facts established during the hearing for a petition on involuntary commitment. *Id.* at 350. The court noted that such an argument, raising no constitutional question or challenge of statutory interpretation, offers no indication that its resolution would have an impact on future litigation. *Id.* at 360. Similarly, the trial court's ruling here focused on the insufficiency of Dr. Murphy's testimony, not on Dr. Murphy or Vista's interpretation of the Code. As in *Alfred H.H.*, Dr.

Murphy's decision to indulge in a *post hoc* determination of respondent's capacity presents no statutory or constitutional issues such that its resolution would have an impact on future litigation. Accordingly, the capable-of-repetition exception does not apply to the circumstances of this case.

¶ 25 None of the exceptions to the mootness doctrine are available in this case; therefore, we conclude that this case is moot. Accordingly, we lack jurisdiction to consider the merits of the appeal and must dismiss the appeal.

¶ 26 III. CONCLUSION

¶ 27 For the foregoing reasons, we dismiss the appeal.

¶ 28 Appeal dismissed.