NO. 4-10-0570 Filed 1/18/11

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

In re: TODD J., a Person Found Subject to Involuntary Admission,	)	Appeal from Circuit Court of
THE PEOPLE OF THE STATE OF ILLINOIS,	)	Sangamon County
Petitioner-Appellee,	)	No. 10MH577
v.	)	
TODD J.,	)	Honorable
Respondent-Appellant.	)	Robert T. Hall,
	)	Judge Presiding.

JUSTICE APPLETON delivered the judgment of the court.
Justices Pope and McCullough concurred in the judgment.

ORDER

Held: Where there is no meritorious issue to be presented in this appeal, we grant respondent's appointed counsel's motion to withdraw as counsel of record.

This case comes to us on a petition for involuntary admission of respondent, Todd J. On July 2, 2010, the circuit court entered an order involuntarily admitting respondent to a mental-health facility pursuant to article VII of the Mental Health and Developmental Disabilities Code (Mental Health Code) (405 ILCS 5/3-700 through 3-706 (West 2008)). Respondent appealed.

Attorney Cynthia Z. Tracy of the Guardianship and Advocacy Commission was appointed to represent respondent on appeal. Rather than filing an appellant's brief, appointed counsel filed a motion to withdraw in accordance with the requirements set forth in *Anders v. California*, 386 U.S. 738 (1967). Counsel's motion states that, after reviewing the record and applicable law, she has concluded that no grounds exist that would warrant

relief in this court. Her motion is accompanied by a detailed memorandum which discusses all aspects of the case, identifies one potential issue, and sets forth the reason why this issue would not warrant reversal. A copy of her motion and memorandum of law were served upon respondent. This court allowed respondent leave to file additional points and authorities by November 15, 2010, and he did not do so.

After carefully reviewing the record, as well as the motion to withdraw and accompanying memorandum of law, we agree with counsel's assessment. First, we agree that two of the three established exceptions to the mootness doctrine could apply to warrant review of this case. See *In re Alfred H.H.*, 233 Ill. 2d 345 (2009) (general discussion of three established exceptions). Both the capable-of-repetition-yet-evading-review exception and the public-interest exception could arguably have allowed us to proceed with a review on the merits of the only potential issue, as that issue does not address merely the sufficiency of the evidence presented at respondent's commitment hearing. The only potential issue in this case addresses whether one of the certifying physicians was properly allowed to testify when she failed to comply with the legal requirements set forth in the statutory section governing the certification. See 405 ILCS 5/3-208 (West 2008). This issue could be one that would arise in a subsequent commitment proceeding brought against respondent (see *In re Barbara H.*, 183 Ill. 2d 482, 491-492 (1998)) or one that could provide guidance to public officers in the future (*Alfred H.H.*, 233 Ill. 2d at 355-58.

Second, we agree that the potential issue counsel identified would not require reversal. Before we discuss that potential issue, we note first that the State had the burden of establishing by clear and convincing evidence that respondent was subject to involuntary admission. At the hearing, the State presented the testimony of respondent's treating

psychiatrist, Dr. Karen Broquet. She confirmed respondent's past diagnosis of schizoaffective disorder, bipolar type. She also testified about respondent's current hospitalization. She said that on June 12, 2010, Decatur police officers took respondent to the emergency room at St. Mary's Hospital after finding him naked in the street. He was making homicidal and suicidal threats and exhibited overall bizarre behavior. St. Mary's transferred him to St. John's Hospital in Springfield, where he remained voluntarily for almost two weeks.

When respondent submitted a written notice of his desire to be discharged on June 24, 2010, a nurse submitted a petition to continue his hospitalization involuntarily for further mental-health treatment. Attached to the petition were two certificates: one signed by a resident physician and the other by Dr. Broquet. Both doctors noted that respondent refused to speak to them, but both opined that respondent was in need of further hospitalization due to his mental illness and resulting dangerous behavior.

According to Dr. Broquet, respondent continued to exhibit manic episodes, with an abundance of physical activity, sudden and sporadic mood changes, and racing thoughts. He engaged in frequent verbal and physical altercations with staff and other patients. In Dr. Broquet's opinion, respondent was in need of hospitalization in a mental-health facility, as the least-restrictive means of treatment, for a period not to exceed 90 days. Currently, he was cooperating with treatment, but he was not capable of being released.

Respondent also testified at the hearing. However, most of his testimony was nonresponsive and made little sense. No further evidence was presented.

With regard to the only potential issue raised by appointed counsel, we note

that both physicians' certificates filed in support of the petition for involuntary admission indicated that respondent refused to cooperate with the examination. Counsel indicated in her memorandum of law that neither physician admonished respondent pursuant to section 3-208 of the Mental Health Code, which requires that a respondent be informed that "he does not have to talk to the examiner; and that any statements he makes may be disclosed at a court hearing on the issue of whether he is subject to involuntary admission." 405 ILCS 5/3-208 (West 2008). The section further provides that if "the person being examined has not been so informed, the examiner shall not be permitted to testify at any subsequent court hearing concerning the respondent's admission." 405 ILCS 5/3-208 (West 2008).

In this case, Dr. Broquet failed to properly admonish respondent, yet testified at respondent's commitment hearing. However, because the doctor did not testify as to any of respondent's statements or admissions gained from her examination, it was not necessary to bar her testimony. See *People v. Lang*, 113 Ill. 2d 407, 468-69 (1986). She testified regarding her review of respondent's records as well as her observations from their subsequent meetings. See *In re Michelle J.*, 209 Ill. 2d 428, 439 (2004). We find no error relating to this issue.

Based on our review of the record, we find the State sufficiently proved by clear and convincing evidence that respondent was subject to involuntary admission. We further find the record indicates that all of the statutory requirements for involuntary admission by court order were satisfied. Therefore, we conclude there are no meritorious justiciable issues for appeal. Accordingly, we grant counsel's motion to withdraw and affirm the circuit court's judgment.

Affirmed.