2011 IL App (4th) 100596-U

Filed 9/13/11

NO. 4-10-0596

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

In re: ROBERT F., a Person Found Subject to Administration of Psychotropic Medication,	)	Appeal from Circuit Court of Sangamon County
THE PEOPLE OF THE STATE OF ILLINOIS, Petitioner-Appellee,	)	No. 10MH604
v.	)	Honorable
ROBERT F., Respondent-Appellant.	)	Esteban F. Sanchez, Judge Presiding.

PRESIDING JUSTICE KNECHT delivered the judgment of the court.
Justice Turner concurred in the judgment.
Justice Pope specially concurred in the judgment.

ORDER

¶ *1* *Held*: Where the State did not prove strict compliance with the requirements of section 2-102(a-5) of the Mental Health and Developmental Disabilities Code (405 ILCS 5/2-102(a-5) (West 2008) for the involuntary administration of psychotropic medication, the criteria necessary to satisfy the public-interest exception to the mootness doctrine has been satisfied and the judgment of the trial court is reversed.

¶ 2 Dr. K. Kripakaran, a psychiatrist at McFarland Mental Health Center, filed a petition for the involuntary administration of psychotropic medications to respondent, Robert F. After a hearing, the trial court granted the petition. Respondent appeals, contending (1) the State failed to prove he received information about the benefits of the proposed treatment and its alternatives in writing as required by section 2-102(a-5) of the Mental Health and Developmental Disabilities Code (Mental Health Code) (405 ILCS 5/2-102(a-5) (West 2008)); (2) the State

failed to provide the same information to his guardian; and (3) the State's evidence at the hearing did not support the dosage of medication authorized in the court's order. We reverse.

¶ 3 I. BACKGROUND

¶ 4 Dr. Kripakaran's petition alleged respondent had a mental illness and lacked the capacity to give informed consent to the administration of psychotropic medication, which respondent needed because he was paranoid. The petition listed first-choice medications of Haloperidol, Haloperidol Decaonate, and Cogentin, with alternatives of Olanzapine and Lorazepam.

¶ 5 On July 30, 2010, the trial court held a hearing on the petition. Dr. Kripakaran did not testify. Instead, Dr. Vinod Alluri, another psychiatrist at McFarland who was treating respondent, testified. Sandra Klunick, respondent's sister and legal guardian, also testified, as did respondent.

¶ 6 Respondent's most recent court-authorized admission to McFarland was in March 2010. He had at least one prior admission. Dr. Alluri testified he was treating respondent for paranoid schizophrenia. Respondent thought others, particularly his brother-in-law, were trying to kill him. He made verbal threats to others he thought were trying to harm him. Respondent also ordered knife and gun catalogues while in McFarland. He stated he needed a knife for hunting powerful enough to be called "a one shot" and able to kill with one stroke. He stated it was for his collection. Klunick stated respondent did not have a knife collection and she refused to authorize spending of his funds for this purchase.

¶ 7 Upon his March 2010 admission to McFarland, respondent received psychotropic medication upon court order. A marked improvement in respondent's demeanor and functioning

was noted by both Dr. Alluri and Klunick while he was on the medication. When the order expired, respondent refused to take the medications, explaining he did not have schizophrenia and, even if he did, these medications are not for treating schizophrenia. He complained the medications gave him dry mouth, muscle twitching, and muscle tension. Respondent denied he made threats to other patients or staff.

¶ 8 Dr. Alluri testified the request to administer Cogentin was to combat the side effects of Haloperidol and Haloperidol Decaonate, and the medication requested has been proved to help people with schizophrenia. In Dr. Alluri's opinion, the benefits of the medication outweighed the risks. He believed the medication would improve respondent's symptoms.

¶ 9 Dr. Alluri testified he gave a written list of the side effects to respondent. Klunick testified she had talked to respondent's treating physician about the recommended treatment plan, and she believed the proposed plan was a good one. She stated over several years whenever respondent has not been on medication he is aggressive and threatening and kicked staff where he was living, precipitating the current involuntary commitment.

¶ 10 At the conclusion of the hearing, the trial court granted the petition and allowed the administration of the medications for 90 days. On August 2, 2010, respondent filed a notice of appeal.

¶ 11 II. ANALYSIS

¶ 12 A. Mootness

¶ 13 The case is moot because the order's 90-day period has expired. Generally, Illinois courts do not address moot questions, render advisory opinions, or consider issues for which the court's decision will not affect the result. *In re Alfred H.H.*, 233 Ill. 2d 345, 351, 910

N.E.2d 74, 78 (2009). Exceptions to the mootness doctrine have been recognized as follows: (1) the public-interest exception, (2) the capable-of-repetition-yet-avoiding-review exception, and (3) the collateral-consequences exception. See *Alfred H.H.*, 233 Ill. 2d at 355-61, 910 N.E.2d at 80-83. Respondent contends his case falls under the public-interest and capable-of-repetition exceptions.

¶ 14 The public-interest exception has been narrowly construed and has three criteria: (1) the question is of a public nature; (2) the need for an authoritative determination for the future guidance of public officers; and (3) a likelihood the question will recur. See *Alfred H.H.*, 233 Ill. 2d at 355, 910 N.E.2d at 80.

¶ 15 Respondent raises the issue of compliance with section 2-102(a-5) of the Mental Health Code. Because liberty interests are involved in involuntary-treatment cases, strict compliance with statutory procedures is required. *In re A.W.*, 381 Ill. App. 3d 950, 955, 887 N.E.2d 831, 836 (2008). The procedures which must be followed to authorize involuntary medication of mental-health patients have been recognized as a matter of public concern by our supreme court. See *In re Mary Ann P.*, 202 Ill. 2d 393, 402, 781 N.E.2d 237, 243 (2002). As noted in a recent decision by this court, we have addressed a similar question of compliance with section 2-102(a-5) and "thus this issue's recurrence indicates both (1) a need still exists for guidance in this area and (2) the likeliness of future recurrence in other mental-health cases." *In re Laura H.*, 404 Ill. App. 3d 286, 289, 936 N.E.2d 801, 805 (2010). Respondent has satisfied the criteria for the public-interest exception to the mootness doctrine and we need not address the capable-of-repetition exception.

¶ 16 B. Receipt of Written Information by Respondent

¶ 17 Section 2-102(a-5) of the Mental Health Code (405 ILCS 5/2-102(a-5) (West 2008)) provides, in pertinent part:

> "If the services include the administration of electroconvulsive therapy or psychotropic medication, the physician or the physician's designee shall advise the recipient, in writing, of the side effects, risks, and benefits of the treatment, as well as alternatives to the proposed treatment, to the extent such advice is consistent with the recipient's ability to understand the information communicated."

¶ 18 The State must present clear and convincing evidence of compliance at the hearing on the involuntary-treatment petition. *In re Louis S.*, 361 Ill. App. 3d 774, 779, 838 N.E.2d 226, 231-32 (2005). Verbal notice is not sufficient. See *Laura H.*, 404 Ill. App. 3d at 290-91, 936 N.E.2d at 805. Whether substantial compliance with a statutory provision has taken place is a question of law that is reviewed *de novo*. *Laura H.*, 404 Ill. App. 3d at 290, 936 N.E.2d at 805.

¶ 19 Dr. Alluri testified respondent received a written list of the side effects of the proposed medications. The State points to the averments of Dr. Kripakaran in the petition that respondent was presented with written notification of the risks and benefits of the treatment as well as alternatives to the proposed treatment, but no evidence at the hearing indicated respondent received written notice.

¶ 20 The record contains no copy of what written documents may have been given to respondent. No evidence showed he received written advisement of the risks and benefits of

treatment and any alternatives. We find the requirements of section 2-102(a-5) have not been met. While respondent likely needed the administration of psychotropic medication, it is imperative the proceedings and administration of such medication are in accord with the requirements of the Mental Health Code. *Laura H.*, 404 Ill. App. 3d at 292, 936 N.E.2d at 807. Therefore, we reverse the trial court's order.

¶ 21 As we are reversing this order due to failure to strictly comply with section 2-102(a-5) of the Mental Health Code (405 ILCS 5/2-102(a-5) (West 2008)), we will only briefly address respondent's remaining arguments.

¶ 22 C. Receipt of Written Information by Guardian

¶ 23 Respondent argues no evidence showed his sister, Klunick, was provided with written information as to the involuntary administration of psychotropic medication. We agree. No evidence showed Klunick actually was asked for her consent as guardian, nor was that consent given. The evidence showed Klunick was informed of the proposed administration of psychotropic medication, and she apparently agreed. No evidence showed she was asked for her consent to administer the medication, and no evidence showed she had the authority to consent to it on respondent's behalf. If she had such authority and had given her consent, the State would not have pursued this action against respondent.

¶ 24 D. Evidence as to Dosage of Medication

¶ 25 An order allowing involuntary administration of psychotropic medication must specify the medications and dosages authorized. 405 ILCS 5/2-107.1(a-5)(6) (West 2008). The trial court cannot enter orders not supported by expert testimony or evidence. ~~Further,~~ Allegations contained in a petition do not constitute evidence. See *In re David S.*, 386 Ill. App. 3d 878,

883, 899 N.E.2d 349, 354 (2008).

¶ 26 The petition in this case requested Haloperidol p.o. at 5 to 30 milligrams (mgs) per day; Haloperidol Decaonate IM at 25 to 200 mgs per two to four weeks; and Cogentin p.o./IM at 1 to 6 mgs per day. The alternatives were listed: as an alternative to Haloperidol, Olanzapine p.o./IM at 5 to 30 mgs per day; and, as an alternative to Cogentin, Lorazepam p.o./IM at 1 to 6 mgs per day. The trial court's order listed all requested medications and dosages found in the petition. Respondent argues no evidence supported giving any of the medications as Dr. Alluri never testified concerning the dosages he was requesting.

¶ 27 A review of the record reveals respondent was incorrect as to the testimony given. At the hearing, Dr. Alluri testified to Haloperidol given as an injection, 25 to 200 mgs once in two to four weeks and Cogentin to control side effects from the Haloperidol. Alternatively, he asked for Olanzapine in a dose ranging from 5 to 30 mgs per day. He also testified to Lorazepam in a dose range of 1 to 6 mgs per day.

¶ 28 However, no testimony addressed Haloperidol Decaonate and no testimony addressed dosage amounts for Cogentin. An order granting *all* medications requested in a petition cannot stand where no testimony addressed to *all* requested medications and their dosages. See *In re Gail F.*, 365 Ill. App. 3d 439, 447, 849 N.E.2d 448, 455 (2006).

¶ 29 III. CONCLUSION

¶ 30 The State did not strictly comply with the requirements of the Mental Health Code. We reverse the trial court's judgment.

¶ 31 Reversed.

¶ 32 JUSTICE POPE, specially concurring:

¶ 33 I concur with the majority but write separately to address the issue of written notice of the risks, benefits, side effects of, and alternatives to the proposed treatment. I believe the court could infer from Dr. Alluri's testimony at the hearing that respondent's ability to understand a written communication regarding the benefits of psychotropic medication would be very limited, if not nonexistent. Respondent did not believe he had schizophrenia, nor did he believe the prescribed medication would treat schizophrenia. He clearly understood the side effects and was able to recite the ones he experienced when he took the medication. Section 2-102(a-5) of the Code provides for written notification only "to the extent such advice is consistent with the recipient's ability to understand the information communicated." 405 ILCS 5/2-102 (a-5) (West 2008).

¶ 34 Nevertheless, no direct testimony concerned written notification of the risks, benefits, and alternatives to treatment. Dr. Alluri only testified respondent was handed a written list of side effects. Moreover, he did not testify respondent was unable to understand such information if it had been presented to him in writing.

¶ 35 Unnecessary appeals can be avoided by simply obtaining a copy of the written notification provided to respondents, showing it to the doctor, and asking if the exhibit is a true and accurate copy of the notification provided to the respondent in that particular case. While not necessary, if the copy introduced at the hearing bore the respondent's signature, so much the better. Of course, care should be taken the written notification complies with the statute and addresses all four required matters, *i.e.*, side effects, risks and benefits of treatment, and alternatives to the proposed treatment.

¶ 36 Based on the record in this case, respondent suffered from schizophrenia, had stopped taking his medication, had no insight as to his need for medication, and had grown threatening without it. It is clear involuntary treatment was appropriate for respondent. However, as the majority points out, the legislature has seen fit to enact strict requirements which must be followed in these cases. This court is not free to ignore those requirements.