NO. 4-10-0737 Order Filed 4/4/11

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

In re: BENNET S., a Person Found Subject to Involuntary Admission,	)	Appeal from Circuit Court of
THE PEOPLE OF THE STATE OF ILLINOIS,	)	Sangamon County
Petitioner-Appellee,	)	No. 10MH747
v.	)	
BENNET S.,	)	Honorable
Respondent-Appellant.	)	Charles J. Gramlich,
	)	Judge Presiding.

JUSTICE McCULLOUGH delivered the judgment of the court. Justices Steigmann and Appleton concurred in the judgment.

ORDER

Held: (1) The collateral-consequences exception to the mootness doctrine applied to the trial court's order for involuntary admission.

(2) Although the petition for involuntary admission and the September 1, 2010, medical certificate tracked the language of a previous version of section 1-119 of the Mental Health Code, this issue is forfeited on appeal because (i) the language used in the petition and medical certificate were consistent with the current statutory language, (ii) respondent failed to object to the form of the petition and medical certificate in the trial court, and (iii) respondent failed to show he was prejudiced by the use of these forms.

On September 2, 2010, Jill Montgomery, a crisis worker at the Community Counseling Center, Alton, Illinois, filed a petition for involuntary admission against respondent, Bennet S. On September 10, 2010, the trial court found respondent subject to involuntary admission under section 3-600 of the Mental Health

and Developmental Disabilities Code (Mental Health Code) (Pub. Act 96-1399, §5 (eff. July 29, 2010) (2010 Ill. Legis. Serv. 3593, 3594 (West)) (amending 405 ILCS 5/3-600 (West 2008)) and ordered hospitalization for a period not to exceed 90 days. This appeal followed.

On appeal, respondent argues the petition for involuntary admission and the September 1, 2010, medical certificate filed by Dr. Deborah O'Brien were defective for failure to comply with the requirements of section 3-601 of the Mental Health Code (Pub. Act 96-1399, §5 (eff. July 29, 2010) (2010 Ill. Legis. Serv. 3593, 3594-95 (West)) (amending 405 ILCS 5/3-601 (West 2008)) because the preprinted forms were not updated to comply with the current version of section 1-119 of the Mental Health Code (Pub. Act 96-1399, §5 (eff. July 29, 2010) (2010 Ill. Legis. Serv. 3593, 3593-94 (West)) (amending 405 ILCS 5/1-119 (West 2008)).

The trial court entered the commitment order on September 10, 2010, and limited the enforceability of the order for a period not to exceed 90 days. The 90-day period has passed. As a result, this case is moot. Therefore, before we can address the merits of respondent's appeal, we must first determine whether any exception to the mootness doctrine applies. Respondent argues his appeal is not moot because it falls under the capable-of-repetition-yet-evading-review, the collateral-conse-

quences, and the public-interest exceptions to the mootness doctrine. The State concedes the appeal is not moot despite the expiration of the commitment order because (1) respondent's allegations involve questions of statutory compliance and statutory interpretation and (2) the collateral-consequences exception applies because the record does not indicate respondent has ever been subjected to an order for involuntary admission. We agree and find this appeal falls within the collateral-consequences exception of the mootness doctrine.

The collateral-consequences exception to the mootness doctrine allows a reviewing court to consider an otherwise moot case where the respondent has suffered, or was threatened with, an actual injury traceable to the petitioner and will likely be redressed by a favorable judicial decision. *In re Alfred H.H.*, 233 Ill. 2d 345, 361, 910 N.E.2d 74, 83 (2009). In *Alfred H.H.*, 233 Ill. 2d at 362-63, 910 N.E.2d at 84, the court determined the collateral-consequences exception did not apply because the respondent had previously been involuntarily committed and had been convicted of murder. The court also determined any collateral consequences had already attached as a result of the respondent's involuntary commitments and felony conviction. *Alfred H.H.*, 233 Ill. 2d at 363, 910 N.E.2d at 84.

In this case, our review of the record does not indicate respondent has been subjected to an order for involuntary

admission in the past. Therefore, the collateral-consequences exception applies because collateral consequences had yet to attach and the September 10, 2010, involuntary commitment could be used against respondent in future proceedings. Accordingly, we find the collateral-consequences exception applies, and we will consider the issue raised on appeal.

On appeal, respondent argues the petition for involuntary admission and the September 1, 2010, medical certificate were defective for failure to comply with the requirements of section 3-601 of the Mental Health Code (Pub. Act 96-1399, §5 (eff. July 29, 2010) (2010 Ill. Legis. Serv. 3593, 3594-95 (West)) (amending 405 ILCS 5/3-601 (West 2008)) because the preprinted forms were not updated to comply with the current version of section 1-119 of the Mental Health Code (Pub. Act 96-1399, §5 (eff. July 29, 2010) (2010 Ill. Legis. Serv. 3593, 3593-94 (West)) (amending 405 ILCS 5/1-119 (West 2008)). The State argues the court need not address respondent's allegation of error because respondent failed to bring the alleged error to the attention of the trial court. On the merits, the State argues the petition for involuntary admission and the September 1, 2010, medical certificate complied with the requirements of the Mental Health Code.

If an error demonstrating noncompliance with statutory requirements is apparent on the face of the record, the error may

render a judgment erroneous and may be considered on appeal despite not being raised in the trial court. *In re George O.*, 314 Ill. App. 3d 1044, 1049, 734 N.E.2d 13, 18 (2000). However, "[w]aiver of appellate consideration may be found where the respondent did not object at the hearing *and* he suffered no prejudice as the result of the State's failure to comply with the statutory procedures." (Emphasis in original.) *In re Luttrell*, 261 Ill. App. 3d 221, 229, 633 N.E.2d 74, 80 (1994). Although strict compliance with statutory procedures in involuntary-commitment proceedings is required, "reversal is not required unless the respondent is in some way prejudiced by the failure to comply with those statutory requirements." *In re Kevin S.*, 381 Ill. App. 3d 260, 264, 886 N.E.2d 508, 513 (2008).

According to section 3-601(b) of the Mental Health Code (Pub. Act 96-1399, §5 (eff. July 29, 2010) (2010 Ill. Legis. Serv. 3593, 3594-95 (West)) (amending 405 ILCS 5/3-601(b) (West 2008)), a petition for involuntary admission shall include a detailed statement explaining the reasons for the assertion that the respondent should be subject to an involuntary admission on an inpatient basis, "including the signs and symptoms of a mental illness and a description of any acts, threats, or other behavior or pattern of behavior supporting the assertion and the time and place of their occurrence."

Additionally, under section 1-119 of the Mental Health

Code, a person subject to involuntary admission on an inpatient basis is defined as follows:

> "(1) A person with mental illness who because of his or her illness is reasonably expected, unless treated on an inpatient basis, to engage in conduct placing such person or another in physical harm or in reasonable expectation of being physically harmed;
>
> (2) A person with mental illness who because of his or her illness is unable to provide for his or her basic physical needs so as to guard himself or herself from serious harm without the assistance of family or others, unless treated on an inpatient basis; or
>
> (3) A person with mental illness who:
>
> (i) refuses treatment or is not adhering adequately to prescribed treatment;
>
> (ii) because of the nature of his or her illness, is unable to understand his or her need for treatment; and

(iii) if not treated on an inpatient basis, is reasonably expected, based on his or her behavioral history, to suffer mental or emotional deterioration and is reasonably expected, after such deterioration, to meet the criteria of either paragraph (1) or paragraph (2) of this Section." Pub. Act 96-1399, §5 (eff. July 29, 2010) (2010 Ill. Legis. Serv. 3593, 3593-94 (West)) (amending 405 ILCS 5/1-119 (West 2008)).

Section 3-602 of the Mental Health Code requires the petition for involuntary admission be accompanied by a medical certificate and provides as follows:

"The petition shall be accompanied by a certificate executed by a physician, qualified examiner, psychiatrist, or clinical psychologist which states that the respondent is subject to involuntary admission on an inpatient basis and requires immediate hospitalization. The certificate shall indicate that the physician, qualified examiner, psy-

chiatrist, or clinical psychologist personally examined the respondent not more than 72 hours prior to admission. It shall also contain the physician's, qualified examiner's, psychiatrist's, or clinical psychologist's clinical observations, other factual information relied upon in reaching a diagnosis, and a statement as to whether the respondent was advised of his rights under Section 3-208." Pub. Act 96-1399, §5 (eff. July 29, 2010) (2010 Ill. Legis. Serv. 3593, 3595 (West)) (amending 405 ILCS 5/3-602 (West 2008)).

Respondent argues the preprinted petition and the September 1, 2010, preprinted medical certificate failed to comply with the current version of section 1-119 of the Mental Health Code (Pub. Act 96-1399, §5 (eff. July 29, 2010) (2010 Ill. Legis. Serv. 3593, 3593-94 (West)) (amending 405 ILCS 5/1-119 (West 2008)) that was effective July 29, 2010, and instead, tracked the language of a previous version of the statute (see 405 ILCS 5/3-602 (West 2006)).

From a review of the record, it is apparent that respondent is correct that both the petition and September 1, 2010, medical certificate track the language of a previous

version of section 1-119. However, respondent is unable to show he was prejudiced by the use of the preprinted forms.

The petition for involuntary admission and the September 1, 2010, medical certificate stated respondent was a

> "person with mental illness who, because of his or her illness [was] reasonably expected to inflict serious physical harm upon himself or herself or another in the near future, which may include threatening behavior or conduct that places another individual in reasonable expectation of being harmed; [and] [was] in need of immediate hospitalization for the prevention of such harm."

The handwritten portion of the petition supported these allegations and stated (1) respondent complained that "someone [had] weapons to harm him," (2) he went to the Jerseyville police department 23 times in 18 days complaining that "someone [was] trying to penetrate his mind with engine vibrations," and (3) the police officer that brought respondent to the hospital was concerned that respondent was a danger to the community. Further, the handwritten portion of the September 1, 2010, medical certificate also stated respondent expressed concern about being harmed by someone with weapons, and complained of "engine vibra-

tion" and sleep deprivation.

Both the petition and the September 1, 2010, medical certificate allege respondent was a person with a mental illness who was reasonably expected to inflict serious physical harm upon himself or another person. This language is consistent with the current version of section 1-119 of the Mental Health Code (Pub. Act 96-1399, §5 (eff. July 29, 2010) (2010 Ill. Legis. Serv. 3593, 3593-94 (West)) (amending 405 ILCS 5/1-119 (West 2008)).

Also, respondent notes the petition and September 1, 2010, medical certificate failed to state respondent was reasonably expected to engage in this type of behavior "unless treated on an inpatient basis." Although respondent is correct, both documents stated that respondent was in need of immediate hospitalization for the prevention of harm. Therefore, this language was also consistent with section 1-119 of the Mental Health Code (Pub. Act 96-1399, §5 (eff. July 29, 2010) (2010 Ill. Legis. Serv. 3593, 3593-94 (West)) (amending 405 ILCS 5/1-119 (West 2008)).

In addition, the September 1, 2010, medical certificate (1) stated respondent was subject to involuntary admission and needed immediate hospitalization, (2) indicated respondent was examined on September 1, 2010, not more than 72 hours prior to admission, (3) contained the doctor's observations and the factual information relied on in reaching a diagnosis, and (4)

contained a statement respondent was advised of his rights under section 3-208 of the Mental Health Code. Thus, the medical certificate also met the requirements of section 3-602 of the Mental Health Code (Pub. Act 96-1399, §5 (eff. July 29, 2010) (2010 Ill. Legis. Serv. 3593, 3595 (West)) (amending 405 ILCS 5/3-602 (West 2008)).

Further, this court notes the September 2, 2010, and September 8, 2010, preprinted medical certificates from St. John's Hospital reflected the language of the current version of the statute. In both certificates, the basis for the doctors' involuntary-admission finding was that (1) respondent was a person with a mental illness, (2) he refused treatment or was not adequately adhering to prescribed treatment, (3) he was unable to understand his need for treatment, and (4) if not treated on an inpatient basis, he was reasonably expected to suffer mental or emotional deterioration, and after such deterioration, was reasonably expected to engage in conduct placing himself or another in physical harm or be unable to provide for his basic physical needs.

Because the preprinted forms were consistent with the current language of section 1-119 of the Mental Health Code (Pub. Act 96-1399, §5 (eff. July 29, 2010) (2010 Ill. Legis. Serv. 3593, 3593-94 (West)) (amending 405 ILCS 5/1-119 (West 2008)), respondent is unable to show he was prejudiced by the failure to

use current statutory language in the petition for involuntary admission and the September 1, 2010, medical certificate. Accordingly, the issue is forfeited for appeal purposes.

For the reasons stated, we affirm the trial court's judgment.

Affirmed.