2012 IL App (4th) 110592-U

Filed 6/27/12

NO. 4-11-0592

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

In re: DAVID C., a Person Found Subject to Involuntary Admission,	)	Appeal from
	)	Circuit Court of
THE PEOPLE OF THE STATE OF ILLINOIS,	)	Sangamon County
Petitioner-Appellee,	)	No. 11MH538
v.	)	
DAVID C.,	)	Honorable
Respondent-Appellant.	)	Rudolph M. Braud,
	)	Judge Presiding.

JUSTICE POPE delivered the judgment of the court.
Justices Steigmann and McCullough concurred in the judgment.

ORDER

¶ 1 *Held*: (1) Respondent's appeal is not moot where the public-interest exception applies.

(2) The trial court did not err in denying respondent's motion to dismiss the State's petition for involuntary admission where, *inter alia*, he did not request voluntary admission.

¶ 2 On June 20, 2011, the State filed a petition for involuntary admission pursuant to the Mental Health and Developmental Disabilities Code (Mental Health Code) (405 ILCS 5/1-100 to 6-107 (West 2010)) against respondent, David C. Following a July 8, 2011, hearing, the trial court granted the State's petition.

¶ 3 Respondent appeals, arguing (1) the trial court erred in denying his request for voluntary admission, and (2) his appeal is not moot because it falls under the public-interest and capable-of-repetition-yet-evading-review exceptions to the mootness doctrine. We affirm.

¶ 4 I. BACKGROUND

¶ 5 On June 20, 2011, the State filed a petition for involuntary admission against respondent. The petition included the following allegations: (1) respondent was reasonably expected to engage in conduct because of his mental illness that places himself or another in physical harm; (2) if not treated on an inpatient basis, respondent was reasonably expected to engage in conduct resulting in physical harm; and (3) respondent's immediate hospitalization was required to prevent such harm.

¶ 6 On July 8, 2011, the trial court held a hearing on the petition for involuntary admission. The State called Ghassan Bitar, the psychiatrist who had been treating respondent. Dr. Bitar testified it was his understanding respondent had a history of mental illness going back many years. Respondent had also been hospitalized multiple times in the past year. Dr. Bitar stated respondent was initially diagnosed as suffering from psychosis NOS (not otherwise specified). Dr. Bitar testified respondent had delusional ideas, paranoid ideation, grandiosity, mood lability, anger, and suicidal ideation. Dr. Bitar explained respondent believed things written in the Bible were about him, he was from heaven, and people were trying to bring him down to hell. Respondent also believed people and staff were out to get him and the Federal Bureau of Investigation was watching and following him. Respondent also heard voices and would converse with himself.

¶ 7 Dr. Bitar testified respondent came to McFarland after reporting suicidal ideas regarding cutting his wrists. Since his June 17, 2011, admission in this case, respondent had thrown his food at another patient, broke the water fountain, and pulled the public phone from the wall. Respondent also made comments about killing children. In addition, respondent sent

threatening text messages to his family members that he was going to kill them. Dr. Bitar testified respondent told him the Tuesday prior to the hearing he was going to "splatter his blood all over." Respondent also told Dr. Bitar respondent was not going to get out of McFarland alive. Dr. Bitar stated defendant reported attempting to kill himself that Tuesday by cutting his wrists with a makeshift razor. Dr. Bitar noted, however, no significant marks were found on respondent's person.

¶ 8 Dr. Bitar also testified defendant had previously been prescribed psychotrophic medication but had not been taking his medication prior to his most recent hospitalization. While respondent was voluntarily taking his medication since his admission, Dr. Bitar believed he would not take it after his discharge. Dr. Bitar testified it was his opinion respondent needed hospitalization to prevent harm to himself or others. Based on his condition Dr. Bitar did not believe it appropriate for respondent to live on his own or in a nursing home. Dr. Bitar agreed hospitalization was, at that point, the least restrictive available alternative. He recommended respondent be involuntarily admitted for 90 days.

¶ 9 Respondent testified he had a mental illness requiring medication. Respondent also admitted giving Dr. Bitar a makeshift blade. He testified he "decided not to use it." Respondent also denied telling Dr. Bitar the Bible was about him. Respondent testified if he were released he would "either go to the Alton Salvation Army, Granite City Salvation Army homeless shelters, or I would go to a sleeping room, what is known as the American House, or I would go to my—to live with my friend who recently just admitted herself to Kettler." On cross-examination, respondent indicated one of the friends with whom he testified he could stay had issues with suicide.

¶ 10 The following colloquy also took place during respondent's direct examination:

"[RESPONDENT:] *** I promised my mom that I won't harm myself, and I have no intention to harm anyone else upon arrival, and I did try to admit voluntarily, but Jersey County Hospital didn't even respond.

[MRS. NOLL (respondent's counsel):] And why would they not let you admit yourself voluntarily?

[RESPONDENT:] They didn't respond. I have no idea.

[MRS. NOLL:] Okay.

[RESPONDENT:] They didn't speak a word to me.

[MRS. NOLL:] Okay. All right. Are you willing to admit yourself here voluntarily?

[RESPONDENT:] I tried to at Jersey County, and I asked if I could as soon as I got here.

[MRS. NOLL:] Okay. And nobody responded to that?

[RESPONDENT:] Nobody responded with a word from their mouth. I got nothing.

[MRS. NOLL:] Do you think you could benefit from some short-term treatment here?

[RESPONDENT:] Um, as far as adjusting meds, [*sic*] yes.

[MRS. NOLL:] Would you be willing to stay here voluntarily for a couple weeks while you got all that taken care of?

[RESPONDENT:] Yes.

[MRS. NOLL:] Because you agree you have a mental health issue?

[RESPONDENT:] Right, and I've taken the MMPI test and the older test. I've answered well over—it was, like, about a thousand questions.

[MRS. NOLL:] Uh-huh. Okay.

[RESPONDENT:] And it came up inconclusive.

MRS. NOLL: I don't have any further questions, Your Honor.

THE COURT: Miss Noll, based on that voluntary statement, do you have a motion?

MRS. NOLL: Um, I would move to dismiss."

¶ 11 At the conclusion of the testimony, the trial court denied respondent's motion to dismiss.

¶ 12 During closing argument, respondent's counsel clarified, "I wanted to renew my motion based on the procedural as well as my client says he would do voluntary."

¶ 13 At the conclusion of the hearing, the trial court found respondent was suffering from mental illness and the least restrictive alternative available was to commit respondent to not more than 90 days' involuntary admission. The court noted respondent testified he would like to stay at McFarland and have his medications adjusted so he could function. The court found without treatment it was reasonable to expect respondent would engage in harmful conduct to

himself or others.

¶ 14 This appeal followed.

¶ 15 II. ANALYSIS

¶ 16 On appeal, respondent argues (1) his appeal is not moot because it falls under the public-interest and capable-of-repetition-yet-evading-review exceptions to the mootness doctrine, and (2) the trial court erred in denying his request for voluntary admission.

¶ 17 A. Mootness

¶ 18 To begin, we note this appeal is moot. The trial court entered the commitment order on July 8, 2011, and limited the enforceability of the order to a period not to exceed 90 days. The 90-day period has passed. As a result, this case, like the majority of involuntary admission cases where the order extends for only 90 days, is moot. See *In re Barbara H.*, 183 Ill. 2d 482, 490, 702 N.E.2d 555, 559 (1998). Thus, before we can address the merits of respondent's appeal, we must first determine whether any exception to the mootness doctrine applies.

¶ 19 Respondent agrees this appeal is moot but argues it falls under the public-interest and capable-of-repetition-yet-evading-review exceptions to the mootness doctrine. We find this appeal falls within the public-interest exception.

¶ 20 B. Public-Interest Exception

¶ 21 The public-interest exception to the mootness doctrine allows a reviewing court to consider an otherwise moot case where (1) the question presented is of a public nature, (2) an authoritative determination is needed to guide public officials, and (3) there is a likelihood the question will recur. *In re Alfred H.H.*, 233 Ill. 2d 345, 355, 910 N.E.2d 74, 80 (2009).

¶ 22 In this case, we are not being asked to review the sufficiency of the evidence. Instead, this case involves the procedural requirements of respondent's admission under section 3-810 of the Mental Health Code. See *Alfred H.H.*, 233 Ill. 2d at 356, 910 N.E.2d at 81. "Involuntary admission procedures implicate substantial liberty interests." *In re Robinson*, 151 Ill. 2d 126, 130, 601 N.E.2d 712, 715 (1992). "The procedures that must be followed before an individual, who is suffering from a mental illness, is ordered to be involuntarily admitted for treatment is a matter of public concern." *In re Robert F.*, 396 Ill. App. 3d 304, 311, 917 N.E.2d 1201, 1206 (2009) (citing *In re Mary Ann P.*, 202 Ill. 2d 393, 402, 781 N.E.2d 237, 243 (2002)); *In re Andrew B.*, 386 Ill. App. 3d 337, 340, 896 N.E.2d 1067, 1070 (2008) (procedures courts must follow to authorize involuntary commitment involve matters of substantial public concern).

¶ 23 Respondent argues the trial court erred because it failed to consider all of the requirements under section 3-801 of the Mental Health Code (405 ILCS 5/3-801 (West 2010)) prior to ordering his commitment. Specifically, respondent contends the court erred in involuntarily committing him without addressing his request for voluntary admission as required by section 3-801. Given the facts of this case and respondent's numerous past commitments, there is a strong likelihood respondent will face future commitment petitions. Because of the short duration of the 90-day-commitment periods, the issues raised here are likely to recur without an opportunity for review. Thus, "an authoritative determination regarding the interpretation of [the section 3-801 requirements] will be helpful in the future guidance of public officers." *Robert F.*, 396 Ill. App. 3d at 311, 917 N.E.2d at 1206 (citing *In re Phillip E.*, 385 Ill. App. 3d 278, 282, 895 N.E.2d 33, 39 (2008)). Accordingly, we find the public-interest exception applies.

¶ 24 C. Section 3-801 Requirements

¶ 25 We note respondent is not challenging the sufficiency of the basis for his involuntary admission. Instead, respondent argues only the trial court erred in failing to comply with requirements found in section 3-801 of the Mental Health Code when it denied his "request" for voluntary admission. Respondent maintains the previously quoted colloquy between him and his counsel amounted to a request for voluntary admission under the Mental Health Code. We disagree.

¶ 26 Section 3-801 of the Mental Health Code provides the following:

> "A respondent may request admission as an informal or voluntary recipient at any time prior to an adjudication that he is subject to involuntary admission on an inpatient or outpatient basis. The facility director shall approve such a request unless the facility director determines that the respondent lacks the capacity to consent to informal or voluntary admission or that informal or voluntary admission is clinically inappropriate. The director shall not find that voluntary admission is clinically inappropriate in the absence of a documented history of the respondent's illness and treatment demonstrating that the respondent is unlikely to continue to receive needed treatment following release from informal or voluntary admission and that an order for involuntary admission on an outpatient basis (alternative treatment or for care and custody) is necessary in order to ensure continuity of treatment outside a

mental[-]health facility.

¶ 27 If the facility director approves such a request, *** [t]he court may dismiss the pending proceedings, but *** may require proof that such dismissal is in the best interest of the respondent and of the public." 405 ILCS 5/3-801 (West 2010).

¶ 28 While a respondent may request voluntary admission "at any time" prior to an involuntary-admission adjudication, respondent's counsel in this case never requested respondent's voluntary admission to McFarland and no petition for voluntary admission was pending at the time of the trial court's ruling on the State's petition. Instead, during the hearing on the State's petition for involuntary admission, respondent's counsel merely asked respondent questions from which one could infer respondent would, at best, prefer voluntary admission to the alternative. For example, respondent agreed he could benefit from "short-term" treatment and would be willing to stay at McFarland for a few weeks while adjustments were made to his medication. As a result of those responses, counsel moved to dismiss the State's petition, presumably (and at the prompting of the trial court) because respondent responded "yes" when counsel asked if he would be willing to stay at McFarland. The trial court denied that motion to dismiss.

¶ 29 At the conclusion of the hearing, counsel renewed her motion to dismiss the State's petition "based on the procedural as well as my client says he would do voluntary." While the trial court did not take up counsel's renewed motion, it implicitly denied it when it granted the State's petition. In either case, counsel's statements were not tantamount to a request from respondent for voluntary admission. See *In re Bennett*, 251 Ill. App. 3d 887, 887, 623 N.E.2d

942, 943 (1993) (specific request to remain a voluntary patient during the proceedings on the State's petition for involuntary admission); *In re Hall*, 92 Ill. App. 3d 1136, 1136, 416 N.E.2d 731, 731 (1981) (oral motion to dismiss the proceedings *and* be voluntarily admitted); *In re Byrd*, 68 Ill. App. 3d 849, 850, 386 N.E.2d 385, 386 (1979) (application for voluntary admission filed two days prior to the hearing on the State's involuntary admission petition).

¶ 30 Further, on cross-examination, respondent's counsel did not ask Dr. Bitar whether he would recommend respondent be admitted on a voluntary basis. See *Byrd*, 68 Ill. App. 3d at 854, 386 N.E.2d at 388-89 (testimony from a physician is generally heard as to the advisability of voluntary admission). In addition, the facility director did not determine whether respondent's voluntary admission would be clinically appropriate. *In re Rusick*, 115 Ill. App. 3d 108, 112, 450 N.E.2d 418, 421 (1983) (section 3-801 of the Mental Health Code requires approval of the facility director).

¶ 31 Moreover, under the statute, even if respondent had formally requested voluntary admission and even if the facility director approved respondent's request, the trial court still had discretion to deny the request. See 405 ILCS 5/3-801 (West 2010) ("If the facility director approves such a request, *** [t]he court *may* dismiss the pending proceedings, but *** may require proof that such dismissal is in the best interest of the respondent and of the public." (Emphasis added.)). Based on the circumstances of this case, the trial court did not err in proceeding with the hearing on the State's petition. See *In re Michelle L.*, 372 Ill. App. 3d 654, 659, 867 N.E.2d 1187, 1191 (2007) (finding no error where the trial court proceeded with the hearing on the State's involuntary admission petition after the respondent offered to sign a voluntary-admission form).

¶ 32 We recognize the policy of encouraging voluntary admissions. *Byrd*, 68 Ill. App. 3d at 854, 386 N.E.2d at 388. This policy "is based on psychiatric evidence indicating that a patient who recognizes his condition and voluntarily undertakes treatment can more likely be rehabilitated than one upon whom therapy is forced." *Bennett*, 251 Ill. App. 3d at 889, 623 N.E.2d at 944. However, the patient's condition and the potential threat posed to others must also be considered. *In re James E.*, 207 Ill. 2d 105, 114, 797 N.E.2d 622, 627 (2003). Here, Dr. Bitar testified respondent had recently threatened to kill his family and himself. Dr. Bitar also opined respondent, if released, would not take the recommended medications. The public ought be protected from persons potentially dangerous due to mental illness, and such individuals must often be protected from harming themselves. *James E.*, 207 Ill. 2d at 114, 797 N.E.2d at 627. The trial court did not err in granting the State's petition.

¶ 33 III. CONCLUSION

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

¶ 35 Affirmed.