

NOTICE
This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

2012 IL App (4th) 110863-U

Filed 3/26/12

NO. 4-11-0863

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

In re: Charlene G., a Person Found Subject to)	Appeal from
Administration of Psychotropic Medication,)	Circuit Court of
THE PEOPLE OF THE STATE OF ILLINOIS,)	Sangamon County
Petitioner-Appellee,)	No. 11MH814
v.)	
CHARLENE G.,)	Honorable
Respondent-Appellant.)	Steven H. Nardulli,
)	Judge Presiding.

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

ORDER

¶ 1 *Held:* We grant appointed counsel's motion to withdraw and affirm the trial court's judgment where no meritorious issues can be raised on appeal as to (1) whether respondent was prejudiced when she did not receive three days' notice of the hearing on the petition to administer involuntary medication, and (2) whether the trial court's decision was against the manifest weight of the evidence.

¶ 2 This case comes to us on motion of the Legal Advocacy Service of the Illinois Guardianship and Advocacy Commission (Legal Advocacy) to withdraw as counsel on appeal pursuant to *Anders v. California*, 386 U.S. 738 (1967), as extended to civil matters in *In re Keller*, 138 Ill. App. 3d 746, 486 N.E.2d 291 (1985), because no meritorious issues can be raised in this case. For the following reasons, we agree and affirm.

¶ 3 I. BACKGROUND

¶ 4 In June 2011, the trial court found respondent, Charlene G., unfit to plead or stand

trial on a pending domestic battery charge. The court ordered respondent transferred to the Illinois Department of Mental Health and Developmental Disabilities. On September 12, 2011, respondent was admitted to McFarland Mental Health Center (McFarland). A week later, respondent's treating psychiatrist, Dr. Kasturi Kripakaran, filed a petition for involuntary administration of psychotropic medication. Kripakaran timely provided respondent with a copy of the petition and mailed a copy to the attorney representing respondent in her criminal case.

¶ 5 Kripakaran's petition requested the following medications: (1) Risperidone (Risperdal) tablets, to be taken orally (one to eight milligrams a day); (2) Risperidone Consta (Risperdal Consta), to be taken intramuscularly (25 to 50 milligrams every two weeks); (3) Lorazepam, to be taken orally or intramuscularly (one to six milligrams per day); and (4) Cogentin, to be taken orally or intramuscularly (one to six milligrams per day). As an alternative to Risperdal, the petition requested Olanzapine, to be taken orally or intramuscularly, at a dose of 10 to 30 milligrams per day. As an alternative to Cogentin, the petition requested Benadryl, to be taken orally or intramuscularly, at a dose of 25 to 200 milligrams per day. In addition, the petition requested the court order blood work and a screening test to ensure the safe and effective administration of respondent's medication.

¶ 6 On September 21, the trial court appointed counsel to represent respondent and set a hearing on the petition for September 23. Notice of the hearing was mailed to respondent and her attorney on September 21.

¶ 7 At the hearing, Kripakaran testified respondent had been diagnosed with schizophrenia, as manifested by respondent's hostility and irritability. She exhibited paranoid and grandiose delusions, believing she owned Avon, she had attended law school, she was

pregnant, others were plotting against her, and the police arrested her for no reason at all.

¶ 8 Kripakaran reported respondent had been administered emergency medication on two different occasions while at McFarland after she became agitated and could not be redirected. During one occasion, she made threats to kill Kripakaran and his staff, although she did not physically attack anyone at McFarland. In addition, Kripakaran considered respondent's failure to understand her domestic battery charges and her designation as "unfit to stand trial" to be indications respondent's level of functioning had deteriorated. Kripakaran opined respondent lacked the capacity to make reasoned decisions about treatment. Further, he stated respondent did not understand or have any insight into her mental illness. Respondent refused to take psychotropic medication.

¶ 9 Kripakaran testified about the medications and dosage levels requested in his petition, detailing the benefits and side effects of each medication. He stated the Risperdal tablets, Risperdal Consta, and Olanzapine would help resolve respondent's psychosis. Possible side effects of the three medications included sedation, abnormal involuntary movements, tardive dyskinesia, changes in respondent's lipid profile, changes in respondent's glucose metabolism, and changes in respondent's electrocardiogram (EKG). Lorazepam would help with respondent's agitation, while Cogentin and Benadryl would alleviate the side effects of Risperdal. Cogentin, Lorazepam, and Benadryl could each potentially cause sedation.

¶ 10 Kripakaran's records showed respondent had taken Risperdal and Olanzapine in the past but did not show respondent had experienced adverse side effects. However, his records did not indicate the dosage level respondent had taken of either medication. Likewise, Kripakaran's records showed respondent had taken Lorazepam in the past. He reported

respondent did not experience adverse side effects from Lorazepam. Kripakaran's records did not indicate respondent had previously taken Cogentin or Benadryl.

¶ 11 Overall, Kripakaran opined the benefits of treatment clearly outweighed the potential side effects. He further testified he had explored and ruled out less restrictive treatment options. Specifically, he did not believe respondent was appropriate for group or individual therapy because she was not interested in participating in either type of therapy.

¶ 12 On September 16, 2011, Kripakaran attempted to discuss the benefits and side effects of the medications with respondent, but respondent refused because she did not believe she needed medication. Kripakaran again attempted to speak to respondent about medication on September 22, 2011, but again, respondent did not think medication was necessary. Kripakaran provided respondent with a written list of the medications' benefits and side effects, which the trial court admitted into evidence as People's exhibit No. 1. Kripakaran also provided respondent with a list detailing alternative psychotropic medications and their possible benefits and side effects. The court admitted this list into evidence as People's exhibit No. 2. Finally, the court admitted into evidence People's exhibit No. 3, a document containing the list of personnel at McFarland authorized to administer treatment by psychotropic medication.

¶ 13 On cross-examination, Kripakaran stated respondent had previously received inpatient mental treatment at Provena in December 2010, during which time respondent was diagnosed with bipolar disorder. Kripakaran acknowledged respondent had been maintaining her weight, eating without prompting, and showering while at McFarland, but Kripakaran did not know how respondent was functioning before she was admitted.

¶ 14 Respondent then testified on her own behalf. She stated she had previously been

admitted to Provena, for five or six days, after the "police came and then just threw [her] in there *** for no apparent reason." She said she was "diagnosed with bipolar" at that time although "there [was] nothing wrong with [her], none whatsoever." She said she had also been to another mental health institution when she was living in Iowa. Prior to being arrested and admitted to McFarland, respondent was living on her own in Urbana, although she had just been released from jail on May 20, 2011. She could not recall the amount of unemployment benefits she received every month but testified it "should be anywhere from \$900 to \$1,000 a month." She used to sell Avon products but had not done so in three or four months.

¶ 15 Respondent testified she had taken Risperdal once while she was incarcerated, and that "it felt like it was about to kill" her, "shut [her] body down," put her "straight to sleep," and made her legs and head hurt. When asked why she did not want to take medication again, respondent stated she "didn't know for sure" whether she was pregnant. She further stated nobody had given her medical attention and she needed to see a clinic "on the outside, as soon as possible." However, on rebuttal, Kripakaran testified respondent was given a pregnancy test on September 13, the results of which were negative. The trial court admitted into evidence the negative results of this test as People's exhibit No. 4.

¶ 16 When asked about her domestic battery charge on cross-examination, respondent testified:

"I didn't do anything at all. I was arguing with my husband—I was arguing with my boyfriend in the house, and then they just told me—the warrant man just came and said I'm getting arrested for the prior thing that I did or whatever, domestic with a

prior, and how can he—they arrest me in my building like that?

That's basically illegal. I got arrested for no apparent reason. Between the hours of 11 and 7.a.m, they're not supposed to be arresting me at all."

¶ 17 Based on the evidence, the trial court found the State had clearly and convincingly established respondent suffered from a serious mental illness. The court further found (1) respondent demonstrated a deterioration in her ability to function as well as threatening behavior, which had existed for a period of time; (2) the benefits of treatment outweighed the potential harm; (3) respondent lacked the capacity to make a reasoned decision about her treatment because she lacked insight into her mental illness; (4) less restrictive services were explored and found inappropriate; and (5) respondent had been advised as to potential benefits and side effects of treatment and alternatives to treatment. Finally, the court found the requested tests were necessary and appropriate for the safe and effective administration of respondent's medication and the evidence did not show respondent had executed a power of attorney.

¶ 18 The trial court entered an order, effective for 90 days, subjecting respondent to the involuntary administration of the medications listed in Kripakaran's petition at the dosage levels listed in the petition. The order authorized only those individuals named in "People's Ex." to administer medication. The order also authorized the requested tests and blood work.

¶ 19 Respondent appealed, and the court appointed Legal Advocacy to represent respondent. On December 20, 2011, Legal Advocacy filed a motion to withdraw, attaching to its motion a brief conforming to the requirements of *Anders v. California*, 386 U.S. 738 (1967), as extended to civil matters in *In re Keller*, 138 Ill. App. 3d 746, 747-48, 486 N.E.2d 291, 292

(1985). On its own motion, this court granted respondent leave to file additional points and authorities by January 20, 2012. Respondent has not done so. After examining the record and executing our duties in accordance with *Anders*, we grant Legal Advocacy's motion and affirm the trial court's judgment.

¶ 20

II. ANALYSIS

¶ 21 Legal Advocacy argues this appeal presents no meritorious claims upon which respondent could realistically hope to obtain relief. We agree.

¶ 22

A. Notice Deficiency

¶ 23 Legal Advocacy first argues, despite only receiving two days' notice of the hearing on Kripakaran's petition for involuntary administration of psychotropic medication, no colorable argument can be made respondent or her attorney were prejudiced by the notice deficiency. We agree.

¶ 24

Under section 2-107.1 of the Mental Health and Developmental Disabilities Code (Mental Health Code) (405 ILCS 5/2-107.1(a-5)(1) (West 2010)), a petitioner must provide respondent and respondent's attorney with notice of the time and place of a hearing on a petition to administer psychotropic medication "no later than 3 days prior to the date of the hearing." However, a trial court's failure to strictly comply with notice requirements in proceedings to administer psychotropic medication does not amount to a due process violation where the respondent had (1) actual notice of the proceedings, and (2) ample opportunity to prepare a defense. *In re C.E.*, 161 Ill. 2d 200, 225-27, 641 N.E.2d 345, 356-57 (1994).

¶ 25

In this case, the trial court entered an order on September 21 setting a hearing for September 23. Notice of the hearing was mailed to respondent and her attorney on September

21. Thus, respondent and her attorney did not receive notice of the hearing within the three days prescribed by section 2-107.1 of the Mental Health Code. However, the record in this case shows both respondent and her attorney were present at the hearing and did not object to the potential notice deficiency or request additional time to prepare a defense. Accordingly, we agree with Legal Advocacy no colorable argument can be made that the notice deficiency prejudiced respondent or her attorney such that relief is warranted.

¶ 26 B. Sufficiency of the Evidence

¶ 27 Next, Legal Advocacy argues no meritorious argument can be made the trial court's determination that respondent was subject to involuntary administration of psychotropic medication was against the manifest weight of the evidence. We agree.

¶ 28 Section 2-107.1 of the Mental Health Code provides forced administration of psychotropic medication may only be administered when the State proves, by clear and convincing evidence, all of the following factors:

"(A) That the recipient has a serious mental illness or developmental disability.

(B) That because of said mental illness or developmental disability, the recipient currently exhibits any one of the following:

(i) deterioration of his or her ability to function, as compared to the recipient's ability to function prior to the current onset of symptoms of the mental illness or disability for which treatment is presently sought, (ii) suffering, or (iii) threatening behavior.

(C) That the illness or disability has existed for a period

marked by the continuing presence of the symptoms set forth in item (B) of this subdivision *** or the repeated episodic occurrence of these symptoms.

(D) That the benefits of the treatment outweigh the harm.

(E) That the recipient lacks the capacity to make a reasoned decision about the treatment.

(F) That other less restrictive services have been explored and found inappropriate." 405 ILCS 5/2-107.1(a-5)(4)(A) through (a-5) (4)(F) (West 2010).

¶ 29 In addition, the State must present clear and convincing evidence the respondent received written notification of the side effects, risks, and benefits of the treatment, as well as alternatives to the proposed treatment. *In re Louis S.*, 361 Ill. App. 3d 774, 780, 838 N.E.2d 226, 232 (2005). If the State's petition seeks authorization for testing and other procedures, the State must prove by clear and convincing evidence the testing and procedures are "essential for the safe and effective administration of the treatment." 405 ILCS 5/2-107.1(a-5)(4)(G) (West 2010). A trial court's determination as to involuntary administration of psychotropic medication will not be reversed on appeal unless it was against the manifest weight of the evidence. *In re A.W.*, 381 Ill. App. 3d 950, 957, 887 N.E.2d 831, 838 (2008).

¶ 30 No meritorious argument can be made in the case *sub judice* that the court's decision was manifestly erroneous. Kripakaran testified respondent was diagnosed with schizophrenia, as evidenced by her hostility as well as her paranoid and grandiose delusions. Kripakaran testified respondent's designation as "unfit to stand trial" indicated her level of

functioning had deteriorated. Being found "unfit to stand trial" at a fitness hearing does not necessarily indicate a person's ability to function has deteriorated. See *People v. Murphy*, 72 Ill. 2d 421, 432-33, 381 N.E.2d 677, 683 (1978) (" 'Fitness speaks only to a person's ability to function within the context of trial.' [Citation.] It does not refer to sanity or competence in other areas.") However, as Legal Advocacy correctly points out, Kripakaran also testified respondent had been administered emergency medication on two different occasions at McFarland and made threats to kill Kripakaran and his staff, both of which suggested functional deterioration and threatening behavior. Thus, no colorable argument can be made the trial court's findings that respondent suffered from a serious mental illness and respondent demonstrated a deterioration in her ability to function as well as threatening behavior were manifestly erroneous.

¶ 31 Likewise, no colorable argument can be made the trial court's finding respondent lacked capacity to give informed consent was manifestly erroneous. Kripakaran testified respondent did not have any insight into her mental illness. Respondent refused to discuss treatment options with Kripakaran, asserting medication was not necessary. Respondent testified she had previously experienced adverse side effects from Risperidone; however, when asked why she did not want to take medication again, respondent replied she might be pregnant, despite receiving a pregnancy test upon her admission to McFarland with negative results. Based on this, it was not manifestly erroneous for the court to find respondent lacked the capacity to make a reasoned decision about treatment.

¶ 32 The trial court further found the requested treatment outweighed the harm, admonishing Kripakaran to "pay particular attention to the side effects" respondent reported experiencing in the past. In addition, the court found less restrictive services were explored and

found inappropriate due to respondent's lack of insight into her own mental illness. No colorable argument can be made the court's findings were against the manifest weight of the evidence.

¶ 33 Finally, respondent received written notification of the side effects and benefits of the proposed medication as well as alternative psychotropic medication, as shown by People's exhibit Nos. 1 and 2. The court found People's exhibit No. 1 showed the requested tests were appropriate and necessary for the safe and effective administration of the medications.

¶ 34 Based on the foregoing, we agree with Legal Advocacy no colorable argument can be made the court's decision was against the manifest weight of the evidence.

¶ 35 III. CONCLUSION

¶ 36 After reviewing the record consistent with our responsibilities under *Anders*, we agree with Legal Advocacy respondent can raise no meritorious issues on appeal. We grant Legal Advocacy's motion to withdraw as counsel for respondent and affirm the trial court's judgment.

¶ 37 Affirmed.