

NOTICE

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2013 IL App (5th) 110477-U
CONSOLIDATED NO. 5-11-0477
IN THE
APPELLATE COURT OF ILLINOIS
FIFTH DISTRICT

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).

<i>In re</i> KEITH L., Alleged to Be a Person	)	Appeal from the
Subject to Involuntary Treatment With	)	Circuit Court of
Psychotropic Medication	)	Randolph County.
)	
(The People of the State of Illinois, Petitioner-	)	No. 11-MH-153
Appellee, v. Keith L., Respondent-Appellant).)	
	)	Honorable Eugene E. Gross,
	)	Judge, presiding.

NO. 5-12-0035
IN THE
APPELLATE COURT OF ILLINOIS
FIFTH DISTRICT

<i>In re</i> GEORGE R., Alleged to Be a Person	)	Appeal from the
Subject to Involuntary Treatment With	)	Circuit Court of
Psychotropic Medication	)	Randolph County.
)	
(The People of the State of Illinois, Petitioner-	)	No. 11-MH-189
Appellee, v. George R., Respondent-Appellant).)	
	)	Honorable Richard A. Brown,
	)	Judge, presiding.

JUSTICE STEWART delivered the judgment of the court.
Justices Welch and Goldenhersh concurred in the judgment.

ORDER

¶ 1 *Held*: Where the orders for the involuntary administration of psychotropic medications to the respondents were not supported by clear and convincing evidence, the orders of the circuit court are reversed.

¶ 2 In this consolidated appeal, Keith L. and George R. appeal from orders of the circuit court of Randolph County, entered October 26, 2011, and January 4, 2012, respectively, finding them subject to the involuntary administration of psychotropic medications according to section 2-107.1(a-5)(4) of the Mental Health and Developmental Disabilities Code (Code) (405 ILCS 5/2-107.1(a-5)(4) (West 2010)). The respondents argue that the circuit court's findings that they met the statutory criteria for forced administration of medication are against the manifest weight of the evidence. The State has filed a confession of error in both cases. We find the respondents' contentions and the State's confession to be well-taken. For the reasons that follow, we reverse both orders.

¶ 3 BACKGROUND

¶ 4 The psychiatrist for both respondents, Dr. Vallabhaneni, filed a petition for the authority to administer involuntary psychotropic medication and the necessary, supportive medical testing and procedures as to both of the respondents. Both of the respondents argue that the State failed to provide clear and convincing evidence that (1) the benefits of the treatment outweigh the harm, (2) the recipient lacks the capacity to make a reasoned decision about the treatment, and (3) the requested testing and procedures are essential for the safe and effective administration of the treatment. 405 ILCS 5/2-107.1(a-5)(4)(D), (a-5)(4)(E), (a-5)(4)(G) (West 2010).

¶ 5 Keith L.

¶ 6 Keith L. was admitted to Chester Mental Health Center (Chester) on October 12, 2011, after the circuit court of Cook County found him unfit to stand trial on a criminal trespass charge. He has had at least 12 prior psychiatric hospitalizations. While at Chester, Keith L. exhibited aggressive behavior in the dining room on October 18, 2011, which required staff intervention and restraints.

¶ 7 Keith L.'s treating psychiatrist, Dr. Vallabhaneni, filed a petition for authority to

administer involuntary psychotropic medication and necessary, supportive medical testing. The petition listed two primary medications that Dr. Vallabhaneni wanted to administer, olanzapine and lorazepam, and two alternatives, risperidone and clonazepam. The petition further stated that he wanted to perform various tests to monitor Keith L.'s reactions to the medication, and "[i]f the patient's medical condition is at risk from worsening psychosis (refusing to eat, strong risk of seizures) the medication will have to be administered via nasogastric tube."

¶ 8 A hearing was held on the petition. At the hearing, Dr. Vallabhaneni testified to the following. Keith L. was his patient, and he diagnosed Keith L. as suffering from bipolar disorder, with a recent manic episode. He discussed with Keith L. the need to take the prescribed medications, but Keith L. refused to take them. During direct examination, the State asked Dr. Vallabhaneni whether he felt that at the time, Keith L. lacked the capacity to make a reasonable decision about his treatment, to which Dr. Vallabhaneni replied, "That is correct." He testified that he discussed with Keith L. that there could be side effects if he took the psychotropic medication, though Dr. Vallabhaneni did not specify what the side effects were. The State also asked Dr. Vallabhaneni if the benefits of treatment would far outweigh the side effects "because there's [*sic*] no side effects," to which Dr. Vallabhaneni replied "yes."

¶ 9 On cross-examination, Dr. Vallabhaneni testified that Keith L. was currently unfit to stand trial in Cook County. He also testified that the medication, olanzapine, could affect diabetes, with which Keith L. had been previously diagnosed. Finally, he stated that Keith L. looked "pleasant and very happy and elated" when defense counsel asked whether he had seen any benefits from the medications.

¶ 10 Keith L. testified that he had been without medication for three years, did not want to take medications, and had a constitutional right to refuse to take the medications.

¶ 11 The trial court found that based on the testimony, Keith L. was an individual with serious mental illness who lacked the capacity to make a reasoned decision about treatment, that other less-restrictive service had been explored and found to be inappropriate, and that the testing and procedures were appropriate and necessary. The court then found that Keith L. was a person subject to involuntary administration of psychotropic medication. From that order, Keith L. appeals.

¶ 12 George R.

¶ 13 George R. was admitted to Chester on October 6, 2011, from the Livingston County jail following a finding that he was unfit to stand trial for an aggravated battery charge, where it was alleged that he hit a medical technician at a correctional facility. Dr. Vallabhaneni filed a petition for authority to administer involuntary psychotropic medication and necessary, supportive medical testing. The petition stated that George R. had a history of mental illness and failed to communicate with Dr. Vallabhaneni during the evaluation. Dr. Vallabhaneni diagnosed George R. as suffering from schizophrenia and paranoid personality disorder. The petition listed two primary medications that Dr. Vallabhaneni wanted to administer, olanzapine and lorazepam, and two alternatives, risperidone and clonazepam. The petition further stated that Dr. Vallabhaneni wanted to perform various tests to monitor George R.'s reactions to the medication, and "[i]f the patient's medical condition is at risk from worsening psychosis (refusing to eat, strong risk of seizures) the medication will have to be administered via nasogastric tube."

¶ 14 On January 4, 2012, a hearing was held on the petition. At the hearing, Dr. Vallabhaneni testified to the following. George R. was his patient and he had been treating him since he was admitted to Chester on October 6, 2011. He diagnosed him with schizophrenia paranoid and paranoid personality disorder. He had a history of mental illness and had been admitted to Chester previously.

¶ 15 Dr. Vallabhaneni further testified that George R.'s ability to function had deteriorated due to his mental health issues. He stated that George R. refused to participate in treatment. At one meeting with Dr. Vallabhaneni, George R. became verbally hostile to the point that he threatened physical harm. George R. was not interested in taking any medications. He testified that he had tried the least restrictive methods to treat George R., but ended up having to enforce medication. He also testified that he did not believe that George R. had the mental capacity to understand his underlying behavior or mental condition. He and George R. discussed the side effects of the psychotropic medications, and George R. was offered proper information when Dr. Vallabhaneni began enforcing administration of the medications. He also testified that he had given George R. his own personal written list of side effects. He stated that he had not seen any side effects in George R. as a result of the medication. When asked whether Dr. Vallabhaneni believed the benefit of the medications outweighed the side effects, again with the State saying "since there's [*sic*] no side effects," Dr. Vallabhaneni indicated that the benefits would outweigh the harm. Dr. Vallabhaneni testified that he was treating George R. with olanzapine that was "very effective" and easy to administer, and lorazepam, which is a "calming down medication." He believed that as a result of the forced medication, George R. was less hostile and less belligerent.

¶ 16 On cross-examination, Dr. Vallabhaneni said that though there was a time where George R. resisted being taken from a room, he never knew of any time where George R. had been physically violent. He indicated that with forced medication, he hoped George R. would eventually be able to stand trial but that the most important issue was his underlying behavior and mental health issues.

¶ 17 George R. testified that he received a written list of the medications but not any information related to the side effects, risks, or dangers. He testified that as a result of having to take the medications, he had experienced dry mouth, increased appetite, dizziness,

and sleepiness. He testified that he was taking medication while at Pontiac Correctional Center but that the physician there said he no longer needed to take it. He further testified that he would be able to take care of himself without medication, that he did not want to cause any problems, and that he wanted to be released so that he could take care of his family. He also testified that if the judge did not order forced medication, he would voluntarily take it on his own.

¶ 18 The court found that, based on the testimony, George R. was a person suffering from schizophrenia and was exhibiting a deterioration in his ability to function. The court entered an order authorizing involuntary treatment and medications listed in the order. From that order, George R. appeals.

¶ 19 ANALYSIS

¶ 20 Initially, we acknowledge that the issues raised on appeal from the orders entered in this case, which expired 90 days after their entry (405 ILCS 5/2-107.1(a-5)(5) (West 2010)), are moot. Nevertheless, we will address the questions raised in this appeal because they are capable of repetition yet might evade review because of the short duration of the orders. See *In re Richard C.*, 329 Ill. App. 3d 1090, 1093 (2002).

¶ 21 A circuit court's order permitting the involuntary administration of psychotropic medication will not be reversed unless it is against the manifest weight of the evidence. *In re C.S.*, 383 Ill. App. 3d 449, 451 (2008). Psychotropic medications may not be administered to an adult recipient of mental health services against his will unless it has been established by clear and convincing evidence that the recipient has a serious mental illness or developmental disability, that his ability to function has deteriorated, that he is suffering or that he exhibits threatening behavior, that the mental illness has continued for a period of time or episodically, that the benefits of the treatment outweigh the harm, that other, less restrictive services had been explored and found inappropriate, and that if authorization is

sought for testing and other procedures, the testing and procedures are essential for the safe and effective administration of treatment. 405 ILCS 5/2-107.1(a-5)(4)(A) through (a-5)(4)(G) (West 2010). Clear and convincing evidence is more than a preponderance of evidence but does not reach the degree of proof necessary to convict a person in a criminal proceeding. *In re M.T.*, 371 Ill. App. 3d 318, 323 (2007).

¶ 22 Both respondents argue that the State failed to provide sufficient evidence to support the grant of the petition for involuntary treatment. They also argue that reversal of the order is necessary because appointed counsel provided ineffective assistance. We address their contentions in turn.

¶ 23 Benefits and Side Effects

¶ 24 To show by clear and convincing evidence that the benefits of the medication outweigh the harm, the State's witness must testify as to the benefits, side effects, and dosages of all the medications ordered, including the primary medication and the alternatives. *In re Louis S.*, 361 Ill. App. 3d 774, 782 (2005). Without doing so, the court would be unable to properly weigh the benefits and the harms. *Id.* The Code requires specific evidence of the risks and benefits of each medication. *In re C.S.*, 383 Ill. App. 3d at 452. The State need not provide extensive information regarding the medications, but must simply have the treating psychiatrist identify and testify to the purpose of each medication as well as how the medications will be administered. *In re Dawn H.*, 2012 IL App (2d) 111013, ¶ 17.

¶ 25 Here, during Keith L.'s hearing, when his counsel asked whether olanzapine would affect Keith L.'s diabetes, Dr. Vallabhaneni simply said that it could possibly affect a person with diabetes. He did not mention the other potential side effects of that medication nor any of the side effects for the other three medications. He mentioned that he discussed the side effects with Keith L., but did not discuss what the actual side effects were while testifying at the hearing. Further, the State introduced no evidence as to what the dosage of any of the

medications would be, nor how Dr. Vallabhaneni planned to administer any of the medications.

¶ 26 In George R.'s case, Dr. Vallabhaneni only briefly mentioned olanzapine and lorazepam, noting that olanzapine was "very effective" and lorazepam was a "calming down" medication. Again, Dr. Vallabhaneni testified that he had discussed the potential side effects with George R., but such information was not presented at the hearing, nor was any evidence presented regarding dosage. Indeed, the State asked if the benefits of both medications would outweigh the side effects because "there's [*sic*] no side effects," to which Dr. Vallabhaneni responded in the affirmative.

¶ 27 Such limited evidence regarding the benefits and side effects of the medications in both cases did not give the circuit court an adequate opportunity to properly conduct a harm and benefits analysis. The State did not prove by clear and convincing evidence that the benefits of the medications outweighed the potential harm.

¶ 28 Decisional Capacity

¶ 29 If an individual has the capacity to make a treatment decision for himself, enforced administration of psychotropic medication is not permitted, even if it appears that it is in that individual's best interest to medicate. *In re John R.*, 339 Ill. App. 3d 778, 780 (2003). A physician must advise the patient, in writing, of the side effects, risks, and benefits of treatment, as well as alternatives to the proposed treatment. 405 ILCS 5/2-102(a-5) (West 2010). Failure to advise the patient destroys the patient's ability to make a reasoned decision about the medications because he would not have all of the facts to be able to do so. *In re Bobby F.*, 2012 IL App (5th) 110214, ¶ 18. Verbally informing the patient about the medications is not enough to meet the statutory requirement. *Id.* ¶ 19.

¶ 30 With respect to George R., Dr. Vallabhaneni stated that he had discussed the medications with him generally and that he was offered the proper information, though Dr.

Vallabhaneni was not sure whether George R. had taken the information. Also, when asked whether he thought George R. had the mental capacity to make a decision about the medication, Dr. Vallabhaneni's response was simply that "he does not have proper understanding of his underlying behavior or mental condition." He went on to say that George R. was refusing accept what had happened to him and why he was admitted to Chester. The record does not contain what information Dr. Vallabhaneni gave to George R., and it is not even clear that George R. took the information that Dr. Vallabhaneni offered. George R. testified that he received a list of the medications but the list did not contain any information about the side effects, risks, or dangers of each medication.

¶ 31 With respect to Keith L., Dr. Vallabhaneni simply stated "yes, we did" when the State asked whether he had given a list of side effects to Keith L. The State never presented any testimony or other evidence to show that Keith L. had been given a list of all of the medications, their benefits and risks, and alternatives to the medications.

¶ 32 The failure to inform either of the respondents about the medications sought to be administered kept the respondents from being able to make a reasoned decision. The State failed to present clear and convincing evidence that the respondents lacked the mental capacity to make a decision about the medications.

¶ 33 Monitoring Tests

¶ 34 When seeking the involuntary testing of a mental health patient, the State must prove by clear and convincing evidence that such testing is essential for the safe and effective administration of the treatment. 405 ILCS 5/2-107.1(a-5)(4)(G) (West 2010). In *Larry B.*, this court reversed an involuntary medication order when the physician simply confirmed, at the hearing, that he wanted to conduct testing to ensure that the administration of the medication was " 'safely and effectively done.' " *In re Larry B.*, 394 Ill. App. 3d 470, 478 (2009). With no other evidence presented about the testing methods, we found that this

testimony "fell far short of clear and convincing specific expert testimony in support of a request for testing." *Id.* The State must present specific testimony about the requested testing and procedures. *In re David S.*, 386 Ill. App. 3d 878, 883 (2008).

¶ 35 The facts here are similar. With respect to Keith L., the only information regarding the potential testing came from Dr. Vallabhaneni's testimony that he was asking the trial court to give Keith L. "the medication listed in the petition as well as do the testing and procedures necessary for the safe and effective administration of the medication." The petition mentioned a nasogastric tube, yet no information about that procedure was given during the hearing. In fact, no information as to how the tests would be conducted, at what time, and why the tests were needed was presented during the hearing. There was less information presented about the desired tests here than in *Larry B.* See *In re Larry B.*, 394 Ill. App. 3d 470, 478 (2009).

¶ 36 With respect to George R., Dr. Vallabhaneni's testimony was almost exactly the same regarding the testing for Keith L. The only evidence the State presented was Dr. Vallabhaneni's confirmation that "he is asking the trial court to give Mr. R. the medication listed in the petition as well as do the testing and procedures necessary for the safe and effective administration of the medication." Again, this testimony, with nothing else, falls short of the clear and convincing evidence necessary to prove that the testing and nasogastric tube were essential for the safe and effective administration of the medication. No information was presented about why, how, and when the tests would be conducted, and no information was provided regarding the nasogastric tube.

¶ 37 The respondents also contend that their appointed counsel provided ineffective assistance. Because of resolution of the preceding issues and our determination that the order granting the petition must be reversed, we need not consider the respondents' allegations of error regarding their counsel's representation.

¶ 38 While the allegations within the petition were thorough and well-supported, such information needed to be presented during the hearings for both of the respondents. See *In re Larry B.*, 394 Ill. App. 3d at 479. Because the State failed to provide any information about the monitoring tests, other than a simple confirmation by Dr. Vallabhaneni that he wanted to be able to conduct testing on both of the respondents, we find that it failed to prove, by clear and convincing evidence, that the tests were essential. Thus, the trial court's order regarding the testing was in error and is reversed.

¶ 39 CONCLUSION

¶ 40 For the foregoing reasons, the order of the Randolph County circuit court authorizing the involuntary administration of psychotropic medications to both of the respondents is reversed.

¶ 41 Reversed.