

NOTICE

Decision filed 08/24/17. The text of this decision may be changed or corrected prior to the filing of a Petition for Rehearing or the disposition of the same.

2017 IL App (5th) 130585-U

NO. 5-13-0585

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> ROGER S., Alleged to Be a Person Subject)	Appeal from the Circuit Court of
To Involuntary Treatment With Psychotropic)	Madison County.
Medication)	
)	No. 13-MH-163
(The People of the State of Illinois,)	
Petitioner-Appellee, v. Roger S.,)	Honorable Thomas W. Chapman,
Respondent-Appellant).)	Judge, presiding.

PRESIDING JUSTICE MOORE delivered the judgment of the court.
Justices Chapman and Overstreet concurred in the judgment.

ORDER

¶ 1 *Held:* Circuit court's judgment for involuntary administration of psychotropic medication reversed where State confessed error regarding its failure to comply with statutory mandate to provide written information to the respondent about the side effects, risks, and benefits of the proposed treatment (405 ILCS 5/2-102(a-5) (West 2012)) and the public-interest exception to the mootness doctrine applies to allow us to consider the appeal.

¶ 2 The respondent, Roger S., appeals the November 26, 2013, judgment of the circuit court of Madison County that found him subject to the involuntary administration of psychotropic medication. For the following reasons, we reverse.

¶ 3

FACTS

¶ 4 On November 1, 2013, Dr. Sanghee Kim-Ansbros, the respondent's psychiatrist at Alton Mental Health Center (AMHC), filed a petition to involuntarily administer psychotropic medication to the respondent, pursuant to section 2-107.1 of the Mental Health and Developmental Disabilities Code (Code) (405 ILCS 5/2-107.1 (West 2012)). The petition alleged that (1) the respondent: (a) had a mental illness; (b) refused to receive psychotropic medication; and (c) exhibited: (i) deterioration of his ability to function; (ii) suffering; and (iii) threatening behavior; (2) the respondent's mental illness had existed for a period of time, marked by the continuing presence of symptoms or repeated episodes of the symptoms since he was in his late teens; (3) the respondent lacked the capacity to make a reasoned decision about the psychotropic medication; (4) the benefits of the medication clearly outweighed the harm; and (5) other less restrictive services were explored and found inappropriate to treat the respondent without the use of psychotropic medication.

¶ 5 A hearing on the petition was conducted on November 26, 2013. There, Dr. Kim-Ansbros testified that she is a board-certified psychiatrist employed at AMHC, where she is the respondent's treating psychiatrist. Dr. Kim-Ansbros testified that the respondent was admitted to AMHC on February 27, 2013, because he was found unfit to stand trial on a felony charge of disorderly conduct, for allegedly placing suspicious items appearing to be explosives outside a store. When the respondent was admitted to AMHC, Dr. Kim-Ansbros treated him daily for three days, weekly for three weeks, and thereafter on a monthly basis. She also discussed the respondent's case with the treatment team on

weekdays and had informal contact with him on the unit. Dr. Kim-Ansbros confirmed that there had never before been an involuntary administration of medication order entered against the respondent.

¶ 6 Dr. Kim-Ansbros testified that she diagnosed the respondent with schizoaffective disorder, bipolar type, and that he experiences periods of grandiosity, oppressive speech, and depression. He also had one past suicide attempt and had exhibited psychotic symptoms including disorganized thinking and various delusions. When asked about the delusions, Dr. Kim-Ansbros explained that the respondent believes he has Addison's disease—which was disproven by an endocrinologist in 2013—and insists that he needs prednisone to treat the alleged Addison's disease. The respondent further believes that he has bacteria in his digestive system, which turns food into poison. Other delusions of the respondent are that the government is against him because he wanted to run for president, and the Bible has a secret code that only he can understand.

¶ 7 Dr. Kim-Ansbros testified that the respondent's ability to function has been impaired by his mental illness, he has significantly worsened in the last two or three months, and he has reached the point of suffering from the illness. She explained that the respondent consistently refused to eat because he believed his food was poisoned, and he refused to use the restroom in May and was urinating in his room and crawling on the floor until he was provided with a wheelchair. He was unhappy with the antibiotics he was receiving as treatment for cellulitis because he believed the antibiotics were poison. Moreover, the respondent refused diuretics to control his swelling. The respondent was

told that without further treatment he was at risk for skin infection, ulcers, osteomyelitis, and a possible loss of extremities. Nevertheless, he consistently declined treatment.

¶ 8 Dr. Kim-Ansbros testified that during a medical examination on September 11, 2013, the respondent threatened to hit the doctor in the head with a brick. She further indicated that on October 6, 2013, during a routine check, the respondent told the staff, "If I had a gun right now, I will [*sic*] start with your toes, and shoot you all the way up your body." Dr. Kim-Ansbros described the respondent as "very irate[,] [s]haking his fist at the staff[,] [a]nd yelling that you are all going to hell." On another occasion, when a doctor stopped by the respondent's room, the respondent yelled at the doctor to get out and pushed the door shut, hitting the doctor's foot. The respondent had also threatened to slit another patient's throat if he had a knife, became agitated and threw his coffee across the room, hitting the staff, attempted to strike a nurse's foot twice, and stated that he wanted a gun. Dr. Kim-Ansbros denied that the respondent ever personally threatened her, nor had she ever heard him threaten to kill himself or others.

¶ 9 Dr. Kim-Ansbros testified that the respondent was not currently taking medication. She recited a lengthy list of medications and dosages she requested the circuit court to approve, as well as alternative medications and dosages, of which the circuit court took judicial notice. Dr. Kim-Ansbros testified in detail regarding the possible side effects of the medications and opined to a reasonable degree of medical and psychiatric certainty that the intended benefits of each medication outweigh the risks and dangers.

¶ 10 Dr. Kim-Ansbros stated that she explained the risks and benefits of the medications to the respondent and provided him with written information but he did not agree to take

the medications. She opined that the respondent lacks the capacity to make reasoned decisions about the psychotropic medications because he does not believe that he has a mental illness. He believes his pain and swelling is caused by poison in his food and by not taking prednisone. Dr. Kim-Ansbros testified that the respondent is out of touch with reality, that he is unable to converse rationally, that he is incapable of understanding the relevance of proposed treatment and possible consequences of refusing treatment, and that his delusions are not amenable to reasoning or explanation. She stated that other less restrictive forms of treatment like counseling and treatment classes were not only refused by the respondent, but would also be inadequate without the use of psychotropic medications.

¶ 11 When asked about who would administer the proposed medications, Dr. Kim-Ansbros responded that the nurses at AMHC would do so. She noted that the respondent's vital signs, body weight, heart, blood cell counts, metabolic panel, and lipid profile would all be monitored to detect side effects and assess his overall physical health. She added that those tests are essential for the safe and effective administration of the medications.

¶ 12 The respondent testified that he had not spoken with Dr. Kim-Ansbros about the proposed medications, but she had given him a pamphlet and "a bunch of papers." He agreed that he read the information about the medications, but he was never offered any alternative forms of medications. He stated that he was "kind of familiar" with the antipsychotic drugs but he is not interested in them because "they only harm me." He further stated that "mostly they actually create the symptoms of the illness that they are trying to treat ***." The respondent testified that he had not taken psychotropic

medications in approximately 20 years and that he had been on Haldol before and "it was a living hell." He explained that Haldol creates an adrenal insufficiency and "it results in death."

¶ 13 He explained that when he was first admitted to AMHC, he was able to eat, sleep, and take care of himself. He testified that he took prednisone for 13 years but alleged that when they took him off of it, "my stomach doesn't make the same amount of digestive acids, so when I eat food it just sits there and kind of rots in my stomach and it doesn't get digested."

¶ 14 The respondent denied ever throwing his food across the table, denied threatening to hit a physician in the head with a brick, denied threatening to slit anyone's throat if he had a knife, denied hitting the physician in the foot with a door, and denied throwing coffee at the staff. He testified that he is 56 years old and has never hit anyone in his life. Regarding his convictions for aggravated assault in 1993, violating an order of protection in 1994, and aggravated battery in 1997, he acknowledged the convictions, but stated they were "not for hitting somebody." He opined that he is able to take care of his basic needs and is not currently in need of any medications.

¶ 15 At the conclusion of the hearing, the circuit court entered an order granting the petition for the involuntary administration of psychotropic medication to the respondent.

¶ 16 ANALYSIS

¶ 17 *Mootness*

¶ 18 We first note that this appeal is moot. The order on appeal was entered on November 26, 2013. It allowed the administration of psychotropic medication to the

respondent for a period not to exceed 90 days and expired thereafter, thereby rendering this appeal moot. If an issue is raised on appeal that is otherwise moot, the issue may be addressed when the magnitude of involved interests merits the reviewing court's action or the issue is one that will likely recur but not last long enough for appellate review because of the inherent brief nature of the controversy. *In re A.W.*, 381 Ill. App. 3d 950, 954 (2008).

¶ 19 "The first exception to the mootness doctrine [is] known as the public-interest exception ***." *Id.* This exception "applies only if a clear showing exists that (1) the question at issue is of 'a substantial public nature,' (2) an authoritative determination is needed to guide public officers in the performance of their duties, and (3) the circumstances are likely to recur in other cases." *Id.* "The public-interest exception must be 'narrowly construed and requires a clear showing of each criterion.'" *Id.* (quoting *Felzak v. Hruby*, 226 Ill. 2d 382, 393 (2007)).

¶ 20 Here, the State concedes that reversal of the order for involuntary treatment is merited because the order failed to comply with the mandates of section 2-102(a-5) of the Code (405 ILCS 5/2-102(a-5) (West 2012)). In particular, the State admits that the record fails to establish that the respondent received written notification of the treatment alternative options as mandated. See *id.* That section specifically provides that if psychotropic medications are administered, "the physician *** shall advise the recipient, in writing, of the *** alternatives to the proposed treatment ***." *Id.* In this case, the State did not ask Dr. Kim-Ansbro whether written information about alternatives to the

proposed treatment was provided to the respondent, and the State has confessed this error.

¶ 21 Notwithstanding this confession of error, the State argues that none of the exceptions to the mootness doctrine apply here. We disagree. "[S]trict compliance with statutory procedures is required based on the important liberty interests involved in involuntary-treatment cases." *In re A.W.*, 381 Ill. App. 3d at 955. The Illinois Supreme Court has "held that the procedures courts must follow to authorize the involuntary medication of mental health patients involve matters of 'substantial public concern.' " *In re Robert S.*, 213 Ill. 2d 30, 46 (2004) (quoting *In re Mary Ann P.*, 202 Ill. 2d 393, 402 (2002)). "[A]rguments regarding the involuntary-treatment order's compliance with the Code constitute questions of public importance." *In re A.W.*, 381 Ill. App. 3d at 955. "In addition, answers to respondent's arguments will provide an authoritative determination to guide public officers in the performance of their duties in mental-health cases." *Id.* "Finally, the circumstances in this case are likely to recur in other involuntary-treatment cases." *Id.* Accordingly, the criteria needed to satisfy the public-interest exception to the mootness doctrine are established here. See *id.* at 954.

¶ 22 Because the order failed to comply with the mandates of section 2-102(a-5) of the Code (405 ILCS 5/2-102(a-5) (West 2012)) and because the public-interest exception to the mootness doctrine is applicable to this case, we reverse the order.

¶ 23 CONCLUSION

¶ 24 For the foregoing reasons, we reverse the November 26, 2013, order of the circuit court of Madison County.

¶ 25 Reversed.