

2012 IL App (2d) 120020-U  
No. 2-12-0020

Order filed December 21, 2012

**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).

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IN THE  
APPELLATE COURT OF ILLINOIS  
SECOND DISTRICT

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<i>In re</i> GREGORY M., Alleged to be a Person	)	Appeal from the Circuit Court
Subject to Involuntary Admission	)	of Kane County.
	)	
	)	No. 11-MH-140
	)	
(The People of the State of Illinois,	)	Honorable
Petitioner-Appellee, v. Gregory M.,	)	Susan Clancy Boles,
Respondent-Appellant).	)	Judge, Presiding.

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JUSTICE HUTCHINSON delivered the judgment of the court.  
Justices Schostok and Birkett concurred in the judgment.

**ORDER**

- ¶ 1 *Held:* We reversed the trial court's involuntary-admission order, as respondent was not examined by a psychiatrist, and the State's petition was not filed, within 24 hours after his admission to a mental-health unit as indicated on the petition.
- ¶ 2 Respondent, Gregory M., appeals from an order of the circuit court of Kane County finding him subject to involuntary admission to a mental health facility pursuant to the Mental Health and Developmental Disabilities Code (the Code) (405 ILCS 5/1-100 *et seq.* (West 2010)) and ordering him to be hospitalized for 90 days. Because the record does not establish that respondent received a timely examination by a psychiatrist or that the petition for his admission was timely filed, we reverse the order.

¶ 3 On October 28, 2011, respondent's father, Gerry M., signed a petition to have respondent involuntarily admitted to a mental health facility on an emergency basis. Gerry M. stated that, on that date, he saw respondent in the emergency room at Centegra Hospital in McHenry. Respondent indicated that he had "trashed" his apartment because he was angry at Gerry M. Respondent further indicated that he would have harmed Gerry M. Gerry M. stated that respondent was not taking his medication and had been paranoid and delusional. A check mark appears in a box next to the following preprinted language on the petition:

"Emergency inpatient admission by certificate; (405 ILCS 5/3-600). *The Respondent is currently detained in a mental health facility[.]*" (Emphasis added.)

"Centegra Hospital McHenry" is handwritten in a space indicating the "name of institution [*sic*] where detained." The petition indicates that it was signed by Gerry M. at 4 a.m. on October 28, 2011.

¶ 4 Dr. O. Habhab examined respondent at Centegra Hospital at 4:15 a.m. on Friday, October 28, 2011. Later that day, respondent was admitted to the Elgin Mental Health Center. Registered nurse Vivian Galilea signed a form indicating that respondent was admitted to a "Mental Health Facility/Psychiatric Unit" at 6:25 p.m. Although the form does not identify the facility to which respondent was admitted, it is a matter of public record that Galilea was employed by the Department of Human Services (the Department) in 2011. See <http://databases.sj-r.com/salaries/state-of-il/search/?name=galilea> (last visited on December 3, 2012). Thus, 6:25 p.m. was presumably the time of admission to the Elgin Mental Health Center. Dr. S. Chan examined respondent at 8 p.m. Nagtswara Rao Nagarakanti, a psychiatrist who is known as Dr. Rao, examined respondent on Monday, October 31, 2011, at 12:10 p.m. Drs. Habhab, Chan, and Rao each certified that respondent

was subject to involuntary admission on an inpatient basis and was in need of immediate hospitalization.

¶ 5 The petition and the certificates of Drs. Habhab, Chan, and Rao were filed in the circuit court at 2:37 p.m. on October 31, 2011. The Kane County public defender's office represented defendant at the hearing on the petition. After the trial court ordered respondent's hospitalization, Inez Toledo, an attorney with the Illinois Guardianship and Advocacy Commission (IGAC) entered a written appearance for respondent and filed a motion to reconsider and vacate that order. Toledo had represented respondent in proceedings concerning the administration of psychotropic medication. The trial court concluded that Toledo was not counsel of record and granted the State's motion to strike the motion to reconsider.

¶ 6 Section 3-601 of the Code provides, in pertinent part, "When a person is asserted to be subject to involuntary admission on an inpatient basis and in such a condition that immediate hospitalization is necessary for the protection of such person or others from physical harm, any person 18 years of age or older may present a petition to the facility director of a mental health facility in the county where the respondent resides or is present." 405 ILCS 5/3-601(a) (West 2010). The petition must be accompanied by the certificate of a physician, qualified examiner, psychiatrist, or clinical psychologist indicating that the respondent is subject to involuntary admission on an inpatient basis and requires immediate hospitalization. 405 ILCS 5/3-602 (West 2010).

¶ 7 The principal issue in this appeal is whether defendant's hospitalization complied with sections 3-610 and 3-611 of the Code. 405 ILCS 5/3-610, 3-611 (West 2010). Section 3-610 provides:

“As soon as possible but not later than 24 hours, excluding Saturdays, Sundays and holidays, after admission of a respondent pursuant to this Article, the respondent shall be examined by a psychiatrist. The psychiatrist may be a member of the staff of the facility but shall not be the person who executed the first certificate. If a certificate has already been completed by a psychiatrist following the respondent’s admission, the respondent shall be examined by another psychiatrist or by a physician, clinical psychologist, or qualified examiner. If, as a result of this second examination, a certificate is executed, the certificate shall be promptly filed with the court. If the certificate states that the respondent is subject to involuntary admission but not in need of immediate hospitalization, the respondent may remain in his or her place of residence pending a hearing on the petition unless he or she voluntarily agrees to inpatient treatment. If the respondent is not examined or if the psychiatrist, physician, clinical psychologist, or qualified examiner does not execute a certificate pursuant to Section 3-602, the respondent shall be released forthwith.” 405 ILCS 5/3-610 (West 2010).

Section 3-611 provides, in pertinent part, that “[w]ithin 24 hours, excluding Saturdays, Sundays and holidays, after the respondent’s admission under this Article, the facility director of the facility shall file 2 copies of the petition, the first certificate, and proof of service of the petition and statement of rights upon the respondent with the court in the county in which the facility is located.” 405 ILCS 5/3-611 (West 2010). If the respondent is not examined, or if the petition is not filed within the 24-hour period, the trial court may not order the respondent to be hospitalized. See *In re Demir*, 322 Ill. App. 3d 989, 995-96 (2001) (failure to timely file petition); *In re Rovelstad*, 281 Ill. App. 3d 956, 965 (1996) (failure to secure timely examination by a psychiatrist).

¶ 8 Respondent argues that the record does not show that he was examined by a psychiatrist within 24 hours of admission. Nor, according to respondent, does the record establish that the petition was filed within that time period. Before addressing those arguments, we note that, because the 90-day period of hospitalization ordered by the trial court has expired, the appeal from the trial court's order is moot. *In re Val Q.*, 396 Ill. App. 3d 155, 159 (2009). We nonetheless reach the merits because the record does not show that respondent had been found subject to involuntary admission on any prior occasion and the order in this case could therefore "return to plague the respondent in some future proceedings or could affect other aspects of the respondent's life." *Id.* In addition, we reject the State's argument that, because at the hearing on the petition respondent failed to object to the procedural errors he raises in this appeal, he has forfeited review of those errors. The procedural safeguards at issue are sufficiently important that noncompliance warrants review under a doctrine analogous to the plain-error rule applicable in criminal cases. *Rovelstad*, 281 Ill. App. 3d at 966. Moreover, reviewing courts have held that the failure to timely file the petition is an error that is not subject to forfeiture. *Demir*, 322 Ill. App. 3d at 994. Citing *In re Joseph P.*, 406 Ill. App. 3d 341 (2010), the State suggests that the plain-error analog applies only in cases where a "bevy" of procedural errors occurred. The *Joseph P.* court stated that "[w]hen a bevy of procedural irregularities occur, as in this case, the State should not always be allowed to prevail with the argument respondent failed to raise objections to these irregularities in the trial court." *Id.* at 347. However, the court did not voice any disagreement with earlier cases like *Demir* and *Rovelstad* holding that the types of errors alleged to have occurred here are sufficiently serious to overcome the forfeiture rule. Thus, we do not read *Joseph P.* as raising the bar for preserving error higher than it was set in the earlier cases.

¶ 9 We therefore turn to the question of whether respondent received an examination by a psychiatrist, and whether the petition was filed, with 24 hours of his admission, excluding Saturdays, Sundays, and holidays. We note that “[t]he burden is upon the State to affirmatively demonstrate that it has complied with the mandates of the Code.” *In re Ellis*, 284 Ill. App. 3d 691, 693 (1996). The parties disagree as to when respondent was admitted for purposes of these requirements. The 24-hour period does not begin to run merely because an individual has been admitted to a general hospital, but it does begin to run when he or she has been admitted to a general hospital’s mental health unit. *In re Moore*, 301 Ill. App. 3d 759, 765-66 (1998). The petition indicates that respondent was being detained in a mental health facility, namely Centegra Hospital in McHenry, at 4 a.m. on October 28, 2011. We read this to mean that respondent had been admitted to Centegra Hospital’s mental health unit. Thus, the 24-hour period began no later than 4 a.m. on October 28, 2011. The State argues, however, that the period began to run at 6:25 p.m. that day, when respondent was evidently transferred to the Elgin Mental Health Center. The State discounts the language of the petition indicating that respondent was in a mental health unit at Centegra Hospital. The State notes that the words “detained in a mental health facility” are preprinted on the petition, which was signed by respondent’s father, Gerry M. The State argues that “[s]ince the pre-printed form was filed [*sic*] out by a family member, it should not be inferred that Jerry [*sic*] M. was qualified to determine what was or was not a mental health facility or the importance of the classification under the Mental Health Code.” Be that as it may, the assistant State’s Attorney assigned to the case presumably was qualified to make those determinations. In involuntary admission proceedings, it is the State’s Attorney’s statutory responsibility to “ensure that *petitions*, reports and orders *are properly prepared*.” (Emphases added.) 405 ILCS 5/3-101(a) (West 2010). It was the State that

appeared—through an assistant State’s attorney—before the trial court to request that the court grant the petition signed by Gerry M. Given the duty to ensure that the petition is accurate, the State will not be heard, for the first time on appeal, to disavow facts set forth in the petition that prevent the State from meeting its burden of showing compliance with the Code’s procedural requirement for involuntary admission.

¶ 10 We therefore agree with respondent that the 24-hour period began no later than 4 a.m. on October 28, 2011. Because that day was a Friday, the next two days are excluded from the 24-hour period. The State contends that, because October 31, 2011, was Halloween, it was also excluded as a holiday. We disagree. As relevant here, the word “holiday” is generally associated with religious observance, release from work (sometimes as part of a public commemoration of an event), or both. See Webster’s Third New International Dictionary 1080 (1993). Halloween has been defined as “the evening preceding All Saint’s Day : the evening of October 31 which is often devoted by young people to merrymaking \*\*\*.” Webster’s Third New International Dictionary 1023 (1993). Halloween is not a “holiday” in any pertinent sense of the word. A number of holidays—Thanksgiving, Christmas, Memorial Day, and Labor Day—are days when, like Saturdays and Sundays, courts are closed and many people are not working. Such days are sensibly excluded from the period when a psychiatric exam must be conducted or a document must be filed in court. Accordingly, we conclude that the 24-hour period concluded at 4 a.m. on October 31, 2011. The record indicates that respondent was examined by a psychiatrist, Dr. Rao, at 12:10 p.m. that day. That examination came too late. Drs. Habhab and Chan examined respondent within the 24-hour period, but the record does not indicate that they were psychiatrists. Additionally, the petition was filed outside the 24-hour period, at 2:37 p.m. on October 31, 2011. Because of these errors, the order

finding respondent subject to involuntary admission and ordering his hospitalization must be reversed.

¶ 11 Respondent also argues that the trial court erred in concluding that Toledo was not counsel of record and striking the motion that Toledo filed on respondent's behalf for reconsideration of the order finding respondent subject to involuntary admission. Having already concluded that the order must be reversed, it is not, strictly speaking, necessary to consider the issue. Nonetheless, because respondent's right to counsel of choice (see *In re Cathy M.*, 326 Ill. App. 3d 335, 339 (2001)) is a significant one, we will briefly address the issue. In concluding that Toledo was not counsel of record, the trial court reasoned that she had not obtained leave of court to file an appearance. As defendant points out, an attorney is not required to obtain leave of court to enter an appearance for a litigant. *Sullivan v. Eichmann*, 213 Ill. 2d 82, 90 (2004). This is true even when the litigant is already represented by another attorney. *Id.* at 91. The State argues that a respondent to a petition for involuntary admission is not entitled to choose what attorney will be appointed to represent him or her. That is beside the point, however, because Toledo did not purport to appear pursuant to a court-appointment.

¶ 12 For the foregoing reasons, we reverse the judgment of the circuit court of Kane County.

¶ 13 Reversed.