2013 IL App (2d) 121134-U
No. 2-12-1134
Order filed November 6, 2013

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

In re ROBERT S., Alleged to be a Person Subject to Involuntary Treatment	)	Appeal from the Circuit Court of Kane County.
	)	No. 12-MH-121
(The People of the State of Illinois, Petitioner-Appellee v. Robert S., Respondent-Appellant).	)	Honorable Susan Clancy Boles, Judge, Presiding.

JUSTICE BIRKETT delivered the judgment of the court.
Justices McLaren and Jorgensen concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court's did not err in designating a treatment facility because the evidence demonstrated that the trial court was repeating the recommendation of respondent's treatment team. The issues regarding respondent's treatment plan and alternative facilities were moot because they involved only case-specific challenges to the sufficiency of the evidence.

¶ 2 Respondent, Robert S., appeals the judgment of the circuit court of Kane County, ordering his involuntary commitment and treatment in the Department of Human Services and specifically in the Elgin Mental Health Center. Respondent argues that (1) the evidence supporting his treatment plan was insufficient; (2) the evidence showed that no less restrictive

treatment alternatives were actually considered; and (3) the trial court exceeded its statutory authority in designating a treatment facility. For the reasons that follow, we conclude that respondent's first two issues are moot and we affirm the trial court's judgment on the third issue.

¶ 3 BACKGROUND

¶ 4 On September 18, 2012, Kay Gotter, a social worker, filed a petition for continued inpatient involuntary admission for respondent, Robert S., in the Kane County Circuit Court. On October 5, 2012, a hearing on the petition was held and the trial court found respondent subject to continued involuntary admission. In its written order, the trial court determined that hospitalization in the Department of Human Services (Department) was the least restrictive treatment. In a conflicting oral pronouncement, the trial court stated that Elgin Mental Health Center was the least restrictive environment.

¶ 5 II. ANALYSIS

¶ 6 On appeal, respondent raises three issues. First, respondent contends that his treatment plan did not meet the statutory requirements of section 3-813 of the Mental Health and Developmental Disabilities Code (Code) (405 ILCS 5/3-813 (West 2010)). Next, respondent contends that the trial court erred by not actually considering any less restrictive treatment alternatives. Last, respondent contends that the trial court erred by usurping the Department's discretion and designating a specific treatment facility.

¶ 7 As an initial matter, we must recognize and deal with the fact that, literally, this matter is moot because the 90-day involuntary commitment order that is the subject of this appeal has already expired, and the respondent has been discharged from treatment. An appeal is moot where no actual controversy is presented, or where intervening events foreclose the reviewing

court from granting effectual relief to the complaining party. *In re J.T.*, 221 Ill. 2d 338, 349–50 (2006). Thus, this appeal is moot.

¶ 8 Although a reviewing court does not decide moot questions, there are exceptions to the mootness doctrine. *In re Val Q.*, 396 Ill. App. 3d 155, 159 (2009). These include:

> "(1) the public-interest exception, [which is] applicable where the case presents a question of public importance that will likely recur and whose answer will guide public officers in the performance of their duties, (2) the capable-of-repetition exception, [which is] applicable to cases involving events of short duration that are capable of repetition, yet evading review, and (3) the collateral-consequences exception, [which is] applicable where the involuntary treatment order could return to plague the respondent in some future proceedings or could affect other aspects of the respondent's life." *Id.*

An appeal of a mental health case will usually fall within one of the established exceptions to the mootness doctrine. *In re Alfred H.H.*, 233 Ill. 2d 345, 355 (2009). However, there is no *per se* exception to mootness for mental health cases, and whether an exception applies is determined on a case-by-case basis. *Id.*

¶ 9 Respondent argues that, although his case is moot, it falls within an exception to the mootness doctrine. However, respondent concedes, and we agree, that the collateral-consequences exception does not apply here, because respondent has been involuntarily committed previously and has felony convictions, such that "[e]very collateral consequence that can be identified already existed as a result of respondent's previous adjudications and felony conviction[s]." *Id.* at 363. However, respondent argues that the public-interest and the capable-of-repetition exceptions apply.

¶ 10 The public-interest exception applies where "(1) the question presented is of a public nature; (2) there is a need for an authoritative determination for the future guidance of public officers; and (3) there is a likelihood of future recurrence of the question." *Id.* at 355. This exception is narrowly construed and requires a clear showing of each criterion. *Id.* at 355-56.

¶ 11 Respondent argues that the public-interest exception applies because questions of compliance with the statutory procedures mandated by the Code are of "substantial public concern." "Though mental health cases do have the potential to deprive respondents of significant liberties, this only addresses the public nature of the class of cases; it does nothing to examine the public nature of the issue presented within this appeal." *Id.* at 356. Here, despite an attempt to invoke statutory compliance, respondent is essentially arguing sufficiency-of-the-evidence questions regarding the first two issues on appeal: specifically, that the evidence supporting his treatment plan did not meet the requirements of section 3-813 of the Code (405 ILCS 5/3-813 (West 2010)), and that the court did not actually consider "alternative mental facilities" as required under section 3-811 (405 ILCS 5/3-811 (West 2010)). In *Alfred H.H.*, our supreme court refused to apply the public-interest exception to a question of the sufficiency of the evidence to commit the respondent to a mental health facility as "[s]ufficiency of the evidence claims are inherently case-specific reviews" that do not present broad public interest issues. *Alfred H.H.*, 233 Ill. 2d at 356-57. Similarly here, the issues raised by respondent's arguments—whether his treatment plan met the section 3-813 requirements and whether the court considered alternative mental health treatment facilities—are specific factual questions applicable to respondent, and are not questions of a public nature. See *In re James H.*, 405 Ill. App. 3d 897, 904 (2010) (the "challenge in the underlying appeal of the sufficiency of the

evidence as to the least-restrictive treatment alternative does not meet the public-interest exception").

¶ 12 Respondent also argues that the "public interest" exception is met because "this court's analysis of the issues would guide courts and parties in future cases involving [s]ections 3-811 and 3-813." However, "[i]f all that was required under this factor was that the opinion could be of value to future litigants, the factor would be so broad as to virtually eliminate the notion of mootness." *Alfred H.H.*, 233 Ill. 2d at 357. Rather, the second element of the public-interest exception envisions a situation where the law is in disarray or there is conflicting precedent. See *In re Adoption of Walgreen*, 186 Ill. 2d 362, 365-66 (1999). Respondent has failed to demonstrate that the law regarding sections 3-811 and 3-813 is in disarray or is guided by conflicting precedent. Because respondent has failed to demonstrate that there is a need for an authoritative determination regarding sections 3-811 and 3-813, the public interest exception does not apply.

¶ 13 Additionally, respondent fails to make an argument as to the third element of the public-interest exception, that there is a likelihood of future recurrence of the question. As each element of the public-interest exception must be demonstrated, and because respondent has failed to demonstrate applicability of any of the criterion, we conclude that the public-interest exception does not apply to the first two issues on appeal.

¶ 14 Still looking at the first two issues on appeal, respondent also argues that they meet the capable-of-repetition-yet-evading-review exception to the mootness doctrine. Under this exception: (1) the challenged action must be of too short a duration to be fully litigated prior to its cessation; and (2) there must be a reasonable expectation that the same complaining party would be subjected to the same action again. *Alfred H.H.*, 233 Ill. 2d at 358.

¶ 15 Respondent's claim meets the first element as the challenged action, the 90-day commitment order, is too short to be fully litigated before its conclusion. *Id.* For the second element, respondent must show a substantial likelihood that "the issue presented in the instant case, and any resolution thereof, would have some bearing on a similar issue presented in a subsequent case." *Id.* at 360.

¶ 16 Here, the resolution of only the third issue on appeal—the trial court's designation of a treatment facility—raises an issue of statutory compliance under section 3-811 reasonably likely to affect him in the same action again. Respondent will likely again be subject to involuntary admission and the trial court will again have to make a final order under section 3-811 regarding a treatment facility. See *In re Gloria C.*, 401 Ill. App. 3d 271, 276 (2010) ("It is reasonably likely that the resolution of this issue would affect future cases involving the respondent, because the respondent will likely again be subject to involuntary admission and the trial court will again have to address whether the State sufficiently complied with section 3–703 of the Code."). Furthermore, respondent's third argument on appeal challenges the interpretation of a statute, rather than arguing sufficiency of the evidence. See *Alfred H.H.*, 233 Ill. 2d at 360 (rejecting respondent's sufficiency-of-the-evidence claim, noting that "[r]espondent does not raise a constitutional argument or challenge the interpretation of the statute"); *In re Jonathan P.*, 399 Ill. App. 3d 396, 401 (2010) (distinguishing *Alfred H.H.* where respondent's arguments "challenge interpretation of the statute by contending that the order violated the Code"); *In re Daniel K.*, 2013 IL App (2d) 111251, ¶ 18 ("when a purely legal question is raised, such as an issue of statutory interpretation, the exception can apply because the court will likely again commit the same alleged errors"). But see *In re Joseph P.*, 406 Ill. App. 3d 341, 346 (2010) (issues of respondent's abilities to care for his physical needs without assistance and whether his liberty

interests were violated by involuntary treatment were fact-based determinations based on respondent's condition at the time of the orders while future proceedings would entail a new evaluation).

¶ 17 While respondent's third argument on appeal meets the exception to the mootness doctrine, as it is capable of repetition, yet evading review, this is in contrast to the first two issues, which are purely questions of the sufficiency of evidence. The issue of whether respondent's treatment plan was sufficient under section 3-813 is not a question that respondent is likely to face again under the same facts. Although respondent presents this argument as a question of statutory interpretation, upon closer examination, it is evident that respondent is arguing whether the plan was sufficient under the evidence presented at the hearing, arguing that it "sparsely addressed [s]ection 3-813 treatment plan requirements." Thus, rather than arguing the statutory interpretation of the requirements under section 3-813, respondent instead admits that the requirements were fulfilled in his case, but argues that he was unsatisfied with the quantum of evidence provided. Similarly, the second issue on appeal raised by respondent—that there were no alternative mental health facilities considered—is also a fact-specific inquiry. Again, though respondent frames his argument within statutory requirements, it is clear that he is unsatisfied with the sufficiency of the evidence presented, arguing that the evidence presented by the State was inadequate to show that the court actually considered alternative facilities. See *James H.*, 405 Ill. App. 3d at 902 (whether hospitalization was the proper treatment alternative is a fact-based determination; the order entered "was based on respondent's condition at the time of the order and any future proceedings would entail a fresh evaluation of his particular condition existing at that time"). This is in contrast to respondent's third issue, which is a question of the

trial court's authority under the Code and is not based on any particular facts alleged at the hearing.

¶ 18 Thus, as we find that respondent's third argument meets an exception to the mootness doctrine, we reach the merits of whether the trial court erred in designating a treatment facility. See *Daniel K.*, 2013 IL App (2d) 111251, ¶ 20 (finding two issues raised by the State to be under exceptions to the mootness doctrine, while refusing to address the remaining issues as they entailed questions of sufficiency of the evidence); but *contra In re David M.*, 2013 IL App (4th) 121004, ¶ 23 (choosing to address additional issues not falling under any recognized exception to the mootness doctrine where the issue of the trial court's compliance with section 3–800(a) fell within the public-interest exception).[1]

¶ 19 Substantively, respondent argues that the trial court erroneously designated a treatment facility when it orally held that Elgin Mental Health Center was the least restrictive environment, even though the written order found respondent subject to hospitalization in the Department of Human Services. We first note that where the written and oral order conflict, the oral pronouncement is controlling. *Danada Square, LLC v. KFC National Management Co.*, 392 Ill. App. 3d 598, 607 (2009). Here, we presume that the parties followed the oral order, and

[1] While the opposite results of *Daniel K.* and *David M.* suggest that there is a difference in the law, such that the second element of the public-interest exception is met, the issue in disarray concerns the scope of appellate review and not the Code. Thus, the conflicting opinions do not serve to convey jurisdiction on any of respondent's issues in this appeal. Further, we choose to follow *Daniel K.* as *David M.* provides no rationale to explain its choice to accept substantive review of concededly moot issues.

respondent was committed to the Elgin Mental Health Center. As respondent points out, section 3-811 of the Code does not give a trial court authority to designate the facility for treatment. *In re Langdon*, 53 Ill. App. 3d 768, 772 (1977). However, it appears from the record that the Elgin Mental Health Center was recommended by respondent's treatment committee, and the court was not designating a facility for treatment, but was simply agreeing with the treatment committee. Thus, we hold that the trial court did not err in its oral pronouncement. Furthermore, even if agreeing with the treatment committee's recommendation were error, it is harmless as the treatment committee appears to be making the recommendation on behalf and for the Department, and thereby is exercising the Department's discretion.

¶ 20 III. CONCLUSION

¶ 21 Accordingly, for the foregoing reasons, we dismiss as moot the first two issues on appeal and affirm the trial court's judgment on the third issue on appeal.

¶ 22 Dismissed in part and affirmed in part.