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2013 IL App (4th) 120812-U Modified order filed April 18, 2013

NO. 4-12-0812

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

In re: Mark P., 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. 12MH685
v.)	
MARK P.,)	Honorable
Respondent-Appellant.)	Steven H. Nardulli,
)	Judge Presiding.

JUSTICE KNECHT delivered the judgment of the court.
Presiding Justice Steigmann and Justice Holder White concurred in the judgment.

ORDER

¶ 1 *Held:* The appellate court granted Legal Advocacy's motion to withdraw as counsel pursuant to *Anders v. California*, 386 U.S. 738 (1967). Respondent's case was moot, but fell within an exception to the mootness doctrine. Nevertheless, the court agreed with Legal Advocacy's conclusion the record reveals no meritorious arguments on appeal.

¶ 2 This appeal comes to us on a 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 by *In re Keller*, 138 Ill. App. 3d 746, 486 N.E.2d 291 (1985), because no meritorious issues can be raised in this case. We grant Legal Advocacy's motion and affirm the trial court's decision.

¶ 3

I. BACKGROUND

¶ 4

On August 20, 2012, Dr. Sreehari Patibandla, a psychiatrist at McFarland Mental Health Center (McFarland), filed a petition, pursuant to section 2-107.1 of the Mental Health And Developmental Disabilities Code (Mental Health Code) (405 ILCS 5/2-107.1 (West 2010)), for involuntary administration of psychotropic medication to respondent, Mark P., in Sangamon County case No. 12-MH-685. The trial court appointed an assistant public defender to represent respondent and set a hearing on the petition for August 24, 2012.

¶ 5

A. The Hearing on the Petition for Involuntary Administration of Psychotropic Medication

¶ 6

1. *Respondent's Request To Proceed Pro Se*

¶ 7

At the beginning of the August 24, 2012, hearing, the assistant public defender informed the trial court respondent wished to represent himself. Thereafter, the following exchange occurred between the trial court and respondent:

"THE COURT: All right. [Respondent], do I understand that you want to represent yourself in this?

RESPONDENT: Well, Your Honor, the truth of the matter is I'm not representing myself *pro se*. I'm just myself, okay?

THE COURT: *Pro se* is a Latin term for 'by yourself,' so it's just a Latin word for saying the same thing you just said.

RESPONDENT: All right. But I think there's several issues that are compounding here and converging all at the same

time, and I will—I've written out 33 questions that I would like to ask, and I have appealed to the appellate court the status that the circuit court sent me here, and there's several issues that came up, and I have documentation from the appellate court, okay?

I didn't send an appeal to the judge's decision, I sent an appeal to due process, and I was looking for—I was looking for the authority that the prosecutor and the public defender had in order to take my identity and use an orthographic variation and speak that name that I own in a court of law basically claiming that they had charged and then trying to get me to take credit for—or claim that that piece of paper that they have that name written on was me, and secondly, they're trying to charge—say that—they're trying to charge [f]irst [d]egree [m]urder, okay? I was never allowed to have any contract or power of attorney from the Public Defender's Office. Dr. Patibandla here and Don Henke (phonetic) has claimed that I'm here on a forensics unit and that that means that this is a criminal matter.

THE COURT: Well, this is not a criminal matter.

RESPONDENT: No, I understand that, but if I wasn't here, we wouldn't be having this meeting if I wasn't here."

¶ 8

The trial court then admonished respondent as to the strategic risks and practical difficulties inherent in self-representation. Respondent responded by making a

somewhat incoherent argument about (1) the medication proposed in Dr. Patibandla's petition being World-War-Two technology, (2) the court lacking authority to order the administration of medication, and (3) respondent's knowledge of a drug that could cure his mental illness. Respondent then informed the court that he was not consenting to the proceedings:

"RESPONDENT: And I tell you what. I'm going to say I'm under protest and duress, and I'm not consenting to these proceedings whatsoever. I personally don't believe you have authority as a member of the bench to speak in the legalities because you're not a member of the bar ***.

THE COURT: Actually, I am a member of the bar, [respondent].

RESPONDENT: And a member of the bench at the same time?

THE COURT: You can't be a judge in Illinois if you're not a lawyer.

RESPONDENT: I don't know the law, you're right.

THE COURT: Which is my point.

RESPONDENT: And you don't know medicine, and you're taking [Dr. Patibandla's] conjectural view.

THE COURT: What I have to do first is make the decision whether you're competent to represent yourself.

RESPONDENT: I'm not going to say another word, Your Honor. I'm not consenting to these proceedings. I'm not going to say another word, and I have other legal avenues to address whatever outcome happens here today if I don't like it."

¶ 9 At the trial court's behest, the assistant State's Attorney called Dr. Patibandla, respondent's treating physician, to testify on the question of whether respondent had the mental capacity to make an informed waiver of counsel.

¶ 10 Dr. Patibandla testified he was board-certified by the American Board of Psychiatry and Neurology, licensed to practice as a physician in Illinois, and credentialed at McFarland to practice psychology on an inpatient basis (Dr. Patibandla has worked for the state of Illinois in that capacity for 23 years). In a brief cross-examination of Dr. Patibandla regarding his qualification to give opinion testimony, respondent argued Dr. Patibandla was not qualified to give his opinion because opinion is not proof. As respondent put it:

"Your Honor, proof doesn't exist right now. We have two sets of physics laws, general relativity and quantitative mechanics rules, that contradict each other, and the only thing you have is probabilities. He is unqualified because he's offering his conjectural rule as a proof, and proof does not exist."

¶ 11 The trial court thereafter certified Dr. Patibandla as an opinion witness, at which point respondent repeated he did not consent to the proceedings.

¶ 12 On direct examination by the State, Dr. Patibandla testified he was

respondent's treating physician at McFarland and met with him approximately 10 to 12 times since respondent was admitted to the facility in June 2011. Respondent suffers from schizoaffective disorder, bipolar type. According to Dr. Patibandla, respondent has no insight into his mental illness, nor does he recognize his delusional thoughts as such. Dr. Patibandla also testified respondent does not believe civil or criminal courts have any authority over him. During Dr. Patibandla's testimony, respondent repeatedly objected to the expression of opinions and questioned the court as to its authority to hold the proceeding and make rulings therein. Following Dr. Patibandla's testimony, the trial court denied respondent's request to represent himself, as follows:

"Okay. Based upon the doctor's testimony and based upon [respondent's] in-court statements, I am satisfied that he does not have the capacity to represent himself based upon a mental illness from which he suffers and from which he does not recognize that he suffers from, that his attempts to represent himself will put him in a position where he is doomed to failure in these proceedings, and consequently, I am going to deny his motion to represent himself, so let's proceed with the underlying petition."

¶ 13 The trial court appointed the public defender to represent respondent in the proceeding.

¶ 14 2. *Evidence Presented on the Petition for Involuntary Administration of Psychotropic Medication*

¶ 15 Dr. Patibandla testified respondent talks at length about his inventions,

claiming to have developed a worldwide "solution for energy." Respondent interrupted this testimony by saying, "That's true." At McFarland, respondent refuses to sign his name on documents, instead writing "duress" or "under duress." Respondent threatens staff with physical harm, is vulgar to female staff members, and several days before the hearing kicked a female staff member in the ankle. He continuously demands Dr. Patibandla treat him with a drug called flumazenil, which is an antidote used in emergency rooms to treat acute alcohol and benzodiazepine poisoning. According to Dr. Patibandla, flumazenil is not accepted in the psychiatric profession for use in treating schizoaffective disorder, nor did his research of flumazenil reveal any drug companies in the United States conducting controlled trials of the drug for that purpose. Dr. Patibandla described the seven alternative medication regimens he proposed in his petition, in order of desirability, and provided a detailed summary of the risks and benefits of the different plans. The trial court accepted into evidence a 40-page summary of the various alternative proposed medication plans.

¶ 16 Respondent testified on his own behalf. He attributed his mental illness to a plot carried out by the Freemasons in which one or more members of that organization intentionally caused him to overdose on methamphetamine as retribution for his refusal to join their fraternal organization. Respondent was uncooperative with his public defender during direct examination, instead choosing to go on lengthy diatribes about, among other things, (1) his dealings with the Freemasons, the Elks Club, and the Shriners; (2) a murder committed by his father in a brothel in the 1980s; (3) his invention of a "new energy system that is fuel-less electricity"; and (4) the effect of methamphetamine and

cocaine on brain chemistry. At one point, respondent's public defender attempted to cut him off, saying, "You're rambling." Respondent kept talking after his public defender informed the court she had no further questions. At the point when respondent began discussing the specific quantity of nuclear waste available for his energy system, the trial court cut off his testimony, saying, "[Respondent], you're both repeating yourself and wandering far off the subject." The State declined to conduct cross-examination.

¶ 17

The trial court announced its findings and order as follows:

"THE COURT: Based upon the testimony, I do find that [respondent] suffers from a serious mental illness. Although the State had not established that he is suffering because of it, it has been established that he has exhibited deterioration of his ability to function and he suffers from threatening or disruptive behavior. This illness has existed for an extended period of time marked by the continuing presence of these symptoms. The benefits of the treatment will outweigh the harm that he will suffer. He lacks the capacity to make a reasoned decision about the treatment. Other less restrictive services were explored and found inappropriate or inadequate. *** [A]ccordingly, I'm going to enter the order, approve the order as presented."

¶ 18

B. The Appeal

¶ 19

On August 30, 2012, respondent filed a notice of appeal, challenging the trial court's order granting the petition for involuntary administration of psychotropic

medication. The trial court appointed Legal Advocacy to represent respondent in the appeal. On December 3, 2012, Legal Advocacy filed a motion to withdraw in the case, attaching to the motion a brief conforming to the requirements of *Anders*, 386 U.S. 738, as extended to civil matters by *Keller*, 138 Ill. App. 3d at 747-48, 486 N.E.2d at 292. This court allowed respondent leave to file additional points and authorities by January 4, 2013, but he has not done so. After examining the record and executing our duties in accordance with *Anders*, we grant Legal Advocacy's motion to withdraw.

¶ 20

II. ANALYSIS

¶ 21

Legal Advocacy notes a recognized exception to the mootness doctrine exists but contends no meritorious argument can be raised on appeal, asserting it would be frivolous to argue (1) the trial court erred by denying respondent's request to represent himself, or (2) the State failed to prove the elements of section 2-107.1 by clear and convincing evidence.

¶ 22

A. The Collateral-Consequences Exception to the Mootness Doctrine Applies

¶ 23

Respondent's 90-day administration of medication order expired on its own terms on November 21, 2012. Respondent's case is moot. Generally, Illinois courts do not decide moot questions or render advisory opinions. *In re Alfred H.H.*, 233 Ill. 2d 345, 351, 910 N.E.2d 74, 78 (2009). However, we will consider an otherwise moot case where it falls into a recognized exception. Here, Legal Advocacy contends respondent's case does not fall into two of the three mootness exceptions: (1) the capable-of-repetition-yet-evading-review exception, and (2) the public-interest exception. However,

it may fall into the collateral-consequences exception.

¶ 24 The collateral-consequences exception to the mootness doctrine allows a reviewing court to consider an otherwise moot case where the involuntary treatment " 'could return to plague the respondent in some future proceedings or could affect other aspects of the respondent's life.' " *In re Charles H.*, 409 Ill. App. 3d 1047, 1052-53, 950 N.E.2d 710, 715 (2011) (quoting *In re Val Q.*, 396 Ill. App. 3d 155, 159, 919 N.E.2d 976, 980 (2009)). The exception does not apply where the record indicates the respondent has previously been subject to an involuntary-treatment or involuntary-admission order because any collateral consequences have already attached. *Charles H.*, 409 Ill. App. 3d at 1053, 950 N.E.2d at 715; *In re Joseph P.*, 406 Ill. App. 3d 341, 346, 943 N.E.2d 715, 720 (2010).

¶ 25 In this case, the record shows respondent was admitted to McFarland on an inpatient basis in June 2011, but nothing in the record indicates his admission was involuntary or that he has previously been subject to an order of involuntary treatment of any kind. "Where, as here, the involuntary treatment order at issue is the respondent's first, collateral consequences could plague him in the future." *In re Nicholas L.*, 407 Ill. App. 3d 1061, 1074, 944 N.E.2d 384, 396 (2011); see also *Val Q.*, 396 Ill. App. 3d at 159, 919 N.E.2d at 980 (because the case involved the respondent's first involuntary treatment order, the court found the collateral-consequences exception applicable); *Alfred H.H.*, 233 Ill. 2d at 362, 910 N.E.2d at 84 (collateral-consequences exception applies where reversal could provide a basis for a motion *in limine* that would prohibit any mention of the hospitalization during the course of another proceeding). We find the

185, 190, 940 N.E.2d 237, 242 (2010).

¶ 29 Dr. Patibandla, respondent's treating physician, testified respondent suffered from severe delusions brought on by his schizoaffective disorder, bipolar type. Respondent's statements during the portion of the hearing on his request to proceed *pro se* confirmed Dr. Patibandla's testimony respondent did not recognize the courts of law as having authority over him. Respondent continuously voiced his nonconsent to the hearing and demonstrated an inability to comprehend the nature of the court's adjudicatory power. The following exchange is illustrative.

"RESPONDENT: Your Honor, may I ask a question?

THE COURT: In this proceeding? Yes, sir.

RESPONDENT: Who has given Mr. Patibandla here the authority to use and speak my name here in a public forum? Who has granted him that authority? Because you haven't yet. You're trying to—

THE COURT: Well, if that's your question, I'm going to grant him the authority to use your name right now.

RESPONDENT: And who gives you the authority [to] do that, Your Honor?

THE COURT: The laws and the constitution in the State of Illinois, so I'm not going to quarrel with you, [respondent]."

¶ 30 Respondent's inability to comprehend and accept the trial court's authority to hold the hearing and make rulings affecting his rights, especially when corroborated by

his psychiatrist's testimony, casts more than enough doubt over respondent's mental capacity and his understanding of the purpose of counsel to support the trial court's decision to deny his request to proceed *pro se*. We agree with Legal Advocacy's conclusion that an argument attributing reversible error to this ruling would be frivolous.

¶ 31 C. The Trial Court's Order Was Not Manifestly Erroneous

¶ 32 Counsel next concludes it would be frivolous to argue the State failed to prove the elements of section 2-107.1 by clear and convincing evidence. At the trial level, the State must prove, by clear and convincing evidence, the statutory basis for involuntarily medicating the respondent. *In re Dorothy W.*, 295 Ill. App. 3d 107, 108, 692 N.E.2d 388, 389 (1998). To involuntarily administer the medication, the State must prove the following elements under section 2-107.1(a-5)(4) of the Mental Health Code:

"(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 (4) 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 the other less restrictive services have been explored and found inappropriate.

(G) If the petition seeks authorization for testing and other procedures, that such testing and procedures are essential for the safe and effective administration of the treatment." 405 ILCS 5/2-107.1(a-5)(4) (West 2010).

¶ 33 The appellate court will reverse the trial court's determination of whether the State met its burden of proof only if the trial court's decision is manifestly erroneous. *In re Larry B.*, 394 Ill. App. 3d 470, 475, 914 N.E.2d 1243, 1247 (2009).

¶ 34 Dr. Patibandla provided testimony establishing each element of section 2-107.1(a-5)(4), and the trial court made explicit findings as to each element when it announced its decision at the conclusion of the hearing. Although respondent attacked Dr. Patibandla's qualifications to render an opinion regarding respondent's mental illness and need for treatment, the evidence supported the trial court's opposite conclusion. Dr. Patibandla was well-qualified to render such opinions. Dr. Patibandla is a board-certified psychiatrist with 23 years of experience treating patients suffering from severe mental illnesses. Respondent met with Dr. Patibandla approximately 10 to 12 times during respondent's stay at McFarland. Because Dr. Patibandla testified squarely as to all elements of section 2-107.1(a-5)(4), any argument the trial court's

order was manifestly erroneous would have to rely on discrediting Dr. Patibandla's testimony. Aside from respondent's arguments at the hearing regarding the nature of probability versus proof, no evidence in the record casts doubt over the credibility of Dr. Patibandla's testimony. We agree with Legal Advocacy's conclusion an argument attacking the trial court's determination the State proved all elements of section 2-107.1 by clear and convincing evidence would be frivolous.

¶ 35

III. CONCLUSION

¶ 36

After reviewing the record consistent with our responsibilities under *Anders*, we agree with Legal Advocacy that 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.