

NOTICE  
Decision filed 09/16/14, corrected 10/30/14. 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.

2014 IL App (5th) 130327-U

NO. 5-13-0327

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).

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<i>In re</i> WILLIE W., Alleged to Be a Person Subject to Involuntary Administration of Psychotropic Medication	)	Appeal from the Circuit Court of Randolph County.
	)	No. 13-MH-77
(The People of the State of Illinois, Petitioner-Appellee, v. Willie W., Respondent-Appellant).	)	Honorable Eugene E. Gross, Judge, presiding.

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

**ORDER**

¶ 1 *Held:* Where the State failed to prove by clear and convincing evidence that (1) the tests and procedures that were ordered were essential for the safe and effective administration of the medication and (2) the respondent lacked decisional capacity to make a reasoned decision about the proposed treatment, the order of the circuit court is reversed.

¶ 2 The respondent, Willie W., appeals from an order of the circuit court of Randolph County finding him subject to involuntary administration of psychotropic medications according to section 2-107.1(a-5) of the Mental Health and Developmental Disabilities Code (Code) (405 ILCS 5/2-107.1(a-5) (West 2012)). The respondent argues that (1) the circuit court's finding that he met the statutory criteria for forced administration of medication was against the manifest weight of the evidence, and (2) he was not afforded

effective assistance of counsel. The State has filed a confession of error. We find the respondent's contentions and the State's confession to be well-taken. For the reasons that follow, we reverse the order of the circuit court.

¶ 3 Willie W. was admitted to Chester Mental Health Center (Chester) on May 2, 2013, after having been found unfit to stand trial on charges for home invasion, theft, and first-degree murder. He had previously been admitted to Chester from September 20, 2011, to March 19, 2012, for the same charges. On May 28, 2013, the respondent's psychiatrist at Chester, Dr. Muddasani Reddy, filed a petition seeking the authority to administer involuntary treatment to the respondent. As the primary medications sought to be administered to the respondent, the petition listed quetiapine, olanzapine, benztropine, clonazepam, and divalproex NA ER, with corresponding dosage ranges for each. The petition also listed alternative medications and their dosages. The petition also sought the authority to administer testing and procedures as well as the use of a nasogastric tube should they become necessary.

¶ 4 The court appointed a public defender for the respondent and held a hearing on the petition on June 5, 2013. Dr. Reddy testified for the State as follows. He had been treating the respondent since the respondent's admission to Chester on May 2, 2013. He diagnosed the respondent as suffering from bipolar mood disorder with psychotic features. When the respondent was admitted to Chester, the staff at Chester offered him psychotropic medications, but he refused them. However, following an incident where he threatened to harm a therapist and was put in restraints, the staff began giving him emergency forced medication.

¶ 5 The State asked Dr. Reddy about each primary and alternative medication and their potential benefits and side effects. The State then asked, "You're also requesting specific testing procedures to look for these potential adverse side effects," to which Dr. Reddy responded, "Yes." The State did not ask any other questions about the proposed testing. On cross-examination, the respondent's counsel asked whether any tests had been conducted on the respondent to determine if he was suffering from the side effects of the emergency medication. Dr. Reddy responded that he was not sure because he did not have the respondent's medical chart in front of him.

¶ 6 Next, the State asked Dr. Reddy whether he had given the respondent a written list of the medications that he was requesting and the potential benefits and adverse side effects. Dr. Reddy replied that when the respondent would start getting the medication, staff members would give the respondent written instructions. Dr. Reddy specifically said, "I don't give it to him, but he gets the—he already got the side effect medication—effects and side effects of the medication when he started receiving on an emergency basis." On cross-examination, the respondent's counsel asked when the respondent received the list, and Dr. Reddy replied that the respondent did not get the list from him, but from the hospital when the respondent received the medication. When pressed as to when the respondent actually received the list, Dr. Reddy did not respond.

¶ 7 The State also asked Dr. Reddy what less-restrictive services had been explored and found inappropriate in treating the respondent. Dr. Reddy responded with, "Counseling, but it was inappropriate at the time that he needed the medication." The State did not expound upon that response, and did not ask whether Dr. Reddy had given

the respondent information about alternative treatments. No evidence was presented that Dr. Reddy or hospital staff had provided the respondent with written information about the alternatives to the proposed treatment.

¶ 8 The respondent testified that he did not try to assault a therapist, but that he became agitated in a meeting and tried to leave the meeting. He said that when staff would give him medication, he would throw it away. He did not want to be on medication, and the medication violated his practice of religion.

¶ 9 The court entered an order for the administration of authorized involuntary treatment, finding that the respondent had a serious mental illness, had exhibited a deterioration of his ability to function, was suffering, and had exhibited threatening behavior. The court also found that the respondent lacked the capacity to make a reasoned decision about treatment. In addition to authorizing the involuntary administration of psychotropic medication, the court ordered specific testing and procedures when necessary to administer the medication, as well as blood testing, and that the medication be administered via a nasogastric tube should the respondent's medical condition be at risk from worsening psychoses. This appeal followed.

¶ 10

#### ANALYSIS

¶ 11 We begin by noting that this appeal is moot because the 90-day period authorized by the circuit court's order has expired. 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 and the respondent's continuing mental health

issues and unwillingness to take medication. See *In re Joseph M.*, 405 Ill. App. 3d 1167, 1175 (2010).

¶ 12 The respondent argues, and the State concedes, that the State failed to prove by clear and convincing evidence that (1) the respondent lacked the decisional capacity to make a reasoned decision about the proposed treatment (405 ILCS 5/2-107.1(a-5)(4)(E) (West 2012)), and (2) the tests and other procedures that the court ordered, which included the use of a nasogastric tube, were essential for the safe and effective administration of the medication (405 ILCS 5/2-107.1(a-5)(4)(G) (West 2012)). The respondent further argues that he was denied the effective assistance of counsel.

¶ 13 The Code states that a recipient of mental health services shall be provided with adequate and humane care and services in the least restrictive environment, pursuant to an individual service plan. 405 ILCS 5/2-102(a) (West 2012). Section 2-102(a-5) of the Code states that if the services include the administration of psychotropic medication, the physician shall: (1) advise the recipient, in writing, of the side effects, risks, and benefits of the treatment, as well as alternatives to the proposed treatment, to the extent such advice is consistent with the recipient's ability to understand the information communicated, and (2) determine and state in writing whether the recipient has the capacity to make a reasoned decision about the treatment. 405 ILCS 5/2-102(a-5) (West 2012). If the recipient lacks the capacity to make a reasoned decision about the treatment, the treatment may be administered only pursuant to section 2-107 or 2-107.1 of the Code. 405 ILCS 5/2-102(a-5) (West 2012).

¶ 14 Medication may be administered to a recipient without his consent if and only if it has been determined by clear and convincing evidence that, *inter alia*, (1) the recipient lacks the capacity to make a reasoned decision about treatment, and (2) if the petition seeks the authorization for testing and other procedures, such testing and procedures are essential for the safe and effective administration of the treatment. 405 ILCS 5/2-107.1(a-5)(4)(E) & (G) (West 2012). Whether there was substantial compliance with a statutory provision is a question of law, which we review *de novo*. *In re Tiffany W.*, 2012 IL App (1st) 102492-B, ¶ 10. A reviewing court will not reverse a circuit court's determination about the sufficiency of the evidence unless such determination was against the manifest weight of the evidence. *Id.* A judgment is against the manifest weight of the evidence only where the opposite conclusion is apparent or where the findings appear to be unreasonable, arbitrary, or not based on the evidence. *Id.*

¶ 15 A patient's decisional capacity to make treatment decisions for himself is based upon the conveyed information concerning the risks and benefits of the proposed treatment and reasonable alternatives to treatment. *In re John R.*, 339 Ill. App. 3d 778, 785 (2003). The failure to provide the respondent with the statutorily mandated written information about the risks and benefits of the proposed treatment as well as the alternatives to the treatment amounts to reversible error because the respondent has not received all of the information necessary to make a rational choice. *In re Bobby F.*, 2012 IL App (5th) 110214, ¶ 18. The failure to provide the respondent with information about alternative nonmedicinal forms of treatment amounts to reversible error. *In re Laura H.*, 404 Ill. App. 3d 286, 291-92 (2010).

¶ 16 In this case, Dr. Reddy testified that the respondent lacked the capacity to make a reasoned decision about his medications. Dr. Reddy testified that he did not give the respondent a written list of the benefits and side effects of the requested medication, but that hospital staff would have given that information to the respondent. However, Dr. Reddy did not say who specifically gave him the information, did not provide any testimony that he spoke about the medications to the respondent, and did not offer any other information that the respondent had actually received a written list of the medications. Further, though he briefly mentioned alternative treatments in his testimony, Dr. Reddy did not testify, and the State presented no evidence, as to whether the respondent had received written information about the risks and benefits of alternative forms of treatment. The respondent could not have made an informed decision about treatment because he was not provided with enough information about medication and other treatment to be able to rationally do so.

¶ 17 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 2012). The State must present specific testimony about the requested testing and procedures. *In re David S.*, 386 Ill. App. 3d 878, 883 (2008). This court has reversed an involuntary medication order where the testifying 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 administration and testing methods, we found that the

physician's testimony "fell far short of clear and convincing specific expert testimony in support of a request for testing." *Id.*

¶ 18 Here, Dr. Reddy indicated that bloodwork was done before starting the respondent on the emergency medication. However, the State did not present any testimony or other evidence as to why the blood tests or procedures were necessary. The petition mentioned a nasogastric tube, yet no information about that procedure was given at the hearing, and the information in the petition simply stated that the testing and procedures were essential for the safe and effective administration of the medication. No evidence was presented as to the nasogastric tube's necessity. Without more than a mere conclusion that the requested testing and nasogastric tube were necessary, the State has failed to provide the clear and convincing evidence required by the Code to administer tests without the respondent's consent.

¶ 19 The respondent also contends that his appointed counsel provided ineffective assistance. Because of the resolution of the preceding issues and our determination that the order granting the petition must be reversed, we need not consider the respondent's allegations of error regarding his counsel's representation. See *In re Larry B.*, 394 Ill. App. 3d 470, 479 (2009).

¶ 20 CONCLUSION

¶ 21 For the foregoing reasons, the judgment of the circuit court of Randolph County ordering the involuntary administration of medication for the respondent is reversed.

¶ 22 Reversed.