2016 IL App (5th) 150037-U

NO. 5-15-0037

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

In re EDWIN P., Alleged to Be a Person Subject to Involuntary Admission	)	Appeal from the Circuit Court of Madison County.
(The People of the State of Illinois, Petitioner-Appellee, v. Edwin P., Respondent-Appellant).	)	No. 14-MH-125
	)	Honorable Ben L. Beyers II, Judge, presiding.

PRESIDING JUSTICE SCHWARM delivered the judgment of the court.
Justices Chapman and Stewart concurred in the judgment.

ORDER

¶ 1 *Held*: Appointed appellate counsel's motion to withdraw is granted, and this appeal is dismissed as moot.

¶ 2 The respondent, Edwin P., appeals from a judgment that the circuit court entered pursuant to the Mental Health and Developmental Disabilities Code (405 ILCS 5/1-100 *et seq.* (West 2014)). The court found the respondent subject to involuntary admission on an inpatient basis (see 405 ILCS 5/1-119 (West 2014)) and ordered that he be hospitalized in a mental-health facility of the Illinois Department of Human Services for a period not to exceed 90 days (see 405 ILCS 5/3-813(a) (West 2014)). His appointed attorney on appeal, the Legal Advocacy Service (LAS), a division of the Illinois Guardianship and Advocacy Commission, has filed with this court a motion to withdraw

as counsel on the ground that no reasonable argument can be made in support of this appeal. See, *e.g.*, *In re Juswick*, 237 Ill. App. 3d 102, 104 (1992) (the procedure outlined in *Anders v. California*, 386 U.S. 738 (1967), is applicable to cases involving involuntary admissions to mental-health facilities). The respondent was given proper notice of the LAS's motion. He was granted an opportunity to file *pro se* briefs, memoranda, or other documents responding to the motion and supporting his appeal, but he did not take advantage of that opportunity. This court has examined the LAS's motion to withdraw, the supporting memorandum that accompanied it, and the entire record on appeal. For the following reasons, the LAS's motion to withdraw is granted and this appeal is dismissed as moot.

¶ 3 BACKGROUND

¶ 4 The respondent was born on December 20, 1948. He is a college graduate and a military veteran.

¶ 5 On December 12, 2014, Terri Schulte, a licensed clinical social worker at the Alton Mental Health Center (AMHC), filed in the circuit court of Madison County a petition for the involuntary admission of the respondent on an inpatient basis. See 405 ILCS 5/3-601 (West 2012). The petition alleged three bases for involuntary admission, *viz.*: (1) the respondent was a person with mental illness who, because of his illness, was reasonably expected, unless treated on an inpatient basis, to engage in conduct placing himself or another in physical harm or in reasonable expectation of being physically harmed (see 405 ILCS 5/1-119(1) (West 2012)); (2) the respondent was a person with mental illness who, because of his illness, was unable to provide for his basic physical

needs so as to guard himself from serious harm without the assistance of family or others, unless treated on an inpatient basis (see 405 ILCS 5/1-119(2) (West 2012)); and (3) the respondent was a person with mental illness who (i) refused treatment or was not adhering adequately to prescribed treatment, (ii) because of the nature of his illness, was unable to understand his need for treatment, and (iii) if not treated on an inpatient basis, was reasonably expected, based on his behavioral history, to suffer mental or emotional deterioration and was reasonably expected, after such deterioration, to meet the criteria of either paragraph (1) or paragraph (2) above (see 405 ILCS 5/1-119(3) (West 2012)). The petition further alleged that immediate hospitalization was needed. According to the petition, the respondent had been admitted to AMHC voluntarily, but he subsequently submitted a written notice of his desire to be discharged. See 405 ILCS 5/3-403 (West 2012). His diagnosis was schizoaffective disorder. The petition was accompanied by two certificates. See 405 ILCS 5/3-403, 3-602 (West 2012).

¶ 6 On December 19, 2014, the circuit court held a hearing on the involuntary-admission petition. Appointed counsel from the LAS represented the respondent.

¶ 7 Terri Schulte, the licensed clinical social worker who had prepared the petition, was the State's sole witness. She testified that she had been working with the respondent on a daily basis. She also had reviewed the respondent's record and had discussed with other staff members the respondent's condition, behavior, and treatment. The day before the hearing, Schulte attempted to interview the respondent, but he refused to answer any questions after she advised him that he had a right to refuse.

¶ 8 According to Schulte, the respondent arrived at AMHC on October 15, 2014, shortly after the Madison County circuit court, which was handling the respondent's misdemeanor disorderly-conduct case, ordered that he be temporarily detained and examined. See 405 ILCS 5/3-607 (West 2012). However, the respondent was immediately transferred to a medical hospital due to his being "not medically stable." On October 20, 2014, he was returned to AMHC and was admitted. The respondent signed a paper making his admission voluntary. Then, on December 8, the respondent submitted a written request for discharge, and Schulte promptly filed the involuntary-admission petition. See 405 ILCS 5/3-403 (West 2014).

¶ 9 Schulte further testified that the October 2014 admission was the respondent's first admission to AMHC since 1996. Records showed "multiple psychiatric hospitalizations in community hospitals in the 1980s and 1990s but none recently." Indeed, for more than a decade prior to October 2014, the respondent's mental health had been stable. He had lived in supervised housing and had received outpatient mental-health treatment that included medications. For most of that period, he had a legal guardian–first his father, then his sister–but in 2011, the guardianship was terminated at the respondent's request. In 2013, he moved out of supervised housing and into a private apartment, though he continued the outpatient treatment. However, in July 2014, the respondent ceased all of his outpatient treatment, including medications. He subsequently was evicted from his apartment.

¶ 10 According to Schulte, the respondent's current diagnosis was schizoaffective disorder, bipolar type, which involved both a cognitive disorder and "a mood

component." Upon arrival at AMHC, the respondent had a delusion that the reason for his then-recent eviction from his apartment was that "people *** were jealous of his writing and wanted to make money off of it." During his first week at AMHC, the respondent was treated with medications. "The doctor adjusted those medications," but little improvement in the respondent's condition was observed. After one week at AMHC, the respondent refused to take any more medications. Since then, the respondent had been experiencing further deterioration of his "insight and judgment" regarding his mental illness, his need for treatment, and his interactions with other people. Also, the respondent attended group therapy only 25% to 30% of the time, and his "argumentative" disposition greatly reduced the therapeutic value of those sessions. According to Schulte, the respondent caused other patients to become upset "almost on a daily basis" through his "intrusiveness," his demeanor, and his "getting in [their] personal space."

¶ 11 Schulte further testified that the respondent had been given short-term "emergency medications" on four separate days during the latter half of November 2014 and on five separate days during early- to mid-December 2014. These medications were intended to calm him after he displayed "an increased level of agitation" that, in Schulte's view, could have led the respondent to harm himself or another person.

¶ 12 Schulte thought that the respondent needed to remain hospitalized at AMHC for 90 days, and a less restrictive alternative would not be appropriate. She opined that without inpatient treatment, the respondent would engage in conduct that placed other people in physical harm or in reasonable expectation of being physically harmed, "because his agitation gets so high." Schulte acknowledged that the respondent never had

hit, or attempted to hit, anyone at AMHC, and that he did not have any known history of violence. Schulte also opined that without inpatient treatment, the respondent would engage in conduct that placed himself in physical harm. On this point, Schulte explained that "with the intrusiveness and the demeanor [respondent] talks to people [*sic*]," someone could "end up attacking him." Schulte acknowledged that the respondent had not been placed in restraints or in seclusion at AMHC.

¶ 13 In regard to the respondent's ability to care for himself outside an institutional setting, Schulte opined that the respondent would not be able to provide for his basic physical needs or guard himself from serious harm. One reason for this inability, in Schulte's view, was that the respondent was homeless. Schulte explained that the respondent, due to a neurogenic bladder, needed to catheterize himself twice daily in order to eliminate urine, and without a home, he would not have a place to which the needed medical supplies could be delivered or in which the supplies could be stored in a sanitary manner. According to Schulte, she once asked the respondent where he would go if he were discharged immediately, and he answered that "he was going to go to Schnucks because it's 24 hours and he can stay there until he finds a place." No relative lived anywhere near the respondent. Schulte acknowledged that at the time of hearing, the respondent was catheterizing himself and was eating and showering regularly.

¶ 14 The respondent, on his own behalf, testified that he did not have any desire to harm himself or any other person, and he was not a threat to anyone. He acknowledged having a "sharp tongue" that he utilized to "snap back at people" who "get[ ] in [his] face." He insisted that he never "g[o]t out of line or raise[d] the roof" except when he felt

"pressure or fear and intimidation." According to the respondent, he handled his affairs reasonably well while living in the community, but "everything caved in on [him]" when "Judy denied [him] the education [he] thought [he] was entitled to" and he "blew up at the office." This portion of the respondent's testimony is unclear, but when considered in the context of the total record, it suggests that the respondent engaged in a loud outburst that resulted in his being evicted from his apartment and in his being charged with disorderly conduct. The respondent further testified that he had $1,037 in a bank account, received $500 per month in Social Security, anticipated receiving SSI payments, and was able to afford an apartment and all other necessities. The respondent stated that he was not mentally ill and that he wanted to be discharged from AMHC. While testifying, the respondent frequently digressed, sometimes criticizing his father, whom he characterized as abusive.

¶ 15 After the hearing, the court found that the State had proved, by clear and convincing evidence, that the respondent was subject to involuntary admission on each of the first two bases alleged in the petition, *viz.*: (1) he was a person with mental illness who, because of the illness, was reasonably expected, unless treated on an inpatient basis, to engage in conduct placing himself or another in physical harm or in reasonable expectation of being physically harmed, and (2) he was a person with mental illness who, because of his illness, was unable to provide for his basic physical needs so as to guard himself from serious harm, without the assistance of family or others, unless treated on an inpatient basis. The court ordered that the respondent be hospitalized in a Department of Human Services facility for a period not to exceed 90 days.

¶ 16 By appointed counsel, the respondent filed a timely notice of appeal from the involuntary-admission order, thus perfecting the instant appeal.

¶ 17 ANALYSIS

¶ 18 As previously noted, the LAS has asked this court for leave to withdraw as counsel for the respondent, on the ground that this appeal lacks merit. The LAS has identified two potential issues on review: (1) whether the State failed to prove, by clear and convincing evidence, that the respondent could reasonably be expected to place himself or another in physical harm, and (2) whether the State failed to prove, by clear and convincing evidence, that the respondent was unable to provide for his basic physical needs. The LAS has concluded that although the State failed to prove a reasonable expectation that the respondent would place himself or another in physical harm, it succeeded in proving that he was unable to provide for his basic physical needs. This court is inclined to agree with the LAS's conclusion concerning the respondent's ability to provide for his needs. However, this court disposes of this appeal for a reason unaddressed by the LAS, namely: this appeal is moot.

¶ 19 The circuit court's involuntary-admission order was entered on December 19, 2014. The order authorized hospitalization for no more than 90 days. More than 90 days have passed since the order was entered, and therefore the order has expired by its own terms and no longer has any force or effect. This court cannot possibly grant any effectual relief. Without doubt, this case has become moot. See, *e.g.*, *In re Alfred H.H.*, 233 Ill. 2d 345, 350 (2009). Generally, a reviewing court must refuse to decide a case

that has become moot, unless the case falls within a recognized exception to the mootness doctrine. *Id.* at 351, 355.

¶ 20 This court's own careful examination of the entire record on appeal has revealed that this case cannot properly be considered under any recognized exception to the mootness doctrine. There are three such exceptions, *viz.*: the collateral-consequences exception, the public-interest exception, and the capable-of-repetition-yet-evading-review exception. *In re Rita P.*, 2014 IL 115798, ¶ 24. At first blush, the collateral-consequences exception would appear to apply, for the involuntary-admission order could conceivably have consequences for the respondent in some future proceeding. See *In re Alfred H.H.*, 233 Ill. 2d at 361-62. The record on appeal does not make clear whether the respondent's prior admissions to mental-health facilities were voluntary or involuntary. Therefore, there is a possibility that all of the prior admissions were voluntary and that the instant admission, *i.e.*, the admission that is the subject of this appeal, is the respondent's first involuntary admission. In the past, the Appellate Court has held that where an involuntary-admission order is the respondent's first, collateral consequences could plague him in the future and the collateral-consequences exception applied. See, *e.g.*, *In re Meek*, 131 Ill. App. 3d 742, 745 (1985).

¶ 21 However, in *In re Rita P.*, our supreme court made plain that "[a]pplication of the collateral consequences exception cannot rest upon the lone fact that no prior involuntary admission or treatment order was entered, or upon a vague, unsupported statement that collateral consequences might plague the respondent in the future." *In re Rita P.*, 2014 IL 115798, ¶ 34. Instead, a reviewing court is obliged to "consider all the relevant facts

and legal issues raised in the appeal before deciding whether the exception applies." *Id.* "Collateral consequences must be identified that could stem solely from the present adjudication. [Citation.]" (Internal quotation marks omitted.) *Id.*

¶ 22 In the instant case, the possibility that no prior involuntary-admission order was entered provides the only rationale for applying the collateral-consequences exception. Under *In re Rita P.*, this possibility is clearly insufficient to invoke the exception. Meanwhile, this court cannot identify any collateral consequence that could stem solely from the adjudication at issue here. Therefore, the collateral-consequences exception does not apply to the case at bar.

¶ 23 The public-interest exception also does not apply. This exception allows a court to consider an otherwise moot case when "(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." *In re Alfred H.H.*, 233 Ill. 2d at 355. This exception is "narrowly construed and requires a clear showing of each criterion. [Citation.]" (Internal quotation marks omitted.) *Id.* at 355-56. At a minimum, the first criterion is not satisfied here. The potential issues in this appeal, as identified by the LAS, would require extremely fact-specific reviews. They are not issues of a public nature, *i.e.*, of broad public interest, and their resolution would not have a significant effect on the public as a whole. See *id.* at 356-57. Because the first criterion for the public-interest exception is clearly not satisfied, the two other criteria need not be discussed here.

¶ 24 Likewise, the capable-of-repetition-yet-evading-review exception does not apply to the case at bar. This exception has two criteria that must be satisfied: "First, the challenged action must be of a duration too short to be fully litigated prior to its cessation. Second, there must be a reasonable expectation that the same complaining party would be subjected to the same action again. [Citation.]" (Internal quotation marks omitted.) *Id.* at 358. Here, the first criterion surely is satisfied, given the length of time required to litigate an appeal. However, the second criterion is not satisfied. There is no substantial likelihood that resolution of the two potential issues in this case would have any bearing on a similar issue in a subsequent case. As previously noted, the two potential issues identified by the LAS are very fact-specific; their resolution would turn on the facts peculiar to this case. Neither of the two potential issues involves, say, a challenge to an interpretation of a statute that could be applied in a future case involving the respondent. See *id.* at 360.

¶ 25 This case is moot, and no exception to the mootness doctrine is applicable. The LAS is granted leave to withdraw as counsel, and this appeal is dismissed as moot.

¶ 26 Motion granted; appeal dismissed.