2017 IL App (1st) 152507-U
Nos. 1-15-2507 & 1-15-3359 (Consolidated)
Order filed November 3, 2017

Fifth Division

IN THE APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

IN THE MATTER OF EZRA C., A Person Found to be Subject to Involuntary Admission, (The People of the State of Illinois, Petitioner-Appellee, v. Ezra C., Respondent-Appellant).	))))))))))))	Appeal from the Circuit Court of Cook County. No. 15 CoMH 2322 Honorable Margarita Kulys-Hoffman and Honorable Robert Bertucci, Judges, presiding.

JUSTICE LAMPKIN delivered the judgment of the court.
Justices Hall and Rochford concurred in the judgment.

O R D E R

¶1 *HELD*: Respondent failed to establish that his appeal was reviewable pursuant to either the public interest exception or the capable of repetition yet avoiding review exception to the mootness doctrine.

¶2 Respondent, Ezra C., appeals the trial court's orders related to his involuntary commitment. Respondent contends the trial court: (1) erred in committing him to a mental health

facility for alleged harm; (2) abused its discretion in allowing the State to amend its commitment petition to add three witnesses; (3) violated section 3-814 of the Mental Health and Developmental Disabilities Code (Code) (405 ILCS 5/3-814 (West 2014)) in modifying the commitment order without first reviewing respondent's treatment plan and without holding a hearing; and (4) erred in modifying respondent's commitment order to a less restrictive inpatient setting when he was willing to voluntarily reside in the less restrictive setting. Respondent recognizes that his substantive arguments are moot, but requests that this court address his contentions under either the public interest exception or the "capable of repetition yet avoiding review" exception to the mootness doctrine. Based on the following, we dismiss the appeal as moot where no exceptions to the mootness doctrine apply.

¶3 FACTS

¶4 On July 16, 2015, a petition was filed for respondent's involuntary admission to Westlake Hospital due to mental illness. A social worker and respondent's mother were listed as "witnesses by whom the facts asserted [in the petition] may be proven." Two certificates authored by Westlake Hospital doctors were also filed with the petition. The petition and supporting documentation alleged that respondent threatened to get a gun and harm others in the recent past, that he was hostile, and that he became agitated when others suggested he seek help.

¶5 The matter was set for trial on July 30, 2015. An unrelated trial proceeded first in the courtroom and respondent's psychiatrist, Richard Goldberg, needed to reschedule due to the length of the first trial. Over respondent's objection, the matter was continued. Then, on July 31, 2015, the State filed a motion to amend the petition for involuntary admission, adding as witnesses respondent's sister, girlfriend, and father. Respondent filed a response to the State's

motion to amend, objecting to the addition of the named witnesses. After considering arguments by both parties, the trial court granted the State's request to amend the petition.

¶6 At trial, on August 6, 2015, the State called three witnesses: Rachel Barclay, respondent's girlfriend with whom he had four children; Dolores Mills, respondent's mother; and Dr. Goldberg. Dr. Goldberg opined that respondent suffered from paranoid schizophrenia. Respondent's symptoms included delusional beliefs about himself and his family, denial of his illness, paranoia, and guardedness. According to Dr. Goldberg, respondent required inpatient treatment otherwise he reasonably could be expected to engage in conduct placing himself or others at risk of physical harm. Dr. Goldberg testified that respondent had not acknowledged his previous threats, violence, and harm to others and had no insight into his illness. Dr. Goldberg recommended that respondent remain hospitalized in a locked, 24-hour inpatient setting, noting that less restrictive alternatives had been considered, but were dismissed as inappropriate.

¶7 Ultimately, the trial court adjudicated respondent as a mentally disabled person subject to involuntary admission and ordered inpatient hospitalization at Westlake hospital not to exceed a period of 90 days because respondent was "reasonably expected, unless treated on an inpatient basis, to engage in conduct placing such person or another in physical harm or in reasonable expectation of being physically harmed." In so finding, the trial court stated:

> "I've read the cases. I've examined the evidence. I've considered the demeanor and the credibility of the witnesses, and I find that the State has met its burden. Let me go through some of these elements. First of all, I think there is evidence of mental illness. The doctor, who's board certified in adult psychiatry, forensic psychiatry, and addiction medicine, testified that in his opinion, the [r]espondent suffers from paranoid schizophrenia. He's been a patient since July 16th. He examines him several times a

week. He believes he's symptomatic and he's delusional. [Respondent] says he's a successful businessman, and this has been refuted by the family which says he has no business and doesn't work. He also said [respondent] is in denial. Respondent says he's not the one that's mentally ill. His family members are the one who's mentally ill. I think there's also been proof of threatening behavior. I've examined the *Czyz* case, and I think it's distinguishable. In that case, three doctors testified. The first one said that the defendant was no longer in need of medical treatment in a hospital setting. The second one said the defendant did not need medical treatment and was not a danger [to] himself or others, and the third one said that the defendant was not in need of mental health treatment and did not represent a danger to himself or others. So all three witnesses testified at the hearing that the defendant did not represent a threat to himself or the community. I think in this case there is evidence that [respondent] is a threat. The respondent's girlfriend testified—and I'm going to confine it to the more recent incidents because as counsel argued it should be current. In July 2014, he said he would kill her. November 2014 he pushed her. In April 2015, he pushed her down and held her down. He wanted her to be seated. The mother testified that in the fall of 2014 when she saw the [r]espondent he had his hands around her grandson's neck and was choking him. When she tried to intervene, he pushed her down. In fall of 2014, he was very aggressive. He threatened her and her grandson. In [*sic*] 4th of July 2015, when they were coming home from the barbeque, he yelled at her and she felt threatened, and at some point, he said that she—that he threatened her grandson and her every day. The doctor relied on some of these statements, and I think there was a factual basis for the facts upon with which he relied on, and also, the doctor testified that at the hospital the defendant—or the

> [r]espondent [wa]s angry and confrontational. As to the alternative settings, the doctor testified that in his opinion other alternatives did not have the appropriate level of care, and I think at some point he said it would almost be malpractice to send the respondent to those settings. Also based on all of this, I find that the State has met its burden in this case."

¶8 On September 1, 2015, the State filed a motion to modify the trial court's August 6, 2015, order pursuant to section 2-1203(a) of the Code of Civil Procedure (735 ILCS 5/2-1203(a) (West 2014)). In the motion, the State posited that Dr. Goldberg recommended the transfer of respondent to a "less-restrictive setting," namely, "Wilson Care," for the remainder of respondent's 90 day commitment order. Respondent's counsel filed an objection to the State's motion to modify. In that pleading, respondent's counsel argued that the State failed to provide a status report explaining how respondent continued to meet the criteria of involuntary admission and failed to provide current information or a treatment plan. According to the response, respondent no longer met the criteria for continued involuntary admission. Instead, respondent's counsel alleged respondent had worked with his assigned social worker on discharge planning, noting Wilson Care was an immediate-care facility that had accepted him for immediate placement, and he was willing to voluntarily enter the facility. Because he was willing to voluntarily enter Wilson Care, respondent's counsel argued there was no need for a modification of the August 6, 2015, commitment order. Respondent's counsel, instead, requested respondent's discharge. A copy of respondent's treatment plan through August 28, 2015, was attached to the pleading.

¶9 On September 3, 2015, a case management conference took place. Respondent's counsel and Dr. Goldberg were not present for the meeting, but were available by speaker phone in the

courtroom. Judge Kulys-Hoffman, who entered the initial involuntary commitment order, also was not available for the conference. The transcript of the conference held before Judge Bertucci provided the following:

> "Now, alternatively we'll have to reschedule it, and either I'll do it or Judge Kulys will do it. But it seems to me we're all in agreement, it sounds like. When I say we are all, I mean you guys are in agreement that [respondent] should be at Wilson, it's just under what circumstances he should be at Wilson.
>
> State doctor feels he should be there under the same order, which can be monitored and adjusted as need be, just as the original order was. And you, [respondent's counsel], feel he should be there just voluntarily.
>
> So what about the idea of an order being entered today allowing him to go to Wilson under the same commitment order, and then still set it for hearing if necessary on the manner he's there—do you understand what I'm saying—instead of wasting time and having him linger at Westlake while we figure out a date."

Respondent's counsel responded:

> "I think an interim order to that effect would be appropriate because he's interested in getting in as soon as possible because he's ready to be able to use the services that the intermediate care facility will be able to provide him."

Respondent's counsel, however, expressed respondent's unwillingness to agree to the State's request to modify the commitment order because he wanted to retain his ability to appeal the initial involuntary commitment. Respondent's counsel reiterated that respondent was willing to enter Wilson Care as a voluntary patient and that committing him involuntarily would restrict his rights and privileges. Dr. Goldberg opined that respondent's commitment order should be

modified to transfer respondent to the less-restrictive venue, but not to terminate the commitment order prior to the 90-day time period. Over respondent's objection, the trial court modified his involuntary commitment order, thereby transferring him to Wilson Care.

¶10 On October 2, 2015, respondent's counsel filed a motion to reconsider the modification of respondent's commitment order. Respondent's counsel argued that the modification was entered without a hearing and without consideration of an updated treatment plan, which would have demonstrated respondent had satisfied all of his treatment goals. On October 21, 2015, the trial court heard arguments on the motion, during which time the trial court stated:

> "So the intermediary care facility, you know, he wanted to go to, they were ready to take him, and the treatment team's obligated to place him in the least restrictive location, and that's what they were looking for. And that's why it was done that day. We really granted his wish. Not in the method you asked for, which was to let him go voluntar[ily], but we granted what the doctor wanted and what the Respondent wanted in terms of where to go. But that said, I mean, the Court felt that it was appropriate based on the original finding and based on everything the Court had before it, you know."

Respondent's counsel insisted that a hearing was warranted prior to modifying the commitment order. The State reminded respondent's counsel that she was not denied a hearing but, rather, that she was unavailable for the scheduled hearing. Ultimately, the trial court denied respondent's motion to reconsider the modified commitment order. In so doing, the trial court stated:

> "And it doesn't matter whether [the commitment order] expires November [4], which, you know, is coming pretty quickly. If it's two weeks away or tomorrow, you know, the Court is not deciding this based on, oh, there's only a little bit of time left, because it could be tomorrow it expires. As it turns out, you know, it does expire two

> weeks—just two weeks. But that said, you know, based on everything I heard, I think it's appropriate to let the modified order remain as it stands. That he be there under the commitment order, fortunate for him, with many freedoms and so on, and in two weeks it's going to be over with anyway.
>
> And in large part, because, you know, we do have the case manager indicating that [respondent is] not appropriate for discharge at this time. So that's their view of things, and it is—you point out it started with a, you know, involuntary commitment with great restrictions. And because of [respondent's], in large part, I'm sure, because of not just his treatment team, but his cooperation, he's done very well, and it's gotten to the point where it's a much less restrictive situation, and, you know, here he is today.
>
> So, [respondent], I have to compliment you. Not everyone is successful as you've been. But I'm going to let the order stand and deny the motion to reconsider."

This appeal followed.

¶11 ANALYSIS

¶12 The parties agree that the initial order from which respondent appeals, entered on August 6, 2015, was effective for 90 days pursuant to section 2-107.1 of the Code (405 ILCS 5/2-107.1(a-5)(5) (West 2014)). The 90 days have since transpired. As a result, the parties also agree that the underlying case is moot. Respondent, however, requests that we review the substance of his appeal under two of the exceptions to the mootness doctrine.

¶13 "As a general rule, courts in Illinois do not decide moot questions, render advisory opinions, or consider issues where the result will not be affected regardless of how those issues are decided." *In re Alfred H.H.*, 233 Ill. 2d 345, 351 (2009). Our supreme court has never adopted a general exception to the mootness doctrine for mental health cases. *Id*. at 353. Rather,

"whether a case falls within an established exception to the mootness doctrine is a case-by-case determination. Therefore, there is no *per se* exception to mootness that universally applies to mental health cases." *Id*. at 355.

¶14 There are three exceptions to the mootness doctrine: (1) the public interest exception; (2) the "capable of repetition yet avoiding review" exception; and (3) the collateral consequences exception. This court reviews whether a moot case falls within one of the exceptions to the mootness doctrine *de novo*. *Id*. at 350.

¶15 Respondent first contends that the public interest exception applies to his case.

¶16 The public interest 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. *Id*. at 355. This exception is " 'narrowly construed and requires a clear showing of each criterion.' " *Id*. at 355-56 (quoting *In re Marriage of Peters-Farrell*, 216 Ill. 2d 287, 292 (2005)).

¶17 Respondent has four substantive arguments, all of which he contends satisfy the public interest exception. More specifically, respondent argues the trial court: (1) erred in committing him to a mental health facility for alleged harm; (2) abused its discretion in allowing the State to amend its commitment petition to add three witnesses without analyzing the factors for permitting an amendment; (3) violated section 3-814 of the Code in modifying the commitment order without first reviewing respondent's treatment plan and without holding a hearing; and (4) erred in modifying respondent's commitment order committing him to a less restrictive inpatient setting when he was willing to reside in the less restrictive setting voluntarily.

¶18 Turning to the first criterion, whether the question is of a public nature, the supreme court has advised that case-specific inquiries, such as sufficiency of the evidence claims, do not present the kinds of broad public interest issues required to satisfy the exception. *In re Rita P.*, 2014 IL 115798, ¶ 36 (citing *In re Alfred H.H.*, 233 Ill. 2d at 356-57). Respondent's first claim involved the sufficiency of the evidence to support his involuntary commitment and, therefore, did not satisfy the public interest exception. The trial court's determination whether the State established harm sufficient to warrant respondent's involuntary commitment was based on the facts and circumstances of respondent's case. Contrary to respondent's argument, the matter did not require the trial court to determine whether "an alleged threat" satisfied section 1-119(1) of the Code (405 ILCS 4/1-119(1) (West 2014)). Accordingly, the resolution of the facts in support of respondent's involuntary commitment was not a matter of a public nature.

¶19 Respondent's second claim, namely, whether the trial court abused its discretion in allowing the State to amend its petition to add three witnesses, similarly did not involve a question of public interest. In other words, the trial court's assessment of the propriety of an amendment to respondent's commitment petition was a fact-specific inquiry wholly dependent on the facts and circumstances of respondent's case. Respondent concedes that the pleading complied with section 3-601(b)(4) of the Code (405 ILCS 5/3-601(b)(4) (West 2014)), in that the names and addresses of the witnesses were included in the petition. Therefore, whether the trial court abused its discretion in allowing the State to amend the petition was relevant only to respondent's case.

¶20 The State concedes that respondent's third and fourth claims are matters of a public nature. We agree. Respondent's third claim, namely, whether the trial court violated section 3-814 of the Code by modifying respondent's commitment order without first reviewing his

treatment plan and without holding a hearing, satisfies the first criterion of the public interest exception. The issue was one of general applicability to mental health cases involving the proper construction of section 3-814 of the Code. " '[T]he procedures which must be followed and the proofs that must be made before a court may authorize involuntary treatment to recipients of mental health services are matters of a public nature and of a substantial public concern.' " *In re Lance H.*, 402 Ill. App. 3d 382, 385 (2010) (quoting *In re Mary Ann P.*, 202 Ill. 2d 393, 402 (2002)).

¶21 Additionally, respondent's fourth claim, namely, whether the trial court erred in modifying respondent's commitment order to a less restrictive placement when he was willing to voluntarily reside in the less restrictive setting, also satisfies the first criterion of the public interest exception to the mootness doctrine. Determining the rights of an individual to voluntarily agree to a less restrictive facility admission after an adjudication resulting in involuntarily commitment is a question of statutory rights pertinent to the public's interest.

¶22 Because all three criteria clearly must be established in order for the public interest exception to apply, we proceed only with respondent's latter two claims. See *In re Alfred H.H.*, 233 Ill. 2d at 355-56. Turning to the second criterion, whether there is a need for an authoritative determination for the future guidance of public officers, our supreme court has advised that we consider the state of the law as it relates to the moot question. *Id*. ¶ 37. The second criterion can be satisfied in cases of first impression (*id.*) and where the law is in disarray or there is conflicting precedent (see *In re Alfred H.H.*, 233 Ill. 2d at 358).

¶23 With regard to the modification of respondent's commitment order, the plain language of section 814(d) provides that it was within the trial court's discretion whether to hold a hearing. More specifically, section 814(d) of the Code provides that "[t]he recipient or an interested

person on his or her behalf may request a hearing or the court on its own motion may order a hearing to review the treatment being received by the recipient." 405 ILCS 5/3-814(d) (West 2014). Accordingly, the statute clearly states, and the law supports, that a hearing to modify an individual's treatment plan is discretionary. See *People v. Chiakulas*, 288 Ill. App. 3d. 248, 253 (1997). Moreover, "not more than 30 days after admission" into a facility, the facility director is required to file with the court a current treatment plan. 405 ILCS 5/3-814(a) (West 2014). In relevant part, the statute is clear that "on request of the recipient or an interested person on his behalf, or on the court's own initiative, the court shall review the current treatment plan to determine whether its contents comply with the requirements of this Section and Section 3-209." 405 ILCS 5/3-814(c) (West 2014). Therefore, pursuant to the statute, if a request is made by the individual to review his or her current treatment plan, the court is required to review such plan. See *Chiakulas*, 288 Ill. App. 3d at 252. We, therefore, conclude that the second criterion has not been satisfied where the matter is not one of first impression and the law is neither in disarray nor in conflict.

¶24 Turning to respondent's final claim, we similarly find the law is established as to whether respondent had the authority to request a modification to his admission status from involuntary to voluntary. Section 3-801 of the Code clearly provides that "[a] respondent may request admission as an informal or voluntary recipient at any time prior to an adjudication that he is subject to involuntary admission on an inpatient or outpatient basis." 405 ILCS 5/3-801 (West 2014). While respondent is correct in stating that only a facility director has the authority to evaluate and approve a request for voluntary admission as outlined by sections 3-400 and 3-401 of the Code (405 ILCS 5/3-400, 3-401 (West 2014), the timing for a respondent's request to do so expressly is limited to "any time prior" to an adjudication resulting in involuntary admission

per section 3-801 of the Code. See *In re Lance H.*, 2014 IL 114899, ¶¶ 31-32. Accordingly, the issue is not one of first impression nor is the law in disarray or in conflict. We, therefore, conclude the second criterion has not been satisfied with regard to respondent's final contention.

¶25 Because respondent failed to establish the second criterion and all criteria of the public interest exception must be shown in order for this court to address a moot issue, we need not address the third criterion, *i.e.*, whether there is a likelihood of future recurrence of the issue in conjunction with respondent's latter two claims.

¶26 In the alternative, respondent requests that we address his moot contentions under the capable of repetition yet avoiding review exception to the mootness doctrine.

¶27 The capable of repetition yet avoiding review exception has two elements: (1) the duration of the challenged action must be too short 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.' " *In re Alfred H.H.*, 233 Ill. 2d at 358 (quoting *In re Barbara H.*, 183 Ill. 2d 482, 491 (1998)).

¶28 In this case, there is no dispute that the first element has been met. The question is whether there is a reasonable expectation that respondent will personally be subject to the same action again. In order to satisfy the exception, "there must be 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.

¶29 We conclude that respondent has failed to satisfy the second requirement for application of the capable of repetition yet avoiding review exception. Respondent's claims include a sufficiency of the evidence challenge, a challenge to the trial court's grant of a motion to amend, a challenge to the trial court's ability to modify a commitment order absent a hearing or alleged

review of his treatment plan, and a challenge to the trial court's ability to consider his belated request for voluntary admission. Respondent's claims all challenge the trial court's application of the circumstances relevant at the time of the underlying events. Due to their express relevance to the events that took place, it is unclear how resolution of these issues could be applicable to respondent in future litigation. If respondent were subject to involuntary admission once again, the facts would necessarily be different, including those facts leading respondent to request transfer to the less restrictive facility on a voluntary basis. Simply stated, respondent has not demonstrated 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. We, therefore, conclude respondent failed to establish the capable of repetition yet avoiding review exception to the mootness doctrine applies to his claims.

¶30 CONCLUSION

¶31 Based on the foregoing, we find the appeal is dismissed as moot.

¶32 Dismissed.