2017 IL App (2d) 160780-U
No. 2-16-0780
Order filed November 6, 2017

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

In re LISA A., Alleged to be a Person Subject to Involuntary Treatment	)	Appeal from the Circuit Court of Kane County.
	)	No. 16-MH-120
(The People of the State of Illinois, Petitioner-Appellee, v. Lisa A., Respondent-Appellant).	)	Honorable Divya K. Sarang, Judge, Presiding.

JUSTICE SCHOSTOK delivered the judgment of the court.
Justices Hutchinson and Birkett concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court erred in authorizing respondent's involuntary treatment, as the State did not introduce evidence of the side effects of all the requested medications and the court did not specifically designate the persons authorized to administer them. However, the court did not err in taking judicial notice of the anticipated dosages listed in the petition, as amended, and incorporating those dosages into its order.

¶ 2 Respondent, Lisa A., appeals the trial court's order authorizing the involuntary administration of psychotropic medications for up to 90 days under section 2-107.1 of the Mental Health and Developmental Disabilities Code (Code) (405 ILCS 5/2-107.1 (West 2016)). She argues that the evidence was insufficient to support the order. We determine that the trial court did not err by taking judicial notice of the petition and using evidence from it to list anticipated

dosages of the medications. However, we agree that the court erred when it entered the order without evidence of the side effects of all of the medications and without specifically naming the individuals authorized to administer them. Accordingly, we reverse on those points.

¶ 3 I. BACKGROUND

¶ 4 Respondent was admitted to the Elgin Mental Health Center (the Center) after being found unfit to stand trial in a criminal case. It was her first arrest and hospitalization. She was diagnosed with schizophrenia and displayed paranoid and grandiose delusions, disorganized and illogical speech, an impaired sense of reality, and poor hygiene.

¶ 5 In August 2016, Dr. Zulima Hurtado, a psychiatrist at the Center, filed a petition for involuntary treatment. In paragraphs eight and nine, the petition sought the authority to administer four medications and three alternatives and listed the anticipated ranges of dosages. At the hearing on the matter, the State asked the trial court to take judicial notice of the petition. The court responded that it would take judicial notice of the entire file. There was no objection.

¶ 6 Hurtado testified about respondent's mental illness and treatment. The State gave Hurtado a copy of the petition with the purpose of going through the list of medications in paragraphs eight and nine. There was no objection. Hurtado stated the names of the medications, but did not state who would administer the medications and did not testify about the side effects of two of them. Hurtado did not testify about the anticipated dosage of each medication, but the State referred to the dosages listed in the petition on several occasions, and the dosages in the petition were amended twice without objection. During closing, respondent's attorney asked the court to deny the petition because there was no testimony about the dosages of the medications.

¶ 7 The court granted the petition, stating that it considered the testimony and the petition. The court stated that the staff at the Center were authorized to administer the medications in the dosages "testified to by the [d]octor." The written order reflected the dosages in the petition with the amendments that were made during the hearing. Respondent appeals.

¶ 8 II. ANALYSIS

¶ 9 Respondent argues that the State failed to provide clear and convincing evidence that the benefits of the proposed treatment outweighed the harm, because it failed to present sufficient evidence of the side effects of the medications, the dosage amounts, and who would administer the medications. Respondent recognizes that the matter is moot because the order was for 90 days, which time has passed. However, she argues that the collateral-consequences exception to the mootness doctrine applies. The State agrees.

¶ 10 "An appeal is considered moot where it presents no actual controversy or where the issues involved in the trial court no longer exist because intervening events have rendered it impossible for the reviewing court to grant effectual relief to the complaining party." *In re J.T.*, 221 Ill. 2d 338, 349-50 (2006). Generally, courts of review 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 Barbara H.*, 183 Ill. 2d 482, 491 (1998).

¶ 11 Reviewing courts, however, recognize exceptions to the mootness doctrine: (1) the public-interest exception, 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, applicable to cases involving events of short duration that are capable of repetition, yet evading review, and (3) the collateral-consequences exception, applicable where the order could have consequences for a party in some future proceedings. See

In re Alfred H.H., 233 Ill. 2d 345, 355-62 (2009); *In re J.T.*, 221 Ill. 2d at 350. There is no *per se* exception to mootness that universally applies to mental health cases; however, most appeals in mental health cases will fall within one of the established exceptions. *In re Alfred H.H.*, 233 Ill. 2d at 355. Whether a case falls within an established exception is a case-by-case determination. *Id*.

¶ 12 "The collateral consequences exception allows a reviewing court to consider a case that is otherwise moot where an order for involuntary treatment 'could return to plague the respondent in some future proceedings or could affect other aspects of the respondent's life.' " *In re Rita P.*, 2013 IL App (1st) 112837, ¶ 10 (quoting *In re Val Q.*, 396 Ill. App. 3d 155, 159 (2009)). "For example, reversal of an involuntary treatment order could provide a basis for a motion *in limine* in a future proceeding that would prohibit any mention of the prior treatment." *Id*. "The exception does not apply when the respondent has previously been subject to involuntary treatment, because in those circumstances any collateral consequences would have already attached. *Id*. However, when a respondent has not previously been subject to involuntary treatment and has a diagnosis making him or her likely to be subject to future proceedings that would be impacted by past involuntary treatment, the collateral-consequences exception applies. See *id*.

¶ 13 Here, the record indicates that this is respondent's first involuntary-treatment order. Further, she is likely to be subject to future proceedings that would be impacted by her involuntary treatment. Accordingly, the collateral-consequences exception applies. See *id*.

¶ 14 In regard to the merits, the State concedes that there was insufficient evidence of the side effects of the medications and who would administer them. However, the State contends that there was sufficient evidence of the dosages of the medications.

¶ 15 We will not reverse the trial court's determination unless it was against the manifest weight of the evidence. *In re Laura H.*, 404 Ill. App. 3d 286, 290 (2010). "A judgment will be considered against the manifest weight of the evidence 'only when an opposite conclusion is apparent or when the findings appear to be unreasonable, arbitrary, or not based on evidence.' " *In re Louis S.*, 361 Ill. App. 3d 774, 779 (2005) (quoting *In re John R.*, 339 Ill. App. 3d 778, 781 (2003)). Although respondent failed to raise the issues in the trial court, they affect a substantial right and, therefore, we review the matter for plain error. *In re Suzette D.*, 388 Ill. App. 3d 978, 984 (2009); *In re Cynthia S.*, 326 Ill. App. 3d 65, 68 (2001) ("Fundamental liberty interests are involved in the involuntary administration of medication for mental health purposes.").

¶ 16 "Given the fairly invasive nature of psychotropic medications, and the possibility of significant side effects associated with the medications, courts must be cautious in entering orders allowing hospital staff to involuntarily administer these medications." *In re Suzette D.*, 388 Ill. App. 3d at 984. Under the Code, forced administration of psychotropic medication is authorized only if the court finds clear and convincing evidence that the benefits of the treatment outweigh the harm. 405 ILCS 5/2-107.1(a-5)(4)(D) (West 2016). The order must also designate the persons authorized to administer the medications. 405 ILCS 5/2-107.1(a-5)(6) (West 2016).

¶ 17 Specific evidence of the benefits and risks of each medication is required so that the trial court may determine whether the State can demonstrate by clear and convincing evidence that the benefits of the proposed treatment outweigh the potential harm. *In re Suzette D.*, 388 Ill. App. 3d at 985. "Thus, the State must produce evidence of the benefits of each drug sought to be administered as well as the potential side effects of each drug." *Id.* "If the State fails to produce such evidence, we must reverse the involuntary-treatment order." *Id.* Further, if the order fails

to specifically designate the persons authorized to administer the medications, we must reverse. *In re Cynthia S.*, 326 Ill. App. 3d at 69.

¶ 18 Here, the State concedes, and we agree, that there was insufficient evidence of the side effects of the medications and who would administer them. Hurtado failed to testify to the side effects of all of the medications, and the order merely authorized "staff" to administer the medications instead of designating specific persons. Accordingly, we reverse on those issues. We note, however, that remand is not in order since the proceedings have concluded. A new petition and hearing must proceed if the State or respondent's physician seeks to involuntarily administer additional psychotropic medication to respondent. *Id*.

¶ 19 In regard to dosages, respondent argues that, because there was no testimony about the dosage for each medication, the order must be reversed. The State, however, argues that the court's judicial notice of the petition containing the dosages was sufficient.

¶ 20 Under the Code, a trial court's involuntary-treatment order must "specify the medications and the anticipated range of dosages that have been authorized." 405 ILCS 5/2-107.1(a-5)(6) (2016). Additionally, the court's order must be supported by evidence presented by the State "as to the anticipated range of dosages of the proposed psychotropic medication." *In re A.W.*, 381 Ill. App. 3d 950, 959 (2008).

¶ 21 In *A.W.*, the Fourth District held that an involuntary-treatment order failed to comply with the Code when it authorized specific dosages of psychotropic medications that were not supported by evidence of those dosages. *Id*. at 958. No testimony was presented about the anticipated dosages, and the trial court did not take judicial notice of the petition. *Id.* at 953-54. The court rejected the State's contention that the order was sufficient because the petition listed the anticipated dosages. *Id.* at 959. Instead, the court held that the petition's listing of

anticipated dosages would not suffice "[a]bsent (1) the trial court's (a) taking judicial notice of the anticipated dosages listed in the petition or (b) admitting in evidence the petition for the purpose of establishing the anticipated dosages or (2) testimony that the proposed psychotropic medications are requested in the dosages as they are listed in the petition." *Id*.

¶ 22 Here, unlike in *A.W.*, there was evidence of the anticipated ranges of dosages because the court took judicial notice of the petition without objection from respondent. Further, during Hurtado's testimony, she was directed specifically to the paragraphs of the petition containing the medications and their dosages. Each medication was discussed, and two dosages were amended during that portion of testimony. The court specifically stated that it considered the petition, and its order reflected the amendments. Thus, there was clear and convincing evidence of the anticipated ranges of dosages and those dosages were properly reflected in the order.

¶ 23 Respondent argues that the trial court's judicial notice of the entire file, including the petition, was improper because the dosages were not the type of facts subject to judicial notice and because the court did not specify that it was taking notice of the petition for the purpose of establishing the anticipated dosages.

¶ 24 "A judicially noticed fact must be one not subject to reasonable dispute in that it is either (1) generally known within the territorial jurisdiction of the trial court or (2) capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned." Ill. R. Evid. 201(b) (eff. Jan. 1, 2011); see also *People v. Davis*, 65 Ill. 2d 157, 165 (1976) (judicial notice may be taken of facts that, if not generally known, are "readily verifiable from sources of indisputable accuracy"). "It is settled that a trial court may properly take judicial notice of matters of record in its own proceedings." *People v. Knight*, 75 Ill. 2d 291, 296 (1979).

¶ 25 Here, the court could take judicial notice of the petition as a matter of record in its own proceeding. Further, the anticipated dosages in the petition were not disputed facts. The court could not selectively authorize anything other than Hurtado's requested treatment protocol. See *In re Mary Ann P.*, 202 Ill. 2d 393, 405-06 (2002). Thus, the only evidence required was that of the anticipated dosages, which were clearly listed in the petition. Hurtado was given the petition during her testimony and was specifically directed to the paragraphs concerning the dosages. The petition was then amended during her testimony to reflect changes in the dosages. While the trial court did not specifically state that it was taking judicial notice for the purpose of establishing the anticipated dosages, it did specifically take notice of the court file in response to the State's request for judicial notice of the petition. The court specifically stated that it considered the petition when it made its order, and that order matched the amended petition. Respondent never objected. While it would have been better for the State to elicit direct testimony of the anticipated dosages, given the circumstances—where evidence of the anticipated dosages was properly before the court, there was no objection, and the order reflected the evidence—there was no error.

¶ 26 III. CONCLUSION

¶ 27 The trial court erred when it entered the order for involuntary treatment without evidence of the side effects of all medications and without specifically stating the individuals authorized to administer the medications. Accordingly, we reverse on those points. The court did not err by taking judicial notice of the petition and using that evidence to list the anticipated dosages.

¶ 28 Reversed.