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2017 IL App (4th) 150754-U

NO. 4-15-0754

FILED
July 13, 2017
Carla Bender
4th District Appellate
Court, IL

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

In re: RICHARD P., a Person Found Subject to Involuntary Admission	)	Appeal from
	)	Circuit Court of
	)	Champaign County
(The People of the State of Illinois,	)	No. 15MH6
Petitioner-Appellee,	)	
v.	)	Honorable
Richard P.,	)	Heidi N. Ladd,
Respondent-Appellant).	)	Judge Presiding.

JUSTICE HOLDER WHITE delivered the judgment of the court.
Presiding Justice Turner and Justice Harris concurred in the judgment.

ORDER

¶ 1 *Held*: The appellate court granted respondent's counsel's motion to withdraw, concluding no meritorious issues can be raised on appeal.

¶ 2 In August 2015, respondent, Richard P., was involuntarily admitted for psychiatric treatment at the Pavilion Foundation Hospital (Pavilion) after he engaged in paranoid and delusional behavior. Following a hearing on the petition, the trial court ordered respondent involuntarily committed for a period not to exceed 90 days.

¶ 3 Respondent's counsel on appeal has filed a motion to withdraw, asserting there are no meritorious issues for review. For the following reasons, we grant respondent's counsel's motion to withdraw and dismiss the appeal.

¶ 4 I. BACKGROUND

¶ 5 A. The Petition

¶ 6 On August 28, 2015, Detective John McDowell with the Sangamon County sheriff's office submitted a petition for involuntary admission for emergency treatment for respondent. The petition alleged respondent, a person with a mental illness, was (1) unable to provide for his basic physical needs so as to protect himself from physical harm unless treated on an inpatient basis; (2) refusing or not adhering to treatment due to his failure to understand the need for treatment, and his failure to understand will lead to further mental or emotional deterioration if not treated on an inpatient basis; and (3) in need of immediate hospitalization to prevent such harm. Specifically, the petition stated respondent (1) had not slept in days, (2) was experiencing chest pains, and (3) talked about killing himself and his daughters to prevent "shadow people" from stealing their souls. Respondent also refused to submit to any blood draws because he thought they were lethal injections.

¶ 7 B. The Hearing

¶ 8 Respondent's case proceeded to a hearing in September 2015. Prior to hearing evidence, the trial court told counsel it had received a communication from the sheriff's deputies that respondent was uncooperative and refused to attend the proceedings. Respondent's attorney confirmed that respondent did not want to be present for the proceedings and waived his appearance.

¶ 9 1. *Morgan P.*

¶ 10 Morgan P. testified she was respondent's wife of 9 1/2 years and that they had two daughters, ages six and eight. In the past few months, Morgan noted changes in respondent's behavior. He became paranoid, believing that someone meant to cause him physical harm, and his aggressive behavior made her feel threatened and afraid he would harm her. Two weeks prior to his involuntary admission, respondent took Morgan to a park near their home after

disabling the OnStar capability in the vehicle. Respondent told Morgan to park the vehicle beneath a tree so the satellites could not see them, and he stated his suspicions that the vehicles driving by contained people who were trying to kill him by shooting lasers into his heart and brain.

¶ 11 On August 22, 2015, respondent returned home after going out for a drink and told Morgan he could not drink any alcohol because the "voices" said they would kill him if he drank it. Respondent then asked Morgan for transportation to his brother's house—about 40 minutes away—because he believed the family home was unsafe. Respondent remained at his brother's house for four days. On August 26, 2015, respondent asked Morgan to pick him up from his brother's home and transport him to a mental-health center for treatment. However, when she arrived, respondent refused to seek treatment. Respondent told Morgan he believed she and her father put a "burn notice" on him to have him killed. According to Morgan, he also stated people engaged in shootings because voices in their heads told them to do so.

¶ 12 The next day, respondent returned home. Morgan discovered him sitting at the dining room table begging for help but refusing to respond to Morgan's questions. Morgan called the police to report respondent's behavior, but after respondent placed a similar call to police alleging Morgan was "the crazy one," no action was taken. Out of concern for herself and her children, Morgan took her daughters to her father's home.

¶ 13 The next morning, respondent appeared at the home of Morgan's father. Morgan described respondent as "out of it" and "almost like the voices had taken over and they were too loud for him to respond." He grabbed both of his daughters by their arms and attempted to "drag them off somewhere" until Morgan intervened to stop him. That night, Morgan returned home with the children, but she slept in their room due to her fear of respondent. In the early morning

hours of August 28, 2015, respondent woke Morgan and said something to the effect of, "if she is doing this to me, then blast her." According to Morgan, he appeared to be talking about her.

¶ 14 Morgan noted respondent regularly complained of chest pains during the last week of August. Respondent blamed the pain on "lasers" that were shooting into his brain and heart. He began taking large quantities of aspirin—he consumed more than 50 aspirin in one week—to ease the pain. He also appeared to get very little sleep. According to Morgan, during the two-week period prior to respondent's commitment, he dressed appropriately but failed to maintain appropriate hygiene. He had medical stickers from heart-rate monitors all over his body because he never removed them following a hospital stay.

¶ 15 Since he had been committed, Morgan noticed respondent at times seemed "fairly normal" but, on other occasions, he screamed at her for the duration of their phone conversation. Morgan testified, if respondent was acting normally, she would agree to him returning home.

¶ 16 2. *Kevin P.*

¶ 17 Kevin P., respondent's brother, testified he observed respondent acting abnormally during the past two weeks. On August 22, 2015, respondent sent Kevin a link to an article about gang stalking, followed by a series of text messages. Respondent sent text messages such as, (1) "No matter what happens, know I still love you, bro"; (2) "I have been targeted for death. They want me gone"; (3) "they are following [me] everywhere"; (4) "I've been labeled a security or health risk to others and marked for termination"; and (5) "they keep aiming devices at me from the sky, shooting me in the head and abdomen area, trying to kill me off." That evening, respondent visited Kevin and was acting very nervous. He laid a broken flat-screen television across two chairs and slept on the floor beneath the television. Prior to respondent leaving Kevin's home on August 26, 2015, respondent told Kevin about someone

being in the house when no one else was present. For the duration of respondent's stay, Kevin did not see him eat, shower, or brush his teeth. Respondent told Kevin not to drink the soda from the house because there was "something" in it.

¶ 18 3. *Detective McDowell*

¶ 19 Detective McDowell testified he spoke with respondent on August 28, 2016, when respondent appeared in the records lobby of the sheriff's office. Respondent brought in an iPad and an iPhone, asking for police to catch the "shadow people" he recorded on those devices. Detective McDowell explained the recording appeared to depict filming of the ground. Respondent became aggravated when the police would not help him, and he then went on a mostly indecipherable tirade. His tirade included a statement that he intended to kill himself and his daughters before he would allow the "shadow people" to steal their souls. Respondent's statements about his family prompted Detective McDowell to check on their welfare. Ultimately, Detective McDowell completed a petition for involuntary admission and called for an ambulance to transport respondent to the hospital.

¶ 20 4. *Dr. Martin Repetto*

¶ 21 Dr. Martin Repetto, a psychiatrist tendered as an expert witness, testified he first encountered respondent at Pavilion, where respondent was being assessed for psychiatric services. Dr. Repetto described respondent's demeanor as "extremely guarded, moderately agitated, very irritated, had an aggressive demeanor." According to respondent, his admission was a mistake and he was concerned for the safety of his children and himself.

¶ 22 Beginning August 31, 2015, Dr. Repetto provided treatment to respondent. On September 1 and 2, 2015, respondent acted calmer and more cooperative, but he refused to voluntarily admit himself and denied Dr. Repetto permission to speak with his family. On

September 3, 2015, the day of the hearing, respondent acted agitated, declined medication, and refused to sign a release that would allow Dr. Repetto to speak with his family. Respondent expressed concern that he was being watched by people outside of the hospital who intended him harm. He also suffered from paranoid hallucinations.

¶ 23 Dr. Repetto diagnosed respondent with psychosis not otherwise specified, a mental illness. Due to the brief period since the onset of the illness, Dr. Repetto explained it was too early to diagnose a specific psychotic disorder. Thus, for the time being, respondent met the criteria for a brief psychotic episode or a substance-induced psychosis, which qualified as a mental illness under the Mental Health and Developmental Disabilities Code (Code) (405 ILCS 5/1-129 (West 2014)). Although respondent tested positive only for marijuana during his recent hospital stay, Dr. Repetto said other substances not identified in a standard drug test could have induced the psychotic episodes.

¶ 24 As a result of respondent's psychosis not otherwise specified, Dr. Repetto testified respondent could not make an appropriate assessment and evaluation of the environment around him and his judgment was impaired. Dr. Repetto opined, if not admitted, respondent's condition would deteriorate because respondent did not understand the need for treatment. Moreover, the safety of respondent and his family was in question, as respondent made comments about possibly harming his daughters and himself. If released, Dr. Repetto believed respondent might act on his delusions and hurt his family or himself. By being admitted, treatment providers could ensure respondent took his medication, which he was currently taking only intermittently, and monitor whether the psychosis resolved itself. Dr. Repetto opined 90 days would be an appropriate period of time in which to complete respondent's evaluation, prescribe medication, and monitor his progress.

¶ 25 According to Dr. Repetto, the least restrictive environment for treating respondent would be at a mental-health facility such as the Andrew McFarland Mental Health Center (McFarland) or Pavilion. Dr. Repetto stressed that outpatient treatment, which previously failed, should not be considered.

¶ 26 5. *Dispositional Report*

¶ 27 The dispositional report filed by Pavilion stated respondent had been admitted to HSHS St. John's Hospital in Springfield, complaining of a lack of sleep for several days and chest pain. He reported his thoughts about killing his daughters and himself to prevent the "shadow people" from stealing their souls. He also began having paranoid thoughts about the safety of his food. Respondent lacked any prior history of psychiatric admission.

¶ 28 Since his commitment at Pavilion, respondent refused to consent to treatment. During his psychosocial assessment, respondent acted nervous, unfocused, anxious, distracted, and disoriented. He continued to exhibit delusions and intermittently rejected his medications, believing the medications would kill him. Additionally, respondent tried to sneak out of the facility. According to the report, respondent's inability to appreciate his mental illness made him "an inappropriate candidate for anything other than acute inpatient treatment."

¶ 29 6. *The Trial Court's Judgment*

¶ 30 Following the presentation of evidence, the trial court briefly outlined the evidence it found persuasive, such as (1) the witnesses' testimony, which the court found credible; (2) evidence of respondent's ongoing delusional behavior that included threats to kill himself and his children; (3) respondent's deteriorating condition that included ingesting a bottle of aspirin to assuage the pain from "lasers" being shot into his heart; and (4) respondent's intermittent refusal to take medication. The court also found credible Dr. Repetto's opinion that

respondent's behavior would continue to deteriorate without treatment, and the safety of respondent's family and his inability to appreciate his mental illness required inpatient treatment. Accordingly, the court determined the State provided sufficient evidence to prove the allegations in the petition. The court found inpatient treatment was the least restrictive alternative to protect respondent and others from physical harm. Respondent was ordered hospitalized for a period not to exceed 90 days and placed in the custody and care of the Pavilion. Upon a bed becoming available at McFarland, the order granted the Pavilion authority to transport respondent to McFarland.

¶ 31 C. Appellate Proceedings

¶ 32 Respondent filed a timely notice of appeal. However, in January 2017, respondent's appellate counsel filed a motion to withdraw, alleging no meritorious issues could be raised on appeal. This court allowed respondent leave to file additional points and authorities by March 7, 2017. Respondent failed to do so. After examining the record and the possible issues on appeal, we grant respondent's appellate counsel's motion to withdraw and dismiss the appeal.

¶ 33 II. ANALYSIS

¶ 34 Respondent's appellate counsel asserts no meritorious argument can be made on appeal to support the contentions that (1) the State failed to prove by clear and convincing evidence respondent's involuntary admission was warranted and (2) inpatient treatment was not the least restrictive means for providing treatment. However, before we reach the merits, we first analyze whether respondent's case is moot.

¶ 35 A. Mootness

¶ 36 Respondent's 90-day commitment order expired on its own terms in December 2015. Thus, respondent's case is moot. See *In re Barbara H.*, 183 Ill. 2d 482, 490, 702 N.E.2d 555, 559 (1998) (a case is moot when the original judgment no longer has any force or effect). 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 under a recognized exception. These exceptions include: (1) the collateral-consequences exception, (2) the capable-of-repetition-yet-evading-review exception, or (3) the public-interest exception. See *id*. This court considers these exceptions on a case-by-case basis. *Id.* at 354, 910 N.E.2d at 79.

¶ 37 In analyzing the collateral-consequences exception, we must engage in a case-by-case analysis of the relevant facts and legal issues to determine whether application of the exception is warranted. *In re Rita P.*, 2014 IL 115798, ¶ 34, 10 N.E.3d 854. "Collateral consequences must be identified that 'could stem solely from the present adjudication.' " *Id*.

¶ 38 In this case, respondent's appellate counsel concedes the collateral-consequences exception may apply, as respondent had no prior history of involuntary mental-health treatment or criminality. However, in making this argument, respondent's counsel relies on *In re Joseph P.*, 406 Ill. App. 3d 341, 347, 943 N.E.2d 715, 720 (2010), which the supreme court expressly overruled in *Rita P*. Despite counsel's reliance on an overturned case, the collateral-consequences exception remains applicable here. As *Rita P.* holds:

> "Application 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. Rather, a reviewing court must consider all the relevant facts and legal issues raised in the appeal before deciding whether the exception applies." *Rita P.*, 2014 IL 115798, ¶ 34, 10 N.E.3d 854.

¶ 39 A review of the record shows this is respondent's first involuntary commitment. While this fact alone is not enough to avoid finding respondent's claim moot, this case also involves allegations of threats to the safety of respondent's wife and children, which could be used against him in a myriad of future proceedings, including divorce or custody matters. We therefore conclude the collateral-consequences exception to the mootness doctrine applies.

¶ 40 B. Sufficiency of the Evidence Regarding the Petition

¶ 41 Respondent's counsel asserts no meritorious issue can be raised regarding the sufficiency of the evidence. We agree.

¶ 42 Involuntary commitment proceedings implicate an individual's liberty interest. *In re Torski C.*, 395 Ill. App. 3d 1010, 1017, 918 N.E.2d 1218, 1225 (2009). "Proof of mental illness alone is not sufficient to support involuntary admission." *In re Jakush*, 311 Ill. App. 3d 940, 944, 725 N.E.2d 785, 788 (2000). Thus, "a mentally ill person may not be confined against his will merely because of a mental illness if he can live safely in freedom." *In re Rovelstad*, 281 Ill. App. 3d 956, 967, 667 N.E.2d 720, 726 (1996). Section 1-119 of the Code (405 ILCS 5/1-119 (West 2014)), the basis of the petition, outlines the circumstances which may subject a person to an involuntary admission. Further, as part of its evidence, the State must present the testimony of at least one psychiatrist, clinical social worker, clinical psychologist, or qualified examiner who has examined the respondent. 405 ILCS 5/3-807 (West 2014). The allegations in the petition must be proved by clear and convincing evidence. 405 ILCS 5/3-808 (West 2014).

We will not overturn the trial court's finding unless it is against the manifest weight of the evidence. *In re Todd K.*, 371 Ill. App. 3d 539, 542, 867 N.E.2d 1104, 1107 (2007).

¶ 43 In this case, the petition for involuntary admission alleged two grounds for admission under the Code. First, the petition alleged, because of his mental illness, respondent was reasonably expected, if not treated on an inpatient basis, to engage in conduct placing himself or another person in physical harm or in reasonable expectation of being harmed. See 405 ILCS 5/1-119(1) (West 2014). We agree with respondent's counsel that sufficient evidence in the record supports this claim.

¶ 44 Dr. Repetto testified he had personally examined respondent and diagnosed him with psychosis not otherwise specified, which constitutes a mental illness. See 405 ILCS 5/1-129 (West 2014). Although respondent had not actually committed any physical harm to anyone, the evidence demonstrated respondent's family had a reasonable expectation of being harmed due to the onset of respondent's psychosis. According to Morgan, respondent's wife, she feared he would harm her after uttering such statements as "if she is doing this to me, then blast her." Her fear of respondent extended to fear on behalf of her daughters, whom she kept close during the two weeks preceding respondent's admission. Morgan testified respondent's behavior prompted her to remove the children from the home on one occasion and stay in their bedroom overnight on another occasion.

¶ 45 Detective McDowell testified respondent became irate at the sheriff's office when officers did not take his video about the "shadow people" seriously, and his statements that he would kill himself and his daughters to keep the "shadow people" from stealing their souls alarmed Detective McDowell enough to check on the welfare of his family. Respondent later repeated his statements about killing his daughters to Dr. Repetto, who expressed concern that

respondent would act on these delusions if released. This evidence is sufficient to support the trial court's finding as to this allegation. Because we have found sufficient evidence to support one ground for admission, we need not consider the second ground.

¶ 46 C. Treatment

¶ 47 1. *Sufficiency of the Evidence Regarding Treatment*

¶ 48 Respondent's counsel next asserts no meritorious issue can be raised as to the trial court's order for inpatient treatment. Once a person has been found subject to involuntary admission, the court is tasked with placing the person in the least restrictive environment. *In re Luttrell*, 261 Ill. App. 3d 221, 226, 633 N.E.2d 74, 78 (1994). The options for the court to consider include hospitalization, outpatient treatment, or placing the respondent in the care of a family member. 405 ILCS 5/3-811 (West 2014). If the court orders hospitalization on an inpatient basis, the period of hospitalization must not exceed 90 days. 405 ILCS 5/3-813(a) (West 2014). The trial court's finding must be supported by clear and convincing evidence. 405 ILCS 5/3-808 (West 2014). We will not overturn that finding unless it is against the manifest weight of the evidence. *In re Shirley M.*, 368 Ill. App. 3d 1187, 1194, 860 N.E.2d 353, 359 (2006).

¶ 49 In this case, the trial court ordered respondent to undergo inpatient treatment for a period not to exceed 90 days. Placing respondent in Morgan's care was not a viable option, as Morgan did not wish for him to return home unless he was "normal." At the hearing, Morgan testified, since respondent's commitment, he sometimes acted "fairly normal" but, on other occasions, he would scream at her for the duration of their phone conversation. Dr. Repetto also testified respondent did not yet act "normal." Respondent continued to (1) experience paranoid

delusions that someone was trying to harm him and poison his food, (2) intermittently refuse medication, and (3) lack appreciation for his mental illness.

¶ 50 Because respondent was still exhibiting symptoms of psychosis, Dr. Repetto opined respondent, if not treated on an inpatient basis, might act on his thoughts and kill his daughters and himself to protect their souls. Dr. Repetto noted that previous attempts to engage respondent in outpatient mental-health treatment failed.

¶ 51 Under these circumstances, we cannot find the court's decision as to the least restrictive alternative for treatment was against the manifest weight of the evidence.

¶ 52 2. *Compliance With the Code*

¶ 53 Counsel for respondent asserts potential issues may exist as to the trial court's order. Specifically, respondent argues the order appears to be inconsistent in that respondent was hospitalized in the Pavilion and placed in the care and custody of the Pavilion, but he was subject to transfer to McFarland upon a bed becoming available at McFarland. Respondent asserts the trial court lacked the authority to order a specific placement and that a private facility is prohibited from transferring patients to a state facility.

¶ 54 As to the claim the trial court improperly ordered a specific placement, respondent cites *People v. Lang*, 37 Ill. 2d 75, 80, 224 N.E.2d 838, 841 (1967), which held the Department of Mental Health, and not the trial court, is best suited to determine the appropriate placement for a patient. Respondent also points out that under the Code and legal precedent, a private institution, such as the Pavilion, may not invoke the Code's transfer provisions, as those provisions relate to state institutions. See *In re Hays*, 102 Ill. 2d 314, 320, 465 N.E.2d 98, 101 (1984); *In re James E.*, 207 Ill. 2d 105, 112, 797 N.E.2d 622, 626 (2003); 405 ILCS 5/3-908, 3-909 (West 2014).

¶ 55 Respondent, however, failed to raise the issues about the court's order before the trial court, meaning the issues have been forfeited. See *In re Nau*, 153 Ill. 2d 406, 417, 607 N.E.2d 134, 139 (1992) ("The failure to raise an issue in the trial court generally results in a waiver of the issue on appeal."). We find no basis to excuse respondent's forfeiture and note that, even if we were to address the merits and find error, respondent must establish the error resulted in prejudice. *In re Lisa G.C.*, 373 Ill. App. 3d 586, 590, 871 N.E.2d 794, 799 (2007). "Reversal is required for failure to comply with the requirements of the Code where respondent is prejudiced by such failure." *Id*. There is no assertion, here, of any prejudice to respondent as a result of these alleged errors.

¶ 56 After considering the evidence and the motion for leave to withdraw, we conclude the potential contentions of respondent either lack merit or have been forfeited. We therefore grant counsel's motion to withdraw and dismiss this appeal.

¶ 57 III. CONCLUSION

¶ 58 Based on the foregoing, we grant respondent's counsel's motion to withdraw and dismiss this appeal.

¶ 59 Dismissed.