

NOTICE

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FILED

June 13, 2017
Carla Bender
4th District Appellate
Court, IL

2017 IL App (4th) 160580-U

NO. 4-16-0580

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

In re: CYNTHIA M., a Person Found Subject to)	Appeal from
Administration of Psychotropic Medication,)	Circuit Court of
THE PEOPLE OF THE STATE OF ILLINOIS,)	Sangamon County
Petitioner-Appellee,)	No. 16MH336
v.)	
CYNTHIA M.,)	Honorable
Respondent-Appellant.)	Chris Perrin,
)	Judge Presiding.

JUSTICE HOLDER WHITE delivered the judgment of the court.
Justices Steigmann and Pope concurred in the judgment.

ORDER

- ¶ 1 *Held:* The appellate court dismissed, concluding respondent's appeal challenging the trial court's order for involuntary administration of psychotropic medication was moot and did not meet any of the exceptions to the mootness doctrine.
- ¶ 2 Respondent, Cynthia M., appeals from the circuit court's order finding her subject to involuntary administration of psychotropic medication pursuant to section 2-107.1 of the Mental Health and Developmental Disabilities Code (Mental Health Code) (405 ILCS 5/2-107.1 (West 2014)). She argues the court's judgment should be reversed because (1) she was not advised in writing of the side effects, risks, and benefits of the treatment as required by section 2-102(a-5) of the Mental Health Code (405 ILCS 5/2-102(a-5) (West 2014)); and (2) it was against the manifest weight of the evidence.
- ¶ 3 For the reasons that follow, we conclude respondent's appeal is moot and, therefore, we dismiss the appeal.

¶ 4

I. BACKGROUND

¶ 5 In June 2016, Dr. Aura Eberhardt, a psychiatrist at Andrew McFarland Mental Health Center (McFarland), filed a petition for administration of psychotropic medication. Respondent was previously found subject to involuntary admission in Sangamon County case No. 16-MH-280. This court dismissed as moot respondent's involuntary admission appeal by summary order in case No. 4-16-0458 (Mar. 28, 2017).

¶ 6 In August 2016, following a series of agreed continuances and an independent psychiatric evaluation, the trial court held a hearing on the petition for administration of psychotropic medication. Respondent refused to attend the hearing. The State called Dr. Eberhardt as its only witness.

¶ 7 Dr. Eberhardt testified she had been treating respondent since she was admitted to McFarland in June 2016. According to Dr. Eberhardt, respondent has schizoaffective disorder and had her first psychiatric admission 25 years before, at the age of 33. Respondent had paranoid delusions and believed (1) McFarland staff electrocuted her, (2) she was shot eight times in the neck, and (3) Dr. Eberhardt forced her to take medication every night. Respondent also believed she had various illnesses, including malaria and "brain clinking." According to Dr. Eberhardt, respondent also slept poorly and showed signs of agitation by yelling at peers and staff, spitting at staff, and slamming doors. Respondent refused treatment by psychotropic medication.

¶ 8 Dr. Eberhardt testified respondent lacked the capacity to make decisions regarding treatment because she denied having a psychiatric illness, was unable to have a reality-based conversation, and had no understanding of or insight into her illness. According to Dr. Eberhardt, respondent exhibited deterioration in her ability to function. Respondent refused to

shower, required prompting to eat meals, and refused medical exams, even though she believed she suffered from various illnesses. In Dr. Eberhardt's opinion, respondent's delusions caused her to suffer.

¶ 9 Dr. Eberhardt testified the following medications were her first choice for treating respondent: (1) Risperidone to treat psychotic symptoms, including paranoia and delusions (2 to 8 milligrams by mouth per day or 25 to 37.5 milligrams intramuscular long acting every 14 days); (2) Depakote to treat agitation, aggression, and mood lability (500 to 2500 milligrams by mouth); (3) Ativan to treat anxiety, insomnia, and agitation (1 to 4 milligrams by mouth or injection, as needed); and (4) Cogentin to treat possible side effects from Risperidone (1 to 4 milligrams by mouth or injection, as needed). Dr. Eberhardt testified the following medications were alternatives to the first-choice medications and had the same benefits: (1) Haldol as an alternative for Risperidone (5 to 30 milligrams by mouth or 5 to 20 milligrams intramuscularly per day, or 100 to 200 milligrams intramuscularly every 28 days); (2) Zyprexa as an alternative for Risperidone (5 to 20 milligrams by mouth or intramuscularly per day); (3) Lithium as an alternative to Depakote (450 to 1800 milligrams); and (4) Benadryl as an alternative to Cogentin (20 to 100 milligrams).

¶ 10 Dr. Eberhardt further testified regarding the possible side effects and risks of these medications, which included, in part, lethal lithium toxicity, suicidal ideation, and tardive dyskinesia. According to Dr. Eberhardt, respondent had been treated with the first-choice medications without negative side effects in the past. However, Dr. Eberhardt testified respondent would be monitored for negative side effects and her medications would be adjusted or discontinued accordingly.

¶ 11 The State offered into evidence People's exhibit No. 1, a 47-page written document which extensively detailed the benefits, side effects, and risks for each of Dr. Eberhardt's first-choice and alternative medications for respondent. Also offered into evidence was People's exhibit No. 2, a written document outlining treatment alternatives to psychotropic medications. Dr. Eberhardt testified she attempted to discuss the benefits, risks, side effects, and alternative treatments with respondent and attempted to give her copies of People's exhibit Nos. 1 and 2. According to Dr. Eberhardt, respondent refused to take these documents, so Dr. Eberhardt placed the written materials outlining the benefits, risks, side effects, and alternative treatments in respondent's mailbox, which respondent had access to at all times.

¶ 12 The trial court found the State had proved the allegations in the petition by clear and convincing evidence. In doing so, the court further found, in part, (1) the benefits of treatment would outweigh the potential harm from side effects; and (2) respondent was given the written list of the proposed medications and alternatives, including information on the dosages, benefits, and risks. Accordingly, the court ordered the administration of authorized involuntary treatment for 90 days.

¶ 13 This appeal followed.

¶ 14 II. ANALYSIS

¶ 15 On appeal, respondent asserts the trial court's judgment should be reversed because (1) she was not advised in writing of the side effects, risks, and benefits of the treatment as required by section 2-102(a-5) of the Mental Health Code (405 ILCS 5/2-102(a-5) (West 2014)), and (2) it was against the manifest weight of the evidence. The State contends respondent's claim is moot. Respondent has not addressed the mootness issue.

¶ 16 The August 5, 2016, involuntary-treatment order expired on its own terms 90 days after it was entered; accordingly, this appeal is moot. "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, 910 N.E.2d 74, 78 (2009). However, we will consider an otherwise moot case where it falls under a recognized exception. Here, respondent's case does not fall into any of the following three mootness exceptions: (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. "All of the exceptions to the mootness doctrine are 'to be construed narrowly and require a clear showing of each criterion to bring the case within the terms.'" *In re Sharon H.*, 2016 IL App (3d) 140980, ¶ 20, 52 N.E.3d 698 (quoting *In re J.T.*, 221 Ill. 2d 338, 350, 851 N.E.2d 1, 8 (2006)).

¶ 17 A. Collateral-Consequences Exception

¶ 18 In analyzing the collateral-consequences exception, we "must consider all the relevant facts and legal issues raised in the appeal before deciding whether the exception applies." *In re Rita P.*, 2014 IL 115798, ¶ 34, 10 N.E.3d 854. Further, "[c]ollateral consequences must be identified that 'could stem solely from the present adjudication.'" *Id.* (quoting *Alfred H.H.*, 233 Ill. 2d at 363, 910 N.E.2d at 84). Respondent has failed to raise any facts or legal issues identifying collateral consequences that could stem solely from the present case. Accordingly, we find the collateral-consequences exception does not allow for a review of the merits of respondent's claim.

¶ 19 B. Capable-Of-Repetition-Yet-Evading-Review Exception

¶ 20 Another exception to the mootness doctrine exists for cases where the events are capable of repetition, yet are of such a short duration as to evade review. *J.T.*, 221 Ill. 2d at 350, 851 N.E.2d at 8. "This exception has two elements. First, the challenged actions 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.' " *Alfred H.H.*, 233 Ill. 2d at 358, 910 N.E.2d at 82 (quoting *In re Barbara H.*, 183 Ill. 2d 482, 491, 702 N.E.2d 555, 559 (1998)). The "same action" need not be identical, but "the actions must have a substantial enough relation that the resolution of the issue in the present case would be likely to affect a future case involving respondent." *Id.* at 359, 910 N.E.2d at 82.

¶ 21 There is no question the first criterion has been met, as the involuntary-medication order expired by its own terms in 90 days, and appellate review could not have taken place prior to its expiration. *Id.* However, respondent has failed to show that review of her claims would have some impact on her in a future case. *Id.* Accordingly, we conclude this exception does not allow for our review of respondent's claims.

¶ 22 C. Public-Interest Exception

¶ 23 "Application of the public interest exception requires (1) the existence of a question of public importance; (2) the desirability of an authoritative determination for the purpose of guiding public officers in the performance of their duties; and (3) the likelihood that the question will recur." *J.T.*, 221 Ill. 2d at 350, 851 N.E.2d at 8. Respondent does not argue her claims raise questions of public importance. Nor does respondent contend her claims present issues on which an authoritative determination would provide guidance to public officers in the performance of their duties. We conclude the fact-specific nature of her sufficiency-of-the-

evidence claim does "not present the kind[] of broad public interest issue[]" necessary to meet the first criterion of this exception. *Alfred H.H.*, 233 Ill. 2d at 356-57, 910 N.E.2d at 81.

¶ 24 Moreover, we do not think respondent's claim regarding compliance with section 2-102(a-5) in her specific case presents a question of public importance. Our review of the record shows Dr. Eberhardt testified she attempted to personally provide written information regarding the benefits, risks, and side effects of the proposed treatment, and written information regarding alternatives to the treatment. Respondent chose not to accept these written documents, so Dr. Eberhardt left the documents in respondent's personal "box." Although respondent contends the right to receive a written notification under section 2-102(a-5) cannot be waived, her refusal to read the written information presented to her—and made available to her following her refusal to accept the written documents—is a separate issue from whether Dr. Eberhardt complied with the statute. This claim does not raise an important public question. Accordingly, we conclude the public-interest exception does not allow for review of the merits of this claim.

¶ 25 III. CONCLUSION

¶ 26 For the reasons stated, we dismiss this appeal.

¶ 27 Dismissed.