NOTICE
Decision filed 12/05/17. The text of this decision may be changed or corrected prior to the filing of a Petition for Rehearing or the disposition of the same.

2017 IL App (5th) 140106-U

NO. 5-14-0106

NOTICE
This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

In re MARY H., Alleged to be a Person Subject to Involuntary Treatment With Psychotropic Medication	)	Appeal from the Circuit Court of Madison County.
(The People of the State of Illinois, Petitioner-Appellee, v. Mary H., Respondent-Appellant).	)	No. 13-MH-190
	)	Honorable Thomas W. Chapman, Judge, presiding.

PRESIDING JUSTICE BARBERIS delivered the judgment of the court.
Justices Goldenhersh and Overstreet concurred in the judgment.

ORDER

¶ 1 *Held:* Where the order for the involuntary administration of psychotropic medication to the respondent was not supported by clear and convincing evidence, the order of the circuit court is reversed.

¶ 2 Respondent, Mary H., appeals the circuit court's order authorizing the involuntary administration of psychotropic medication 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 2012)). On appeal, Mary contends that the evidence was insufficient to support the order. We reverse.

¶ 3 BACKGROUND

¶ 4 In July 2013, Mary was charged with disorderly conduct in Cook County and found unfit to stand trial. Mary was initially diagnosed with delusional disorder. In October 2013, Mary was remanded to the custody of the Illinois Department of Human Services and placed at Alton Mental Health Center's (AMHC) forensic unit. This was Mary's first involuntary hospitalization. Upon further observation at AMHC, Mary was diagnosed with schizoaffective disorder-bipolar type. In December 2013, Dr. Kanwal Mahmood, Mary's treating psychiatrist, filed a verified petition for the involuntary administration of psychotropic medication.

¶ 5 In February 2014, the circuit court held a hearing on the petition. Dr. Mahmood testified to the following. Although Mary had been initially diagnosed with delusional disorder in July 2013, her initial diagnosis was based on a single interview by a forensic psychiatrist. Dr. Mahmood subsequently diagnosed Mary with schizoaffective disorder-bipolar type due to displayed mood symptoms. Dr. Mahmood's diagnosis was based upon numerous observations of Mary over a longer period of time. Mary exhibited the following symptoms: racing thoughts, pressured speech, trouble staying focused, agitation, and sexual delusions. Mary suffered from a false fixed ideation that she had been the victim of numerous sexual assaults. Her sexual delusions included instances of sexual assault by her father, other family members, neighbors, and, most recently, AMHC staff members. Additionally, Mary believed that she had contracted a sexually transmitted disease after being sexually assaulted.

¶ 6 Dr. Mahmood observed that Mary's fixation about being sexually assaulted, and her hostility towards other patients and staff, especially males, increased during her first three weeks at AMHC. Mary made multiple accusations that certain male staff members had raped her. Mary accused these staff members of anal, vaginal, and gang rape. On one occasion, Mary refused to shower out of fear that physical evidence would be lost. It was also noted that Mary had refused to eat because she believed rapists were in the dining area. In addition, Mary had displayed numerous acts of aggression and hostility. She threatened to cut off a male staff member's penis, attempted to hit another staff member with a book, invaded patients' personal space, and verbally threatened to kill another patient. As a result of this behavior, Mary required emergency medication on at least three occasions.

¶ 7 Dr. Mahmood also opined that Mary lacked the capacity to make a reasoned decision about the proposed treatment because she was "not in touch with reality due to her psychosis." Although Mary was able to understand medical terminology, her psychiatric symptoms prevented her from understanding her need for, and the benefits of, the proposed medication in comparison to potential risks. Dr. Mahmood believed that Mary could not be reasoned with and was "cognitively impaired regarding her understanding of her mental illness." As a result, Mary believed that her ideations of rape were true and did not think medication was necessary. Dr. Mahmood concluded that Mary's false fixed ideations and belief that she did not need medication were "indirectly related."

¶ 8 Dr. Mahmood testified that Mary was provided with written information regarding the proposed medications, the benefits and risks associated with the medications, the recommended dosages, and the alternative medications. Dr. Mahmood did not testify that Mary was provided with written notification that there were no alternatives to the proposed treatment. Dr. Mahmood attempted to discuss the medications and possible side effects with Mary, but Mary was unable to stay focused. Although Mary was knowledgeable about the proposed medications and had voluntarily participated in several alternative treatments, she had not shown improvement. Thus, Dr. Mahmood believed that counseling services would only be effective if combined with psychotropic medication. Given that no lesser treatment alternatives were available, Dr. Mahmood opined that the only viable option was the administration of psychotropic medication. The circuit court took judicial notice of the proposed medications listed in the petition.

¶ 9 Mary testified to the following. She had been a practicing physician until her license was suspended in 2004. Mary acknowledged that she had been diagnosed with delusional disorder; however, she clarified that the diagnosis was "delusional disorder in remission." Mary believed that she had contracted a sexually transmitted disease after being sexually assaulted. She explained that she had "a skin eruption" on her legs and arms that was indicative of syphilis. Mary also explained that she had a yellowish vaginal discharge due to gonorrhea.

¶ 10 At the close of the testimony, the circuit court granted the petition finding that the State had proven, by clear and convincing evidence, all statutory factors pursuant to

section 2-107.1(a-5)(4) of the Code. See 405 ILCS 5/2-107.1(a-5)(4)(A)-(G) (West 2014).

¶ 11 ANALYSIS

¶ 12 Mary argues that the State failed to provide clear and convincing evidence (1) that she exhibited a deterioration of her ability to function, suffering, or threatening behavior, and (2) that she lacked the capacity to make a reasoned decision regarding the proposed medication. Mary acknowledges that the issues raised in her appeal are facially moot because the circuit court's 90-day order expired. See 405 ILCS 5/2-107.1(a-5)(5) (West 2012). She argues, however, that the collateral-consequences and public-interest exceptions to the mootness doctrine apply. The State agrees.

¶ 13 An appeal is moot where no actual controversy is presented, or the issues involved in the appeal no longer exist for the reviewing court to grant relief to the complaining party. *In re J.T.*, 221 Ill. 2d 338, 349-50 (2006). Generally, courts do not consider moot issues; however, this court may decide a moot question if the case falls within an exception—public-interest; capable-of-repetition-yet-avoiding-review; or collateral-consequences—to the mootness doctrine. *In re Alfred H.H.*, 233 Ill. 2d 345, 351 (2009); *In re Daryll C.*, 401 Ill. App. 3d 748, 752 (2010). Whether a case falls within an established exception to the mootness doctrine is a case-by-case determination that we review *de novo*. *Alfred H.H.*, 233 Ill. 2d at 350, 355.

¶ 14 Here, the record indicates that this is Mary's first involuntary-treatment order. Application of the collateral-consequences exception cannot rest upon the lone fact that no prior involuntary treatment order was entered. *In re Rita P.*, 2014 IL 115798, ¶ 34.

However, there are identifiable collateral consequences that may plague Mary in the future. Mary was diagnosed with a serious mental illness and admitted for mental health treatment on numerous occasions; therefore, it is likely that she could be subject to future mental health proceedings, and, perhaps, participate in proceedings to reinstate her medical license. See *Alfred H.H.*, 233 Ill. 2d at 362. Because we agree that this case meets the collateral-consequences exception, we do not address whether Mary also established the criteria necessary to satisfy the public-interest exception to the mootness doctrine. See *In re Atul R.*, 382 Ill. App. 3d 1164, 1168 (2008). For these reasons, we review the merits of this appeal.

¶ 15 Mary contends that the State failed to prove by clear and convincing evidence that she lacked capacity to make a reasoned decision about the proposed treatment. In particular, Mary argues that the State failed to provide to her, in writing, all required information about alternatives to the proposed treatment, as mandated by section 2-102(a-5) of the Code (405 ILCS 5/2-102(a-5) (West 2014)). We agree.

¶ 16 When the administration of psychotropic medication is at issue, section 2-102(a-5) of the Code mandates the following:

> "the physician *** shall advise the recipient, in writing, of the side effects, risks, and benefits of the treatment, as well as *alternatives to the proposed treatment*, to the extent such advice is consistent with the recipient's ability to understand the information communicated." (Emphasis added.) 405 ILCS 5/2-102(a-5) (West 2014).

¶ 17 Our district has determined that it is crucial for a respondent to be advised in writing about alternatives to treatment. *In re Debra B.*, 2016 IL App (5th) 130573, ¶ 26. This requirement is crucial, first, because the Code explicitly mandates strict compliance

to guard a patient's fundamental liberty interest in refusing invasive medication. *Id.* Second, because respondents in mental health cases are presumed competent, adequate proof that a respondent has been provided all necessary information is crucial to a circuit court's determination regarding her capacity to make a decision. *Id.* ¶ 27.

¶ 18 Moreover, the rights provided for in the Code ensure that a patient's due process rights are met and protected. *In re John R.*, 339 Ill. App. 3d 778, 784 (2003). Written notice is mandated to provide clear and convincing proof to the reviewing court that all alternatives to the proposed treatment have been considered, even when no alternative treatment is available, and that the patient has been provided with the necessary information to make a reasoned decision.

¶ 19 As stated earlier, Dr. Mahmood testified that Mary had been provided written information regarding the proposed and alternative medications. However, there was no evidence adduced at the hearing that Mary had been provided with written information regarding alternative forms of treatment, such as counseling and therapy. Although Dr. Mahmood opined that there were no alternatives to the proposed treatment, the Code requires that this information be provided in writing to the respondent to guard the individual's fundamental liberty interest in refusing invasive medication. The Code requires strict compliance to ensure that the patient's due process rights are met and protected. This requirement was not satisfied here. Where the State failed to produce evidence that Mary was provided written information that no alternative forms of treatment existed outside of the proposed treatment, the evidence was insufficient to

establish that Mary lacked the capacity to make a reasoned decision about the proposed treatment.

¶ 20 CONCLUSION

¶ 21 For the foregoing reasons, we reverse the order of the circuit court of Madison County finding Mary subject to the involuntary administration of psychotropic medication.

¶ 22 Reversed.