2018 IL App (1st) 162295-U

No. 1-16-2295

Order filed August 10, 2018

Fifth Division

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

FIRST DISTRICT

In re D.P., a Person Found Subject to Involuntary Admission, (The People of the State of Illinois,	)	Appeal from the Circuit Court of Cook County.
Petitioner-Appellee,	)	
v.	)	No. 16 COMH 1891
D.P.,	)	Honorable Robert Bertucci,
Respondent-Appellant).	)	Judge, presiding.

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

ORDER

¶ 1 *Held*: Where the respondent was ordered involuntarily committed to a mental health facility by the trial court, appealed her commitment, and was released while her appeal was pending, her appeal is dismissed as moot because it does not fall within any of the exceptions to the mootness doctrine, *i.e.*, public interest, capable of repetition yet avoiding review, or collateral consequences.

¶ 2 Following a June 2016 hearing, the trial court issued an order, limited in duration to 90 days, which found that respondent D.P. was subject to involuntary admission to a mental health

facility. The court later denied the State's petition to authorize the involuntary administration of psychotropic medication and subsequently granted D.P.'s motion for an independent examination. Then, in August 2016, the trial court denied D.P.'s motion to reconsider and vacate the commitment order, but granted her petition for discharge and ordered her release. Also, the trial court's commitment order expired in September 2016.

¶ 3 On appeal, D.P. argues that (1) her case falls within the exceptions to the mootness doctrine, (2) the State failed to prove that she met the criteria for involuntary commitment, and (3) the trial court violated her right to commitment in the least restrictive setting.

¶ 4 For the reasons that follow, we dismiss this appeal as moot.[1]

¶ 5 I. BACKGROUND

¶ 6 On June 9, 2016, the State filed a petition alleging that D.P. was subject to involuntary admission because she had a mental illness and unless she was treated on an inpatient basis her illness rendered her unable to provide for her basic physical needs so as to guard herself from serious harm without the assistance of family or others. The State also alleged that D.P. refused or did not adhere adequately to prescribed treatment, was unable to understand her need for treatment due to her illness, and unless treated on an inpatient basis was reasonably expected to deteriorate to the point that she would meet the statutory criteria for involuntary admission. Later, the State also filed a petition for involuntary medication.

¶ 7 At the June 30, 2016 hearing, the State presented the testimony of D.P.'s mother, who lived in Florida and had been a nurse for 33 years. After college, D.P. worked as a tax auditor and traveled the country for work. The mother testified that she maintained contact with D.P.,

[1] In adherence with the requirements of Illinois Supreme Court Rule 352(a) (eff. July 1, 2018), this appeal has been resolved without oral argument upon the entry of a separate written order.

who was 35 years old, by providing her with a cell phone so that they could text, email or talk at least two to three times a month. They had always been close, and the mother noticed over the last couple of years a decline in D.P.'s behavior and signs of mental illness. Prior to her decline, D.P. was a loving, social and intelligent individual, and she was eating and sleeping regularly and taking care of herself. D.P. also started her own magazine. However, about four or five years ago, D.P. talked about quitting her auditing job and felt that she was being spied on during audits through cameras in the ceiling and that "they" were listening and recording what she said. Against her mother's advice, D.P. quit her auditing job, withdrew her money from her 401(k) account, and focused on her magazine full time. The mother stopped receiving mailed copies of D.P.'s magazine a couple of years ago, and D.P. explained that funds were low and she had run out of money. Although D.P. claimed that she was changing the magazine to a digital format, the absence of any updates to the magazine's webpage since November 2015 indicated that D.P. was not currently publishing the magazine. D.P. frequently asked her mother, father and sister for money, which they sent so that she could pay bills, buy food, and have transportation. About two or three years ago, D.P.'s car was repossessed for nonpayment.

¶ 8 The mother testified that D.P. became very paranoid in the past couple of years. Specifically, D.P. thought that the police and FBI were spying on her, someone was trying to take her company away from her, and people were listening to her telephone conversations. She believed that songs she heard on the radio had been stolen from her and the only way she could stop the recording artists from stealing her thoughts was to walk into Lake Michigan. She told her mother that she either slept for long periods of time or could not sleep and was up at all hours of the night. The mother noticed that D.P. talked very fast and paced back and forth. In March

2016, D.P. told her mother that someone owed her $334 and she would stand up for her rights by going on a hunger strike until that money was repaid.

¶ 9 When D.P.'s mother and sister visited her on May 1, 2016 for D.P.'s birthday, D.P. did not let them enter her condominium, but her mother noticed from the doorway that the condominium was dark, cold, and had a foul odor. D. P. looked like she had lost weight—10 to 15 pounds over a two to three month time span, and she had dark circles around her eyes, which looked sunken in. They all went to a hotel, and D.P. talked about her boxing training regimen and desire to compete in the 2020 Olympics. Music on the radio agitated D.P., and she said that if she walked into the lake, it would quiet her thoughts and stop people from stealing them. She believed that when she was gone, people would know that she wrote all those songs and she would be famous. When her mother mentioned that she thought D.P. needed help, D.P. got agitated, asserted that she was not crazy, and yelled and screamed at her mother. As a result of their conversations, the mother went to court and obtained a writ to have D.P. taken to a hospital for an evaluation.

¶ 10 The police took D.P. to a hospital. While she was there, her mother and sister entered her condominium. The sump pump was not working and the toilets were all backed up. The condominium was cold, cluttered, and lacked electricity and gas. The floor boards had buckled and were a foot high, and the hardwood was cracking and opening. Sterno fuel cans on a desk looked like they had been used for cooking.

¶ 11 D.P. was admitted to Madden Mental Health Center (Madden) on May 4, 2016, and her mother returned to Florida. Then D.P. was released to her father's care when she agreed to go stay with him in Kansas and receive treatment there. However, after her release from Madden,

she ran from her father and went back to her prior living situation. Her mother returned to Chicago on or about May 18, 2016, to get a second writ because D.P. was not getting treatment. Her mother saw "no trespassing" signs and a May 17, 2016 eviction notice on the door of D.P.'s condominium. The police picked up D.P. and she was hospitalized at Madden again on May 21, 2016.

¶ 12 Dr. Shabbir Zarif, D.P.'s treating psychiatrist at Madden, was qualified as an expert and testified that he had observed D.P. on a daily basis and had individual and staffing sessions with her one to two times a week. He reviewed her social history and medical records, received information from her parents, and discussed her condition with his peers. Dr. Zarif diagnosed D.P. with non-bizarre and bizarre type delusional disorder. D.P. held fixed false beliefs about making productive career choices, the reasonableness of her lifestyle and standard of living, the theft of her music by famous artists, and the ability of other people to read her thoughts. Dr. Zarif was concerned that D.P. had expressed suicidal thoughts to her mother; D.P., however, denied having delusional disorder and asserted that her mother's reports were not true. Dr. Zarif opined that D.P.'s mental illness rendered her unable to provide for her basic physical needs so as to guard herself from serious harm without the assistance of her family or others. She lived in deplorable conditions, was being evicted from her home, and could not maintain enough income to pay for utilities. Dr. Zarif acknowledged that the father of D.P.'s friend was open to the possibility of allowing D.P. to live with him.

¶ 13 Dr. Zarif stated that D.P. was somewhat resistant to treatment and was very frustrated and angry. Dr. Zarif believed that if D.P. was discharged without medication treatment, she most likely would not seek or accept medical care because she did not appreciate her significant

decline in functioning and did not believe she had an illness or needed medication or treatment. Consequently, a locked inpatient facility was necessary to initiate and follow through with her treatment. Dr. Zarif opined that if D.P. did not receive treatment on an inpatient basis, she reasonably would be expected to deteriorate because she would likely return to her prior lifestyle and probably would have even less resources than before due to her estrangement from her family.

¶ 14 Dr. Zarif identified the contents of the State's group exhibit, which included his signed predisposition report, the master treatment plan, and the social assessment of D.P. When D.P. expressed concern about admitting the predisposition report into evidence, the trial court explained that it would only consider the predisposition report if it found that D.P. was subject to involuntary admission.

¶ 15 D.P. testified that she could get a job if she wanted one, being at Madden prevented her from earning an income because she could not go to job interviews, and she received money from her family. She asserted that her magazine had been international with a global readership but the subscriptions had expired and it was in a "relaunch phase." She claimed that she had not been evicted from her condominium, could heat it as needed, and had decided not to have any utilities there because she wanted to strip her life to the bare minimum and focus on her endeavors, goals and aspirations. She asserted that any deterioration in her health was due to being at Madden, which could not accommodate her vegan diet very well and did not allow her to go outside.

¶ 16 The trial court found that D.P. was subject to involuntary admission and ordered inpatient hospitalization at Madden for a period not to exceed 90 days.

¶ 17 The parties proceeded to hearing on the petition for involuntary medication. At the conclusion of the hearing, the trial court denied the petition, finding that the State did not prove by clear and convincing evidence that D.P. lacked the capacity to make a reasoned decision about taking medication. Thereafter, D.P. moved the court to reconsider and vacate the commitment order, petitioned for discharge from involuntary commitment, and moved for an independent examination. The trial court granted the motion for an independent examination, and a letter from the psychiatrist who performed that examination was subsequently filed with the court. Thereafter, the trial court denied D.P.'s motion to reconsider and vacate the commitment order, but granted her petition for discharge.

¶ 18 II. ANALYSIS

¶ 19 D.P. argues that (1) her appeal falls within the public interest, capable of repetition yet avoiding review, and collateral consequences exceptions to the mootness doctrine, (2) the State failed to prove that she met the criteria for involuntary commitment, and (3) the trial court violated her right to commitment in the least restrictive setting by failing to consider a predisposition report required by statute.

¶ 20 There is no dispute that D.P.'s claims on appeal are moot. The 90-day commitment order expired on September 28, 2016, and that period has long since passed. Moreover, the trial court granted D.P.'s petition for discharge on August 10, 2016, and ordered her release. The State argues that D.P.'s appeal should be dismissed as moot because the court can no longer grant her any effective relief and none of the exceptions to the mootness doctrine apply to this case. D.P., however, argues that we may consider this appeal under either the public interest exception, the capable of repetition yet evading review exception, or the collateral consequences exception.

¶ 21 Ordinarily, appellate courts do not have jurisdiction to consider moot issues. We may only consider D.P.'s claims if they fall within a recognized exception to the mootness doctrine. See *In re Alfred H.H.*, 233 Ill. 2d 345, 351 (2009). Whether a case falls within an established exception to the mootness doctrine is a case-by-case determination. *Id.* at 355.

¶ 22 A. The Public Interest Exception

¶ 23 Under the public interest exception, we may consider D.P.'s claims if (1) they present questions of a public nature, (2) an authoritative determination is needed to guide public officials and courts, and (3) the questions are likely to recur. See *id.* at 351. The public interest exception is narrowly construed and requires a clear showing of each criterion. *Id.* at 356.

¶ 24 D.P. asserts that the public interest exception is met because her appeal involves issues of statutory compliance concerning mandatory procedures in involuntary commitment proceedings, which are matters of considerable public concern, require an authoritative decision to provide guidance to public officials, and are likely to arise again in the future. Specifically, she argues that her sufficiency of the evidence claim has broader public interest implications because she believes a definitive decision is needed to provide guidance regarding what constitutes "mental or emotional deterioration" to warrant involuntary admission under section 1-119(3)(iii) of the Mental Health Code (Code) (405 ILCS 5/1-119(3)(iii) (West 2016)). She also contends that her least restrictive treatment setting claim, which is based on her assertion that the record fails to show compliance with the predisposition report requirements under section 3-810 of the Code (*id.* at 3-810), presents a legal question about procedural due process in involuntary commitment proceedings.

¶ 25 The questions presented in this case are (1) whether the State presented sufficient evidence to involuntarily commit D.P. to a mental health facility and (2) whether the trial court

violated her right to commitment in the least restrictive setting by failing to consider the required predisposition written report, which includes information on the appropriateness and availability of alternative treatment settings, a social investigation of the respondent, and a preliminary treatment plan, before entering a disposition. Both of these questions call for a case-specific review of the facts and do not present the kinds of broad public interest issues required to satisfy the first criterion of the public interest exception. *In re Alfred H.H.*, 233 Ill. 2d at 356-57. Consequently, D.P. has not clearly established that her issues on appeal are of sufficient breadth or have a significant effect on the public as a whole so as to satisfy the substantial public nature criterion.

¶ 26 Furthermore, it is highly unlikely that determinations on the sufficiency of the evidence and least restrictive setting claims in this case would have any impact on future litigation. The public interest exception "requires that the party asserting justiciability show that there is a 'need to make an authoritative determination for future guidance of public officers.' " *Id.* at 358 (quoting *In re Adoption of Walgreen*, 186 Ill. 2d 362, 365 (1999)). This case does not present a situation where the law is in disarray or there is conflicting precedent.

¶ 27 Contrary to D.P's assertions on appeal, courts and public officials already have guidance about assessing "mental or emotional deterioration" when deciding whether involuntary commitment is warranted. See 405 ILCS 5/1-119 (West 2016) ("the court may consider evidence of the person's repeated past pattern of specific behavior and actions related to the person's illness."); *In re C.E.*, 161 Ill. 2d 200, 228 (1994) (discussing the context of the deterioration analysis); *In re Debra B.*, 2016 IL App (5th) 130573, ¶¶ 50-52 (discussing what constitutes deterioration and proof of deterioration); *In re Torski C.*, 395 Ill. App. 3d 1010, 1022-23 (2009)

(discussing the testimony necessary to show deterioration, factors to consider to analyze whether an individual is deteriorating, and the basis for a court's involuntary commitment determination).

¶ 28 Furthermore, D.P. has not shown, and this court's research has not uncovered, any disarray in the law or conflicting legal precedent concerning the consequences of failing to comply with the predisposition report requirements. See, *e.g.*, *In re Robinson*, 151 Ill. 2d 126 (1992) (the State's failure to present a formal predisposition report was harmless error because expert testimony made reference to all the information required in the predisposition report and the respondent did not object); *In re Amanda H.*, 2017 IL App (3rd) 150164 (the State satisfies the Code's predisposition report requirement absent a formal written report only when the testimony provides the specific information required by the language of the statute). Moreover, the record here does not support an alleged failure to comply with the statutory predisposition report requirement because that report was admitted into evidence and the trial court explained to D.P. that the court would consider the report if the court found that D.P. was subject to involuntary admission.

¶ 29 Finally, there is no substantial likelihood that the material facts that give rise to D.P.'s insufficient evidence and least restrictive setting claims are likely to recur either as to her or anyone else. "Any future commitment proceedings must be based on the current condition of the respondent's illness and the decision to commit must be based upon a fresh evaluation of the respondent's conduct and mental state." (Internal quotation marks omitted.) *In re Alfred H.H.*, 233 Ill. 2d at 358. Therefore, it is highly unlikely that determinations of the sufficiency of the evidence and least restrictive setting claims in this case would have any impact on future litigation.

¶ 30 B. Capable of Repetition Yet Avoiding Review Exception

¶ 31 Under the capable of repetition yet avoiding review exception, we may consider D.P.'s claims if (1) the action challenged is of such short duration that it cannot be fully litigated before becoming moot and (2) there is a reasonable likelihood that the same party will be subjected to the same action again. See *id*.

¶ 32 D.P. asserts that she has met this exception because (1) the effect of the challenged order was limited to 90 days, which duration was too short to fully litigate that order prior to its cessation, and (2) there is a reasonable expectation that she will be subjected to the same action again, *i.e.*, that the predisposition report requirement will be violated again because the trial court adjudicated her mentally ill once, so she now has a history of mental illness and could again face a mental health proceeding.

¶ 33 The only question regarding this exception is whether D.P. has satisfied the second element. The Illinois Supreme Court has explained that the phrase "same action" does not mean that the actions need to be identical; rather, 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. "Simply stated, 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.

¶ 34 D.P. does not meet this burden. Her claims on appeal about the sufficiency of the evidence and least restrictive setting do not raise a constitutional argument or challenge the interpretation of the statute. Instead, she disputes whether the specific facts established during her hearing were sufficient to find that she was a danger to herself or to others and whether the

trial court considered a report before disposition. There is no clear indication of how a resolution of these claims could be of use to her in future litigation. *Id*. (even though the court's resolution of certain questions could be helpful to future litigants, the court does not review cases merely to set precedent or guide future litigation).

¶ 35 C. Collateral Consequences Exception

¶ 36 Under the collateral consequences exception, a court may review a court order or incarceration that has ceased "because a plaintiff has suffered, or is threatened with, an actual injury traceable to the defendant and likely to be redressed by a favorable judicial decision." (Internal quotation marks omitted.) *Id*. at 361 (finding that the collateral consequences exception did not apply in a case where collateral consequences had already attached to a respondent who was a felon, served a sentence for murder, and had multiple involuntary commitments). Continuing collateral consequences must be either proved or presumed. *Id*.

¶ 37 The Illinois Supreme Court stated that some potential legal benefits to the reversal of an involuntary commitment order could include a basis for a motion *in limine* to prohibit any mention of the hospitalization during the course of another proceeding or the respondent's ability to seek employment in certain fields affected by statutory provisions that allow an entity to refuse or revoke the license necessary to practice a profession based on mental illness. *Id*. at 363. However, 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." *In re Rita P.*, 2014 IL 115798, ¶¶ 34. Instead, "a reviewing court must consider all the relevant facts and legal issues raised in the appeal before deciding whether the exception applies." *Id*. ¶ 34.

¶ 38 D.P. asserts that this exception is met because a reversal of the trial court's findings would result in "a host of potential legal benefits" because the evidence did not show that she had any past involuntary commitments or felony convictions. She argues that the challenged commitment order could plague her in some future proceeding relating to her mental health because the State or a family member could use it as background information and history for any future attempt to obtain an *ex parte* order for her hospitalization. Also, she argues that the challenged order could adversely affect her efforts to obtain employment or renew or retain her driver's license because the evidence showed that at one time she traveled extensively for work when she was an auditor and had a car at her disposal.

¶ 39 When the facts of this case are considered, we do not find collateral consequences that could stem solely from the challenged order and warrant an exception to the mootness doctrine. The absence of any prior involuntary commitment order or felony conviction is not sufficient to warrant a collateral consequences exception in this case. Furthermore, if any future petitioner tried to seek an *ex parte* order for D.P.'s hospitalization, the petitioner's ability to obtain such an order would not turn upon the existence of the commitment order in this case. An *ex parte* order requires a petitioner to allege facts showing that an emergency exists such that immediate hospitalization is necessary and the petitioner must testify before the court as to the factual basis for the present allegation in the petition. 405 ILCS 5/3-701(b) (West 2016). Because a commitment order does not contain any factual details about a person's symptoms, behaviors, or actions, it does not constitute background and history that would assist in obtaining an *ex parte* order.

¶ 40 Finally, we find that D.P.'s bare assertions about collateral consequences plaguing her future ability to drive a car and obtain employment are too vague and unsupported. The evidence showed that D.P. had not worked as an auditor for several years since she left that field of work to pursue the independent publication of her own magazine. Moreover, she had not possessed a car for about three years and did not present any evidence showing that she was seeking a car or had the resources to obtain one. Also, she did not show that driving a vehicle was an important component of any prospective employment.

¶ 41 III. CONCLUSION

¶ 42 For the foregoing reasons, we conclude that D.P.'s claims on appeal have not met any of the exceptions to the mootness doctrine. Accordingly, we dismiss this appeal as moot.

¶ 43 Appeal dismissed.