

NOTICE

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2018 IL App (4th) 170733-U

NO. 4-17-0733

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED

July 3, 2018

Carla Bender

4th District Appellate

Court, IL

<i>In re</i> JUSTIN B., a Person Found Subject to)	Appeal from the
Involuntary Administration of Psychotropic)	Circuit Court of
Medication)	Sangamon County
)	No. 17MH323
(The People of the State of Illinois,)	
Petitioner-Appellee,)	
v.)	Honorable
Justin B.,)	Brian T. Otwell,
Respondent-Appellant).)	Judge Presiding.

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

ORDER

- ¶ 1 *Held:* The appellate court granted appellate counsel’s motion to withdraw, concluding no meritorious issues can be raised on appeal.
- ¶ 2 Following a September 2017 hearing, the trial court found respondent, Justin B., subject to the involuntary administration of psychotropic medication.
- ¶ 3 On appeal, respondent’s counsel seeks to withdraw his representation, contending any appeal in this cause would be meritless. We grant counsel’s motion to withdraw and affirm the trial court’s judgment.

¶ 4 **I. BACKGROUND**

¶ 5 On September 11, 2017, Dr. Zhihong Zhang filed a petition for the involuntary administration of psychotropic medication to respondent. Therein, Dr. Zhang indicated he had known respondent since July 14, 2017, and respondent has a serious mental illness or

developmental disability and has been diagnosed with schizophrenia. Because of his mental illness or developmental disability, respondent exhibits (1) deterioration of his ability to function, based on his refusal to sleep in his room, sleeping or sitting on a stool and falling off while sleeping, and not taking showers; (2) suffering, based on his paranoid delusions; and (3) threatening behavior, as evidenced by “making karate chopping, kicking [at] the air,” and “hitting at [an] unseen object with his fists.” Dr. Zhang sought to administer psychotropic medication to respondent, with the intended benefits being his ability to function normally, “not be suffering,” and not exhibit “threatening behaviors.” Dr. Zhang indicated he explained the risks and the intended benefits of the treatment and provided that information in written or printed form to respondent.

¶ 6 On September 15, 2017, the trial court conducted a hearing on the petition at McFarland Mental Health Center (McFarland). Respondent did not appear. His counsel, Kelly Phelps, stated respondent did not want him as his attorney because he worked for a state agency, and respondent believed there would be a conflict of interest. Respondent also told counsel he wanted “court at the county building.” The court removed Phelps from his representation of respondent and appointed Sean Liles, a private attorney, to represent him. The court then continued the hearing.

¶ 7 On September 22, 2017, the trial court conducted a hearing on the petition. Respondent did not appear. Liles stated he spoke with respondent the day before and prior to the hearing. Liles stated respondent told him that if “this was an actual court proceeding, it would be done in a courthouse.” When the court asked whether Liles thought it would be in respondent’s best interest to force him to be present, Liles stated it “would not be in his emotional or mental best interest.” The court decided to proceed in respondent’s absence.

¶ 8 Dr. Zhang testified as an expert in psychiatry and stated he diagnosed respondent with schizophrenia. Since March 2017, respondent had exhibited symptoms of schizophrenia, including “delusional thinking with behaviors, bizarre movements.” As examples of delusional thinking, respondent thought the police were after him and thought he was poisoned, so he turned off the power and heat even in colder weather. He was also arrested after he “beat his brother and put a screwdriver against his neck.” As examples of bizarre movements, respondent “was choking, kicking, making karate movement[s].” Dr. Zhang stated respondent has shown “paranoid thought,” thought the doctor worked for the Federal Bureau of Investigation, thought he was being held illegally, and believed doctors were holding him to make money. Dr. Zhang opined respondent does not have any capacity to make reasoned decisions about treatment, “has no insight into his mental illness,” has no “reality-based thinking,” and “cannot appreciate the consequence of refusing medications.” Respondent arrived at McFarland after “he was unfit to stand trial” on charges of battery and aggravated assault. Dr. Zhang stated respondent exhibited a deterioration of his ability to function, including an inability to sleep and maintain his personal hygiene.

¶ 9 According to Dr. Zhang, respondent is suffering because of his mental illness. Respondent also has engaged in threatening behavior, as he “has been constantly showing the fighting movement,” threw hot coffee at a staff member, and was “very aggressive” when out in the community.

¶ 10 Dr. Zhang asked the trial court to order several medications for respondent, including risperidone, risperidal consta, lorazepam, and benztropine. Dr. Zhang also mentioned two alternatives to risperidone, including olanzapine and haloperidol. Risperidone’s intended benefit was to reduce respondent’s psychosis, agitation, and aggression. Risperidal consta had

similar benefits but in an injectible form. Dr. Zhang stated lorazepam is used for agitation and aggression and benztropine can be used to reduce side effects like tremors and rigidity. Dr. Zhang also testified about the possible side effects of the drugs, but he was not worried about any particular side effects at the time of the hearing.

¶ 11 Dr. Zhang attempted to discuss the benefits, risks, and possible side effects of the medications with respondent, but respondent did not exhibit any understanding due to his mental illness. He presented respondent with a written list of the benefits, risks, and possible side effects, as well as a list of alternative treatments to psychotropic medication, but respondent refused to take them. Dr. Zhang told respondent he would put the materials in his box so he could read them later.

¶ 12 Dr. Zhang opined the benefits of treatment clearly outweighed the potential harm from any adverse side effects because the medications “have been used effectively to treat a patient with schizophrenia” and, without the drugs, respondent “will continue to have paranoid thinking, will continue to suffer, [and will] put himself or others in danger.” Other less restrictive services than psychotropic medication had been explored, but group or individual therapy was inappropriate for respondent. Dr. Zhang was unaware of respondent having a power of attorney for health care or any written mental-health-treatment declarations.

¶ 13 On cross-examination, Dr. Zhang stated respondent was not qualified for individual therapy because “he’s so psychotic that he cannot manipulate information in a rational way.” After the State rested, respondent’s counsel asked for a short break to attempt to talk with his client in hopes of him participating. The trial court granted the recess, but counsel indicated respondent refused to interact with him.

¶ 14 After hearing counsels’ arguments, the trial court found respondent had a serious mental illness, “exhibits arguably threatening behavior, but certainly, and by clear and convincing evidence, suffering.” The court also found the benefits of the treatment outweigh the harm, and less restrictive services were considered but found inappropriate. The court allowed the petition and ordered the proposed medication to be administered for a period of no more than 90 days. This appeal followed.

¶ 15 II. ANALYSIS

¶ 16 The *Anders* procedure pertaining to an appellate counsel’s motion to withdraw has been found to be applicable in the context of an appeal from an involuntary commitment order. *In re Juswick*, 237 Ill. App. 3d 102, 104, 604 N.E.2d 528, 530 (1992) (citing *Anders v. California*, 386 U.S. 738 (1967)). Here on appeal, respondent’s counsel has filed a brief, wherein he asks this court to allow him to withdraw because the appeal has no merit. He also raises several potential issues for review. The State filed a brief asking this court to affirm the trial court’s judgment. Because respondent’s counsel failed to show service of the motion on respondent, we continued this matter until such time as counsel provided evidence of reasonable efforts to serve his client. He has now done so, as evidenced by his proof of service dated June 12, 2018. We granted respondent seven days to file a response. No response has been filed. After examining the record and the possible issues on appeal, we grant appellate counsel’s motion to withdraw and dismiss the appeal.

¶ 17 A. Mootness

¶ 18 Initially, we note this case is moot as the 90-day treatment order entered on September 22, 2017, has expired. However, issues raised in an otherwise moot appeal may be reviewed when (1) addressing the issues involved is in the public interest; (2) the case is capable

of repetition, yet evades review; or (3) the respondent will potentially suffer collateral consequences as a result of the trial court’s judgment. *In re Alfred H.H.*, 233 Ill. 2d 345, 355-61, 910 N.E.2d 74, 80-83 (2009).

¶ 19 *1. Public-Interest Exception*

¶ 20 The public-interest exception permits review of otherwise moot cases when (1) the question is of a public nature, (2) there is a need for an authoritative determination for the future guidance of public officials, and (3) the question is likely to recur in the future. *Alfred H.H.*, 233 Ill. 2d at 355, 910 N.E.2d at 80.

¶ 21 In the case *sub judice*, respondent’s counsel raises issues involving the statutory notice requirement of the proposed risks and benefits of the proposed medication set forth in section 2-102(a-5) of the Mental Health Code (Code) (405 ILCS 5/2-102(a-5) (West 2016)) and the weight of the State’s evidence under section 2-107.1(a-5)(4) of the Code (405 ILCS 5/2-107.1(a-5)(4) (West 2016)).

¶ 22 “Involuntary admission procedures implicate substantial liberty interests.” *In re Robinson*, 151 Ill. 2d 126, 130, 601 N.E.2d 712, 715 (1992). The procedures regulating the involuntary admission of a person suffering from a mental illness are a matter of public concern. *In re Robert F.*, 396 Ill. App. 3d 304, 311, 917 N.E.2d 1201, 1206 (2009).

¶ 23 Here, we conclude an authoritative determination for the future guidance of public officials is not necessary as the issues raised by counsel have already been addressed in previous appellate decisions. See *In re Katarzyna G.*, 2013 IL App (2d) 120807, ¶¶ 16-17, 995 N.E.2d 585 (addressing section 2-102(a-5) of the Code and the written-notice requirement); *In re Beverly B.*, 2017 IL App (2d) 160327, ¶ 39, 86 N.E.3d 1279 (addressing section 2-107.1(a-5)(4)(B) of the Code and the clear-and-convincing-evidence requirement). Thus, the public-

interest exception to the mootness doctrine does not apply to these issues.

¶ 24 2. *Capable-of-Repetition-Yet-Evading-Review Exception*

¶ 25 The capable-of-repetition-yet-evading-review exception applies when (1) the action is too short to be fully litigated prior to the expiration of the underlying order, and (2) a reasonable expectation exists that the complaining party will be subject to the same action in the future. *Alfred H.H.*, 233 Ill. 2d at 358, 910 N.E.2d at 82.

¶ 26 Respondent meets the first criteria of this exception. Respondent’s involuntary treatment order was limited to 90 days, causing the order to be of such short duration that it could not have been fully litigated prior to its expiration. However, respondent does not meet the second requirement of the exception. Respondent has to show a substantial likelihood that a resolution of the procedural issues in this case will “have some bearing on a similar issue” in a later case. *Alfred H.H.*, 233 Ill. 2d at 360, 910 N.E.2d at 83. Whether respondent’s procedural rights were violated and the strength of the State’s case are fact-based determinations and will not likely have an impact on future litigation. Thus, the capable-of-repetition-yet-evading-review exception does not apply in this case.

¶ 27 3. *Collateral-Consequences Exception*

¶ 28 The collateral-consequences exception applies to mental-health cases and is decided on a case-by-case basis. *In re Rita P.*, 2014 IL 115798, ¶ 31, 10 N.E.3d 854 (citing *Alfred H.H.*, 233 Ill. 2d at 362, 910 N.E.2d at 84). “Under this exception, where collateral consequences survive the expiration or cessation of a court order that are likely to be redressed by a favorable judicial determination, appellate review is permissible.” *Rita P.*, 2014 IL 115798, ¶ 31, 10 N.E.3d 854. Although our supreme court has recognized that mere reversal “will not, in itself, purge a respondent’s mental health records of any mention of the admission or treatment,

that is not the same as saying that there is no effect whatsoever.” *Alfred H.H.*, 233 Ill. 2d at 362, 910 N.E.2d at 84. Reversal could have several benefits, such as affecting the respondent’s ability to seek employment and preventing the respondent’s hospitalization from being mentioned in a subsequent proceeding. *Alfred H.H.*, 233 Ill. 2d at 362, 910 N.E.2d at 84.

“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. [Citation.] Collateral consequences must be identified that ‘could stem solely from the present adjudication.’ [Citation.]” *Rita P.*, 2014 IL 115798, ¶ 34, 10 N.E.3d 854.

¶ 29 In this case, Dr. Zhang noted respondent came to McFarland on July 14, 2017, by court order. Although unclear, it appears respondent had been arrested for the incident pertaining to the assault of his brother. Dr. Zhang stated respondent had been found unfit to stand trial on charges of battery and aggravated assault. Given the possible criminal proceedings against respondent, and considering how his involuntary treatment could pertain to issues in that proceeding and future proceedings, we find the collateral-consequences exception applies. Accordingly, we will address the merits of the issues raised by respondent’s counsel.

¶ 30 B. Notice

¶ 31 Before the State may proceed with the involuntary administration of psychotropic medication, the State must show “the recipient lacks the capacity to make a reasoned decision

about the treatment.” 405 ILCS 5/2-107.1(a-5)(4)(E) (West 2016). “Before a respondent can make a ‘reasoned decision’ about treatment, the respondent must be advised in writing about several things important to making that decision.” *Katarzyna G.*, 2013 IL App (2d) 120807, ¶ 16, 995 N.E.2d 585. Section 2-102(a-5) of the Code (405 ILCS 5/2-102(a-5) (West 2016)) provides as follows:

“If the services include the administration of electroconvulsive therapy or psychotropic medication, the physician or the physician’s designee 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.”

“Section 2-102(a-5) of the Code not only ensures that a respondent is fully informed about the risks, benefits, side effects, and alternatives to treatment, but also ensures that the respondent’s due process rights are protected.” *Katarzyna G.*, 2013 IL App (2d) 120807, ¶ 16, 995 N.E.2d 585.

¶ 32 In this case, Dr. Zhang testified he attempted to discuss the benefits, risks, and possible side effects of the medications with respondent, but respondent did not exhibit any understanding due to his mental illness. He presented respondent with a written list of the benefits, risks, and possible side effects, as well as a list of alternative treatments to psychotropic medication, but respondent refused to take them. Dr. Zhang told respondent he would put the materials in his box so he could read them later. With no evidence to the contrary, the evidence

indicates Dr. Zhang complied with the written-notification requirement of section 2-102(a-5) of the Code.

¶ 33 C. Sufficiency of the Evidence

¶ 34 Section 2-107.1(a-5)(4) of the Code (405 ILCS 5/2-107.1(a-5)(4) (West 2016)) provides psychotropic medication “may be administered to the recipient if and only if it has been determined by clear and convincing evidence” that certain factors are present. In determining whether a person meets the criteria specified in the statute, “the court may consider evidence of the person’s history of serious violence, repeated past pattern of specific behavior, actions related to the person’s illness, or past outcomes of various treatment options.” 405 ILCS 5/2-107.1(a-5)(4) (West 2016). Section 2-107.1(a-5)(4) of the Code (405 ILCS 5/2-107.1(a-5)(4) (West 2016)) lists the criteria as follows:

“(A) That the recipient has a serious mental illness or developmental disability.

(B) That because of said mental illness or developmental disability, the recipient currently exhibits any one of the following:
(i) deterioration of his or her ability to function, as compared to the recipient’s ability to function prior to the current onset of symptoms of the mental illness or disability for which treatment is presently sought, (ii) suffering, or (iii) threatening behavior.

(C) That the illness or disability has existed for a period marked by the continuing presence of the symptoms set forth in item (B) of this subdivision (4) or the repeated episodic occurrence of these symptoms.

(D) That the benefits of the treatment outweigh the harm.

(E) That the recipient lacks the capacity to make a reasoned decision about the treatment.

(F) That other less restrictive services have been explored and found inappropriate.

(G) If the petition seeks authorization for testing and other procedures, that such testing and procedures are essential for the safe and effective administration of the treatment.”

¶ 35 In this case, Dr. Zhang testified respondent had been diagnosed with schizophrenia and had demonstrated symptoms since March 2017. Because of that mental illness, Dr. Zhang stated respondent suffered from a deterioration of his ability to function and was unable to make reasoned decisions as to his health care. Dr. Zhang stated other less restrictive means of treatment, including group and individual therapy, had been considered and rejected. Further, the proposed treatment would have the benefits of reducing respondent’s symptoms of suffering, agitation, and aggression. Dr. Zhang believed respondent would be at minimal risk for possible side effects from the psychotropic medication. Dr. Zhang also requested a complete blood count, a comprehensive metabolic profile, and an electrocardiogram to help with the safe and effective administration of treatment by psychotropic medication, as well as to help monitor any possible side effects. As the State provided clear and convincing evidence of the need for respondent’s involuntary treatment, we find no error in the trial court’s decision authorizing such treatment. Accordingly, as any appeal in this cause would be without merit, we grant counsel’s request to withdraw.

¶ 36

III. CONCLUSION

¶ 37 For the reasons stated, we grant counsel's request to withdraw and affirm the trial court's judgment.

¶ 38 Affirmed.