2018 IL App (5th) 140111-U

NO. 5-14-0111

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

In re ROGER S., a Person Found Subject to Involuntary Medication	)	Appeal from the Circuit Court of Madison County.
(The People of the State of Illinois, Petitioner-Appellee, v. Roger S., Respondent-Appellant).	)	No. 14-MH-10
	)	Honorable Thomas W. Chapman, Judge, presiding.

JUSTICE WELCH delivered the judgment of the court.
Justices Goldenhersh and Moore concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court's judgment for involuntary administration of psychotropic medication is reversed where the State admitted error in its failure to comply with section 2-102(a-5) of the Mental Health and Developmental Disabilities Code in failing to provide written information to the respondent about nonmedical alternatives to treatment (405 ILCS 5/2-102(a-5) (West 2014)). The public-interest exception to the mootness doctrine allows this court to consider the appeal.

¶ 2 The respondent, Roger S., appeals a February 28, 2014, judgment of the circuit court of Madison County which found him subject to the involuntary administration of psychotropic medications. For the following reasons, we reverse.

¶ 3 BACKGROUND

¶ 4 On January 30, 2014, Dr. Sanghee Kim-Ansbro, a psychiatrist at the Alton Mental Health Center (AMHC), filed a petition for the continued involuntary administration of psychotropic medication to the respondent. On February 28, 2014, the trial court held a hearing on the petition and found that the respondent was a person subject to the continued involuntary administration of psychotropic medication. On March 12, 2014, the respondent filed a notice of appeal.

¶ 5 As this court has already detailed the patient history of Roger S. in a previous appeal, we will only reiterate those facts necessary to understand the January 30, 2014, petition and the subsequent appeal. See *In re Roger S.*, 2017 IL App (5th) 130585-U. The order for continued medication that is the subject of this appeal arose from a previous petition filed by Dr. Kim-Ansbro on November 1, 2013. The relevant petition was filed upon the expiration of the November 1, 2013, petition. However, as this court reversed the trial court's judgment as to the November 1, 2013, petition, the January 30, 2014, petition that is the subject of this appeal is the first involuntary medication order known by this court to have been entered against the respondent. See *Roger S.*, 2017 IL App (5th) 130585-U.

¶ 6 In the January 30, 2014, petition, Dr. Kim-Ansbro asserted that the respondent should be subject to continued involuntary medication because his behavior satisfied all three of the criteria under section 2-107.1 of the Mental Health and Developmental Disabilities Code (Code). 405 ILCS 5/2-107.1 (West 2014). The petition alleged that (1) the respondent had a serious mental illness or developmental disability and had been

diagnosed with schizoaffective disorder, bipolar type; (2) as a result of this diagnosis, the respondent was exhibiting deterioration in his ability to function, suffering, and threatening behavior; (3) the mental illness had existed for a period of time, marked by the continuing presence of symptoms since his late teens; (4) the respondent had been treated in the past with psychotropic medication; (5) the intended benefits of medication outweighed the harm; (6) the respondent objected to the administration of the requested medication; however, he lacked the capacity to make a reasoned decision about treatment because he did not believe he has a mental illness and he was "not in touch with reality and unable to converse in a rational manner"; and (7) other less restrictive services were explored and found inappropriate to treat the respondent without the use of psychotropic medication.

¶ 7 On February 28, 2014, the trial court held a hearing on the petition. At the hearing, Dr. Kim-Ansbro testified that she was the respondent's treating psychiatrist since his initial admission on February 27, 2013. She testified that, as a result of his mental illness, the respondent exhibits symptoms that include disorganized thinking and various delusions. She testified that the respondent believes that the food he was being given by the hospital was poisoned and that he had been poisoned with a biological weapon. She also testified that he believes he suffers from Addison's disease, despite having been seen by two different endocrinologists who ruled out the diagnosis. According to her testimony, these symptoms showed deterioration in his ability to function.

¶ 8 When asked about how the respondent was suffering, Dr. Kim-Ansbro testified that, prior to any court-ordered medication, he was tormented about his belief that he was

being poisoned and that the hospital staff was trying to kill him, but since the administration of the psychotropic medication, he seemed to be less bothered and distressed and his suffering had lessened.

¶ 9 When asked if the respondent exhibited any threatening or aggressive behavior, Dr. Kim-Ansbro testified that, prior to the psychotropic medication, he had threatened to hit a physician with a brick, threw a bowl of cereal at the staff, pushed a door shut and hit a physician's foot, threatened to slit the throat of another patient, hit a member of the staff with coffee he threw across the dining room, spit on the floor and banged a nightlight cover with his fist, and asked for a gun. However, she went on to testify that, since the start of medication, the respondent had no further incidents of threatening behavior or physical aggression.

¶ 10 Dr. Kim-Ansbro testified that the respondent was currently on psychotropic medication. She then recited the list of primary and alternative medications that she was asking the court to approve as well as the intended benefits and risks of the medications. She further testified that any risks due to the respondent's high cholesterol and high triglyceride levels were outweighed by the benefits of each primary and alternative medication.

¶ 11 Dr. Kim-Ansbro testified that she had explained the intended benefits and the possible risks of each medication to the respondent and provided him with those written materials; however, she was not asked, nor did she testify, that the respondent was provided with written materials regarding nonmedical alternatives to treatment as required by the Code. She testified that, in her opinion, he objected to taking the

medication because he did not have the capacity to make a reasoned decision about the proposed medications. She opined that "he's not in touch with *** reality [in] a rational manner, his delusions [are] so fixed and longstanding that they are not amenable to reasoning or explanation. And his poor reality testing prevents him from understanding the relevance and significance of proposed treatment or possible consequences of not receiving [it]."

¶ 12 Dr. Kim-Ansbro testified that other less restrictive forms of treatment such as counseling, activities in the unit, and treatment classes for rehabilitation had been attempted but were unsuccessful. She further testified that the respondent's condition did not respond to those treatment modalities without the use of psychotropic medication.

¶ 13 Dr. Kim-Ansbro testified that the administration of any medications to the respondent would be handled by the nursing staff at AMHC and that he would be monitored by assessing his vital signs and body weight, as well as an electrocardiogram, complete blood cell count, metabolic panel, and lipid profile for the purpose of monitoring any potential side effects.

¶ 14 The respondent testified on his own behalf that he could take better care of himself than the doctors could. He also explained that the reason he chooses to utilize a wheelchair, rather than walk, is because he is afraid of falling or seizing and injuring himself. He then went on to elaborate that he was not getting real health care, called his treatment anti-health care, and stated that the petition completed by Dr. Kim-Ansbro is full of lies. He denied the allegations of aggression, testifying specifically that he did not throw a brick at a physician, slam the door on a physician's foot, or ask for a gun. He did

admit on the stand that in reference to another patient, he said to one of the staff "[w]hy don't you go home and I can slit his throat and make it a little bit better place ***."

¶ 15 The respondent then testified about some of the side effects he began experiencing once he was put on mandatory medication. He testified that, on the first medication, he could not sleep for days. On the second medication, he testified that he had trouble closing his hands and squeezing to the point that he could not hold a comb or a broom. He further testified that the medications made him feel dizzy and made the room spin. He likened it to an epileptic seizure. He also testified that the medications gave him blurred and double vision, muscle cramps, difficulties in turning his neck left and right, a constant headache, and a burning/stinging sensation in his hands and feet. He testified that he did not want to continue taking the medication. He told the court that being on the medication was the "worst [he's] ever felt in [his] lifetime ever."

¶ 16 Dr. Kim-Ansbro was recalled to testify about the possible alternative causes of the physical symptoms from which the respondent testified that he was suffering. She testified that the weakness in his hands and feet could be due to the progression of his arthritis. She testified, however, that the dizziness reported by the respondent is a common symptom, as most psychotropic medications cause a change in blood pressure. She further testified that the tingling in his hands and feet could be the result of inflammation.

¶ 17 On February 28, 2014, the trial court issued a written order for involuntary administration of psychotropic medication. The court determined that the respondent has a serious mental illness, was exhibiting deterioration in his ability to function, and was

suffering. The court did not cite threatening behavior as a reason for the imposition of involuntary medication. The court further ruled that the benefits of the medication would outweigh the harm, that the respondent lacked the capacity to make a reasoned decision about the treatment, that other less restrictive means were explored and found inappropriate, and that testing and/or other procedures were necessary for the safe administration of treatment. On March 12, 2014, the respondent filed a notice of appeal.

¶ 18 ARGUMENT

¶ 19 At the outset, this court notes that this appeal is moot as the February 28, 2014, 90-day involuntary medication order has expired. However, an otherwise moot appeal may be heard when either "the immediacy or magnitude of the interests involved" warrants review or the issue is likely to recur but will evade review because of the inherently short-lived nature of the controversy. *In re A.W.*, 381 Ill. App. 3d 950, 954 (2008).

¶ 20 In determining whether a mootness exception applies, a court must conduct a case-by-case analysis and " 'consider all the applicable exceptions in light of the relevant facts and legal claims raised in the appeal.' " *In re Rita P.*, 2014 IL 115798, ¶ 32 (quoting *In re Alfred H.H.*, 233 Ill. 2d 345, 364 (2009)). There is no automatically applicable exception to mootness in involuntary medication/treatment cases. *Id.* ¶ 34.

¶ 21 There are three recognized exceptions to the mootness doctrine, the relevant exception to this case being the public-interest exception. This exception "applies only if a clear showing exists that (1) the question at issue is of 'a substantial public nature,' (2) an authoritative determination is needed to guide public officers in the performance of

their duties, and (3) the circumstances are likely to recur in other cases." *In re A.W.*, 381 Ill. App. 3d at 454. "The public-interest exception must be 'narrowly construed and requires a clear showing of each criterion.' " *Id.* (quoting *Felzak v. Hruby*, 226 Ill. 2d 382, 393 (2007)).

¶ 22 First, this case is of a substantial public nature because it presents an issue of statutory compliance under the Code which prior courts have already acknowledged as "matters of a public nature and of substantial public concern." *In re Mary Ann P.*, 202 Ill. 2d 393, 402 (2002). Additionally, "strict compliance with statutory procedures is required based on the important liberty interests involved in involuntary-treatment cases." *A.W.*, 381 Ill. App. 3d at 955.

¶ 23 Second, a determination in this case will guide public officers in the performance of their duties because it will instruct the State as to how an involuntary-treatment or involuntary-medication hearing must be conducted in order to comply with the requirements under the Code. Though the State has already admitted to the error, it has failed to provide all statutorily required written materials at least twice to this respondent alone, and therefore, it seems that instruction or guidance is needed.

¶ 24 Third, the circumstances are likely to recur because under the Code the State is required to prove a person lacks the ability to make a reasoned decision about his treatment in all involuntary-treatment and involuntary-medication cases. Therefore, we find that the public-interest exception to the mootness doctrine applies in this case.

¶ 25 Next, we turn to the merits of this case. Under section 2-102(a-5) of the Code, a physician is required to "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 recipient's ability to understand the information communicated." 405 ILCS 5/2-102(a-5) (West 2014). Further, section 2-107.1(a-5)(4) requires that before an order for involuntary-medication is entered, the State must prove by clear and convincing evidence that the "recipient lacks the capacity to make a reasoned decision about the treatment." *Id.* § 2-107.1(a-5)(4)(E). The State concedes that it did not prove that the respondent received written information about nonmedical alternatives to treatment prior to the entry of the involuntary medication order and thus did not comply with the Code. Therefore, we reverse.

¶ 26 CONCLUSION

¶ 27 For the foregoing reasons, we reverse the February 28, 2014, order of the circuit court of Madison County.

¶ 28 Reversed.