2019 IL App (5th) 160359-U

NO. 5-16-0359

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

In re PAMELA M., a Person Found Subject to Involuntary Medication	)	Appeal from the Circuit Court of Union County.
(The People of the State of Illinois,	)	
Petitioner-Appellee,	)	No. 16-MH-60
v.	)	
Pamela M.,	)	Honorable Mark M. Boie,
Respondent-Appellant).	)	Judge, presiding.

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

ORDER

¶ 1 *Held*: The circuit court's order authorizing the involuntary administration of psychotropic medication is affirmed and the respondent's appeal is dismissed in part (1) where the respondent was not prejudiced by the fact that formal notice was not given to her guardian, and (2) where the respondent's argument relating to the sufficiency of the evidence to support the order is moot and is not excused by any applicable exception to the mootness doctrine.

¶ 2 The respondent, Pamela M., appeals the circuit court's August 10, 2016, order finding her subject to involuntary administration of psychotropic medication under the Mental Health and Developmental Disabilities Code (Code) (405 ILCS 5/2-107.1 (West

2016)). On appeal, the respondent argues (1) that the court's order must be reversed because there was no notice sent to her guardian, (2) that the order must be reversed because the State did not present clear and convincing evidence to support the petition, and (3) that this case is not moot because it falls within two recognized exceptions to the mootness doctrine. For the following reasons, we dismiss the appeal in part and affirm.

¶ 3 I. BACKGROUND

¶ 4 On July 29, 2016, Dr. Vikas Arora, the respondent's psychiatrist at the Choate Mental Health and Development Center (Choate Mental Health), filed a petition seeking to involuntarily administer psychotropic medication to the respondent, pursuant to section 2-107.1 of the Code (405 ILCS 5/2-107.1 (West 2016)). The petition and attached addendum alleged in pertinent part that (1) the respondent: (a) had a major mental illness; (b) exhibited erratic compliance with taking psychotropic medications; (c) lacked the mental capacity concerning the need to take psychotropic medications to treat her mental illness; and (d) because of her mental illness, she was: (i) suffering; (ii) a danger to others; and (iii) unable to function in the community; (2) the benefits of the medication clearly outweighed the harm; (3) the respondent lacked the capacity to make a reasoned decision about the treatment offered; and (4) other less restrictive services were explored and found ineffective in treating her. The petition also sought authorization for a number of tests and procedures to be performed on her in conjunction with the administration of the psychotropic medications.

¶ 5 A hearing on the petition was conducted on August 10, 2016. There, Dr. Arora testified he is a board-certified psychiatrist employed by Choate Mental Health, where he

treated the respondent on two or three occasions, each resulting in a petition for involuntary administration of psychotropic medications. Dr. Arora testified that he diagnosed the respondent with paranoid schizophrenia, which was a serious mental illness, and that she experienced delusions, disorganized thinking, disorganized behavior, and intense mood and affect liability. When asked about the delusions, Dr. Arora testified that the respondent believed she could baptize people with her spit. He also said she believed that her husband raped her, sodomized her, and forced medications down her throat. Another of her delusions was that the psychotropic medications gave her heart damage, when in fact her electrocardiogram results were normal.

¶ 6 As to the respondent's disorganized behavior, the doctor explained that she was hard to redirect and would yell, scream, and curse. She had mood and affect liability where she would be calm one moment and then extremely explosive and angry the next. Due to her anger and poor impulse control, she would get in peers' faces and call them fat. Dr. Arora also testified to an incident between the respondent and Dr. Diana Tracy, who was her initial psychiatrist, in which she stood over Dr. Tracy and threatened to have her license revoked.

¶ 7 Dr. Arora opined that the respondent exhibited a deterioration of her ability to function because of her mental illness. Specifically, he believed her symptoms of irritability, anger, poor impulse control, intrusiveness, as well as her bizarre, religious, and persecutory delusions, were preventing her from being able to participate in her treatment programs. He also believed she was deteriorating based on the fact she had become disruptive in class and in her programs.

¶ 8 Dr. Arora's observations also led him to conclude that the respondent was suffering as a result of her mental illness. He came to this conclusion based on the fact that (1) she had bizarre, religious, and persecutory delusions; (2) she had explosive anger and temperament problems; (3) she was verbally aggressive in that she yelled, cursed, and insulted nurses and technicians; and (4) she believed her husband, who was also her legal guardian, raped her, sodomized her, and forced medications down her throat. When asked what physical or emotional manifestations the respondent exhibited based on the foregoing beliefs, Dr. Arora recalled that she was very intrusive, getting in patients' or staff members' faces; she would call staff members "bitch" or other profanities; and she called other patients fat and otherwise harassed or intimidated them.

¶ 9 Dr. Arora also testified that he believed the respondent exhibited threatening behavior because of her mental illness. In support of this observation, he cited the fact that Dr. Tracy was "very fearful for her life" because the respondent threatened and tried to intimidate her. The respondent was also aggressive and insulting to other patients, as well as aggressive and provocative towards technicians or nurses. Dr. Arora's notes reflected that while the respondent was in the emergency room and off her medications, she threatened to sever another patient's penis. For these reasons, he opined that she was a danger to herself and others.

¶ 10 Dr. Arora recommended that the trial court approve the administration of the following primary medications: (1) haloperidol, either orally, intramuscularly, or by decanoate injection; (2) Ativan, either orally or intramuscularly; (3) Cogentin, either orally or intramuscularly; and (4) Lamictal administered orally. The doctor recited the suggested

dosages, as well as three alternative medications and dosages, that he requested be approved. He testified in detail regarding the possible side effects of the medications and said that, based on his expert opinion, the intended benefits of each medication outweighed the risks and dangers.

¶ 11 Dr. Arora stated that he explained the risks and benefits of the medications to the respondent and provided her with written information, but she refused to take the medications. He opined that she lacked the capacity to make a reasoned decision about taking her medication for the following reasons. First, he recalled that she was erratically compliant in taking her medications, *i.e.*, she would take them for a while, then refuse, and then take them again, which he found to be an indicator that she did not possess mental capacity concerning the importance of taking her psychotropic medicine on a daily basis. Second, she did not have a strong grasp of her mental health symptoms or understand the consequences of not taking her medicine in the prescribed manner. Third, she wanted to exert control over the dosage of the medications she was receiving. For example, she said that she would only take two milligrams of haloperidol twice a day, when the proper dosage was much higher than that amount. When the doctors tried to explain the proper dosage to her, she would become loud, verbally aggressive, and other symptoms of her mental illness would flare up.

¶ 12 Dr. Arora also testified that other less restrictive forms of treatment, like various forms of therapy, had been explored but were inappropriate in the respondent's situation without the use of psychotropic medications.

¶ 13 When asked about who would administer the proposed medications, Dr. Arora responded that the nurses at Choate Mental Health would do so. As to the tests and procedures requested in the petition, which included a comprehensive metabolic panel, lipid profile, electrocardiogram, thyroid profile, and urinalysis, Dr. Arora said that they would be performed to ensure that the administration of the psychotropic medications to the respondent was safe and effective.

¶ 14 On cross-examination, Dr. Arora was further questioned about the respondent's delusions regarding her husband. Dr. Arora testified that, as was stated in the addendum to the petition, the respondent's husband was her legal guardian. Although the doctor opined that her allegations against her husband were just delusions, he had no actual knowledge to either confirm or deny them.

¶ 15 The respondent testified that she did not have a mental illness but complied with her medications in order to function in society. She then went on a tangent about the widespread use of psychotropic medications in America. She stated that her allegations against her husband were not delusions, further detailed the alleged acts he committed against her, and said she filed for divorce against him in 2008.

¶ 16 She then testified that she was trained, certified, and worked as a nurse for 12 years. Because of such experience, she said she understood when the doctor provided her with the risks and benefits of her medications. She then recited some of her concerns about her medications. The respondent stated that she was an orthodox Christian, and so she believed she could baptize people in spit or any liquid. She subsequently testified that she only called Dr. Tracy a bitch because Dr. Tracy prescribed a high dose of haloperidol and

because her vegan diet was not honored. The respondent believed she could still perform her activities of daily living and that she was capable of making reasoned decisions concerning her medications. She agreed to take the haloperidol and Cogentin but not the Ativan and Lamictal because of her concerns about the side effects.

¶ 17 At the conclusion of the hearing, the trial court issued oral findings including that the respondent has a serious mental illness, was exhibiting deterioration in her ability to function, and was exhibiting threatening behavior. The court further found that, even though she may have some understanding as to the risks and benefits of her medications as a result of her nursing background, she lacked capacity to make a reasoned decision about her medications based on her erratic compliance. Finally, the court concluded that less restrictive services were explored and found inappropriate, information regarding the requested medications was given to her, and the requested tests and procedures would help ensure that the medications were safe. Subsequently, the court entered a written order authorizing the involuntary administration of psychotropic medication to the respondent for a period not to exceed 90 days. On August 22, 2016, she filed a notice of appeal.

¶ 18 II. ANALYSIS

¶ 19 On appeal, the respondent argues that (1) the trial court's order must be reversed because there was no notice sent to her guardian, (2) the order must be reversed because the State failed to present clear and convincing evidence to prove she exhibited deterioration in her ability to function, and (3) this case is not moot because it falls within two exceptions to the mootness doctrine.

¶ 20 With respect to the mootness issue, which we must address prior to reaching the merits of the respondent's appeal, we note that this appeal is moot as the August 10, 2016, 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).

¶ 21 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.

¶ 22 There are three recognized exceptions to the mootness doctrine, the first 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." *A.W.*, 381 Ill. App. 3d at 954. "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)).

¶ 23 The first issue presented in this appeal 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.

¶ 24 Second, a determination of this issue 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. The respondent alleges that the State failed to provide statutorily required notice to her guardian, the State asserts actual notice was not required, and, therefore, it seems that instruction or guidance is needed on the matter.

¶ 25 Third, the circumstances are likely to recur because, under the Code, the State is required to provide a copy of the involuntary-medication petition along with notice of the time and place of the hearing to, *inter alia,* a respondent and to his or her guardian in all involuntary-medication cases. Therefore, we find that the public-interest exception to the mootness doctrine applies to the first issue presented by the respondent's appeal.

¶ 26 We also find that the capable-of-repetition-yet-evading-review exception to the mootness doctrine applies to the present matter. Application of this exception involves a two-prong test. The action must be of the type that cannot be litigated within its short duration, and there must be a reasonable expectation of a reoccurrence of this action against the respondent in the future. *Alfred H.H.*, 233 Ill. 2d at 358.

¶ 27 Here, the involuntary-medication order was only for 90 days, which is too short a duration for it to be fully litigated before the expiration of the order. The respondent's history of being subject to petitions for involuntary administration of psychotropic medication provides a reasonable expectation that she could be reviewed for the

involuntary administration of the medicine again. Thus, the issue of statutory compliance presented here is substantially likely to resurface in a future involuntary-medication action against the respondent. For these reasons, there is a substantial likelihood that a resolution of the first issue presented by this appeal will have some bearing on similar issues raised by her in a subsequent case. Accordingly, our review of the trial court's order is also proper under the capable-of-repetition-yet-evading-review exception to the mootness doctrine.

¶ 28 However, the second issue presented by the respondent's appeal, which concerns whether the State presented sufficient evidence to justify the involuntary administration of psychotropic medication, does not fall into an exception to the mootness doctrine. Importantly, we note that the argument portion of her brief regarding the mootness exceptions focuses solely on the issue of the State's failure to comply with the notice requirement and does not argue that her sufficiency of the evidence claim falls under either of the exceptions advanced. Similarly, the State agreed when asked during oral argument whether the respondent's sufficiency of the evidence claim was likely moot.

¶ 29 In *Alfred H.H.*, the supreme court addressed whether the public-interest or capable-of-repetition-yet-evading-review exceptions to the mootness doctrine applied to respondent's claim on appeal that the State did not present sufficient evidence to justify his involuntary commitment. *Id.* at 351, 355-59. In analyzing whether the public-interest exception applied, the court found that "[s]ufficiency of the evidence claims are inherently case-specific reviews that do not present *** broad public interest issues ***." *Id.* at 356-57. Although the court acknowledged that, even cases presenting sufficiency-of-the-evidence questions have precedential value, it ultimately found that if the threshold of

future precedential value was set so low, it would "virtually eliminate the notion of mootness." *Id*. at 357. Finally, the court found no likelihood that the factual question presented in that appeal would recur because any future commitment proceedings against respondent would be "based on the current condition of *** respondent's illness," and any future commitment orders would be "based upon a fresh evaluation of *** respondent's conduct and mental state." (Internal quotation marks omitted.) *Id*. at 358. As such, the court determined that the public-interest exception did not apply to respondent's sufficiency of the evidence claim. *Id*.

¶ 30 The court then addressed whether the capable-of-repetition-yet-evading-review exception applied. *Id*. at 358-60. Although the court found the first element of the exception was met, it determined that the second element was not satisfied based on the following reasoning:

> "His claim on appeal is that the trial court lacked sufficient evidence to order his involuntary commitment. Respondent does not raise a constitutional argument or challenge the interpretation of the statute. Instead, he disputes whether the specific facts that were established during the hearing in this specific adjudication were sufficient to find respondent was a danger to himself or to others. There is no clear indication of how a resolution of this issue could be of use to respondent in future litigation. The court acknowledges that though it is possible that the resolution of such questions could be helpful to future litigants, we do not, as stated earlier, review cases merely to set precedent or guide future litigation." (Internal quotation marks omitted.) *Id*. at 360.

¶ 31 Agreeing with the *Alfred H.H.* court, we find the second claim presented by the respondent's appeal does not fall into the public-interest exception because it requires a fact-specific review of the condition of her mental illness at the time of the hearing, would have little precedential value, and would not be likely to recur as any future involuntary

medication cases brought against the respondent will arise from a fresh evaluation of her conduct and mental state. See *id*. at 356-58; *In re Sharon H.*, 2016 IL App (3d) 140980, ¶ 28 (similarly finding respondent's sufficiency of the evidence claims did not fall under this exception). Moreover, the capable-of-repetition-yet-evading-review exception also does not apply to her claim as it relates to whether the specific facts established during the hearing were sufficient to support the trial court's finding that she exhibited deterioration in her ability to function. As such, we fail to see how a resolution of this issue would be of use to the respondent in any future cases. See *Alfred H.H.*, 233 Ill. 2d at 358-60; *Sharon H.*, 2016 IL App (3d) 140980, ¶¶ 24-25 (similarly finding).

¶ 32 Next, we turn to the merits of the respondent's first contention on appeal. She argues that the trial court's order must be reversed because there was no notice sent to her guardian. Although the State concedes that the record contains no indication that her guardian was served with a copy of the petition or provided notice of the time and place of the hearing, the State argues reversal is not required because the respondent was not prejudiced as a result of her guardian's absence from the hearing. The State initially highlights the fact that this issue was not brought to the court's attention and is being raised for the first time on appeal. The State points to the fact that the respondent's delusions caused her to believe her guardian, who is also her husband, raped her, sodomized her, and forced medications down her throat. Thus, the State asserts that the guardian's presence at and testimony during the hearing would not have been favorable to her position, and, as such, she cannot establish that she was prejudiced due to his lack of notice and absence. We agree with the State's position.

¶ 33 Section 2-107.1(a-5)(1) of the Code directs that the petitioner shall deliver a copy of the petition seeking involuntary administration of psychotropic medications, along with notice of the time and place of the hearing, to, *inter alia*, respondent and his or her guardian no later than three days prior to the date of the hearing. 405 ILCS 5/2-107.1(a-5)(1) (West 2016). It is undisputed that the record on appeal contains no indication that the respondent's husband, who is also her guardian, was served with a copy of the petition or notified of the time and place of the hearing. Thus, the issue before us is whether reversal is required where the respondent's husband was not provided with formal notice of the hearing but was contacted in anticipation of the involuntary-medication petition being filed.

¶ 34 We find *In re Todd K.*, 371 Ill. App. 3d 539 (2007), instructive on this issue. In that case, respondent argued that the lack of notice to his guardian about his involuntary commitment hearing violated his procedural due-process rights. *Id*. at 541. In response, the State argued respondent forfeited the issue by failing to raise it in the trial court and that he failed to establish prejudice as a result of the technical violation. *Id*. The reviewing court determined that, even if respondent had not forfeited the issue, his claim failed as he could not demonstrate he was prejudiced by the lack of formal notice to his guardian about the hearing. *Id*. The court acknowledged that notice to the guardian was important to give him or her the chance to aid a respondent in preparing for the hearing and the opportunity to be heard on the matter. *Id*. However, the court ultimately found:

> "The record suggests that despite the guardian's failure to attend the hearing, respondent's guardian was aware of the situation as he received a copy of the petition and was contacted for the treatment plan. As the guardian was aware of the

proceeding, he had the chance to assist respondent, and the failure to formally notify him of the time and date of the hearing was harmless." *Id*. at 541-42.

¶ 35 Similarly here, the record indicates that the respondent's guardian was contacted in preparation of the involuntary-medication petition and attached addendum. In the addendum, he admitted that the respondent had been subject to court-ordered medications over her objections in the past as treatment for her mental illness. The addendum also explicitly states that the respondent's guardian agreed that she should be treated with court-ordered medications over her objection. Accordingly, we are satisfied that he was aware of the situation giving rise to the instant proceedings, he had the chance to assist the respondent but apparently chose not to, and the failure to formally notify him of the hearing was not prejudicial under the circumstances of this case. See *In re Nau*, 153 Ill. 2d 406, 414-20 (1992) (where respondent failed to raise the procedural defect in the trial court, the supreme court found the defect was harmless, not prejudicial, and not sufficiently egregious to warrant plain error relief). Therefore, we affirm the trial court's August 10, 2016, order.

¶ 36 III. CONCLUSION

¶ 37 For the foregoing reasons, the August 10, 2016, order of the circuit court of Union County is affirmed, and the appeal is dismissed in part. Specifically, we rule as follows. First, the respondent's second claim on appeal as to whether there was sufficient evidence to support the court's order is moot and is not excused by any applicable exception to the mootness doctrine; thus, it is not subject to review and is dismissed as moot. Second, the

court's order authorizing the involuntary administration of psychotropic medication is hereby affirmed.

¶ 38 Affirmed; appeal dismissed in part.