2024 IL App (3d) 230027-U

Order filed February 8, 2024

IN THE

APPELLATE COURT OF ILLINOIS

THIRD DISTRICT

2024

In re CORNELIUS W., a Person Found Subject to Involuntary Medication,	)	Appeal from the Circuit Court of the 21st Judicial Circuit, Kankakee County, Illinois,
	)	Appeal No. 3-23-0027
	)	Circuit No. 22-MH-127
(The People of the State of Illinois, Petitioner-Appellee v. Cornelius W., Respondent-Appellant.)	)	Honorable Lindsay Parkhurst, Judge, Presiding.

JUSTICE DAVENPORT delivered the judgment of the court.
Justices Brennan and Hettel concurred in the judgment.

ORDER

¶ 1 *Held*: Involuntary medication petition was improvidently granted where the State failed to present evidence (1) of the anticipated dosage amounts or (2) that respondent had received written information about alternatives to the proposed treatment. Reversed.

¶ 2 The respondent, Cornelius W., appeals from an order entered pursuant to the Mental Health and Developmental Disabilities Code (Code) (405 ILCS 5/1-100 *et seq.* (West 2022)), finding him subject to the involuntary administration of psychotropic medication. Respondent argues reversal is warranted because (1) the State failed to comply with the Code's mandatory requirements,

(2) the trial court improperly took blanket judicial notice of a separate involuntary admission proceeding, and (3) respondent's trial counsel provided ineffective assistance of counsel. We agree with his first argument and, therefore, reverse.

¶ 3 I. BACKGROUND

¶ 4 Respondent was 43 years old at the time of the proceedings in this matter. On November 28, 2022, respondent was admitted to the emergency department of Riverside Medical Center for reportedly threatening to burn down his house with his family inside. A social investigation revealed that, in the week before admission, respondent voiced suicidal thoughts and vulgarities, appeared internally preoccupied, purchased knives and machetes, gave knives to his teenage son, threatened to throw bricks and burn down his house, and believed a male was attempting to sexually assault him.

¶ 5 Upon admission, respondent pulled out knives, refused to speak with male staff, implied homicidal and suicidal ideations only to then deny them, and made inappropriate comments about genitalia. He also asserted his wife had lied to lock him up in the hospital, his children had attempted to provoke him to physical aggression, and the police, "whites[,] and gays" were conspiring against him.

¶ 6 On December 1, 2022, the trial court conducted an involuntary admission hearing at which respondent, his treating psychiatrist at the time, and a clinical case manager testified. The testimony of the psychiatrist, Dr. Reid Alley, centered on respondent's diagnosis and his behavior before and after admission to Riverside. Dr. Alley believed respondent suffered from schizoaffective disorder, a mental illness marked by paranoia or hallucinations, and a "mood component." Dr. Alley testified that, according to respondent's wife, respondent had been hospitalized for his first psychotic episode about 18 months before his most recent admission; he

had stopped taking his medications soon after discharge; and, within the past six months, he had lost several jobs for aggressive behavior. Dr. Alley further testified that although respondent was currently compliant with medication recommendations, he was concerned respondent would become noncompliant if discharged. Respondent testified he most recently took the prescribed medications "at least seven months ago" but stopped because they were placebo pills.

¶ 7 After the close of evidence, the court concluded respondent was accepting treatment while at the hospital, "but once he gets out, he says that it's a placebo and he doesn't take it and doesn't follow back up with his treaters." Accordingly, the court entered an order subjecting respondent to involuntary admission not to exceed 90 days. The court's involuntary admission order is not at issue in this appeal.

¶ 8 After the involuntary admission order was entered, respondent refused all medication. He also refused to speak with the psychiatric team and insisted on being seen by a female practitioner. Respondent was then placed in Dr. Mayurika Pise's care but refused to speak to her as well.

¶ 9 On December 7, 2022, the State petitioned for an order permitting Dr. Pise to administer psychotropic medications to respondent. The medication petition, signed by Dr. Pise, listed Paliperidone as a "first choice" medication, and Haloperidol, Aripiprazole, Depakote, and Olanzapine as "alternatives." Each medication was accompanied by either one or two anticipated dosage ranges, depending on whether the medication was requested in both an injectable and oral formulation. The petition also sought testing authorization for "CBC, chemistries, and EKG."

¶ 10 Two days later, the State filed a predisposition report signed by Dr. Pise. The report stated, in part, "Involuntary medication order is being recommended due to continued symptoms of psychosis and refusal to take any medical or psychiatric medication. Multiple attempts have been

made daily to engage [respondent] in conversation, discuss medications, and offer medications, but he refuses to interact."

¶ 11 On December 13, 2022, the court held a hearing on the State's medication petition. The hearing did not include an opening or closing statement, and consisted almost entirely of Dr. Pise's testimony.

¶ 12 At the outset, respondent's counsel stipulated to Dr. Pise's status as an expert in psychiatric medicine. Dr. Pise testified about respondent's behavior upon admission to Riverside and the subsequent degradation of his mental condition; her unsuccessful attempts to communicate with respondent; and the risks and benefits of each medication listed in the petition, as well as the need for "CBC, chemistries, and EKG" testing. She testified that, after the December 1 hearing, respondent stopped taking both his psychiatric and antihypertensive medications. She also testified that respondent had received written information about the proposed treatment plan, along with the recommended medications' risks and benefits.

¶ 13 Finally, Dr. Pise opined that respondent did not have the capacity to give informed consent in his current state; the requested medications would be far more beneficial than the risk of their known side effects; no less restrictive treatment options existed given the severity of respondent's symptoms; and, if the petition were granted, it would probably take two weeks for respondent's psychiatric condition to stabilize, and for respondent to resume taking his antihypertensive medication voluntarily.

¶ 14 Respondent's counsel did not cross-examine Dr. Pise, and the State rested its case. Thereafter, respondent was sworn and respondent's counsel asked him only two questions: (1) "Can you state your name for the record?" and (2) "[I]s there anything you would like to say to the Judge or anything that you would like to testify to before we conclude?" In response to the

second question, respondent stated he was coherent and could take care of himself if given the chance, he was "here" against his will, and he did not need to be on any psychotropic medications. Respondent further stated that, although he did not know for sure, his hypertension was due to what was given to him at Riverside, "whether that be within the food or any other means being served to [him]." Finally, respondent stated he was willing to take what was needed for his care but did not feel his care required what "they're explaining to [him]." The following exchange ensued:

> "THE COURT: Okay. Thank you.
>
> And you wanted me to take judicial notice of the—
>
> [ASSISTANT STATE'S ATTORNEY]: Of the testimony at the [December 1] hearing for involuntary admission.
>
> THE COURT: Okay. I was the Judge on your other hearing—
>
> [RESPONDENT]: Uh-huh.
>
> THE COURT: —and I'm going to take judicial notice of that hearing, and all the testimony in that hearing, and the order for involuntary admission."

¶ 15 The trial court proceeded to grant the State's petition, both orally and in writing. Its medication order was a preprinted standardized form signed by the court, with blanks filled in and boxes checked by the court. Tracking the preprinted language of the medication order, the court issued an oral ruling in which it found, by clear and convincing evidence, that (1) respondent had a serious mental illness diagnosed as schizoaffective disorder; (2) based on the testimony from both hearings, respondent exhibited a deterioration in his ability to function; (3) respondent's illness continued for a period of time and had not improved; (4) the proposed treatment's benefits outweighed the harm; (5) respondent was advised in writing of the proposed treatment's benefits,

risks, and alternatives; (6) due to his untreated mental illness, respondent lacked the capacity to make a reasoned decision about the proposed treatment's efficacy; (7) other less restrictive services were explored and found inappropriate; (8) the requested testing was essential to the proposed treatment's safe and effective administration; and (9) a good faith attempt was made to determine whether respondent had executed a "power of attorney for mental health treatment."[1] The court's written order authorized Dr. Pise to administer Paliperidone and the four alternative medications to respondent, in their requested formulations and dosage ranges. The medication order was entered on December 13, 2022, and provided it was in effect for no longer than 90 days.

¶ 16 Respondent appealed.

¶ 17 II. ANALYSIS

¶ 18 On appeal, respondent argues (1) the State failed to comply with the Code, (2) the trial court improperly took judicial notice of all testimony from the involuntary admission proceeding, and (3) respondent's counsel was ineffective for failing to hold the State to the Code's requirements and for failing to provide meaningful advocacy at the involuntary treatment hearing. We find the lack of statutory compliance dispositive and limit our discussion accordingly.

¶ 19 A. Mootness

¶ 20 Initially, we note the trial court's 90-day medication order has expired, thereby mooting this appeal. *In re Marcus S.*, 2022 IL App (3d) 170014, ¶ 42. Reviewing courts do not typically decide moot questions, render advisory opinions, or consider issues where the result will not be affected by the court's decision. *Id.* Still, we may decide a moot question under one of the three

[1]The Code requires the petitioner to make a good faith attempt to determine whether the respondent has executed a power of attorney for health care *or* a declaration for mental health treatment. 405 ILCS 5/2-107.1(a-5)(1) (West 2022).

exceptions to the mootness doctrine: (1) public interest, (2) capable of repetition, and (3) collateral consequences. *Id.* Whether an appeal falls within one of these exceptions is determined on a case-by-case basis. *Id.*

¶ 21 The public interest exception applies only if "(1) the question at issue is of a substantial public nature; (2) an authoritative determination is needed for future guidance; and (3) the circumstances are likely to recur." *Felzak v. Hruby*, 226 Ill. 2d 382, 393 (2007). "The exception is narrowly construed and requires a clear showing of each criterion." *Id.* Here, the statutory compliance issues raised by respondent satisfy all three elements of this exception. First, compliance with the Code's procedural mandates is a matter of substantial public nature. *In re Robert S.*, 213 Ill. 2d 30, 46 (2004); see also *In re A.W.*, 381 Ill. App. 3d 950, 955 (2008) (arguments regarding medication order's Code compliance are questions of public importance). The first element is thus satisfied.

¶ 22 The second and third elements are also satisfied. The appellate court has previously addressed respondent's Code compliance concerns in *In re A.W.*, 381 Ill. App. 3d 950 (2008) and more recently in *In re Wilma T.*, 2018 IL App (3d) 170155. Despite this, the State's arguments before this court fail to acknowledge either case's holding. The State's apparent disregard of dispositive case law is alarming and strongly suggests an authoritative determination is in order. Moreover, respondent argues his trial counsel failed to hold the State to the Code's requirements. See *In re Jessica H.*, 2014 IL App (4th) 130399, ¶ 20 (concluding the public interest exception applied, in part, because "the court, the State, and counsel for the respondent failed to appreciate the mandatory statutory requirements given the posture of [the] case."). Finally, Code compliance continues to be a recurrent issue in mental health appeals. See, *e.g.*, *In re Marcus S.*, 2022 IL App (3d) 170014, ¶ 52 (urging the supreme court to "act to stop to the continuing, egregious violations

of respondents' constitutional and statutory rights in [mental health] cases"). The recurrence of statutory compliance issues "indicates both (1) a need still exists for guidance in this area and (2) the likeliness of future recurrence in other mental-health cases." *In re Laura H.*, 404 Ill. App. 3d 286, 289 (2010). All three elements of the public interest exception are thus met.

¶ 23 B. Code Compliance

¶ 24 Respondent's statutory compliance arguments involve sections 2-107.1(a-5)(4), 2-107.1(a-5)(6), and 2-102(a-5) of the Code. 405 ILCS 5/2-102(a-5), 107.1(a-5) (West 2022). Before a court may order involuntary medication, the State must establish the following seven requirements by clear and convincing evidence:

> "(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." 405 ILCS 5/2-107.1(a-5)(4) (West 2022).

¶ 25 Section 2-107.1(a-5)(6) of the Code requires an involuntary medication order to "specify the medications and the anticipated range of dosages that have been authorized and may include a list of any alternative medications and range of dosages deemed necessary." *Id.* § 2-107.1(a-5)(6).

¶ 26 Finally, section 2-102(a-5) of the Code requires the recipient of psychotropic medication to be advised "in writing, of the side effects, risks, and benefits of the treatment, as well as alternatives to the proposed treatment." 405 ILCS 5/2-102(a-5) (West 2022).

¶ 27 On appeal, respondent raises two Code compliance issues, which we now address.

¶ 28 1. *Necessity of Dosage Evidence*

¶ 29 First, respondent argues the trial court did not comply with the Code when it authorized five different medications with varying dosages and ranges, having heard no evidence about the reasoning or context for the amounts. Respondent cites *A.W.* in support of his position. In response, the State cites section 2-107.1(a-5)(6) to argue "the trial court complied with the [C]ode where the [medication] order specified the anticipated range of dosages." In essence, the parties dispute whether the Code requires an involuntary medication order to rely on admitted evidence of dosage amounts.

¶ 30 In *A.W.*, the Fourth District considered whether a medication order failed to comply with the Code because it authorized specific medication dosages unsupported by evidence as to those dosages. *In re A.W.*, 381 Ill. App. 3d at 955. The court acknowledged the Code does not explicitly require evidence of the proposed medications and their anticipated range of dosages. *Id.* at 958. Still, it held the Code requires the State to present evidence as to the dosages. *Id.* at 959.

¶ 31 In so ruling, the court considered sections 2-107.1(a-5)(6) and 2-107.1(a-5)(4)(D) in tandem. Based on these two subsections, the court held "the State must present evidence as to the anticipated range of dosages of the proposed psychotropic medication." *Id.* at 958–59. "To hold otherwise would mean that *** an involuntary-treatment order could be entered even though no evidence was presented to support the ordered dosages." *Id.* at 959.

¶ 32 We agree with *A.W.*'s conclusion and reasoning. Section 2-107.1(a-5)(6) requires a medication order to specify the medications accompanied by their anticipated dosages while section 2-107.1(a-5)(4)(D) requires evidence that the treatment's benefits outweigh the harm. Although sections 2-107.1(a-5)(4)(D) and 2-107.1(a-5)(6) do not expressly require the State to present dosage evidence, "[a] court must view the statute as a whole, construing words and phrases in light of other relevant statutory provisions and not in isolation." *State ex rel. Leibowitz v. Family Vision Care, LLC,* 2020 IL 124754, ¶ 35. Where one subsection requires a medication order to specify dosages, and the other requires a showing that the medications' benefits outweigh the harms, it follows that evidence must be adduced as to the medication dosages. An authorized dosage range is indispensable to a medication order under section 2-107.1(a-5)(6) just as it is inseparable from the harm-benefit analysis under section 2-107.1(a-5)(4)(D). Thus, evidence supporting a requested dosage range is mandatory.

¶ 33 The State argues the trial court complied with the Code because both the medication petition and the medication order listed the proposed medications alongside their respective dosages. We reject this argument. An involuntary medication order may not presume a prescribed dosage order based solely on the State's petition. "[M]aterial in the petition is not evidence." *In re Gail F.*, 365 Ill. App. 3d 439, 444 (2006). The State must present competent evidence to support the medication petition's list of anticipated dosages. Short of expert testimony, the State may do

so by admitting the petition into evidence for the purpose of establishing the dosages listed therein or by presenting testimony that the medications are requested in the dosages listed in the petition. *In re A.W.*, 381 Ill. App. 3d at 959.

¶ 34 Here, the State did not opt for either of these avenues, leaving its petition's list of dosages outside the scope of competent evidence. Accordingly, the medication order improperly authorized the dosages listed in the State's petition.

¶ 35 2. *Treatment Alternatives in Writing*

¶ 36 Second, respondent contends he did not receive written information about alternatives to Dr. Pise's proposed treatment in violation of section 107.1(a-5)(4)(E) of the Code. That subsection requires clear and convincing evidence that the recipient lacks the capacity to make a reasoned decision about the proposed treatment. 405 ILCS 5/2-107.1(a-5)(4)(E) (West 2022). In *Wilma*, we held that "the State cannot establish that a respondent lacks the capacity to make a reasoned decision without the respondent receiving prior written notice" regarding alternatives to the proposed treatment. *In re Wilma T.*, 2018 IL App (3d) 170155, ¶ 23. We stressed that the State must strictly comply with section 2-102(a-5), which requires the recipient of psychotropic medication be notified in writing of the alternatives to the proposed treatment. *Id.*

¶ 37 The State concedes Dr. Pise did not "specifically testify as to the alternatives to the proposed treatment." It argues, nonetheless, that it complied with section 2-102(a-5)'s mandate where "the trial court stated, orally and in writing, that respondent had been advised in writing of the alternatives to the proposed treatment." Although the trial court's factual findings are given great deference on appeal, we will reverse an involuntary medication order when the trial court's findings are not based on the evidence. *In re Donald L.*, 2014 IL App (2d) 130044, ¶ 32.

¶ 38 Here, the trial court's finding—that respondent received written notice of treatment alternatives—was not based on the evidence. The State failed to elicit any testimony or present any documentary evidence indicating respondent had been advised in writing of treatment alternatives. Absent evidentiary support, the trial court's mere recitation of statutory language on a preprinted standardized form is insufficient to overcome the need for compliance with the Code's mandates. See *In re Wilma T.*, 2018 IL App (3d) 170155, ¶ 23 ("Strict compliance is required."). Thus, where the State did not put forth evidence indicating respondent had received written information about treatment alternatives, the State could not show—and the trial court could not find—that respondent lacked the capacity to make a reasoned decision about the proposed treatment. *In re Wilma T.*, 2018 IL App (3d) 170155, ¶ 23. Accordingly, we reverse the trial court's medication order for noncompliance with the Code's mandates.

¶ 39 In closing, we note the Code's requirements are not mere technicalities. *In re Marcus S.*, 2022 IL App (3d) 170014, ¶ 50. They are procedural safeguards that "must be scrupulously observed and strictly construed in favor of the respondent." *Id.*

¶ 40 III. CONCLUSION

¶ 41 The judgment of the circuit court of Kankakee County is reversed.

¶ 42 Reversed.