Illinois Official Reports

Appellate Court

In re Leo M., 2022 IL App (5th) 190211

Appellate Court Caption	*In re* LEO M., a Person Found Subject to Involuntary Medication (The People of the State of Illinois, Petitioner-Appellee, v. Leo M., Respondent-Appellant).
District & No.	Fifth District No. 5-19-0211
Filed	September 14, 2022
Decision Under Review	Appeal from the Circuit Court of Randolph County, No. 19-MH-81; the Hon. Richard A. Brown, Judge, presiding.
Judgment	Reversed.
Counsel on Appeal	Veronique Baker and Ann Krasuski, of Illinois Guardianship & Advocacy Commission, of Hines, for appellant. Jeremy R. Walker, State's Attorney, of Chester (Patrick Delfino, Patrick D. Daly, and Sharon Shanahan, of State's Attorneys Appellate Prosecutor's Office, of counsel), for the People.
Panel	PRESIDING JUSTICE BOIE delivered the judgment of the court, with opinion. Justices Cates and Barberis concurred in the judgment and opinion.

OPINION

¶ 1 The respondent, Leo M., appeals from a medication order, entered pursuant to the Mental Health and Developmental Disabilities Code (Code) (405 ILCS 5/1-100 *et seq.* (West 2018)), finding him to be subject to the involuntary administration of psychotropic medication. Leo M. raises four arguments challenging the trial court's order for administration of authorized involuntary treatment (medication order) entered on May 1, 2019. Leo M. argues that (1) the State failed to protect Leo M.'s due process right to complete medication information and failed to prove that he lacked capacity when the written information that he was provided about his medication did not adequately describe the benefits of each medication individually or the benefits and side effects of the medications in combination, (2) the State failed to prove the benefits of the proposed treatment outweighed the harm to Leo M. when its evidence did not include the benefits and harm of each individual medication or the medications in combination, (3) the trial court's medication order was defective because it failed to specify medication dosages for Valproic acid[1] (VPA) and lithium,[2] and (4) Leo M.'s counsel denied him effective assistance of counsel by failing to subject the State's case to meaningful adversarial testing.

¶ 2 I. BACKGROUND

¶ 3 Leo M. was 24 years old at the time of the proceedings in this matter. He was admitted to Chester Mental Health Center (CMHC) on April 22, 2019, after he was found unfit to stand trial in Cook County on charges of trespass and battery. On April 25, 2019, Leo M.'s treating psychiatrist, Dr. Terrence Casey, filed a petition seeking authority to administer medication over objection (petition) to Leo M. On May 1, 2019, the trial court conducted a hearing on the petition.

¶ 4 The State called Dr. Casey as its sole witness. Dr. Casey testified that he was a psychiatrist employed by CMHC, that he had treated Leo M. since his admission on April 22, 2019, and that he diagnosed him with bipolar disorder, not otherwise specified (NOS), and "personality disorder, rule out ASPD,[3] also cannabis use disorder and borderline." There was no further testimony about how Dr. Casey arrived at the diagnosis, its definition, or the symptomology of the diagnosis. Dr. Casey testified that he had prescribed psychotropic medication for Leo M. and that he was taking the medication because it was "emergency enforced." Dr. Casey stated that if there had not been a previous order for court-enforced medication, he would not expect that Leo M. would be taking the medications.

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[1]Valproic acid is the generic name for a prescription medication used to treat various types of seizure disorders, manic episodes related to bipolar disorder, and to prevent migraine headaches. *Valproic Acid*, Drugs.com, https://www.drugs.com/mtm/valproic-acid.html (last visited Sept. 1, 2022) [https://perma.cc/W7YN-MZVF].

[2]Lithium is the generic name for a mood stabilizer that is used to treat or control manic episodes of bipolar disorder including hyperactivity, rushed speech, poor judgment, reduced need for sleep, aggression, and anger. *Lithium*, Drugs.com, https://www.drugs.com/lithium.html (last visited Sept. 1, 2022) [https://perma.cc/9NCR-TA64].

[3]ASPD means antisocial personality disorder. American Psychiatric Association, Diagnostic and Statistical Manual of Mental Disorders, 5th Edition, DSM-5 *Personality Disorders* 659 (2013).

¶ 5 The State presented Dr. Casey with an exhibit that contained the petition, an attachment entitled "alternatives to medication," and 35 pages of drug sheets. The petition included an itemized list and dosages for primary and alternative medications that Dr. Casey had prescribed and sought to administer. Dr. Casey testified that the petition contained a specific listing of each and every possible adverse side effect that Leo M. may experience from receiving the medications. Dr. Casey also testified that Leo M. was presented with a copy of the petition and attachments on April 25, 2019, although he refused to sign for them. The exhibit was admitted to the record with no objection, and the transcript of the proceeding also indicates that the petition was admitted into evidence.

¶ 6 The petition included a prescribed medication protocol with dosages and indicated that the medication would be administered individually or in combination. The primary medications included olanzapine,[4] lithium, risperidone,[5] diphenhydramine,[6] lorazepam,[7] fluoxetine,[8] and carbamazepine.[9] The petition also included a list of alternative medications to be administered either individually or in combination with the primary medications. The alternative medications included fluphenazine,[10] VPA, quetiapine,[11] benztropine,[12]

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[4]Olanzapine is the generic name of ZyPREXA™, an antipsychotic medication that is used to treat psychotic conditions such as schizophrenia and bipolar disorder. *Olanzapine*, Drugs.com, https://www.drugs.com/mtm/olanzapine.html (last visited Sept. 1, 2022) [https://perma.cc/4QU5-BTRN].

[5]Risperidone is the generic name of an antipsychotic medication used to treat symptoms of bipolar disorder. *Risperidone*, Drugs.com, https://www.drugs.com/risperidone.html (last visited Sept. 1, 2022) [https://perma.cc/P566-3XPC].

[6]Diphenhydramine is the generic name of Benadryl™, an antihistamine that reduces the effects of natural chemical histamine in the body, treating sneezing, runny nose, watery eyes, hives, skin rash, itching, and other cold or allergy symptoms. *Diphenhydramine*, Drugs.com, https://www.drugs.com/diphenhydramine.html (last visited Sept. 1, 2022) [https://perma.cc/7DLR-WNLW].

[7]Lorazepam is the generic name for Ativan™, a benzodiazepine used to treat anxiety disorders. *Lorazepam*, Drugs.com, https://www.drugs.com/lorazepam.html (last visited Sept. 1, 2022) [https://perma.cc/H2M8-QEFN].

[8]Fluoxetine is the generic name of Prozac™, an SSRI, which is sometimes used together with olanzapine to treat manic depression caused by bipolar disorder. *Fluoxetine*, Drugs.com, https://www.drugs.com/fluoxetine.html (last visited Sept. 1, 2022) [https://perma.cc/5BL8-S6T3].

[9] Carbamazepine is the generic name of an anticonvulsant used to treat bipolar disorder. *Carbamazepine*, Drugs.com, https://www.drugs.com/carbamazepine.html (last visited Sept. 1, 2022) [https://perma.cc/GN2Y-8ZB4].

[10]Fluphenazine is a phenothiazine antipsychotic medicine that is used to treat psychotic disorders such as schizophrenia. *Fluphenazine*, Drugs.com, https://www.drugs.com/mtm/fluphenazine.html (last visited Sept. 1, 2022) [https://perma.cc/YDE2-TQ3F].

[11]Quetiapine is the generic name for Seroquel™, a second-generation or atypical antipsychotic used to treat schizophrenia, bipolar disorder, and depression. *Quetiapine*, Drugs.com, https://www.drugs.com/quetiapine.html (last visited Sept. 1, 2022) [https://perma.cc/RH3H-QKMZ].

[12]Benztropine is the generic name for Cogentin™, an anticholinergic antiparkinson agent used to treat Parkinson-like symptoms caused by using certain medicines. *Benztropine*, Drugs.com, https://www.drugs.com/mtm/benztropine.html (last visited Sept. 1, 2022) [https://perma.cc/AA2S-EJKG].

clonazepam,[13] Effexor XR,[14] and oxcarbazepine.[15] Lithium and VPA were listed at a dosage up to therapeutic level. Dr. Casey testified that he was seeking to administer medications and dosages as contained in the petition. Dr. Casey further testified that he was seeking to conduct specific tests and procedures on Leo M. that were necessary for the safe administration of the medications as listed in the petition. Those tests and procedures listed in the petition were blood testing, including but not limited to complete blood count, comprehensive metabolic panel, urine analysis, blood levels of medication or chemicals, weights, vital signs, physical examination, and EKG.[16]

¶ 7 The petition also included written information about Leo M.'s condition. The written information indicated that Leo M. had exhibited self-injurious behavior in jail by banging his head and was physically aggressive toward peers and staff. Leo M. had urinated on the floor and on clothing and was noncompliant with directions from the jail staff. The information indicated that Leo M.'s psychiatric condition was unstable and included symptoms of illogical content of speech, labile mood, and psychomotor agitation. The petition indicated that at CMHC, Leo M. was psychiatrically unstable, psychotic, and agitated.

¶ 8 The petition included attachments. One of the attachments was a written evaluation for enforced medications, signed by Dr. Casey, which indicated that Leo M. had unstable thought processes and was experiencing active psychosis. The evaluation indicated that Leo M. had no insight into his aggressions and was an imminent risk of danger to himself and others.

¶ 9 The evaluation included information that antipsychotic medications are used to decrease and remit symptoms such as delusions and hallucinations, as well as alleviate disorganized and confused thought processes. Further, antipsychotic medications reduce and alleviate hostility and lessens potential for aggression and helps control violent acting out. The evaluation also included information about anxiolytic medications, which it indicated are used to alleviate anxiety, tension, restlessness, and agitation. They also augment the effects of antipsychotic medications. None of the medications were labeled as antipsychotic or anxiolytic.

¶ 10 The evaluation included information about the benefits of medications in reducing the intensity of psychotic symptoms, as well as mood disturbance, and alleviating threatening and aggressive behavior, as well as bizarre and erratic behaviors. The evaluation indicated that the benefits outweighed the risks of uncontrolled symptoms, which would fuel threatening, impulsive, and acting-out behaviors causing not only serious danger of harm to others, but also

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[13]Clonazepam is the generic name for KlonoPIN™, a benzodiazepine used to treat seizure and panic disorders. *Clonazepam*, Drugs.com, https://www.drugs.com/clonazepam.html (last visited Sept. 1, 2022) [https://perma.cc/YT3T-QFSK].

[14]Effexor XR™ is a brand name for the generic drug venlafaxine, and is a selective serotonin and norepinephrine reuptake inhibitor (SSNRI) used to treat major depressive disorder, anxiety, and panic disorder. *Venlafaxine*, Drugs.com, https://www.drugs.com/venlafaxine.html (last visited Sept. 1, 2022) [https://perma.cc/8D2H-YDGP].

[15]Oxcarbazepine is the generic name for an anticonvulsant and is used to decrease nerve impulses that cause seizures and pain. *Oxcarbazepine*, Drugs.com, https://www.drugs.com/mtm/oxcarbazepine.html (last visited Sept. 1, 2022) [https://perma.cc/48GC-TYZL].

[16]EKG is an acronym for electrocardiogram, which records the electrical signals in the heart. *Electrocardiogram (ECG or EKG)*, Drugs.com, https://www.drugs.com/mcp/electrocardiogram-ecg-or-ekg (last visited Sept. 2, 2022) [https://perma.cc/G8D6-QWWT].

to himself. The evaluation indicated that Leo M. had impaired insight and judgment, that his mental illness was affecting his ability to recognize his treatment needs, and that he was unable to make a reasoned decision regarding his treatment.

¶ 11 The evaluation indicated that less restrictive services had been tried and employed, including psychotherapy, counseling, persuasion, encouragement, redirection, milieu therapy, seclusion, and restraints. The evaluation included the opinion that the less restrictive services were inappropriate and inadequate in reducing, alleviating, controlling, and attenuating Leo M.'s symptoms. The evaluation indicated that the petition sought authorization for testing and other procedures and that the testing and procedures were essential for the safe and effective administration of the treatment. The evaluation included a statement that Dr. Casey had made a good faith attempt to determine whether Leo M. had executed a power of attorney for health care or a declaration of mental health treatment under the Mental Health Treatment Preference Declaration Act (755 ILCS 43/1 (West 2018)).

¶ 12 The attachments to the petition also included a statement, signed and dated by Kacie Straight, indicating that Leo M. was provided with the drug sheets for olanzapine, lithium, risperidone, diphenhydramine, lorazepam, fluoxetine, carbamazepine, fluphenazine, VPA, quetiapine, benztropine mesylate, clonazepam, venlafaxine, and oxcarbazepine. The drug sheets included information about what mental illness the drugs treated, how to take the medications, the drugs and foods to avoid while taking the medication, and a list of possible side effects for the medications.

¶ 13 Dr. Casey testified that it was his opinion that Leo M., due to his serious mental illness, was threatening, aggressive, or disruptive. Dr. Casey testified that Leo M. was transferred to CMHC from Cook County, where he was in jail for criminal charges. Leo M. was transferred due to a report that he was going to harm himself and had made threatening statements to the police officers. Leo M. had struck his head on the wall and had injuries upon arrival to CMHC due to thrashing in the police cruiser. He was aggressive at CMHC, attempting to strike staff. He was placed in restraints on April 22, 2019, and April 24, 2019. Leo M. was described as unstable and psychotic, exhibiting poor insight and judgment. Dr. Casey testified that Leo M. was suffering as a result of his mental illness, although Dr. Casey did not elaborate as to how Leo M. was suffering. Dr. Casey opined that the psychotropic medications helped to relieve Leo M.'s suffering. Dr. Casey testified that Leo M. self-reported that he had been psychiatrically hospitalized many times at various facilities. Dr. Casey testified that he believed that Leo M. had experienced symptoms of his mental illness for a period of years based on the prior psychiatric history and his observation of Leo M. Dr. Casey testified that Leo M. had been psychiatrically hospitalized many times at various facilities, although he did not have a prior admission to the Illinois Department of Human Services.

¶ 14 Dr. Casey testified that, in his opinion, the benefits of the treatment outweighed any risk of harm, without any elaboration as to the benefits of the medication or how he formed that opinion. Dr. Casey testified that Leo M. lacked the capacity to make a reasoned decision about his treatment because it was Dr. Casey's opinion that Leo M. was very violent with his behavior, was psychotic, and had a past psychiatric history. Dr. Casey further considered Leo M.'s presentation while in jail prior to his transfer to CMHC.

¶ 15 Dr. Casey testified that Leo M. was participating in meetings with his treatment team and individual therapy. Dr. Casey also testified that there were groups available to help Leo M. understand court and the procedures and various participants to help him deal with his criminal

charges. Additionally, the CMHC offered off-unit activities, with good behaviors, including courtyard, gym, movie night, and horticulture.

¶ 16 Dr. Casey testified that he was requesting that the trial court enter a 90-day order authorizing medication to be administered over objection and for authorization of other "fully qualified and credentialed" doctors listed in the petition to oversee the administration of medication.

¶ 17 On cross-examination, Dr. Casey testified that Leo M. was currently taking olanzapine and lorazepam. Dr. Casey testified that since starting the medication, Leo M. had been less aggressive. The medications were in the process of increasing dosage to therapeutic levels. Dr. Casey testified that Zyprexa™, also known as olanzapine, was to help with Leo M.'s psychosis and violence. Dr. Casey testified that none of the prescribed medications would exacerbate Leo M.'s asthma diagnosis.

¶ 18 Leo M. testified that he did not agree with Dr. Casey's opinion that he would benefit from taking the psychotropic medications. He explained that since 2016, he had tried every type of antidepressant, selective serotonin reuptake inhibitors (SSRI), and serotonin-norephinephrine reuptake inhibitors (SNRI), and all had given him horrible side effects and increased his suicidal ideations and tendencies. Leo M. testified that he stopped taking other medications and started smoking cannabis for his post-traumatic stress disorder (PTSD), which was the illness that he believed he had. He testified that several other doctors would agree with him, including the doctor he was seeing at Cook County. Leo M. testified that his previous doctor believed that he had PTSD and it was well managed under clonazepam (KlonoPIN™), which would be the substitute for lorazepam. Leo M. testified that he was requesting that the trial court deny the petition and that he did not want to take any medication. He testified that taking medication was against his belief system and that he believed that cannabis was the tree of life in the book of Genesis. Leo M. further testified that he wanted to be prescribed cannabis and to continue individualized psychotherapy. Leo M. commented that he had not had a chance to engage in psychotherapy or go to recreational therapy at the gym.

¶ 19 Leo M. went on to testify that he had experienced side effects from taking the medications, including a heart problem called QTC, which he believed was caused by Risperdal. Leo M. testified that he also experienced muscle spasms and tremors, which he believed were caused by olanzapine. Leo M. testified that he believed that for the seven days prior to the hearing, he had been receiving emergency enforced medication for no reason because, for the most part, he stayed in his room and only came out for meals. Leo M. testified that the statute states that he had to be a danger to himself or others. Leo M. testified that when he was placed in restraints, he was lying on the floor because they were refusing to give him his breakfast. He testified that he was not in four-point restraints on April 24, 2019. Leo M. stated that on April 22, 2019, he was in four-point restraints because he refused to give them a photographic image. Leo M. then requested a continuance to review the records to see if there was any evidence of him striking staff because he denied doing that. Neither Leo M.'s attorney nor the trial court responded to Leo M.'s request for a continuance. Leo M.'s counsel indicated that he had no other witnesses. The trial court did not ask for closing arguments and immediately stated its findings.

¶ 20 The trial court found that Leo M. was an individual suffering from a serious mental illness, bipolar disorder, who had exhibited a deterioration of his ability to function, had engaged in threatening behavior, and was suffering. The trial court also found that it was necessary for the

medical staff to be authorized to administer the psychotropic medications listed in the court order together with the necessary testing. The trial court entered the order for administration of authorized involuntary treatment on May 1, 2019. The order indicated that the trial court found that Leo M.'s mental illness had existed for a period marked by the continuing presence of deterioration of his ability to function, suffering, or threatening behavior or the repeated episodic occurrences of the symptoms. The trial court further found that the benefits of the treatment would outweigh the harm and that Leo M. lacked the capacity to make a reasoned decision about the treatment. The trial court also found that less restrictive services were explored and found inappropriate, and that testing and procedures were essential for the safe and effective administration of treatment. The trial court found that a good faith attempt had been made to determine whether Leo M. had executed a power of attorney for health care or a declaration of mental health treatment. The trial court found that Leo M. received information about the benefits and side effects of the treatments and their alternatives and that he was a person subject to involuntary administration of psychotropic medication pursuant to section 2-107.1 of the Code (405 ILCS 5/2-107.1 (West 2018)). The trial court's order allowed the involuntary administration of medication for a period not to exceed 90 days and authorized the individuals named in the petition to administer the medication and the testing requested to ensure the safe administration of that medication. Leo M. filed his own notice of appeal on May 28, 2019.

¶ 21 II. ANALYSIS

¶ 22 A. Mootness

¶ 23 We first acknowledge that this appeal is moot as of July 30, 2019, when the medication order expired; therefore, our decision in this case will not grant Leo M. effective relief from that order. See *In re Joseph M.*, 398 Ill. App. 3d 1086, 1087 (2010). This court does not have jurisdiction to decide a moot question or render an advisory opinion unless the case falls within an exception to the mootness doctrine. *In re Barbara H.*, 183 Ill. 2d 482, 491 (1998). While there is no *per se* exception to mootness that universally applies to mental health cases, appeals of otherwise moot mental health orders "will usually fall within one of the established exceptions to the mootness doctrine." *In re Alfred H.H.*, 233 Ill. 2d 345, 355 (2009). The established exceptions are "public interest," "capable of repetition yet avoiding review," and "collateral consequences." *Id.* at 354-61.

¶ 24 On appeal, Leo M. concedes that the issues are moot but argues that the "capable of repetition" and "public interest" exceptions apply, as he raises statutory compliance issues and has a history of mental illness and several admissions to mental health facilities. Thus, Leo M. argues that he is likely to face the issues raised here again. The State concedes that both exceptions apply.

¶ 25 An exception to the mootness doctrine exists for cases where the events are capable of repetition yet are of such a short duration as to evade review. *In re Craig H.*, 2020 IL App (4th) 190061, ¶ 27. This exception has two elements. First, the challenged action must be of a duration too short to be fully litigated prior to its cessation. *Id.* Second, there must be a reasonable expectation that the same complaining party would be subjected to the same action again. *Id.* The same action need not be identical, but 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 the respondent. *Id.* This exception must be narrowly construed and requires a clear showing of each criterion. *In re J.T.*, 221 Ill. 2d 338, 350 (2006).

¶ 26 As previously stated, the medication order in this case was limited to 90 days. Because the challenged order was of such short duration, the issues could not have been fully litigated prior to its cessation. As such, the first criterion has been established. See *In re Alfred H.H.*, 233 Ill. 2d at 358. Thus, the only question with regard to this exception is whether there is a reasonable expectation that the respondent will be personally subject to the same action.

¶ 27 The record establishes that Leo M. was a person with a history of mental illness, having been subjected to several previous involuntary admissions for mental health treatment and having been subject to voluntary and involuntary administration of psychotropic medication in the past. Therefore, it is very likely that Leo M. will face future involuntary hospital admissions or involuntary administration of psychotropic medication proceedings and, as such, meets the second element that he would likely be subjected to the same action again.

¶ 28 An appeal that merely challenges the sufficiency of the evidence presented in a particular case will not suffice because any subsequent case involving the respondent will involve different evidence and will require an independent determination of the sufficiency of that evidence. *Id.* at 359-60. However, if the respondent's appeal raises a constitutional issue or challenges the trial court's interpretation of a statute, the exception applies because the court's resolution of these issues could affect the respondent in subsequent commitment proceedings. *Id.* at 360.

¶ 29 The present appeal involves challenges to the sufficiency of the evidence, but also involves the allegations that the State failed to observe several mandatory procedural and substantive requirements of the Code, that the trial court entered an invalid involuntary medication order despite several statutory violations, and that Leo M.'s counsel was ineffective for failing to object to the errors and omissions. Leo M.'s arguments that the State and the trial court failed to comply with several mandatory requirements of the Code's involuntary treatment statute (405 ILCS 5/2-107 (West 2018)) fall under the exception. See *In re Marcus S.*, 2022 IL App (3d) 170014, ¶ 48. As Leo M. is statutorily entitled to counsel during these proceedings (405 ILCS 5/3-805 (West 2018)), and ineffective assistance of counsel issues are likely to recur in future proceedings, the exception applies to the claim of ineffective assistance of counsel as well. *In re Tara S.*, 2017 IL App (3d) 160357, ¶ 17. Accordingly, we find that the issues presented in this case are reviewable under the capable of repetition yet avoiding review exception to mootness. Because we find that the "capable of repetition" exception applies, we do not need to address Leo M.'s argument that the "public interest exception" also applies.

¶ 30 Leo M.'s argument that the State failed to prove by clear and convincing evidence that he was subject to involuntary treatment is a sufficiency of the evidence claim. While a routine sufficiency-of-the-evidence argument in a mental health case has been found not to meet the criteria for either exception to the mootness doctrine, because we are addressing the merits of the respondent's statutory compliance arguments under the capable of repetition exception, we will also consider the merits of the respondent's sufficiency-of-the-evidence argument. See *In re A.W.*, 381 Ill. App. 3d 950, 956 (2008).

¶ 31 Leo M. argues that the trial court erred in entering the medication order and raises four issues for this court's review. The issues raised are (1) whether the medication order was defective where it failed to specify the medication dosages for VPA and lithium, (2) whether the State failed to protect Leo M.'s due process right to complete medication information and

failed to prove that he lacked capacity when the medication information he was provided did not describe the benefits of each medication individually or the benefits and side effects of combined medications administration, (3) whether the State failed to prove the benefits of the treatment outweighed the harm to Leo M. when the evidence did not include the benefits and harm of each individual medication or of the medications in combination, and (4) whether Leo M. received ineffective assistance of counsel.

¶ 32 B. Failure to Comply With the Code

¶ 33 Leo M. argues that the State, the trial court, and his counsel failed to satisfy certain mandatory requirements of the Code and that the errors require reversal. We agree.

¶ 34 The fourteenth amendment's due process clause (U.S. Const., amend XIV) pertains to persons who suffer from mental illness and recognizes that they have constitutionally protected liberty interests that permit them to refuse the involuntary administration of psychotropic medications. *In re C.E.*, 161 Ill. 2d 200, 213 (1994). Because involuntary mental health services, including the involuntary administration of psychotropic drugs, involve a massive curtailment of liberty (*In re Robert S.*, 213 Ill. 2d 30, 46 (2004)), Illinois courts have repeatedly recognized the importance of "the procedures enacted by our legislature to ensure that Illinois citizens are not subjected to such services improperly." *In re Barbara H.*, 183 Ill. 2d at 496.

¶ 35 We also recognize that the State has a legitimate *parens patriae* interest in furthering the treatment of mentally ill patients who are incapable of making reasoned decisions regarding their own treatment. *In re C.E.*, 161 Ill. 2d at 217. Pursuant to section 2-107.1(a-5)(4) of the Code, psychotropic medications may not be administered to an adult recipient of mental health services against their will unless the State proves the following 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)(A)-(G) (West 2018).

¶ 36 The statute provides important procedural safeguards that protect the rights of patients while balancing the State's interests by requiring the trial court to find evidence of each of the elements before authorizing the forced administration of psychotropic medication. See *In re Louis S.*, 361 Ill. App. 3d 774, 779 (2005). The statute's strict standards must be satisfied by

clear and convincing evidence before medication can be ordered on an involuntary basis. *In re C.E.*, 161 Ill. 2d at 218.

¶ 37 Whether there was compliance with a statutory provision presents a question of law, which we review *de novo*. *In re Nicholas L.*, 407 Ill. App. 3d 1061, 1072 (2011). A reviewing court, however, will not reverse a trial court's determination as to the sufficiency of the evidence unless it is against the manifest weight of the evidence. *In re Laura H.*, 404 Ill. App. 3d 286, 290 (2010). A judgment is against the manifest weight of the evidence only where the opposite conclusion is apparent or where the findings appear to be unreasonable, arbitrary, or not based on the evidence. *Id.*

¶ 38 1. Medication Dosage

¶ 39 Leo M. argues that the medication order was defective where it failed to specify the medication dosages for VPA and lithium. The State confesses this error, and its confession is well taken.

¶ 40 The petition and the medication order list the same medications and dosages. In the petition, the requested dosage for lithium is listed as "up to therapeutic level daily." The alternative medication, VPA, also has a dosage listed as "up to the therapeutic level." Section 2-107.1(a-5)(6) of the Code provides that an order authorizing the use of psychotropic medications on a nonemergency basis must "specify the medications and the anticipated range of dosages that have been authorized." 405 ILCS 5/2-107.1(a-5)(6) (West 2018). We previously addressed this issue in *In re Bobby F.*, 2012 IL App (5th) 110214, ¶ 11, where VPA was ordered " 'up to therapeutic dose.' " Notably, the *Bobby F.* case also occurred in Randolph County, and Dr. Casey acted as the State's expert witness. In that case, we held that a trial court's designation of a " 'therapeutic dose' " lacked the specificity required pursuant to section 2-107.1(a-5)(6) of the Code. *Id.* ¶ 28. Again, we find that the medication order is deficient where it does not properly specify the dosage to be administered and that the medication order must be reversed.

¶ 41 The State correctly submits that resolution of this issue could resolve this appeal. While we acknowledge that the review of Leo M.'s additional contentions of error would not normally be necessary, the numerous defects in this case and their frequent repetition in our mental health courts belie a need to address these errors to ensure that they are not repeated in the future. While the State did not argue that any issue raised by Leo M. was waived, we do note that there was no objection in the trial court by Leo M.'s counsel to *any* of the issues raised, and a motion to reconsider was not filed. However, the waiver rule is a limitation on parties and not on reviewing courts. See *Welch v. Johnson*, 147 Ill. 2d 40, 48 (1992) (reviewing court may, in furtherance of its responsibility to reach a just result, override considerations of waiver). Accordingly, we will consider Leo M.'s remaining issues on the merits. See *In re Len P.*, 302 Ill. App. 3d 281, 286 (1999) (reversing involuntary-treatment order despite waiver because the trial court failed to specify the type and dosage of medication).

¶ 42 2. Incomplete Medication Information

¶ 43 Leo M. next argues that he did not receive complete medication information in violation of section 2-102(a-5) of the Code. 405 ILCS 5/2-102(a-5) (West 2018). Leo M. argues that the State failed to prove that he lacked capacity where the medication information he was provided

did not describe the benefits of each medication individually or the benefits and side effects of the medications when administered in combination.

¶ 44 Before a trial court can authorize involuntary treatment, the State must prove compliance with section 2-102(a-5) of the Code in order to protect the respondent's due process rights. *In re John R.*, 339 Ill. App. 3d 778, 784 (2003). Section 2-102(a-5) of the Code requires that a treating physician "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." 405 ILCS 5/2-102(a-5) (West 2018). The written notice requirement is a procedural safeguard that must be construed in favor of the respondent, and strict compliance therewith is necessary because liberty interests are involved. *In re Bobby F.*, 2012 IL App (5th) 110214, ¶ 20.

¶ 45 The State argues that Leo M. was provided the petition with attachments and the drug sheets contained in the exhibit, which were admitted into evidence, and asserts that these documents combined, along with the testimony of Dr. Casey, complied with the requirements of section 2-102(a-5). An attachment to the petition indicated that the drug notes were provided to Leo M. on April 25, 2019, and was signed by a nurse attesting to the same. We disagree that the petition and attachments provided to Leo M. demonstrate compliance with section 2-102(a-5) of the Code (405 ILCS 5/2-102(a-5) (West 2018)).

¶ 46 The petition and attachments failed to adequately describe the benefits of the treatment individually, as well as the risks and benefits of the medications in combination. An attachment to the petition, titled "evaluation for enforced medications," stated the benefits and side effects of two categories of medications—antipsychotic medications and anxiolytic medications—as well as the benefits of the medications "overall." The petition did not identify which medications listed in the petition were antipsychotic medications and which were anxiolytic medications.

¶ 47 The drug sheets provided to Leo M. stated the name of the drug, what conditions it treats, how to take and store the drug, warnings, and side effects. For example, the olanzapine sheet indicated that it treats psychotic disorders, such as schizophrenia or bipolar disorder. While Leo M. was diagnosed with bipolar disorder, NOS, the drug sheet did not describe how it treats bipolar disorder or how it helps address any symptomology that was exhibited by Leo M. The lorazepam documentation stated that it treats anxiety. There was nothing introduced at the hearing to indicate that Leo M. suffered from anxiety. The diphenhydramine drug sheet indicated that it treats hay fever, allergy, and cold symptoms, as well as insomnia. There was nothing introduced at the hearing to indicate that Leo M. suffered from any of these symptoms. In fact, Dr. Casey's evaluation said that he expected the medications to stabilize Leo M.'s thought process, address his undefined psychotic symptoms and mood disturbance, and alleviate threatening, aggressive, bizarre, and erratic behavior. The drug sheets, however, do not mention these symptoms. Importantly, none of the documents provided to Leo M. indicated how each specific drug would be used to benefit Leo M.'s symptomology.

¶ 48 In *In re Laura H.*, 404 Ill. App. 3d at 291-93, similar drug sheets were found to be insufficient to show statutory compliance with section 2-102 of the Code. In that matter, an expert witness testified to some of the benefits of the drugs prescribed. *Id.* at 291. The court, however, found that the drug sheets in the common-law record simply stated the name of the drug, what conditions it treated, how to take and store the drug, warnings, and side effects. *Id.* The court noted that none of the documents indicated how the specific drug would be used to

benefit the respondent's mental health issues as they were either vague or treated multiple conditions. *Id.* at 292.

¶ 49 In the present case, the drug sheets are similar to those provided to *Laura H.* and were insufficient. While the attachment to the petition described the benefits of the types of drugs, the drugs in the petition were unlabeled as to what type, and therefore, there would be no way for a patient to ascertain which drugs were antipsychotic and which were anxiolytic. While the attachment to the petition included an explanation of the overall benefits of the medications generally, the drug sheets failed to indicate the benefits of each drug for the treatment of Leo M.'s symptoms or the side effects expected to be caused by prescribed psychotropic medication. Accordingly, we find that the written documents provided to Leo M. did not state the benefits of each medication as required by section 2-102(a-5) of the Code. 405 ILCS 5/2-102(a-5) (West 2018).

¶ 50 Before a trial court authorizes involuntary treatment, the State must also show by clear and convincing evidence that the respondent "lacks the capacity to make a reasoned decision about the treatment." *Id.* § 2-107.1(a-5)(4)(E). A necessary predicate to making this informed decision is that the respondent must be informed about the medication's risks and benefits. *In re Cathy M.*, 326 Ill. App. 3d 335, 341 (2001). Absent written information that adequately describes the proposed treatment, along with the risks and benefits associated with the proposed treatment, the State fails to show that the respondent lacks capacity. *In re Louis S.*, 361 Ill. App. 3d at 779-80.

¶ 51 Here, one could not ascertain from the written materials which drugs were first or second choice drugs or would be given in combination. There was no indication of whether the drugs would be given orally or by intramuscular injection and if the difference in delivery would come with a difference in dosage. The poorly defined treatment protocol and the information provided to Leo M. via the petition and attachments were inadequate to inform Leo M. about the medications' benefits, and therefore, Leo M. did not have the information required to make a reasoned decision. Without this information, the trial court could not have found by clear and convincing evidence that Leo M. lacked the capacity to make a reasoned decision about whether to take psychotropic medication, and the medication order must be reversed.

¶ 52 Further, regarding polypharmacy, the proposed medication protocol in the petition and medication order did not indicate which medications would be used in combination, and if medications were to be used in combination, for what purpose. The petition only indicated that the medications listed *may* be used in combination. It was not possible to ascertain from the information provided to Leo M. in writing what medications would be administered at the same time.

¶ 53 It is of note that some of the drug sheets contained in the exhibit indicated that one should alert their doctor if they are taking other medications because the medication may interfere with how another medication works. For example, the drug sheet provided for olanzapine, a medication on Leo M.'s primary medication protocol, under the heading "Drugs and Foods to Avoid," directs the reader that "[s]ome medicines can affect how olanzapine works. Tell your doctor if you are using any of the following: Carbamazepine, diazepam, fluoxetine, fluvoxamine, levodopa, omeprazole, or rifampin." Carbamazepine and fluoxetine are included in Leo M.'s medication protocol; however, there was no information provided to Leo M., nor testimony before the trial court, indicating whether those medications would be administered

simultaneously, and nothing in the written information informed Leo M. of the basis for the warning in the drug sheet.

¶ 54 This court has held that the possibility of harm resulting from drug interactions is a crucial consideration in determining whether the benefits of a proposed course of treatment outweigh the risk of harm. *In re H.P.*, 2019 IL App (5th) 150302, ¶ 36. "Without pertinent information on the possibility of such harm, courts do not have adequate information to make a meaningful determination." *Id.* We held in *In re H.P.* that in order for the courts to meaningfully assess whether the benefits of treatment outweigh the harm that might occur as a result of the proposed treatment, the State must provide trial courts with expert testimony addressing known drug interactions in order to meet its statutory burden. *Id.* ¶¶ 33-36.

¶ 55 The determination of whether an individual has the capacity to make treatment decisions for themselves rests upon their ability to make a rational choice to either accept or refuse the treatment considering conveyed information concerning the risks and benefits of the proposed treatment. We see no reason to differentiate between the information required for the trial court to consider and the information required for a patient to consider the risks and benefits of proposed treatment. As such, we hold that the patient must also be provided with the information about the benefits of polypharmacy and known drug interactions. See also *In re Alaka W.*, 379 Ill. App. 3d 251, 263-64 (2008) (requiring the State to present evidence of the risks and benefits of each medication it sought to have involuntarily administered, which would provide the court the same information deemed necessary for a patient to make a "reasoned decision" as to whether the benefits of the treatment outweigh the potential harm). Where the medication protocol includes polypharmacy, the patient must be informed of the known drug interactions of the medications that are sought to be administered in combination, and that information must describe the benefits and risks that are associated with the combination.

¶ 56 The medication sheets, even when cross-referenced with the petition and attachments, do not sufficiently notify Leo M. about the benefits of each medication individually or of the benefits and side effects of combined medications so that he could make a reasoned decision about the treatment. The medication order must be reversed where it was entered in violation of the requirements of section 2-102(a-5) of the Code. 405 ILCS 5/2-102(a-5) (West 2018). Additionally, the order must be reversed where the State failed to prove by clear and convincing evidence, pursuant to section 2-107.1(a-5)(4)(E) of the Code (*id.* § 2-107.1(a-5)(4)(E)), that Leo M. lacked the capacity to make a reasoned decision where he was not provided with full written information about the medication protocol.

¶ 57 3. Benefits Outweigh the Risk of Harm

¶ 58 Leo M. next argues that the State did not prove that the benefits of the treatment outweighed the risk of harm posed to Leo M. because its evidence did not include the benefits and harm of each individual medication or of the medications in combination. The statute governing orders for the involuntary administration of psychotropic medication requires the State to prove by clear and convincing evidence that the benefits of the proposed treatment outweigh the risk of harm from the treatment. *Id.* § 2-107.1(a-5)(4)(D). The Illinois Supreme Court has found that:

> "Only a physician—such as a psychiatrist—can prescribe medication ***. *** [T]he medical community recognizes that a certain level of knowledge is necessary to safely prescribe medication, to fully recognize its beneficial effects as well as its adverse side

effects, to understand its interaction with other drugs, and to anticipate the consequences of using it on certain at-risk groups." *In re Robert S.*, 213 Ill. 2d at 52.

The State's expert must support his opinions with specific facts or testimony as to the bases of those opinions. *In re Alaka W.*, 379 Ill. App. 3d at 263. An expert's opinion alone is not enough to satisfy the clear and convincing evidence standard. *Id.*

¶ 59 In order for courts to meaningfully weigh whether the benefits of the treatment outweigh the harm, the State must present medical evidence of the benefits of *each medication* to be administered as well as the potential side effects of each medication. *Id.* If the petition lists medications to be used in combination, the State must present evidence about the benefits and possible interactions of using multiple medications. *In re H.P.*, 2019 IL App (5th) 150302, ¶¶ 29-31. Further, the medications should treat symptoms the respondent has actually exhibited. *In re Debra B.*, 2016 IL App (5th) 130573, ¶¶ 44, 47. Accordingly, the evidence about medications' benefits should not be vague, but instead show how the specific drug will benefit the respondent's mental health issues. See *In re Laura H.*, 404 Ill. App. 3d at 292 (discussing the contents of the written medication information that must be given to respondents).

¶ 60 Clear and convincing evidence is defined as a quantum of proof that leaves no room for reasonable doubt in the fact finder's mind about the truth of the proposition in question. *In re John R.*, 339 Ill. App. 3d at 781. The State did not present sufficient evidence to the trial court about the proposed medication protocol, the benefits and side effects of each individual medication, or the combined administration of the medication, to prove by clear and convincing evidence that the benefits of the treatment outweighed the harm as required by the Code. 405 ILCS 5/2-107.1(a-5)(4)(D) (West 2018).

¶ 61 Here, the petition lists a total of 14 medications. The first seven medications listed olanzapine, lithium, risperidone, diphenhydramine, lorazepam, fluoxetine, and carbamazepine, were "to be prescribed individually or in combination." Below these seven medications, the petition listed seven alternative medications, stating that, "[i]f the above medications are not effective, the following may be given to the individual in combination with the above-mentioned medication if clinically needed." The alternative medications were fluphenazine, VPA, quetiapine, benztropine, clonazepam, Venlafaxine XR, and oxcarbazepine. The order mirrors the petition and lists the authorized medications in the same way as the petition.

¶ 62 Dr. Casey was asked if the "benefits and the treatment that you're asking for this court to administer far outweigh any harm that would come from them," and he answered, "Yes." Dr. Casey did not testify about the individual medications, whether they would be given orally or through intramuscular injection (or the dosage associated with each, if different), or their benefits and potential side effects, except during cross-examination when he testified that Leo M. was taking 10 milligrams of olanzapine and 4 milligrams of lorazepam daily and that Leo M. was doing better on these medications and was less aggressive.

¶ 63 The State argues that the petition and attachments, including the drug sheets for each medication, were admitted without objection and satisfy the State's burden of proof as to the benefits and side effects of the medication protocol. During the involuntary medication proceeding, the State asked Dr. Casey if the documents they presented to him during cross-examination contained a specific and itemized list of all psychotropic medications, as well as their requested dosages, whether the documents contained a specific listing of alternative medications and their dosages, and whether the documents contained a listing of every possible

adverse side effect that the patient may experience from receiving the medications, and Dr. Casey answered, "Yes." Dr. Casey was not asked to testify about the benefits of the medications.

¶ 64 The transcript indicates that the petition, an attachment, a list of drug sheets provided to Leo M., and 35 pages of drug sheets were admitted into evidence without objection. It appears that the State intended the petition, attachments, and the drug sheets to replace expert testimony. However, even if the documents could be a substitute for expert testimony, where the documents failed to sufficiently outline the benefits and side effects of the proposed medication protocol, the documents cannot replace expert testimony. See *In re A.W.*, 381 Ill. App. 3d at 959 ("[W]e reject the State's contention that it is sufficient if the petition for involuntary treatment lists the specific requested dosages. Absent (1) the trial court's (a) taking judicial notice of the anticipated dosages listed in the petition or (b) admitting in evidence the petition for the purpose of establishing the anticipated dosages or (2) testimony that the proposed psychotropic medications are requested in the dosages as they are listed in the petition, the petition's listing of anticipated dosages of the proposed psychotropic medication does not suffice.").

¶ 65 Dr. Casey testified that Leo M. was diagnosed with bipolar disorder, NOS, with secondary diagnoses of personality disorder, with the need to rule out ASPD, borderline, and cannabis use disorder. Dr. Casey did not testify to the definition and symptomology of the primary diagnoses or how he arrived at the diagnoses. Dr. Casey testified that Leo M.'s condition was described as very unstable and psychotic with poor insight and judgment. It is unclear from the testimony who described the behavior or if it was Dr. Casey's personal observations.

¶ 66 Dr. Casey did testify to specific behaviors exhibited by Leo M. while in jail and at CMHC. Leo M. had transferred to CMHC from Cook County on a charge of criminal trespass and "battery make physical contact." Dr. Casey testified that Leo M. had a report that he was going to harm himself and had made threatening statements to the police officers while in jail. Dr. Casey testified that Leo M. struck his head on the wall and had injuries prior to arriving at CMHC due to thrashing around a police cruiser and hitting his head on the roof of the car. Dr. Casey testified that upon arrival at CMHC, Leo M. was extremely aggressive, attempted to strike staff, and was placed in restraints on two occasions.

¶ 67 The petition included information in a typed assessment signed by Dr. Casey. Dr. Casey's typed assessment concerning Leo M. stated that "[p]sychiatrically he was unstable, Psychotic and agitated." In the typed assessment, there was also a diagnoses list which included: "Primary: Bipolar D/O NOS, Secondary: Personality DO; R.O ASPD, Borderline, Cannabis Use Disorder, Medical: Asthma per history." The typed assessment further included a section entitled problem identification and treatment interventions. There was a list indicating: "1. Psychosis/violence—Medication, Individual Counseling with his therapist; Recreational Therapy and other Therapeutic Interventions 2. UST—Patient education with restoration to fitness being the goal 3. Polysubstance Abuse—MISA." In the evaluation section of the typed assessment, Dr. Casey indicated that Leo M. was experiencing active psychosis, was unable to understand or comprehend his aggressions, had no insight, and had a high potential for continued aggression and threatening behaviors. Dr. Casey wrote that the benefits of the medications in reducing the intensity of psychotic symptoms, as well as mood disturbance, and alleviating threatening and aggressive behavior, as well as bizarre and erratic behaviors, outweighed the risks of uncontrolled symptoms that would fuel threatening, impulsive,

aggressive, and acting-out behaviors causing not only serious danger of harm to others but also to himself.

¶ 68 Testimony that proposed medications are expected to treat specific symptoms is sufficient to demonstrate the benefits of the proposed treatment to the court. *In re H.P.*, 2019 IL App (5th) 150302, ¶ 31. Dr. Casey did not testify about the diagnoses he made, how he arrived at the diagnoses, or what symptomology was associated with each diagnosis. Dr. Casey also did not testify regarding the benefits and side effects of any of the individual medications listed in the petition. Further, while the petition listed the prescribed medications as primary and alternative, it failed to indicate whether the medications would be prescribed individually or in combination. Leo M. was given the drug sheets for the injectable and oral forms of some medications, but there was no differentiation in the petition or indication of which would be given or at what dose based on the differing methods of delivery.

¶ 69 Dr. Casey did not testify whether the individual medications treated symptoms exhibited by Leo M. that were a result of his mental illness, or if they treated side effects expected to arise based on administration of the prescribed medication protocol. While some symptomology was listed briefly in the attachment to the petition, such as unstable thought processes, active psychosis, aggression or lack of insight, the written information did not define what symptoms were caused by the diagnosis, nor how the individual medications would treat the symptomology associated with the diagnosis.

¶ 70 The attachment to the petition included a heading titled, "evaluation for enforced medications," which included information about the classification of medications. For example: "Antipsychotic medications are used to decrease and remit symptoms such as delusions and hallucinations, as well as alleviate disorganized and confused thought processes. It also reduces and alleviates hostility and lessens potential for aggression and helps control violent acting out." There is a similar paragraph relating to anxiolytic medications. However, none of the medications in the petition were labeled as anxiolytic or antipsychotic, and there was no testimony offered about these drug classifications. Antipsychotic medications, according to the attachment, decrease and remit symptoms such as delusions and hallucinations, as well as alleviating disorganized and confused thought processes. There was no testimony, and nothing listed in written documentation, to indicate that Leo M. suffered from delusions or hallucinations.

¶ 71 The exhibit included some information about the uses of the prescribed medications by way of the drug sheets provided to Leo M. prior to the trial and introduced to the court by way of the exhibit. The petition listed a total of 14 medications, and the order authorized administration of the same. Six of the requested medications listed treatment of bipolar disorder as a benefit, but the medication sheets did not indicate in what way they would treat the disorder or any of the specific symptoms exhibited by Leo M. Further, there was nothing in the record to show that Leo M. suffered from many of the symptoms listed as benefits of some of the prescribed medications. For example, diphenhydramine, according to the drug sheet, treats hay fever, allergy, and cold symptoms. There was no indication that Leo M. suffered from any of those symptoms and no testimony or other written information describing an off-label use to treat specific symptoms presented by Leo M. The drug sheet for fluphenazine indicated that it treats schizophrenia, but there are no other benefits listed. Leo M. was not diagnosed with schizophrenia. There was no testimony or written information to show the benefit of this medication to Leo M.

¶ 72 Where an expert fails to support his opinion with specific facts or testimony as to the bases of those opinions, then his testimony alone is insufficient to satisfy the clear and convincing evidence standard. *In re Alaka W.*, 379 Ill. App. 3d at 263. Here, reversal of the medication order is warranted, as Dr. Casey's testimony did not rise to the level of clear and convincing evidence where he did not adequately explain the bases for his opinion and his opinion was unsupported by the evidence. As such, the State failed to prove that the benefits of the treatment outweigh the risk of harm to Leo M. as required by section 2-107.1(a-5)(4)(D) of the Code. 405 ILCS 5/2-107.1(a-5)(4)(D) (West 2018). Therefore, the trial court's finding that the benefits outweighed the harm was against the manifest weight of the evidence and the medication order must be reversed.

¶ 73 C. Ineffective Assistance of Counsel

¶ 74 Leo M. also argues that his trial counsel provided ineffective assistance during the involuntary medication proceeding by failing to object to the State's failure to present evidence as to each of the required element of the involuntary treatment statute. Leo M. further argues that his trial counsel provided ineffective assistance of counsel by minimally cross-examining the State's witness, failing to object to the lack of qualification of the State's witness as an expert, failing to make a closing argument, failing to heed Leo M.'s request for a continuance, and permitting a *pro forma* hearing. We review a claim of ineffective assistance of counsel under the *de novo* standard. *People v. Davis*, 353 Ill. App. 3d 790, 794 (2004). Based on the following, we agree that Leo M.'s counsel was ineffective at the involuntary medication proceeding.

¶ 75 A respondent that is subject to involuntary administration of psychotropic medication has a statutory right to counsel. 405 ILCS 5/3-805 (West 2018); *In re Barbara H.*, 183 Ill. 2d at 493-94. This right to counsel includes the effective assistance of counsel; anything less would fail to guarantee due process requirements. *In re Tara S.*, 2017 IL App (3d) 160357, ¶ 17. In determining whether counsel has effectively tested the State's case in proceedings under the Code, this court applies the *Strickland* standard. *In re Daryll C.*, 401 Ill. App. 3d 748, 754 (2010); see *Strickland v. Washington*, 466 U.S. 688 (1984). Under *Strickland*, a respondent must prove that "(1) counsel's performance was deficient, such that the errors were so serious that counsel was not functioning as the 'counsel' contemplated by the Code; and (2) counsel's errors were so prejudicial as to deprive [the respondent] of a fair proceeding." *In re Carmody*, 274 Ill. App. 3d 46, 57 (1995) (citing *Strickland*, 466 U.S. at 687).

¶ 76 The United States Supreme Court has held, however, that a party need not prove the *Strickland* element of prejudice when the petitioner's counsel failed "to subject the prosecution's case to meaningful adversarial testing." *United States v. Cronic*, 466 U.S. 648, 659 (1984). Where counsel fails to subject the State's case to meaningful adversarial testing, prejudice will be presumed (*People v. Hattery*, 109 Ill. 2d 449, 461 (1985)), and counsel's failures will not be considered matters of trial strategy. *People v. Patterson*, 217 Ill. 2d 407, 441 (2005). To be effective, then, counsel must create a "confrontation between adversaries" (internal quotation marks omitted) (*Hattery*, 109 Ill. 2d at 462) and must challenge their opponent's case in a valid way. *People v. Bonslater*, 261 Ill. App. 3d 432, 439 (1994). In involuntary health proceedings, whether the respondent's counsel held the State to its burden of proof is of paramount importance. *In re Sharon H.*, 2016 IL App (3d) 140980, ¶ 42. In the

present case, we find that Leo M.'s counsel failed to subject the State's case to meaningful adversarial testing.

¶ 77 Here, the State failed to comply with several mandatory requirements of the Code without meeting any challenge or objection from Leo M.'s counsel. As noted above, the medication order failed to specify the dosages of VPA and lithium; the State failed to show that Leo M. was properly advised in writing about the prescribed medications; and, failed to show that Leo M. lacked the capacity to make a reasoned decision about the medication protocol. Further, the State failed to prove that the benefits of the treatment outweighed the risk of harm. Leo M. was prejudiced by counsel's failures because, if counsel had raised these issues, he would have had a viable argument for the denial of the State's petition.

¶ 78 More specifically, Leo M. had a due process right not to be medicated on an involuntary basis until the State proved that he lacked the capacity to make a reasoned decision about his own medical treatment. *In re Richard C.*, 329 Ill. App. 3d 1090, 1094-95 (2002). The State could not prove that Leo M. lacked that capacity without first demonstrating that he had received all of the information required by the Code as to each of the proposed medications. *In re Wilma T.*, 2018 IL App (3d) 170155, ¶ 23. By failing to object to the State's failure of proof on this issue alone, Leo M.'s counsel failed to protect Leo M.'s fundamental due process right.

¶ 79 We note, additionally, that Leo M.'s counsel conducted a minimal cross-examination of Dr. Casey about the names and dosages of the medications Leo M. was receiving on an emergency-enforced basis, whether he had improved on those medications, and whether the medications would exacerbate Leo M.'s asthma. The defense's cross-examination took up one page of the transcript, and there was no cross-examination regarding Leo M.'s symptomology and diagnoses, the benefits of the medication, how the medication would be administered, the combination of medication and any benefits or side effects of the same, or the poorly defined medication protocol, which was missing dosages for two of the prescribed medications. We further note that the lack of any objections to the State's omissions and errors in the medication order did not appear to be trial strategy, as counsel did not save any challenges to the State's evidence for closing argument, because he did not make a closing argument. Because the blatant errors in this matter were so prejudicial as to render Leo M.'s counsel ineffective, we need not address the several other serious errors allegedly committed by Leo M.'s counsel individually.

¶ 80 This court has previously cautioned that hearings under the Code should not be conducted on a *pro forma* basis and reminded all parties to be vigilant to protect respondents' fundamental liberty interests under the Code. *In re John R.*, 339 Ill. App. 3d at 785. Involuntary medication hearings require more extensive medical testimony than commitment hearings, and as this hearing demonstrates, its extreme brevity and attempts to circumvent live expert testimony for documentary evidence resulted in the omission of necessary testimony without objection from counsel.

¶ 81 While we understand that a medication hearing requires expert testimony on a level that demands a great deal of time, attention, expertise, and recall, the State may refresh its expert's recollection when necessary. We acknowledge that written documentation, if properly introduced for the explicit purposes for which it is sought to be included in the record, could serve to meet the State's burden. For example, the 35 pages of drug sheets seem to appropriately outline the potential harm that each individual medication could pose to Leo M.

However, the written information here was not introduced and admitted for every purpose for which it was intended, and even if it were, it was deficient in meeting the State's burden as to the required elements of its case. While we understand the inclination by the State, the expert witnesses testifying in our mental health courts, and the trial courts' attempt to streamline and reduce the hours of testimony that would be required were the doctor to testify to all of the information contained in the petition and exhibit, procedural steps are still required, and expert testimony is of paramount importance.

¶ 82 This case involved multiple flagrant violations of the Code's requirements. Necessary expert testimony was minimal, at best, and the hearing took about 13 minutes. See *Important Things to Know Before Ordering a Transcript*, U.S. Dist. Court, Dist. of Minn., https://www.mnd.uscourts.gov/important-things-know-ordering-transcript (last visited Sept. 6, 2022) [https://perma.cc/K6RK-NGFF] (estimating transcript costs and stating a "rule of thumb" for legal transcripts that one page of transcript is one minute of court time). Further, the supreme court's special advisory committee for justice and mental health planning has drafted, and the supreme court has approved, a standardized form order for use in the Illinois courts in involuntary medication hearings. The trial court failed to use the approved form[17] for its order for the administration of authorized involuntary treatment, and we take this opportunity to further encourage the use of approved standardized court forms, available on the supreme court's website. We close by reiterating that the Code's procedural safeguards are essential tools to ensure that the liberty interests of respondents are upheld. *In re George O.*, 314 Ill. App. 3d 1044, 1046 (2000). They must be scrupulously observed and strictly construed in favor of the respondent. *In re Marcus S.*, 2022 IL App (3d) 170014, ¶ 50.

¶ 83 III. CONCLUSION

¶ 84 For the foregoing reasons, we reverse the judgment of the circuit court of Randolph County.

¶ 85 Reversed.

[17]The order for administration of authorized involuntary treatment (medication) is available at *Uniform Health Orders*, Office of the Ill. Courts, https://www.illinoiscourts.gov/documents-and-forms/uniform-mental-health-orders/ (last visited Sept. 6, 2022) [https://perma.cc/Q85B-54ZC].