NOTICE
This Order was filed under Supreme Court Rule 23 and is not precedent except in the limited circumstances allowed under Rule 23(e)(1).

2022 IL App (4th) 210756-U

NO. 4-21-0756

FILED
December 30, 2022
Carla Bender
4th District Appellate
Court, IL

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

In re ANTHONY G., a Person Found Subject to Involuntary Administration of Psychotropic Medication	)	Appeal from the Circuit Court of Sangamon County
(The People of the State of Illinois, Petitioner-Appellee,	)	No. 21MH363
v.	)	
Anthony G., Respondent-Appellant).	)	Honorable Christopher G. Perrin, Judge Presiding.

JUSTICE ZENOFF delivered the judgment of the court.
Presiding Justice Knecht and Justice Turner concurred in the judgment.

ORDER

¶ 1 *Held*: The appellate court granted appellate counsel's motion to withdraw, concluding no meritorious issues can be raised on appeal.

¶ 2 Following a December 2021 hearing, the trial court found respondent, Anthony G., subject to the involuntary administration of psychotropic medication.

¶ 3 On appeal, respondent's counsel seeks to withdraw her representation, contending any appeal in this cause would be meritless. We grant counsel's motion to withdraw and affirm the trial court's judgment.

¶ 4 I. BACKGROUND

¶ 5 On November 30, 2021, Dr. Aura Monica Eberhardt filed a petition seeking leave to involuntarily administer psychotropic medication to respondent. In the petition, including the first page of the petition as amended on December 1, 2021, Dr. Eberhardt indicated she had known

respondent since October 21, 2021. Respondent had a serious mental illness, schizoaffective disorder. She alleged, because of his mental illness or developmental disability, respondent exhibited (1) deterioration of his ability to function in the form of grandiose and paranoid delusions, hallucinations, and inappropriate behavior such as throwing urine-soaked socks at staff members and (2) threatening behavior such as asking inmates and staff members to fight him. Dr. Eberhardt sought to administer specified medications to respondent, with the intended benefits being to decrease the intensity of his psychosis, irritability, and irrational thinking. Dr. Eberhardt noted she had explained the risks and the intended benefits of the treatment and had provided the information in written or printed form to respondent. The petition further asked the court to order testing and procedures that Dr. Eberhardt stated were "essential for the safe and effective administration of the [requested] psychotropic medication." The tests and procedures included specified blood work, electrocardiograms (EKGs), and "physical and psychiatric assessments *** includ[ing] vital signs."

¶ 6 On December 1, 2021, the trial court conducted a hearing on the petition via videoconference. Respondent did not initially appear, but he joined the proceedings shortly after they started. Respondent repeatedly interrupted the proceedings, often with off-topic remarks.

¶ 7 The State called Dr. Eberhardt to testify as an expert, and the court qualified her as an expert in psychiatry. Dr. Eberhardt testified that respondent was 43 years old. He had been admitted to McFarland Mental Health Center on October 18, 2021, after a Knox County court found him unfit to stand trial on charges of aggravated battery of a law enforcement officer and battery.

¶ 8 Dr. Eberhardt, relying on her personal examination of respondent and his medical records, opined that respondent's "diagnosis [was] schizoaffective disorder bipolar type." She

estimated from respondent's record he had exhibited schizoaffective behaviors for at least nine years. He displayed "labile mood," such that he could "be observed being calm one minute and the next he's kicking and swinging his arms around." He was irritable and hostile. He had grandiose delusions, including that he was of royal blood and was a counselor for his peers on the unit. He had paranoid delusions, including the belief that staff members stole his wife's soul and that the staff was diseased and needed to stay away from him.

¶ 9 Dr. Eberhardt opined that respondent's deterioration was evident in his delusions and in behavior such as his urinating on the furniture, being "naked on the unit," and defecating on the floor in his bathroom. When Dr. Eberhardt asked respondent why he defecated on the floor, he said he "wanted to achieve some goals." Respondent displayed threatening behavior by "threatening staff and asking peers to fight him." He broke an exit sign into sharp pieces and walked around with the pieces in his hand, refusing to surrender them to staff members. He discussed wanting to hire a hitman to kill his sister.

¶ 10 Dr. Eberhardt opined that respondent "lack[ed] *** insight into his illness[ ] and *** [was] unable to have a rational discussion about *** any subject."

¶ 11 Dr. Eberhardt asked the trial court to order the medications specified in the petition for respondent. She sought to administer olanzapine to treat mood lability and psychotic symptoms, benztropine to treat possible side effects of olanzapine, lorazepam to treat agitation, insomnia, and aggression, and divalproex to treat aggression, agitation, and mood lability. She stated the proposed dosage ranges for these primary medications and for alternative medications listed in the petition.

¶ 12 According to Dr. Eberhardt, respondent had previously taken olanzapine voluntarily from October 21, 2021, until November 13, 2021. His symptoms improved while he

was medicated, but "after he stopped [the olanzapine], his symptoms returned, including the urination, defecation, hostility, [and] threatening behavior." Respondent did not report side effects from either olanzapine or lorazepam. He reported he stopped his medication because he believed he did not need to be medicated anymore. Respondent's record included a note from another psychiatrist that he acknowledged he had been treated with olanzapine "for a long period of time."

¶ 13 Dr. Eberhardt opined:

> "If medications are ordered, I expect that his symptoms will decrease in intensity or [be] controlled by the staff here at McFarland. When he was there for three weeks, his symptoms improved somewhat, and I expect that he will be able to function safely in the community. We know, that without the treatment, based upon behavior in the community and behavior here, he is not safe to function anywhere but McFarland."

¶ 14 Dr. Eberhardt said she had attempted to discuss the benefits, risks, and possible side effects of the medications with respondent, but respondent believed he did not need treatment and "didn't want to listen." She attempted to give respondent the petition (which included a written list of the benefits, risks, and possible side effects of the proposed psychotropic medications and alternatives to those medications), but he refused to take it. She then placed the petition in respondent's "box."

¶ 15 Dr. Eberhardt opined that the benefits of treatment outweighed the potential harm from any adverse side effects: "I believe that the benefits outweigh the risks, because without treatment, [respondent] is psychotic, his thinking is disorganized, he is irrational, hostile and aggressive." She said less restrictive services than involuntary psychotropic medication had been explored. Respondent was not a candidate for group or individual therapy, as he was "hostile and

intrusive." Medication was thus the least restrictive suitable alternative.

¶ 16 Respondent testified. Counsel asked him about his experience taking olanzapine:

"Q. [Respondent's counsel] How did you do on the Olanzapine? The doctor seems to think that you were—

A. [Respondent] I like it. They call it restless leg syndrome. There's a weird feeling, you know, from the body. I was taking it in the morning. I seen a doctor when I was in Galesburg. She wanted to up my dose. I told her I'm working on my case right now in order to take it, you know, provide it and run it through you guys, and I want to see what the Courts, their understanding of their judgments would be.

So she upped the dose of Olanzapine. I cannot take that. When I was incarcerated, I brought it in, my documentation and everything, and the dosage, when it brought in the dosage, it was nasty. I do not want to be over-medicated, and I'm going to be stressed out.

Q. That's how the Olanzapine makes you feel?

A. Yes.

Q. That's what you—let me ask you this ***. How come you agreed to take it while you were at McFarland for those three weeks or so?

A. For these reasons, for the doctors down there and what they have done. They upped my dosage. I could not take it in the jail because of these factors.

Q. Did you—

A. I turned it down here because of these reasons. I was offered one medication that my grandmother's hospital gave me. They said it was Paxil, and I requested it, but, I mean, whether you give me medications or not, I mean, I said I

use better judgment in my beliefs and practices and religion and thoughts and my thought process. I will work with the courts—

Q. Okay.

A. —to figure this out."

(As suggested by the testimony quoted above, respondent's answers to questions were often unresponsive and hard to follow.) Respondent also said, because Dr. Eberhardt left him "sick for three or four days just lookin' at her," he could not work with her.

¶ 17 Dr. Eberhardt was recalled by the State. She testified that restless legs can be a side effect of olanzapine. However, respondent never mentioned restless legs when she questioned him about side effects during the approximately three weeks when he was taking olanzapine voluntarily.

¶ 18 Respondent agreed he had "schizoaffective" disorder and paranoia, and he conceded some of his behavior at the facility had been inappropriate. Moreover, he disliked having paranoia. He further agreed it had always been his goal to regain his fitness. However, he denied olanzapine helped him.

¶ 19 After hearing argument from the State and respondent's counsel, the trial court found the allegations in the petition had been proved by clear and convincing evidence. It found respondent had a mental illness and exhibited deterioration, inability to function, and threatening and disruptive behavior. The illness's symptoms were persistent and were present on the hearing date. Respondent refused to take medication. Respondent had received a list of proposed and alternative medications with their benefits and risks. The trial court further found the benefits of treatment outweighed the potential risks. Respondent lacked capacity to give informed consent to treatment. Less restrictive alternatives were inappropriate, and forced medication was the least

restrictive course of treatment. The court therefore granted the petition and entered an order allowing administration of the proposed medications (or their alternatives) in specified dosage ranges for a period of no more than 90 days. The court also ordered the accompanying tests and other procedures requested in the petition. This appeal followed.

¶ 20 II. ANALYSIS

¶ 21 On appeal, respondent's counsel has moved for leave to withdraw. In her motion, counsel states she read the record and found no issues of arguable merit. She further states respondent has been given notice of her motion to withdraw. Counsel supports her motion with a memorandum of law providing a statement of facts, a discussion of more than one potential issue, an explanation why those issues lack arguable merit, and a discussion of whether any exception to the mootness doctrine might apply. Respondent has filed a response.

¶ 22 We consider counsel's motion to withdraw under the procedure set out in *Anders v. California*, 386 U.S. 738 (1967). We have held the *Anders* procedure is applicable "in civil cases where counsel appointed for indigents contends that the appeal is frivolous and the reviewing court so finds." *In re Keller*, 138 Ill. App. 3d 746, 747 (1985). Thus, Illinois courts use the *Anders* procedure when reviewing motions to withdraw in appeals of involuntary commitment orders. *In re Juswick*, 237 Ill. App. 3d 102, 104 (1992).

¶ 23 After examining the record and the possible issues on appeal, we conclude a nonfrivolous argument could be made for the application of an exception to the mootness doctrine. We nevertheless conclude that the appeal presents no issues of arguable merit. We therefore grant appellate counsel's motion to withdraw and dismiss the appeal.

¶ 24 A. Mootness

¶ 25 As counsel notes, this case is moot as the 90-day treatment order entered on

December 3, 2021, has expired. Nevertheless, a reviewing court may address issues raised in an otherwise moot appeal when (1) addressing an issue involved is in the public interest, (2) an issue is capable of repetition yet evades review, or (3) the respondent will potentially suffer collateral consequences from the trial court's judgment. *In re Alfred H.H.*, 233 Ill. 2d 345, 355-61 (2009). We conclude counsel could make a nonfrivolous argument for applying the collateral-consequences exception.

¶ 26 The collateral-consequences exception may be applied in mental health cases, and reviewing courts decide its applicability on a case-by-case basis. *In re Rita P.*, 2014 IL 115798, ¶ 31 (citing *Alfred H.H.*, 233 Ill. 2d at 362). "Under this exception, where collateral consequences survive the expiration or cessation of a court order that are likely to be redressed by a favorable judicial determination, appellate review is permissible." *Rita P.*, 2014 IL 115798, ¶ 31. The *Alfred H.H.* court noted reversal of a moot mental health order may benefit a respondent by, for instance, changing the respondent's employment prospects or preventing his or her hospitalization from being mentioned in a subsequent proceeding. *Alfred H.H.*, 233 Ill. 2d at 362. However, for the exception to apply, there must be distinctly identifiable consequences stemming from the specific circumstances of the respondent:

> "Application of the collateral consequences exception cannot rest upon the lone fact that no prior involuntary admission or treatment order was entered, or upon a vague, unsupported statement that collateral consequences might plague the respondent in the future. Rather, a reviewing court must consider all the relevant facts and legal issues raised in the appeal before deciding whether the exception applies. [Citation.] Collateral consequences must be identified that 'could stem solely from the present adjudication.' " *Rita P.*, 2014 IL 115798, ¶ 34 (quoting

Alfred H.H., 233 Ill. 2d ad 363).

¶ 27 A nonfrivolous argument can be made that the conditions stated in *Rita P.* are met here. The *Alfred H.H.* court noted that the mention of a mental health order in a subsequent proceeding is one of the possible collateral consequences of such an order. Here, respondent, if restored to fitness, will face a criminal trial, a possible conviction, and a possible sentencing hearing. " 'The source and type of information that [a] sentencing court may consider is virtually without bounds.' " *People v. Maron*, 2019 IL App (2d) 170268, ¶ 63 (quoting *People v. Rose*, 384 Ill. App. 3d 937, 941 (2008)). Thus, the State could plausibly present the order as evidence respondent exhibited threatening behavior when unmedicated and was unwilling to voluntarily take the medications necessary to mitigate those threatening behaviors. This consequence would arguably stem solely from this adjudication. We thus conclude it would *not* be frivolous to argue the collateral-consequences exception applies, and we will address the potential merits of the appeal before determining whether it is proper to allow counsel to withdraw.

¶ 28 B. Notice and Other Matters of Procedure

¶ 29 Counsel notes the existence of three potential issues of law, and she suggests any argument raising those issues would be frivolous. We agree.

¶ 30 First, counsel suggests it would be frivolous to argue the evidence adduced at the hearing failed to show compliance with the requirement of section 2-102(a-5) of the Mental Health and Developmental Disabilities Code (Code) (405 ILCS 5/2-102(a-5) (West 2020)) concerning notice about the effects of psychotropic medication. We agree. Section 2-102(a-5) provides, among other things, that a potential recipient of psychotropic medication under the Code must be advised in writing by "the physician or the physician's designee" "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 2020). In *In re A.W.*, 381 Ill. App. 3d 950, 957-58 (2008), we held that section 2-102(a-5) requires the physician or designee to place the information in the respondent's hands or attempt to do so. *A.W.*, 381 Ill. App. 3d at 958. But *merely* "placing the written notification in a respondent's 'box' " is insufficient. *A.W.*, 381 Ill. App. 3d at 958. Here, Dr. Eberhardt testified she attempted to give the petition—which contained the required information—to respondent, but he refused to take it. Only then did she put the petition in respondent's " 'box.' " It thus would be frivolous to argue Dr. Eberhardt's delivery of the information mandated by section 2-102(a-5) was not in compliance with that section.

¶ 31 Second, counsel suggests it would be frivolous to argue the State failed to comply with section 3-807 of the Code (405 ILCS 5/3-807 (West 2020)), which applies to hearings on involuntary administration of psychotropic medication through section 2-107.1(a-5)(3) of the Code (405 ILCS 5/2-107.1(a-5)(3) (West 2020)). We again agree. Section 3-807 requires a psychiatrist or other expert who examined respondent to testify in person at an involuntary admission hearing. Dr. Eberhardt, a psychiatrist, testified at the hearing that she personally examined respondent.

¶ 32 Third, counsel suggests it would be frivolous to argue the order the court entered failed to comply with section 2-107.1(a-5)(6) of the Code (405 ILCS 5/2-107.1(a-5)(6) (West 2020)), which provides, *inter alia*, an order for involuntary administration of psychotropic medication "shall *** 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." We agree with this point as well. The order of December 3, 2021, included dosage ranges for all first choice and alternative medications Dr. Eberhardt was granted leave to

administer.

¶ 33 C. Sufficiency of the Evidence

¶ 34 We further determine that counsel cannot raise a nonfrivolous challenge to the sufficiency of the evidence. Section 2-107.1(a-5)(4) of the Code (405 ILCS 5/2-107.1(a-5)(4) (West 2020)) provides psychotropic medication "may be administered *** if and only if it has been determined by clear and convincing evidence" that seven specified criteria are present. In determining whether a person meets the criteria specified in the statute, "the court may consider evidence of the person's history of serious violence, repeated past pattern of specific behavior, actions related to the person's illness, or past outcomes of various treatment options." 405 ILCS 5/2-107.1(a-5)(4) (West 2020). There is no nonfrivolous argument to be made that the State's evidence was insufficient as to any of the criteria.

¶ 35 Section 2-107.1(a-5)(4) of the Code (405 ILCS 5/2-107.1(a-5)(4) (West 2020)) lists the criteria as follows:

> "(A) That the recipient has a serious mental illness or developmental disability.
>
> (B) That because of said mental illness or developmental disability, the recipient currently exhibits any one of the following: (i) deterioration of his or her ability to function, as compared to the recipient's ability to function prior to the current onset of symptoms of the mental illness or disability for which treatment is presently sought, (ii) suffering, or (iii) threatening behavior.
>
> (C) That the illness or disability has existed for a period marked by the continuing presence of the symptoms set forth in item (B) of this subdivision (4) or the repeated episodic occurrence of these symptoms.

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

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

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

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

¶ 36 As to the first criterion, given respondent's diagnosis of schizoaffective disorder and his behavior, both as testified to by Dr. Eberhardt and displayed by respondent during the hearing, the trial court was justified in concluding that respondent was suffering from a serious mental illness. See *In re John N., Jr.*, 374 Ill. App. 3d 481, 486 (2007) (stating schizoaffective disorder is a serious mental illness).

¶ 37 As to the second criterion, the evidence established respondent exhibited both threatening behavior and deterioration in his ability to function. Dr. Eberhart testified respondent's symptoms improved during a period when he took olanzapine voluntarily. However, when he discontinued taking olanzapine, symptoms, including inappropriate urination and defecation, delusions, and threating behavior, reappeared. This is sufficient evidence of deterioration. See *In re Perona*, 294 Ill. App. 3d 755, 758-59 (1998) (holding evidence of deterioration was sufficient on similar facts). Further, based on Dr. Eberhardt's testimony that respondent (1) threatened staff and asked peers to fight, (2) broke an exit sign into sharp pieces and walked around with the pieces in his hand, refusing to surrender them to staff members, and (3) discussed having a hitman kill his sister, no difficulty exists in concluding he exhibited threatening behavior.

¶ 38 As to the third criterion, given Dr. Eberhardt's estimation from respondent's record that he had exhibited schizoaffective behaviors for at least nine years, there was sufficient evidence that respondent had ongoing or recurrent symptoms of his illness.

¶ 39 As to criterion four, because Dr. Eberhardt testified both that respondent's symptoms improved while he was taking olanzapine and that he did not report any side effects, no nonfrivolous argument can be made that the State failed to present sufficient evidence the benefits of the treatment would outweigh the harm. We recognize respondent claimed olanzapine gave him restless legs, but a rational fact finder could have found the relief of respondent's severe symptoms outweighed this side effect. Moreover, Dr. Eberhardt requested, and the trial court ordered, medications to treat side effects of olanzapine.

¶ 40 As to criterion five, respondent's behavior at the hearing corroborated Dr. Eberhart's testimony that respondent lacked the capacity to make a reasoned decision about the proposed treatment. Dr. Eberhardt opined respondent "lack[ed] *** insight into his illness, and he [was] unable to have a rational discussion about *** any subject." At the hearing, respondent agreed he had "schizoaffective" disorder and paranoia and that some of his behavior at the facility had been inappropriate, thus potentially showing some insight into his illness. However, he continued to demonstrate his lack of ability to have any kind of reasoned discussion.

¶ 41 As to criterion six, the evidence showing respondent's lack of capacity also showed the unsuitability of less restrictive alternatives, such as group and individual therapy. Respondent's testimony might be read to suggest some willingness to take medications other than the recommended dose of olanzapine—he seemed to suggest Paxil was acceptable. If a respondent will voluntarily take suitable medications, this creates a less restrictive alternative than involuntary

medication. *In re Robert M.*, 2020 IL App (5th) 170015, ¶ 62. In *In re Torry G.*, 2014 IL App (1st) 130709, ¶ 35, a First District panel held:

> "[W]hen a patient is willing to take some forms of psychotropic medication, but not others, and the State seeks to forcibly administer medication in the latter category, the State must first prove by clear and convincing evidence that the drugs that the patient is willing to take 'have been explored and found inappropriate.' " *Torry G.*, 2014 IL App (1st) 130709, ¶ 35 (quoting 405 ILCS 5/2-107.1(a-5)(4)(F) (West 2012)).

The rule in *Torry G.* is consistent with the trial court's order. A rational trier of fact could have found respondent's testimony about his willingness to take medications was insufficient to justify relying solely on a voluntary regimen of medication.

¶ 42 As to the seventh criterion, respondent's trial counsel stipulated that, if medications were ordered, the testing that Dr. Eberhardt requested would be necessary and essential for the safe and effective administration of the treatment. Having so stipulated, the invited-error doctrine would preclude respondent from challenging this criterion on appeal.

¶ 43 III. CONCLUSION

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

¶ 45 Affirmed.