NO. 1-13-0709

IN THE

APPELLATE COURT OF ILLINOIS

FIRST JUDICIAL DISTRICT

IN THE MATTER OF TORRY G.,
Found to be A Person Subject to the
Involuntary medication.

(PEOPLE OF THE STATE OF ILLINOIS,

Petitioner-Appellee,

vs.

TORRY G., Respondent-Appellant).

Appeal from the Circuit Court of Cook County, County Division.
Honorable **David Skryd**, Judge Presiding.

BRIEF AND ARGUMENT FOR
PETITIONER-APPELLEE

———

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POINT AND AUTHORITIES

THIS COURT SHOULD DISMISS THE INSTANT APPEAL AS MOOT WHERE IT CAN NO LONGER GRANTER RESPONDENT ANY EFFECTIVE RELIEF AND NONE OF THE EXCEPTIONS TO THE MOOTNESS DOCTRINE APPLY TO THIS CASE.
(People's Response to Respondent's Issues I - IV)

STATEMENT OF FACTS

Pursuant to Supreme Court Rule 341(i), the People adopt respondent's Statement of Facts and will include any additional facts within their Argument section.

ARGUMENT

THIS COURT SHOULD DISMISS THE INSTANT APPEAL AS MOOT WHERE IT CAN NO LONGER GRANTER RESPONDENT ANY EFFECTIVE RELIEF AND NONE OF THE EXCEPTIONS TO THE MOOTNESS DOCTRINE APPLY TO THIS CASE. (People's Response to Respondent's Issues I - IV)

In this appeal from the circuit court's March 7, 2013 order granting the petition that respondent Torry G. be subject to involuntary administration of psychotropic medication for a period of 90 days, respondent contends that: (1) the People failed to provide sufficient evidence of the need for involuntary administration (Resp. Br. at 8-24); and (2) although the circuit court's order expired and the matter is therefore necessarily moot, the instant case falls within the exceptions to the mootness doctrine. (Resp. Br. at 25-28)

In response, the People maintain that the instant appeal should be dismissed since it is undisputed that the matter was rendered moot when the circuit court's order expired on June 5, 2013 (Resp. Br. at 25), and because none of the mootness exceptions apply to this case.

"A case is rendered moot where the issues that were presented in the trial court do not exist any longer because intervening events have rendered it impossible for the reviewing court to grant the complaining party effectual relief." In re India B., 202 Ill. 2d 522, 543 (2002); In re A Minor, 127 Ill. 2d 247, 255 (1989) (same). Thus, because "[i]t is a basic tenet of justiciability that reviewing courts will not decide moot or abstract questions" (In re J.T., 221 Ill. 2d 338, 349-50 (2006)), and because "[t]he existence of an actual controversy is an essential requisite to appellate jurisdiction" (In re Andrea F., 208 Ill. 2d 148, 156 (2003)), a

reviewing court "must dismiss an appeal when the issues involved have ceased to exist." People v. Hill, 2011 IL 110928, ¶6. See also La Salle National Bank v. Chicago, 3 Ill. 2d 375, 379 (1954) ("An appellate court will not review a case merely to decide moot or abstract questions, to establish a precedent, or to determine the right to, or the liability for, costs, or, in effect, to render a judgment to guide potential future litigation."). Moreover, the burden of establishing that an exception to the mootness doctrine applies falls on the party claiming the exception. See In re Hernandez, 239 Ill. 2d 195, 202 (2010).

Here, respondent's 90 day period of involuntary medication has expired. Thus, since this Court cannot grant her any meaningful relief, any decision would be advisory in nature. See In re Alfred H.H., 233 Ill.2d 345, 352-55 (2009) (holding that the case was moot where the court order expired within 90 days and did not fit within any exception to the mootness doctrine because the respondent's claim was fact specific).

Nevertheless, respondent argues that this Court should apply an exception to the mootness doctrine. However, Illinois law is clear that "there is no per se exception to mootness that universally applies to mental health cases." Id. at 355. Instead, there are only three limited exceptions to the mootness doctrine: 1) public interest; 2) capable of repetition yet avoiding review; and 3) collateral consequences. Id. at 355-61. Here, respondent erroneously argues that each of these exceptions apply. (Resp. Br. at 26-29)

First, respondent is wrong when she asserts that the public interest exception applies to this case. (Resp. Br. at 25-26) Although a reviewing court may review an otherwise moot issue under the public-interest exception to the mootness doctrine, the rigid standards for application of the public-interest exception are met only when "(1) the question presented is

of a public nature; (2) there is a need for an authoritative determination for the future guidance of public officers; and (3) there is a likelihood of future recurrence of the question." Alfred H.H., 233 Ill. 2d at 355. "The exception must be narrowly construed and each criteria must be clearly established." People v. Wanda B., 204 Ill. 2d 382, 388 (2003) (emphasis added). Moreover, the supreme court made clear that routine, fact specific challenges do not satisfy the first requirement of presented a question of a public nature, whiles the second requirement is only satisfied "'where the law is in disarray or there is conflicting precedent.'" Alfred H.H., 233 Ill. 2d at 357-58 (quoting In re Adoption of Walgreen, 186 Ill. 2d 362, 365-66 (1999)).

Here, respondent seeks review of a single issue, whether the evidence was sufficient to support the trial court's order authorizing involuntary administration of medication in light of his claims the People did not establish by clear and convincing evidence that he "lacked the capacity to make a reasoned decision about the treatment" and that "other less restrictive services had been explored and found inappropriate." (Resp. Br. at 9). However, Illinois law is clear that the public interest exception does not apply to claims of insufficient evidence. See Alfred H.H., 233 Ill. 2d at 356 ("The question presented in this case is whether the evidence was sufficient to involuntarily commit respondent to a mental health facility. . . . [T]his question is not of a public nature.").

Although respondent claims that he is raising a "question of law: whether *voluntary* acceptance of medication is a less restrictive alternative to court-ordered *involuntary* medication" (Resp. Br. at 26), such an argument is really nothing more than a claim that the trial court's factual finding that the People established by clear and convincing evidence that

an involuntary medication order was warranted in this case and that the petition should be granted. (R. 125-26) Specifically, as the trial court explained:

> "I've heard all the evidence and the testimony. I heard all the arguments. I find by clear and convincing evidence he has a mental illness, he admitted to the mental illness. There's no question about a mental illness involved in this case. In his own testimony, he said he'd be willing to take certain medications, but he's got to get on some kind of treatment plan to take the medications, but you want to label it as involuntary, but that's just how the order is entered. It seems to me that he knows enough that he's got to get on some drug regimen to assess him, so at some point he can get out and do some kind of outpatient treatment, but they need to determine , based on his condition and actions, he needs to get on the proper medication to assist him with all that. So based upon all the evidence, the order iss going to be granted.

(R. 125-26)

Thus, respondent's claim regarding the necessity of an *involuntary* medication order in this case is not a question of law but is in reality a challenge to the sufficiency of the evidence underlying the court's order based upon the particular facts of this case. As such, it is not a question of a "public nature." Alfred H.H., 233 Ill. 2d at 356.

Similarly, the public interest exception does not apply because it is extremely unlikely that respondent or another individual would be subjected to the involuntary administration of psychotropic medication on the same set of facts. Therefore, any decision by this Court would not impact future litigation. Id. at 358 (holding that the exception did not apply because "there is no substantial likelihood that the material facts that give rise to respondent's insufficiency claim are likely to recur either as to him or anyone else. Any future commitment proceedings must be based on the current condition of the respondent's illness and the decision to commit must be based upon a fresh evaluation of the respondent's

conduct and mental state.") (internal quotation marks and citations omitted).

Similarly, respondent's case does not fall under the exception of capable of repetition yet evading review. This exception has two elements: (1) the challenged action must be of a duration too short to be fully litigated prior to its cessation; and (2) there must be a reasonable expectation that the same complaining party would be subjected to the same action again. Alfred H.H., 233 Ill. 2d at 358. Here, respondent claims that the first element is satisfied because the court's involuntary medication order lasted only 90 days. (Resp. Br. at 27) The People do not disagree. See In re Barbara H., 183 Ill. 2d 482, 492 (1998) (noting that "[i]n virtually every case, the challenged . . . orders will expire before appellate review can be completed").

However, the People maintain that the second factor is not present here, as there is no reasonable expectation that respondent will again be subjected to involuntary administration of medication for the same reasons or under the same circumstances. As the Supreme Court explained in Alfred H.H., to satisfy this exception "there must be a substantial likelihood that the issue presented in the instant case, and any resolution thereof, would have some bearing on a similar issue presented in a subsequent case." 233 Ill. 2d at 360. Based upon this standard, the Court held that a claim of insufficient evidence did not satisfy this mootness exception because "[t]here is no clear indication of how a resolution of th[at] issue could be of use to respondent in future litigation." Id. at 360.

Finally, as to the collateral consequences exception, respondent simply claims that because this case involves his first involuntary treatment order, the exception necessarily

applies to his case. (Resp. Br. at 28)[1] However, the Illinois Supreme Court explicitly rejected such a rote analysis and instead directed that the applicability of the collateral consequence exception be "decided on a case-by-case basis." Id. at 362. Accordingly, the Supreme Court made clear that for the exception to apply, the particular facts of the case must demonstrate that any negative collateral consequence "that can be identified . . . stem solely from the present adjudication." Id. at 363.

Here, respondent fails to make any such showing, and instead essentially relies upon a presumption of significant collateral consequences flowing from the trial court's order. However, in Spencer v. Kemna, 523 U.S. 1, 12 (1998), the United States Supreme Court "refused to extend [the] presumption of collateral consequences (or our willingness to accept hypothetical consequences)" beyond criminal convictions. As the Spencer court explained, prior to the adoption of a presumption of collateral consequences in Sibron v. New York, 392 U.S. 40 (1968), the Court had always

> required collateral consequences of conviction to be specifically identified, and we accepted as sufficient to satisfy the case-or-controversy requirement only concrete disadvantages or disabilities that had in fact occurred, that were imminently threatened, or that were imposed as a matter of law (such as deprivation of the right to vote, to hold office, to serve on a jury, or to engage in certain businesses)."

Id. at 8.

Similarly, while the Illinois Supreme Court noted in In re Hays, 102 Ill. 2d 314, 317 (1984), that "the character of an involuntary commitment has been held to be of sufficient significance to permit the invoking of the 'collateral consequence' exception to the mootness

[1] The People note that the scope of the collateral consequences exception is presently pending before the Illinois Supreme Court in In re Rita P., No. 115798 (leave to appeal granted May

doctrine," the Court relied on Spencer when it subsequently clarified that application of the doctrine must be based upon the unique facts of each case, and that those facts must demonstrate that there are sufficient "collateral consequences that warrant an exception to the mootness doctrine." Alfred H.H., 233 Ill. 2d at 362-63.

Moreover, although respondent points to Alfred H.H.'s discussion of some potential collateral consequences attributable to judgments in mental health cases (Resp. Br. at 28) – the possibility that "a reversal could provide a basis for a motion in limine that would prohibit any mention of the hospitalization during the course of another proceeding" or "affect the ability of a respondent to seek employment in certain fields" – it is significant that the Court found that none of them were sufficient to "warrant an exception to the mootness doctrine" in that case. Id. at 362-63. Likewise, none of them warrant an exception in this case either because it cannot be said that any of them "stem solely from the present adjudication." Id. at 63 (emphasis added).

First, while it is true that a motion in limine could be granted to preclude the fact of the adjudication from being admitted into evidence if the involuntary medication order were reversed, the same is true even if it is not, because unlike previous criminal convictions, prior civil judgments are considered inadmissible hearsay. See Illinois Rule of Evidence 803(22) ("Judgment of Previous Conviction. Evidence of a final judgment, entered after a trial or upon a plea of guilty, adjudging a person guilty of a crime punishable by death or imprisonment in excess of one year, to prove any fact essential to sustain the judgment, but not including, when offered by the Government in a criminal prosecution for purposes other

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29, 2013), (oral argument scheduled for March 11, 2014).

than impeachment, judgments against persons other than the accused. The pendency of an appeal may be shown but does not affect admissibility."); see also United States v. Boulware, 384 F.3d 794, 806 (9th Cir. 2004) ("Although Rule 803 contains exceptions for certain kinds of judgments, such as judgments of previous felony convictions and judgments as to personal, family, or general history or boundaries, civil judgments do not fit comfortably into any hearsay exception."). Nevertheless, the facts regarding respondent's mental health history, including that he suffers from "Bipolar Disorder, Manic, with Psychotic Features" (C. 25) and has been hospitalized nearly 25 times since the age of 17 (R. 119), would still be admissible to assess his credibility and impeach her ability to view and perceive things as a witness (see People v. Williams, 147 Ill. 2d 173, 237 (1991)).

Similarly, respondent's licensure rights and opportunities are also directly affected by his severe mental illness rather than the mere fact that a court entered an order authorizing the involuntary admission. See 225 ILCS 80/24 (a-3)(16) (providing that the Department of Financial and Professional Regulation may refuse to issue or to renew a license to practice optometry, or may revoke, suspend, place on probation, reprimand or take other action it deems appropriate due to "[p]hysical illness, including but not limited to, deterioration through the aging process, or loss of motor skill, mental illness, or disability that results in the inability to practice the profession with reasonable judgment, skill, or safety") (emphasis added); 430 ILCS 65/8(e) (providing that Department of State Police has the authority to deny an application for, or to revoke and seize, a Firearm Owner's Identification Card if the applicant "has been a patient of a mental institution within the past 5 years or has been adjudicated as a mental defective"); 625 ILCS 5/6-103(8) (providing that a driver's license

may not be issued to or renewed by "any person when the Secretary of State has good cause to believe that the person by reason of physical or mental disability would not be able to safely operate a motor vehicle upon the highways").

Thus, contrary to respondent's assumption, the mere fact[2] that the instant proceeding was his "first involuntary order" is not a sufficient reason to overcome mootness under the collateral consequences exception. Furthermore, while respondent implies that his earlier "voluntary" admissions do not carry any collateral consequences because a voluntary admittee has the right to request release at any time (Resp. Br. at 28), he seemingly conflates "voluntary admission" with "informal admission."

Specifically, section 3-300, the "Informal Admission" statute, provides:

> (a) Any person desiring admission to a mental health facility for treatment of a mental illness may be admitted upon his request without making formal application therefor if, after examination, the facility director considers that person clinically suitable for admission upon an informal basis.
>
> (b) Each recipient admitted under this Section shall be informed in writing and orally at the time of admission of his right to be discharged from the facility at any time during the normal daily day-shift hours of operation, which shall include but need not be limited to 9 a.m. to 5 p.m. Such right to be discharged shall commence with the first day-shift hours of operation after his admission.
>
> (c) If the facility director decides to admit a person as a voluntary recipient, he shall state in the recipient's record the reason why informal admission is not suitable.

405 ILCS 5/3-300 (emphasis added).

[2] The People are uncertain if this case truly is respondent's only involuntary mental health order, as the record indicates that there were separate petitions for involuntary admission pending in case nos. 2013 COMH 77 and 2013 COMH 589, at the same time as the instant involuntary medication petition. (C. 19; R. 120) Again, as the proponent of an application of an exception to the mootness doctrine, it is respondent's burden to establish that an exception exists in this case. Hernandez, 239 Ill. 2d at 202.

In contrast, section 3-400, the "Voluntary Admission to Mental Health Facility" provision, states:

> (a) Any person 16 or older, including a person adjudicated a disabled person, may be admitted to a mental health facility as a voluntary recipient for treatment of a mental illness upon the filing of an application with the facility director of the facility if the facility director determines and documents in the recipient's medical record that the person (1) is clinically suitable for admission as a voluntary recipient and (2) has the capacity to consent to voluntary admission.
>
> (b) For purposes of consenting to voluntary admission, a person has the capacity to consent to voluntary admission if, in the professional judgment of the facility director or his or her designee, the person is able to understand that:
>
> (1) He or she is being admitted to a mental health facility.
> (2) He or she may request discharge at any time. The request must be in writing, and discharge is not automatic.
> (3) Within 5 business days after receipt of the written request for discharge, the facility must either discharge the person or initiate commitment proceedings.
>
> (c) No mental health facility shall require the completion of a petition or certificate as a condition of accepting the admission of a recipient who is being transported to that facility from any other inpatient or outpatient healthcare facility if the recipient has completed an application for voluntary admission to the receiving facility pursuant to this Section.

405 ILCS 5/3-400 (emphasis added).

Thus, under the plain language of the statutes, an "informal" admittee has the absolute right to be discharged at any time, whereas a formal, voluntary admittee does not. Instead, a voluntary admittee simply has the right to request discharge, provided it is in the proper form (see Splett v. Splett, 143 Ill. 2d 225, 234 (1991) (holding that an oral request is not sufficient)), but still may be held for up to five additional business days pending a decision to seek involuntary commitment. See also Estate of Johnson v. Condell Memorial Hospital, 119 Ill. 2d

496, 505-08 (1988) (explaining the difference between an informal admission and a voluntary admission and determining that a person who has been informally admitted is not "committed" to the custody of the hospital). Given these crucial distinctions, it necessarily follows that the collateral consequences associated with a formal, voluntary admission are less than an involuntary admission, but greater than those associated with informal admission.

Moreover, given respondent's bipolar disporder and his four separate hospitalizations, the People maintain that respondent's mental health history carries ongoing collateral consequences which are distinct from the circuit court's order in the instant case. See In re James H., 405 Ill. App. 3d 897, 903 (4th Dist. 2010) (noting that "[t]he record does not indicate whether this hospitalization was voluntary or involuntary and what diagnosis of respondent may have been made," and holding that collateral exception to mootness did not apply because "[e]ven if the commitment order is reversed . . .[t]he descriptions of his behavior in this case, his earlier hospitalization, and the scrutiny of the Secret Service are now part of respondent's history"). Like James H., the instant respondent's history includes mental health treatment and hospitalization. As a result, he faces extensive and serious consequences regardless of whether the trial court's order in the instant case is reversed.

Accordingly, "[w]hen the facts of this specific case are considered," it becomes clear that "there is no collateral consequence that can be identified that could stem solely from the present adjudication." Alfred H.H., 233 Ill. 2d at 362-63.

Thus, none of the exceptions to the mootness doctrine apply to this case, this Court should dismiss respondent's appeal as moot.

CONCLUSION

The People of the State of Illinois respectfully request that this Honorable Court dismiss the instant appeal as moot.

Respectfully Submitted,

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CERTIFICATE OF COMPLIANCE

I certify that this brief conforms to the requirements of Rules 341 (a) and (b). The length of this brief, excluding the pages containing the Rule 341 (d) cover, the Rule 341 (h)(1) statement of points and authorities, the Rule 341 (c) certificate of compliance, the certificate of service, and those matters to be appended to the brief under Rule 342(a), is 12 pages.

By: _____
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