An Update on Illinois Mental Health Case Law

2016 and 2017 Illinois Supreme Court and Appellate Court decisions regarding the Illinois Mental Health and Developmental Disabilities Code and the Illinois Mental Health Confidentiality act.

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Illinois Supreme Court Cases

Involuntary Commitment-Timeliness of a Commitment Petition

***In re Linda B.*,** 2017 IL 119392 (Opinion filed September 21, 2017) (Petition for Rehearing denied November 20, 2017).

"The overarching issue presented in this appeal is whether a timely petition was filed, seeking immediate, involuntary admission of respondent for inpatient psychiatric treatment in a mental health facility pursuant to article VI of the Mental Health and Developmental Disabilities Code" (Mental Health Code) (405 ILCS 5/3-600 *et seq.*). ¶1. The Illinois Supreme Court affirmed the appellate court's judgment. ¶52

Background

On May 9, 2013, a petition for involuntary admission was filed for Respondent, Linda B., stating that respondent was admitted to the "Mental Health Facility/Psychiatric Unit" on April 22, 2013. ¶3. At the trial, a psychiatrist testified in part that respondent's hospitalization at Mt. Sinai began on April 22, 2013, when she was admitted to a "medical floor," where she was also "treated psychiatrically." The psychiatrist testified that respondent exhibited agitated and angry behavior and was admitted to a medical floor because she had tachycardia and was severely anemic. ¶5. Throughout respondent's hospitalization, she was followed by a psychiatrist and had a one-to-one sitter, and needed supervision all of the time. ¶5, 9.

Respondent's counsel moved to dismiss the petition for involuntary admission "based upon the petition having been filed well beyond the 24 hours after [respondent's] admission." ¶10. Counsel argued that the petition was untimely filed where respondent was admitted to the medical floor on April 22, 2013, but was also being treated psychiatrically from that date. ¶10. Over counsel's objection, the court allowed the State to reopen its case in order to adduce evidence related to respondent's motion. ¶11. The psychiatrist testified that respondent was admitted to the medical floor for both medical and psychiatric treatment. ¶11.

After closing argument, the circuit court denied respondent's motion to dismiss and granted the petition for involuntary admission and provided that respondent should be treated at a nursing home for a period not to exceed 90 days. ¶12, 13.

Respondent appealed the court's order. The appellate court 'appeared to have resolved this case on the basis of two premises:' (1) respondent's "physical" admission to the hospital was not synonymous with "legal" admission under article VI of the Mental Health Code; and (2) the medical floor of the hospital, arguably, was not a "mental health facility" within the meaning of the statute irrespective of whether psychiatric treatment was rendered there. ¶15. The appellate court affirmed the judgment of the circuit court, concluding that the petition for involuntary admission was timely filed. ¶15.

Analysis and Decision
Public Interest Exception

The Illinois Supreme Court (court) found that the requisites for the application of the public interest exception were satisfied in this case. ¶20. It found that the procedural issues involved in involuntary treatment to recipients of metal health services were matters of public nature and of substantial public concern. (Citations omitted). ¶20. Second, there was apparently uncertainty as to the type of facilities or portions thereof, that meet the statutory definition of a "mental health facility" and, relatedly, whether the type of treatment administered in a facility may, in itself, qualify it as a "mental health facility." ¶20. "Even more to the point, this case presents the question of whether simultaneous, hybrid treatment, for *both* psychiatric and medical conditions, either qualifies (in the first instance) or disqualifies (in the second" the recipient for status as a mental health patient in a facility, dependent upon which condition predominates." ¶20. Finally, "respondent's own history demonstrates how this question might recur." (Citation omitted). ¶20. The court found this scenario as one likely to recur in the general population. ¶20.

Under What Circumstances Does a Medical Floor Qualify as a "Mental Health Facility" Under Section 1-114 of the Mental Health Code and What Constitutes "Admission Under Section 3-611 of the Mental Health Code

"Mental Health Facility" Under Section 1-114

Initially, the court noted that it was far from "clear" that it was respondent's medical condition alone that brought her to someone's attention and resulted in her hospitalization or even that her medical condition was the *primary* factor in her hospitalization and treatment. ¶35. The court noted that it seemed that respondent's psychiatric treatment and supervision on the medical floor were at least as comprehensive and structured as anything she might have received in a psychiatric unit, which the State conceded was a "mental health facility." ¶36. "We think most people of ordinary sensibility would agree with the application of abductive reasoning in this instance and conclude that a facility, or section thereof, capable of providing mental health services, that does in fact provide the individual mental health services, *is* a mental health facility." ¶36. Citing section 1-114 of the Mental Health Code, the court further noted that "[t]he legislature made the definition of "mental health facility" extremely broad so as to encompass *any* place that provides for the "treatment of persons with mental illness."" 405 ILCS 5/1-114. ¶36. The court repeated that the Mental Health Code defines a "mental health facility" as "*any* licensed private hospital, institution, or facility or section thereof, and *any* facility, or section thereof, operated by the State or a political subdivision thereof for the treatment of persons with mental illness and includes *all* hospitals, institutions, clinics, evaluation facilities, and mental health centers which provide treatment for such persons." (Emphases added) (405 ILCS 5/1-114). ¶37. "The salient feature of the definition is that it applies to any facility, or any part of a facility, that provides for "the treatment of persons [afflicted] with mental illness." ¶37. "What the facility is called, if and when it performs some other function, is irrelevant." ¶37. "In those instances in which a facility provides psychiatric

treatment to a person with mental illness – as was the case here – it qualifies as a "mental health facility" for purposes of the Mental Health Code's application." ¶37.

Admission to a Mental Health Facility Under Section 3-611

The court found that the record did not reflect when respondent became noncompliant with treatment and became an involuntary recipient of psychiatric services in the hospital. ¶40, 42. In order to establish untimely filing of the petition, respondent had to establish that her initial period of hospitalization and psychiatric treatment was involuntary. ¶44. Citing *Andrew B.,* 237 Ill.2d 340, 350 (2010), the court noted that "the code refers to 'admission' in a legal sense to describe the individual's legal status" within a facility. ¶48. "In other words, section 3-611's reference to 'admission' is not always limited to the individual's original physical entry." *Id.* ¶48. "The takeaway, for our purposes, is that legal status may change while one is in a mental health facility – and that could well be the case here." ¶49. The court held that because respondent was unable to demonstrate that her physical entry into the facility, and her initial treatment there, were involuntary, she did not demonstrate that error occurred and that the petition for involuntary admission was not timely filed. ¶49.

Summary written by Andreas Liewald

Involuntary Commitment-Shackling of Mental Health Respondent at Hearing

In re Benny M., 2017 IL 120133 (Opinion filed November 30, 2017).

The trial court granted the State's petition for involuntary treatment (psychotropic medication). ¶1. During the hearing, the trial court permitted respondent to remain shackled. ¶1. The appellate court reversed the trial court's judgment, holding that the trial court erred in allowing respondent to be physically restrained during the hearing. ¶1. The Illinois Supreme Court reversed the appellate court's judgment and affirmed the circuit court's judgment. ¶1, 49.

Background

After being found unfit to stand trial on a domestic battery charge, respondent was involuntarily admitted to an Illinois Department of Human Services mental health facility (DHS facility). ¶3. Respondent was involuntarily medicated there and later found fit to stand trial. ¶3. Respondent was transferred to jail and stopped taking his psychotropic medication, and was again found unfit to stand trial. ¶3. Respondent was transferred back to the DHS facility, and the State filed the petition for involuntary treatment at issue in this case. ¶3.

A hearing on the petition was held before the trial court on two separate days. ¶4. On the first day, respondent was physically restrained while being transported, but the shackles were removed before he entered the courtroom. ¶4. Following the direct examination of the State's expert witness, the hearing was continued for two weeks. ¶5.

When the hearing resumed, respondent was physically restrained, and his attorney asked for the shackles to be removed. ¶6. When the trial court inquired whether the shackles were necessary for security, the security officer stated that respondent was "listed as high elopement risk" and then provided a "patient transport checklist" to the court. ¶6, 40. The checklist was not admitted into evidence and was not included in the record on appeal. ¶6. In response to the trial court's inquiry, respondent's attorney stated that she had not reviewed the document. ¶6. Respondent questioned whether he was a high risk for elopement. ¶6. He stated in part "[w]here am I going to go? I'm trapped" and that he was willing to be present at the hearing. ¶6.

The trial court denied the attorney's request for the shackles to be removed. ¶6. Respondent's attorney then asked if respondent's right hand could be released to take notes and communicate with her during the hearing. ¶7. Respondent interjected, "Do you think I am going to take the pen or something and try to stab someone with it?" ¶7. The trial court then inquired to respondent's attorney whether she felt if respondent was unable to participate with his hands restrained. ¶7. The trial court then stated that if there is a need for respondent to take notes, it would consider the request. ¶8.

Respondent's attorney cross-examined the State's witness. ¶9. Respondent interrupted occasionally and commented on the expert's testimony. ¶9. The trial court admonished respondent several times that he would be removed from the courtroom if he kept interrupting. ¶9.

During respondent's testimony, he asserted that he had not been taking his medication because he did not have a mental illness. ¶10. Respondent stated that the shackles were "very restrictive." ¶10. When the judge told respondent he could step down from the witness stand, respondent stated, "If I am still able to walk. I just got up." ¶10.

During closing arguments, respondent interrupted the State. ¶11. The trial court advised respondent that he would be removed from the courtroom the next time he interrupted. ¶11. Respondent's attorney asserted that respondent had to stand up because he had been in pain. ¶12. Respondent then complained that his restraints had been "tightened" and asked if they could be removed. ¶12. A security officer then led respondent out of the courtroom. ¶12. After the State finished its argument, respondent's attorney asserted that respondent complained about the restraints, stood up several times during the hearing, and indicated he was having cramps. ¶13. The trial judge responded, "I'm certain that those comments are not part of the record. I would have possibly addressed them if he had made them or you had made them on his behalf directly to me." ¶13. Respondent's attorney stated, "I apologize. I should have." ¶13. The trial court subsequently granted the petition for psychotropic medication for a period not to exceed 90 days. ¶13.

Respondent appealed the trial court's judgment, contending that he was denied a fair trial because he was shackled during the hearing. ¶14. Although the appeal was moot, the appellate court found that it fell within both the public interest exception to mootness and the

exception for issues capable of repetition, yet evading review. ¶14. The appellate court held that the trial court abused its discretion in shackling respondent because the court did not conduct an independent assessment of the factors bearing on that decision or make explicit finding that shackling was necessary. ¶14. The appellate court further concluded that the error could not be considered harmless beyond a reasonable doubt. ¶14. Accordingly, the trial court's judgment was reversed. ¶14.

Analysis

Mootness Exception – Capable of Repetition Yet Evading Review.

The Illinois Supreme Court found that the mootness exception, capable of repetition yet evading review applied to this case. ¶24. First, the challenged action was too short in duration to be litigated fully prior to its cessation since this the 90-day duration of the order was too brief to allow appellate review. The court also concluded that the second element of the exception, requiring a reasonable expectation that the same complaining party will be subject to the same action again, was also met. ¶20, 24. The court found that there was a dispute on the procedure used in the trial court for ordering restraints. ¶23. The court believed that there was a reasonable expectation that respondent will be subjected to restraints again, given his history of mental illness and involuntary admission and treatment. ¶24. Accordingly, the appeal satisfied both requirements of the mootness exception for issues capable of repetition yet evading review. ¶24.

Merits – Shackling of Respondent

The court noted that it had not previously considered the standards of procedure for imposing restraints in mental health proceedings. ¶27. However, a general review of case law established that routine imposition or restraints is prohibited because it diminishes a defendant's or respondent's ability to assist counsel, undermines the presumption of innocence, and demeans both the defendant or respondent and the judicial process. Citing *Deck v. Missouri,* 544 U.S. 622, 630-31 (2005); *People v. Allen,* 222 Ill. 2d 340, 346 (2006); and *People v. Boose,* 66 Ill. 2d 261, 265 (1977). ¶33. While involuntary treatment proceedings do not involve a presumption of innocence, other concerns weighing against unnecessary use of restraints in criminal and juvenile delinquency proceedings also applied. ¶33. The court found that respondent's ability to assist counsel and the dignity of the court proceedings are important concerns in involuntary treatment proceedings, and those interests may be impacted by unnecessary restraints the same as in criminal and juvenile delinquency proceedings. ¶33. Accordingly, the court held that trial courts may order physical restraints in involuntary treatment proceedings only upon a finding of manifest necessity. ¶34. It held that trial courts must exercise their discretion and make an independent determination on whether to impose physical restraints. ¶34. A finding of manifest necessity for restraints must be based on the risk of flight, threats to the safety of people in the courtroom, or maintaining order during the hearing. Citing *In re Staley,* 67 Ill. 2d 33, 38 (1977) (citing *Boose,* 66 Ill. 2d at 266), ¶34.

The court noted that case law and Illinois Supreme Court Rules 430 and 943 consistently provide that the defendant's or respondent's attorney must be given an opportunity to be heard on reasons for removing restraints and the trial court must state on the record its reasons for allowing the defendant to remain shackled. ¶36. Accordingly, the court held that before ordering restraints in involuntary treatment proceedings, the trial court must give the respondent's attorney an opportunity to be heard and must state on the record the reasons for allowing the respondent to remain shackled. ¶36. The court did not attempt to list the factors to be considered in making this decision. ¶37. Nonetheless, the court reiterated that any factors considered in determining whether physical restraints are necessary should bear on the risk of flight, threats to people in the courtroom, or maintaining order during the hearing. ¶38. It held that the *Boose* hearing requirements apply to involuntary treatment proceedings. ¶42.

The court found that the record showed that the trial court questioned the security officer after respondent's attorney asked for removal of the restraints. ¶40. The court noted that the trial court made several statements in the course of discussing the matter with respondent and his attorney, including a statement about balancing "whatever security feels is necessary and [respondent's] ability to participate. ¶40. The court noted that throughout the hearing, the trial court made statements indicating it was considering the information and making an independent determination. ¶41. The court concluded that the record, read in its entirety, showed the trial court did not simply defer to the security officer but weighed the information provided and made an independent determination that restraints were necessary. ¶41.

Although the court found that the respondent's attorney asked for shackles to be removed and later the right hand to be released, she did not object to the procedure used by the trial court in making its decision, ask for additional opportunity to be heard, or request findings of fact or an explicit statement of the trial court's reasons for permitting respondent to remain shackled. ¶45. The court concluded that a more specific objection was required to preserve respondent's procedural arguments for review given that the procedure for allowing restraints in involuntary treatment proceeding was not established at the time of the hearing in this case. ¶45. Finally, the court noted that respondent did not make a separate argument that the trial court abused its discretion in deciding not to order removal of the restraints. ¶47.

Summary written by Andreas Liewald

Illinois Appellate Court Cases

Involuntary Medication & Commitment: Notice of Hearings

In re Miroslava P., 2016 IL App (2d) 141022 (opinion filed on March 30, 2016)

The State petitioned for the involuntary admission and involuntary administration of psychotropic medication to Respondent, Miroslava P., a Bulgarian citizen. ¶1. At three early status hearings, Respondent requested that the Bulgarian consulate be notified of the admission proceedings. ¶1. Respondent then filed a Motion to Strike the petitions, arguing that the Vienna Convention required that the consulate be notified when one of its citizens was involuntarily detained. ¶8. The trial court denied Respondent's motions to strike the petitions. ¶14. The trial court granted the petitions for involuntary admission and involuntary medication. ¶16.

Respondent then filed a Motion to Reconsider, arguing that the petitions should have been stricken based on the failure to timely notify the consulate and provide it with the admission petition and appropriate documentation. ¶17. In the Motion to Reconsider, Respondent, for the first time, cited section 3-609 of the Mental Health Code, which requires that "[n]ot later than 24 hours, *** a copy of the petition and statement shall be given or sent to the respondent's attorney and guardian, if any. The respondent shall be asked if he desires such documents sent to any other persons, *and at least 2 such persons designated by the respondent shall receive such documents.*" (emphasis added.) 405 ILCS 5/3-609 (West 2014). ¶17. The trial court granted Respondent's Motion to Reconsider, finding that noncompliance with section 3-609, warranted a reversal of both the admission order and the medication order. ¶1, 39.

The State appealed the trial court's reversal of orders, arguing that the trial court abused its discretion in granting the Respondent's motion to reconsider, because: (1) it should have found forfeited Respondent's late citation to section 3-609; (2) any noncompliance with section 3-609 was harmless; and (3) even if compliance with section 3-609 justified vacating the admission order, it did not justify vacating the medication order. ¶22.

Initially, the appellate court held that the public-interest exception to the mootness doctrine applied. Since issues of statutory compliance are considered questions of a public nature, an authoritative determination is needed for future guidance, and the circumstances are likely to recur. ¶24-26.

Respondent's counsel at trial initially cited the Vienna Convention, rather than the Code, for her position that the State must ensure that the consulate be notified. ¶ 32. Later in court when Respondent's counsel mentioned the Mental Health Code, she did not specifically cite section 3-609 as authority. ¶32. Nevertheless, at each and every court appearance, Respondent's counsel raised the broad issue of notifying the consulate. ¶32. "Under these circumstances, where counsel zealously and repeatedly raised the broad issue, Respondent did not forfeit the issue." ¶32.

The appellate court found that Respondent's request to provide her consulate with the petition detailing the reasons of her detainment was highly reasonable and agreed with the trial court's determination that, pursuant to section 3-609, a respondent who is a foreign national may designate her locally stationed counsel as one of her two "other persons" who must receive copies of the admission petition. ¶43-44.

The appellate court also distinguished between "plain-error" and "harmless-error" review. In "plain error" review, where the respondent did not object in the trial court to a noncompliance error, the respondent bears the burden of persuasion to show that the error was prejudicial. ¶64. However, in a "harmless error" review, the noncomplying party – here, the State – bore the burden of persuasion to show the absence of prejudice. ¶64. Here, because Respondent repeatedly objected to the State's failure to timely and adequately notify the consulate, a plain error analysis did not apply to this case. ¶65.

The appellate held that the trial court, in taking a strict compliance approach, did not abuse it discretion in vacating the admission order in light of the State's noncompliance with section 3-609. ¶58, 66.

Regarding notice in a medication proceeding, if, as here, "a hearing is requested to be held immediately following the hearing on a petition for involuntary admission, then the notice requirement *shall be the same* as that for the hearing on the petition for involuntary admission, and the petition filed pursuant to this Section shall be filed with the petition for involuntary admission." (Emphasis added.) 405 ILCS 5/2-107.1(a-5)(1) (West 2014). ¶69. "Also, the medication statute *does* require notification of an individual designated by the respondent, if the designation was made in writing." 405 ILCS 5/2-102(a) (West 2014). ¶69. Finally, the appellate court held that the trial court's determination that the medication order stemmed from the admission order was sound, and the State forfeited its opportunity to request a modification [treatment in an outpatient facility] as opposed to reversal. ¶70. Affirmed. ¶75.
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Involuntary Medication & Commitment: Mootness, Notice Defects; Specificity of Testing in Order

***In re Sharon N.*,** 2016 IL App (3d) 140980 (Opinion filed April 15, 2016)

Respondent appealed the trial court's order for involuntary admission and involuntary administration of psychotropic medication.

Respondent argued that (1) the evidence was insufficient to establish that she was subject to involuntary admission; (2) the evidence was insufficient to establish that she was subject to involuntary medication; (3) the State and the circuit court failed to comply with the statutory provisions on involuntary medication; and (4) her trial counsel was ineffective. ¶18.

The appellate court found that Respondent's first two arguments presented nothing more than sufficiency of evidence arguments. ¶24. It found that those arguments did not meet the "capable of repetition, but evading review exception" to mootness and consequently did not address them. ¶25. However, the appellate court did find that Respondent's third and fourth arguments qualified for the "public interest exception" to the mootness doctrine. ¶32.

The appellate court found that the circuit court committed two errors regarding the petition for involuntary medication and reversed the medication order. ¶40. First, the Petitioner failed to provide a three-day notice of the hearing to Respondent under section 2-107.1(a-5)(1) of the Mental Health Code. 405 ILCS 5/2-107.1(a-5)(1). ¶37, 40. Second, the circuit court failed to specify in the medication order what testing it was requiring to be conducted on the Respondent. 405 ILCS 5/2-107.1(a-5)(4)(G). ¶39, 40.

Regarding Respondent's fourth argument that trial counsel was ineffective, the appellate court initially rejected her argument that failure to follow through with a jury demand in the commitment proceeding prejudiced her. ¶41. The appellate court found that trial counsel's failure to object to Respondent's mother's testimony was not prejudicial, since the evidence from the psychiatrist's testimony was sufficient to support a finding of involuntary admission. ¶5, 43. The appellate court declined to address Respondent's remaining claims of ineffective assistance of counsel related to the medication hearing because it already held that the medication order must be reversed. ¶44.

Commitment order is affirmed and medication order is reversed. ¶47.
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Involuntary Medication: Requirement of Providing Written Information; Sufficiency of Evidence Regarding Suffering & Deterioration of Ability to Function for Involuntary Medication

In re Debra B., 2016 IL App (5th) 130573 (May 31, 2016).

Respondent appealed the trial court's order for the involuntary administration of psychotropic medication. Respondent argued that the Stated failed to prove by clear and convincing evidence that (1) she was suffering as a result of her mental illness; or (2) her ability to function had deteriorated since the onset of her symptoms. ¶1. She also argued that the State failed to prove that she was unable to make a reasoned decision regarding the medications because the record does not establish that she was informed about alternatives to medication. ¶1.

Mootness

Although the appeal was technically moot, the appellate court considered Respondent's arguments under the public-interest exception. ¶19. Under the public-interest exception, the appellate court may consider an otherwise moot appeal if (1) the case presents a question of

public nature; (2) there is a need for an authoritative determination to guide public officials; and (3) it is likely that the question will recur. ¶20, citing *In re Alfred H.H.,* 233 Ill. 2d 345, 355-56 (2009). The appellate court found that the instant case met all three criteria. Cases challenging the sufficiency of the evidence "are inherently case-specific," as a result of which such cases *usually* "do not present the kinds of broad public[-]interest issues" presented by most other mental health cases. ¶21, *Id* at 356-57. Although this case involved a challenge to the sufficiency of the evidence, the appellate court believed that the questions raised by Respondent have "broader implications than most sufficiency-of-the-evidence claims." ¶22.

Requirement of Providing Written Information

The appellate court agreed with Respondent that the State failed to demonstrate that she lacked the capacity to make a reasoned decision regarding the medications because it failed to prove that she was provided with written information regarding reasonable alternatives to medication. ¶25. 405 ILCS 5/2-102(a-5) (West 2012). There was no information in the record to allow the trial court to conclude that Respondent was provided with any written information regarding alternatives to medication. ¶28. Although the petition and affidavit stated that Respondent was explained the alternatives forms of treatment, allegations and information in supporting documents are not sufficient to support an order authorizing involuntary treatment if they are not admitted into evidence. ¶30, citing *In re Bobby F.,* 2012 IL App (5th) 110214 ¶¶22-23; and *In re Phillip E.,* 385 Ill. App. 3d 278, 284 (5th Dist. 2008).

Sufficiency of Evidence Regarding Suffering &
Deterioration of Ability to Function for Involuntary Medication

Regarding suffering, the State had to show that Respondent was experiencing physical pain or emotional distress, and had to provide some factual basis. ¶38, 44. The appellate court found that the psychiatrist did not provide any insight into why he believed her symptoms of a mental illness caused her to suffer. ¶45. He did not explain how these symptoms caused her to feel grief, anxiety, depression or any other type of emotion distress. ¶45. Although Respondent herself used the word "suffering" in her testimony, she testified that the suffering was because of her inpatient hospitalization, that she missed her daughter, and that she was concerned about her daughter's ability to properly manage her home and care for her mother and her pets. ¶47. "This is not the type of "suffering" that can be alleviated by psychotropic medication." ¶47.

Regarding deterioration, the psychiatrist offered the "somewhat conclusory opinion" that Respondent's ability to function had deteriorated. ¶48. The appellate court held that the State had to show a deterioration in the Respondent's ability to function on a basic level. ¶50. The psychiatrist admitted that Respondent was eating properly and was not threatening staff or patients. ¶52. Although he testified that she aggravated other patients, he did not testify that she was disruptive. ¶52. The appellate court found that from the evidence, it appeared that Respondent functioned reasonably well, "at least in the environment of the facility." ¶52. The

appellate court therefore concluded that the State did not show the type of deterioration in Respondent's ability to function that would support an order for involuntary treatment. Finally, although the State noted that the psychiatrist testified that Respondent had threatened an officer and expressed suicidal ideations at a jail prior to her admission, the appellate court was not persuaded. ¶53. "The statute explicitly provides that the court must find that the respondent's illness has been "marked by the continuing presence of the symptoms" justifying involuntary medication "or the repeated episodic occurrence of these symptoms." ¶53. 405 ILCS 5/2-107.1(a-5)(4)(C) (West 2012). The appellate court limited its consideration to the behavior and symptoms that the psychiatrist observed on an ongoing basis while the Respondent was hospitalized. ¶53.

The appellate court therefore held that the trial court's findings that Respondent was suffering and that her ability function had deteriorated were against the manifest weight of the evidence. ¶53

Reversed. ¶55. Originally published in *Mental Health Matters*, June 2017 vol. 3. no. 4

Involuntary Treatment: Authorized to Order Hemodialysis Treatment under sec. 5/2-107.1(a-5)(4)(G)

In re Clinton S., 2016 IL App (2d) 151138 (Dec. 2, 2016).
Second District affirmed a court order for the involuntary administration of psychotropic medication that also authorized hemodialysis treatment on the respondent. ¶ 1 The respondent in his appeal raised two issues 1) that the State failed to prove by clear and convincing evidence that the benefits of the medication outweighed the harm and 2) that the trial court's order exceeded the scope of the testing and other procedures that section 2-107.1 of the Mental Health Code authorizes. ¶ 1

Background

Elgin Mental Health filed a petition for the involuntary administration of psychotropic medication which included a request for the authority to involuntarily administer regular hemodialysis treatment. The Doctor asserted that Mr. S. was suffering from end-stage kidney failure and that the hemodialysis treatment was necessary to prolong his life. ¶ 4 Mr. S., according to the doctor's testimony, initially underwent 18 of the thrice-weekly treatments, but had later had beginning to refuse said treatments. ¶ 9 The Doctor further testified that without the treatment the psychotropic medications would cause toxic accumulations in his body that could lead to a coma. She would therefore not otherwise administer the medications (except in the limited case where the person becomes violent) unless she knew that respondent would be undergoing regular hemodialysis. ¶ 9-10. The circuit court then granted Elgin's petition which included the authority to administer the hemodialysis treatment.

Mootness

The appellate found that this appeal qualified under both the capable-of-repetition and public interest exception to the mootness doctrine. ¶ 17 The capable-of-repetition exception applies, the Second District found, given the Respondent's mental health history and end-stage kidney failure, it is likely that he will be subjected to a petition with similar requests in the future. ¶ 17 The public interest exception also applies because cases under the Mental Health Code have not addressed whether a procedure for treatment of a physical health condition (such as kidney failure) can be ordered pursuant to section 2-107.1. ¶ 17

The Benefits of the Medication Outweighed the Harm

The Second District held that trial court did not err by factoring in the hemodialysis treatment in considering whether the benefits of the medication outweighed its risks. It noted "[w]e do not believe that a trial court under these circumstances is bound to consider the benefits and harm of psychotropic medication in a vacuum, without any regard for the absence or presence of treatment for a respondent's physical health condition. Rather, we believe that the better approach is for a trial court to consider the totality of the evidence in rendering its conclusion. Here, the trial court heard evidence that hemodialysis would offset a significant harm that the psychotropic medication would cause. In our view, it would be untenable to hold that this type of evidence may not be factored into a trial court's consideration of the benefits and harm of psychotropic medication." ¶ 23 Unlike a previous case, *In re Val Q.*, 396 Ill.App.3d 155 (2nd Dist. 2009), here the psychiatrist had performed a consultation with Mr. S.'s kidney specialist to inform "the trial court of the risks and benefits associated with her proposed treatment plan." ¶ 25. The trial court was not at fault then in considering that the respondent would be getting the treatment in determining whether the benefits of the medications outweighed their risks.

Whether the Trial Court is Authorized to Order Hemodialysis Treatment under sec. 5/2-107.1(a-5)(4)(G)

The Second District also held that the trial court was authorized to order hemodialysis as a procedure for the safe and effective administration of the psychotropic medication. See 405 ILCS 5/2–107.1(a–5)(4)(G) (West 2014) (authorizing the trial court to grant a petition for "testing and other procedures" that are "essential for the safe and effective administration of the treatment"). ¶ 27

Here, the Court found that the Doctor's testimony satisfies that rationale of the prior precedent in *Donald L.*, 2014 IL App (2d) 130044, ¶ 26 (concluding that trial courts may not allow doctors to administer unspecified tests at their own discretion) insofar as it pertains to "other procedures" authorized under section 2-107.1 because without the hemodialysis treatment the respondent's end stage kidney failure would make him susceptible to toxic accumulation of chemicals from the psychotropic medication. ¶ 28

The Second District also rejected the Respondent's argument that that a health-care power of attorney or a guardianship would be the proper vehicle to order this treatment. ¶ 30 It noted "Even if one of these alternative vehicles had been used, and assuming that the individual granted such authority would have consented to hemodialysis on respondent's behalf, Susnjar would not necessarily have been adequately assured that she could safely and effectively administer psychotropic medication. We see no reason why Susnjar should not have persisted with the section 2–107.1 petition as a means of guaranteeing that respondent would receive hemodialysis." ¶ 31

In affirming the ordering of the hemodialysis treatment, the appellate court also cited to the Illinois Supreme Court holding in *In re Mary Ann P .,* 202 Ill.2d 393, 406 (2002), which precludes the trial court from authorizing anything short of the complete treatment plan. Because the respondents' medical and physical health conditions were inextricably linked, the psychiatrist's treatment plan addresses both of these conditions. ¶ 32

The Second District did, however, caution that "a section 2–107.1 petition should not be used as an end-around to obtain authority for testing or other procedures to treat a respondent's physical health condition, we believe that the statute includes the necessary safeguards." ¶ 34. Judgement affirmed. ¶ 35.

Involuntary Treatment & Commitment: Requirement of Disclosing Police Involvement in Commitment Petition Predisposition Report Requirement in Commitment Hearing

In re Amanda H., 2017 IL App (3d) 150164 (April 4, 2017)

The Third District reversed an involuntary commitment order and subsequent medication order, because of the failure to list in the commitment petition the transporting police officer(s)' name and address, as required by section 5/3-606 of the Mental Health Code (Code), and also because of the State's failure to file a predisposition report as required by section 3-811 of the Code, nor did the State present sufficient evidence to find substantial compliance with this section. Further this appeal fails within both the "public interest" and "capable or repetition, yet evading review" exceptions to mootness.

Background

The respondent, Amanda H., appealed both the involuntary admission and involuntary medication orders entered in Kankakee County. ¶ 1. She did not disclose any other prior mental health treatment, nor was she previously hospitalized for mental illness. ¶ 9-10.

Police Interaction

In January 2015, Ms. H.'s father went to the police station due to after she reportedly threatened to kill herself, along with yelling and talking to herself. ¶ 9. Subsequently, both the paramedics and police arrived at her house; Ms. H.'s brother testified that they forced her to go

to the hospital. ¶ 9. Ms. H. testified "that the police forced her onto the stretcher, 'put restraints' on her, and seatbelted [her] in.' The paramedics helped the police 'strap [her] down.' She felt 'concerned for her welfare' and for her 'salvation' when the police and paramedics restrained her 'because of the stress it was causing.'" ¶ 18. The petition for her involuntary commitment omitted any information about the police officers.

Predisposition Report

"The State did not submit a written predisposition report outlining a treatment plan and describing the availability and appropriateness of alternative treatment settings, as required by section 3-810 of the Code (405 ILCS 5/3-810 (West 2014)). The respondent's counsel did not object to the State's failure to submit a predisposition report or argue at trial that the information required by section 3-810 had not been adequately presented to the court." ¶ 16

At the admission hearing's conclusion, the trial court granted the State's petition for involuntary admission based on the "dangerous behavior" criteria; after a subsequent hearing the trial court then also granted the involuntary medication petition. ¶ 20

Issues Appealed On

The respondent then raised five issues on her appeal: first, petition's failure to list the police officers as required by section 3-606 of the Code; second, the State neither filed a written predisposition report (as required by section 5/3-810 of the Code), nor had presented evidence that would satisfy the substantial compliance with section 5/3-810's requirements (i.e. on the appropriateness and availability of alternative treatment settings and how involuntary commitment was the least restrictive available treatment for the respondent); third, the trial court failed to consider alternative available treatment settings before ordering commitment, in violation of section 3-811 of the Code; fourth, the trial court committed the respondent based on an incorrect and outdated statutory standard: and finally the State failed to prove that the respondent was subject to involuntary commitment by clear and convincing evidence. ¶ 2.

Mootness

The Third District held that this appeal falls within the "capable of repetition" exception because the respondent's arguments about compliance with the Code "challenge the trial court's interpretation of some of the Code's requirements. It is reasonably likely that the resolution of these issues will affect future cases involving the respondent because the respondent might well be subject to involuntary commitment proceedings in the future and the trial court will likely commit the same alleged errors during those proceedings."(citations omitted) ¶¶ 27-28.

The "public interest" exception is also applicable because, in part, "there is a need for authoritative determination of the issue because no published decision addresses the specific question presented in this case, *i.e.*, whether section 3-606 of the Code requires a police officer

to be identified in a petition for involuntary admission when the officer helped transport the respondent to the hospital at the request of the respondent's family and in conjunction with paramedics. This is an issue of first impression that will likely recur in future cases. Accordingly, deciding the merits of the respondent's argument on this issue will provide helpful guidance to circuit courts." (citations omitted) ¶ 29.

Violation of Section 3-606 of the Code

The Third District rejected the State's forfeiture argument defense, declining to find forfeiture when important liberty interests are at stake. ¶ 33. Because of these liberty interests, the Third also reiterated the importance of strict compliance with the Code. ¶ 34. The petition in question failed section 3-606's requirements that the transporting officers' names, badge numbers, and employer(s) be identified in the petition so that the officers could be called as potential witnesses; even though there was evidence that officers facilitated Ms. H.'s admission. 405 ILCS 5/3-606 (West 2014); ¶ 35. "Failing to provide such information deprived the respondent of using testimony by the transporting officers that may have been beneficial to her. That resulted in potential prejudice to the respondent." ¶ 36. Thereby warranting reversal.

Violation of Sections 3-810 and 3-811 of the Code

The Third District also found that reversal is warranted because the State did not submit a written predisposition report as required by section 3-810 of the Code (405 ILCS 5/3-810 (West 2014)) or otherwise provide the information required by that section. ¶ 38

The "State satisfies the requirements of section 3-810 absent a formal written report *only when the testimony provides the specific information required by the language of the statute*. (Citations omitted) Thus, if the State fails to present any testimony regarding the availability and appropriateness of alternative treatment settings, or presents only conclusory testimony on these matters, an involuntary commitment order may not stand." (Citations omitted) ¶ 42.

Here, the Third again rejected the State's forfeiture because of the total non-compliance on this issue. ¶ 43. It also found the State's evidence lacking for

> Dr. Belford did not identify any available alternative treatment settings that she had considered and explain why she had found them to be inappropriate. Nor did she adequately explain why she felt the claimant would not cooperate with treatment in those settings. Instead, Dr. Belford baldly asserted that, given the respondent's lack of cooperation at Riverside, she "didn't feel" that the respondent would be cooperative in a less restrictive, outpatient treatment setting. This type of cursory testimony on this issue is insufficient to satisfy the requirements of section 3-810. ……..As a result, the circuit court did not consider alternatives to treatment in an inpatient facility or order the least restrictive appropriate treatment, as required by sections 3-810 and 3-811. ¶ 44.

"In sum, because it presented neither a written predisposition report nor witness testimony detailing (1) what alternative treatments were available and why they were inappropriate in this case, (2) a treatment plan with timetables for treatment goals, and (3) a social investigation of the respondent, the State failed to meet its burden of proof." ¶ 45.

It later noted that "[g]iven the State's continuing disregard of both the statute and our prior pronouncements, we must once again stress the need for strict compliance with legislatively mandated procedural safeguards to protect and balance the competing interests of society and individuals subject to involuntary commitment." ¶ 46.

Because of these reversible errors, the Third did not consider the remaining issues. ¶ 47. It did however reverse the medication order "because we have reversed the trial court's order involuntarily admitting the claimant for treatment at a hospital, the respondent no longer qualifies as a 'recipient of services' for the involuntary administration of psychotropic medication under the Code. [citation omitted] Accordingly, we also reverse the trial court's involuntary medication order." ¶ 48.

Dissent

Justice Schmidt dissented for three reasons; first, that forfeiture did take place; second, reversible error much be based on more than "potential prejudice"; and finally, the State's evidence substantially complied with sections 3-810 and 3-811 of the Code. ¶¶ 53-60.

Involuntary Medication: Requirement of Providing Written Information; Requirement of Testimony by Expert who Personally Examined Respondent

In re Tara S., 2017 IL App (3d) 160357 (August 3, 2017).

The Third District Court reversed orders for involuntary admission and for administration of psychotropic medication. ¶1. The appellate court found that respondent's counsel's performance was deficient for not objecting to State's omission of testimony of an expert who had not personally examined respondent. ¶23. The State's expert psychiatrist testified that she had not personally examined respondent. ¶23. Counsel's omission prejudiced the outcome of proceedings, as respondent could not be subject to involuntary admission without testimony of expert who had personally examined her. ¶23. Counsel's performance was also deficient for not raising omission of any written information on one of the medications (lithium) it had ordered. ¶26.

Background

On the date of the hearing for involuntary admission, a psychiatrist, the State's expert witness, testified that although the expert witness had reviewed respondent's medical records, she had not personally examined respondent. ¶6. The trial court found respondent subject to involuntary admission and then proceeded to a hearing on the State's petition for involuntary treatment. ¶9. After a hearing involving the testimony of the same psychiatrist, the trial court

found respondent subject to involuntary treatment for a period of up to ninety days. ¶10-12. There was no record that respondent was given written information about one of the medications (lithium) ordered by the circuit court. ¶26. Respondent appealed. ¶12.

The "Capable of Repetition Yet Avoiding Review" Exception to Mootness

In addressing the mootness issue, the appellate court emphasized the importance of respondent's legal counsel in mental health proceedings. ¶17. "Absent ineffective assistance of counsel review, the statutory guarantee of counsel is rendered a " 'hollow gesture serving only superficially to satisfy due process requirements.'" ¶17, *In re Carmody,* 274 Ill. App. 3d 46, 55 (4th Dist. 1995) (quoting *In re Commitment of Hutchinson,* 421 A.2d 261, 264 (Pa. Super. Ct. 1980)). ¶17. "Counsel's actions protect respondent's constitutionally protected liberty interest to refuse the administration of psychotropic drugs." ¶17, U.S. Const., amend. XIV; see also *In re C.E.,* 161 Ill.2d 200, 214 (1994) (holding that "mentally ill or developmentally disabled [persons] have a Federal constitutionally protected liberty interest to refuse the administration of psychotropic drugs"); *In re Benny M.,* 2015 IL App (2d) 141075, ¶ (noting "like defense counsel in a criminal proceeding, the respondent's counsel in a mental health proceeding plays an essential role in ensuring a fair trial").

"Generally, court of review do not decide moot questions." ¶16, *In re Alfred H.H.,* 233 Ill. 2d 345, 351 (2009). "However, the "capable of repetition yet avoiding review" exception permits review of an otherwise moot issue." ¶16, *Id.* At 358. This mootness exception has two elements: (1) the challenged action is of a duration too short to be fully litigated prior to its cessation and (2) there is a reasonable expectation that the complaining party will be subject to the same action again. ¶16, *Id.* At 358. The parties agreed that the present issue (ineffective assistance of counsel) satisfied the first prong. ¶16. However, the State argued that there was not a reasonable expectation that respondent would be subject to the same action again. ¶16.

The appellate court found that respondent's ineffective assistance of counsel issue satisfied the second prong. ¶17. The record established that respondent had a 10-year history of mental illness, which included two prior hospitalizations. ¶17. The appellate court noted that there was no evidence presented that the proposed treatment plan would alleviate respondent's mental illness entirely. ¶17. "Rather, the evidence showed that her cognitive function would be stabilized once the treatment was in full effect." ¶17. However, respondent had discontinued treatment in the past. ¶17. "Therefore, it is very likely that respondent will face future involuntary hospital admission or involuntary administration of psychotropic medication proceedings." ¶17. "As respondent is statutorily entitled to counsel during these proceedings (405 ILCS 5/3-805), ineffective assistance of counsel issues are likely to recur." ¶17.

Examination of Medical Expert

Section 3-807 of the Mental Health and Developmental Disabilities Code (Code) provides that "No respondent may be found subject to involuntary admission on an inpatient or outpatient basis unless at least one psychiatrist, clinical social worker, clinical psychologist, or qualified

examiner *who has examined the respondent* testifies in person at the hearing. The respondent may waive the requirement of the testimony subject to the approval of the court." ¶21. (Emphasis added.) 405 ILCS 5/3-807.

In this case, the expert's testimony established that she had not personally examined respondent. ¶23. Respondent did not waive the testimony of the expert and the expert's review of respondent's medical records did not satisfy this statutory requirement. ¶23, *In re Michelle J.,* 209 Ill. 2d 428, 437 (2004) (reviewing a respondent's medical records does not satisfy the statutory requirement that the expert examine the respondent prior to the hearing). "Therefore, counsel's performance was deficient for not objecting to the State's omission of testimony of an expert who had not examined respondent." ¶23. Counsel's omission prejudiced the outcome of the proceedings as respondent could not be subject to involuntary admission without testimony of an expert examiner who actually examined her. ¶23, 405 ILCS 5/3-807.

Written Information Requirement

"Section 2-102 of the Code requires that State to notify the recipient of involuntarily administered psychotropic medication with written notice of the "side effects, risks, and benefits of the treatment as well as alternatives to the proposed treatment."" ¶25, 405 ILCS 5/2-102(a-5). Such information is required for respondent to make an informed decision on treatment and verbal advice does not satisfy this statutory requirement. ¶25, *In re Vanessa K.,* 2011 IL App (3d) 100545, ¶20.

The State conceded that respondent did not receive written information about one of the medications (lithium) it was requesting. ¶26. The appellate court accepted the State's confession and found that there was no indication that respondent received written notice of the side effects, risks, benefits, and alternative treatments of lithium. ¶26. "As respondent could not be compelled to take lithium without receiving the statutorily required written information, counsel's performance was deficient for failing to raise this issue." ¶26, 405 ILCS 5/2-102(a-5).

Reversed. ¶23.
Summary written by Andreas Liewald

Involuntary Medication & Commitment
Hospital's Non-Compliance with sec. 2-107(a) of the Mental Health Code

In re Carol B., 2017 IL App (4th) 160604 (August 24, 2017).

The Fourth District reversed trial court's orders for involuntary admission and involuntary treatment for "egregious" and "cumulative" violations of section 2-107(a) of the Mental Health and Developmental Disabilities Code (Code). 405 ILCS 5/2-107(a). ¶3, 59, 67.

Background

After 34 days after respondent's admission to a mental health facility, a hearing on the State's petitions for involuntary admission and involuntary treatment (psychotropic medication and 12 sessions of electroconvulsive therapy - ECT) commenced. ¶2, 10, 16. A week prior to the hearings, respondent's counsel pointed out the lengthy period of time respondent had been hospitalized while awaiting a hearing and emphasize the importance of moving forward with the hearings as soon as possible due to the State's administration of psychotropic medication and ECT without respondent's consent. ¶13. Respondent's counsel further argued that the administration of the medication and ECT violated section 2-107 of the Code because no emergency situation necessitated that administration of medication prior to the hearing, as medical records showed respondent was eating regularly with prompting. ¶13. Respondent's counsel asserted, as a result of the delayed proceedings, the mental health facility would be nearly finished with respondent's ECT treatments before she received a hearing, which circumvented the provisions of the Code and respondent's rights. ¶13. Respondent's counsel also stated that she would ask for a temporary restraining order to prevent the further administration of medication, but suddenly halting the medication would place respondent's health at risk. ¶13.

Respondent declined to attend the hearings. ¶17, 28. The treating psychiatrist testified that upon respondent's admission, respondent was delusional and displayed catatonic symptoms (staring, engaging in repetitive behaviors, exhibiting bizarre behaviors, displaying waxing flexibility, and refusing to eat or cooperate with treatment plans). ¶18. One of the psychiatrist's biggest concerns was respondent's inconsistent eating, as she would sometimes eat nothing and sometimes would eat everything on her tray. ¶18. "She required prompting from staff to eat." ¶18. The psychiatrist opined that respondent lacked the capacity to consent treatment. ¶19. Because she lacked capacity, the psychiatrist determined that she also lacked the capacity *to refuse* treatment. ¶19. Therefore, starting on the day of her admission, the psychiatrist authorized the administration of 3 psychotropic medications without respondent's consent. ¶17, 19. At the time, the psychiatrist admitted respondent's condition would not cause serious and imminent physical harm to herself or others. ¶19, 33. The psychiatrist provided respondent with written documentation of the side effects of every recommended medication approximately four days after beginning treatment. ¶31.

Thirteen days after respondent's admission and twenty-one days prior the hearings, the psychiatrist found respondent posed a risk of serious and imminent physical harm to herself by her failure to eat and engage in basic hygiene. ¶20, 33. He therefore ordered ECT on an emergency basis four days later for three times per week. ¶20. By the date of the hearing, she had completed 8 of 12 rounds of ECT, some of which were administered despite her resistance. ¶20, 33, 35. The psychiatrist opined that respondent lacked the capacity to refuse. ¶35. In justifying the emergency ECT, the psychiatrist explained that a person could die of malnutrition in a matter of weeks or months. ¶21. He testified that respondent's eating was inconsistent and that from the date of her admission, she had lost 5 pounds – from 160 pounds down to 155 pounds. ¶21. At 5 feet 4 inches tall, respondent's ideal weight was 120 pounds. ¶21. He testified that respondent's condition was not so serious as to warrant a feeding tube and that she

would eat when prompted. ¶21. Although respondent had developed depressive symptoms such as hopelessness and passive thoughts of death (such as hoping to die), she never expressed any desire or intention to kill herself and did not require any one-on-one monitoring. ¶22.

The trial court found the State violated section 2-107(a) of the Code by administering psychotropic medication to respondent without her consent when there was no threat of serious and imminent physical harm. ¶2, 40, 405 ILCS 5/2-107(a). However, the court found the violation to be harmless and granted both orders for a period not to exceed 90 days. ¶2. Respondent appealed both orders, asserting violations under section 2-107 of the Code. ¶3.

Mootness

Respondent's appeal centered on the State's involuntary administration of medication in violation of section 2-107 of the Code and the consequences that can arise from such a violation. ¶47. The appellate court found that this question is of a public nature and likely to recur in the future, as the State's application and interpretation of the Code affects any patient involuntarily admitted. ¶47. Thus, there exists a need for an authoritative determination to guide mental health professionals and the State when those professionals decide to administer involuntary treatment prior to the trial court entering an order authorizing the treatment." ¶47. Respondent argued that the State's administration of involuntary treatment prior to the involuntary-admission proceedings affected her due-process rights by altering her mood and behavior prior to her opportunity to be heard. ¶49. The appellate court concluded that, under these circumstances, the public-interest exception to the mootness doctrine applied for both the involuntary admission and involuntary treatment orders. ¶49.

The mental health facility violated section 2-107(a) of the Code.

"Involuntary-admission proceedings implicate an individual's liberty interest." ¶51, *In re Torski C.*, 395 Ill. Ap. 3d 1010, 1017 (4th Dist. 2009). "The Code's procedural safeguards are not mere technicalities but essential tools to safeguard these liberty interests." ¶51, *In re John R.*, 339 Ill. App. 3d 778, 785 (5th Dist. 2003).

Absent a situation where respondent posed a threat to cause serious and imminent physical harm to herself or others, the psychiatrist lacked a legal basis to administer the medication. ¶54. The psychiatrist began administering three psychotropic medications to respondent on the date of her admission, despite his belief that she was not at risk for serious and imminent physical harm at that time. ¶54. "He did this under the belief that respondent's lack of capacity rendered her "unable to refuse" treatment." ¶54. The appellate court found that the psychiatrist's "opinion that he could administer treatment to respondent because she was incapable of refusing is a gross misinterpretation of section 2-107(a) of the Code." ¶55. Under the psychiatrist's logic, "when a patient lacks capacity, regardless of whether that patient's condition may cause serious and imminent physical harm, he may choose whatever treatment he deems appropriate prior to any court hearings because the patient can neither consent to nor refuse his decision." ¶55. "Here, because respondent lacked the capacity to consent to treatment and her condition did not require administration of medication to prevent her from causing serious and imminent physical harm to

herself or others, the trial court properly found the State violated section 2-107(a)." ¶55, 405 ILCS 5/2-107(a).

Remedy for violation of section 2-107(a) of the Code.

The appellate court noted that the Code sets no specific remedies for violation of section 2-107(a). ¶57, 405 ILCS 5/2-107(a). It rejected the State's argument that section 2-107(a) violation constituted harmless error as to respondent's involuntary admission where respondent is unable to demonstrate prejudice. ¶57. Instead, it agreed with respondent that "the egregious, cumulative errors" in this case were not harmless and, instead, violated respondent's due-process rights. ¶59.

First, the psychiatrist administered psychotropic medication when respondent's condition did not require the administration of medication to prevent respondent from causing serious and imminent physical harm to herself or others. ¶59. Following the harmless-error analysis (citation omitted), the appellate court noted that respondent was not in a position to make a timely objection to the involuntary administration of treatment because, at the time the psychiatrist authorized the medication, the court proceedings and appointment of counsel would not commence for more than three weeks. ¶59. Moreover, in the psychiatrist's own words, "respondent's lack of capacity rendered her incapable of refusing any medication he chose to administer." ¶59. "Given these circumstances, the violation of section 2-107(a) could not be easily cured." ¶59. As noted by respondent's counsel, respondent had been psychotropic medication for more than three weeks by the first court appearance, and such medication could not be suddenly stopped without placing respondent's health at risk. ¶59.

The appellate court rejected the State's assertion that the violation of section 1-107(a) made no difference in the end, as the trial court granted the petitions. ¶60. The appellate court was not willing to accept the argument that "the ends justify the means" in this situation. ¶60. It noted that by placing respondent on psychotropic medication when she did not pose a risk to cause serious and imminent physical harm to herself or others, the trial court lost the ability to determine respondent's mental capacity for itself. ¶60. "In this situation, we have evidence the medication altered respondent's mood and behavior" and "we cannot say the premature administration of medication "made no difference."" ¶60. The court noted, for example, that although respondent self-reported as "happy" at the time of her admission, by the hearing date, her mental state had declined to the point that she hoped to die. ¶60.

Second, the appellate court found that the State's delay in filing its amended petition left respondent involuntarily admitted for more than a month before she received a hearing date. ¶61. During this time the psychiatrist subjected respondent to psychotropic medications in the face of no evidence that the medication was necessary to prevent respondent from causing serious and imminent physical harm and subjected respondent to undergo eight rounds of ECT – which required anesthesia and triggered seizures – on the basis that she was a serious and imminent threat to herself, as she was not eating properly or bathing regularly. ¶61.

The appellate court held that the legislature could not have contemplated that a patient would wait over a month for a hearing, all the while being administered medication involuntarily. ¶62.

"Where a respondent lacks the capacity to consent, she relies on the Code to protect her rights." ¶62. A delay of over a month nearly permitted the mental health facility to circumvent the Code by treating and releasing respondent before she had the opportunity for a hearing. "Such a delay is inexcusable and shows a complete disregarding for respondent's liberty interests." ¶62.

Third, the psychiatrist admitted that he did not initially provide respondent with written information regarding the risks, benefits, side effects, and alternative treatment prior to starting the psychotropic-treatment regimen when respondent was first admitted. ¶64. The appellate court rejected the State's argument that the delay was *de minimis*, as she received the written documentation prior to her hearing. ¶64. It noted that the psychiatrist failed to gather that "[t]he rights provided in the statute were not placed in the Code to ensure that a respondent understands a medication's side effects but to ensure a respondent's due process rights are met and protected." ¶64, *In re John R.*, 339 Ill. App. 3d 778, 784 (5th Dist. 2003).

The appellate court found that the trial court was charged with determining whether respondent possesses the capacity to make a reasoned decision about her treatment. ¶65. Here, respondent was deprived of her opportunity to refuse the medication, and because she was already on medication for a significant period of time prior to the long-delayed hearing, the trial court had not way of determining whether respondent lacked the capacity to consent at the time of her admission. ¶65. The appellate court also found that whether the side effects of the medications were worth the risk was an issue for the trial court, yet the psychiatrist took it upon himself to decide that the possible side effects – which included death for dementia patients, heart attached, and suicidal behavior – were worth the risk. ¶66. "Respondent was entitled to her day in court before the long-term administration of mind – and behavior – altering medication." ¶66.

The appellate court declined to find the error harmless, and accordingly reversed the trial court's involuntary-admission order. ¶67. Further, because the appellate court reversed the trial court's involuntary-admission order, respondent no longer qualified as a "[r]ecipient of services" for the administration of involuntary treatment under section 1-123 of the Code. ¶67, 405 ILCS 5/1-123, citing *In re John N.*, 364 Ill. App. 3d 996, 998 (3rd Dist. 2006). The appellate court therefore also reversed the court's involuntary-medication order. ¶67.

Involuntary Treatment: Written Information to Patient and Whether the State Provided Sufficient Evidence of the Behavior Criteria for Involuntary Medication

In re Beverly B., 2017 IL App (2d) 160327 (Opinion filed September 28, 2017).

Respondent appealed an order for the involuntary administration of psychotropic medication, contending that the State failed to present sufficient evidence of its compliance with the mandate of section 2-102(a-5) of the Mental Health Code (Code) (providing recipient with written information about alternatives to treatment) and that there was insufficient evidence that she was exhibiting deterioration of her ability to function or was suffering, as required undersection 2-107.1(a-5)(4)(B) of the Code. 405 ILCS 5/2-102(a-5) and 5/2-107.1(a-5)(4)(B). ¶1. The appellate court reversed the judgment of the circuit court.

Background

The State filed a petition for the involuntary administration of psychotropic medication to respondent, who was adjudicated as unfit to stand trial. ¶3. At Respondent's request, she was permitted by the circuit court to represent herself with the public defender to serve as standby counsel. ¶4. During the trial, the public defender attempted to intervene as respondent cross-examined a State's witness, and the State successfully objected. ¶5. Respondent's psychiatrist opined that respondent's serious mental illness precluded her from making a reasoned decision about treatment. ¶7. The psychiatrist further opined that respondent's ability to function had declined seriously, an opinion he based largely on comparing respondent's current functioning to her previous ability to work as an accountant. ¶7. The psychiatrist testified that respondent had been given written materials about the risks and benefits of the medications. ¶8. When asked if respondent was given written information about less restrictive alternatives, the psychiatrist responded that "At the time of her admission, we do give all the group schedule[s], what are the expectation[s], yes." ¶9.

The circuit court ruled that respondent had a serious mental illness and was exhibiting deterioration and suffering. ¶14. It further stated that the testimony from the doctor also noted that respondent had been advised in writing of the risks and side effects of the medications and of less restrictive services. ¶14.

Analysis

On appeal, respondent raised three claims issues: (1) the circuit court violated her right to counsel when it declined stand by counsel's request to step in following the direct examination of a witness; (2) the Stated failed to present clear and convincing evidence of compliance with section 2-102(a-5), which requires that a potential recipient of psychotropic medication be advised in writing of the side effects, risks, and benefits of the treatment, *and* of the alternatives to the proposed treatment; and (3) the State failed to provide sufficient evidence that she had experienced either deterioration in her ability to function or suffering as required by section 2-107(a-5)(4)(B). 405 ILCS 5/2-102(a-5) and 2-107(a-5)(4)(B). ¶17.

Exception to the Mootness Doctrine

The appellate court concluded that both of respondent's claims about the merits of the judgment fall under the public-interest exception to the mootness doctrine. ¶19, 20. Citing *In re Katarzyna G.,* 2013 IL App (2d) 120807, the court found that the sections at issue – 2-102(a-5) and 2-107.1 – must be interpreted in most involuntary medication proceedings; thus, a court's interpretation of those statutes is a matter of public interest. ¶20. The appellate court also found that these issues have not been authoritatively decided in any published court decisions. ¶20. Finally, the appellate court found that because the issues related to important substantive aspects of those sections, they will certainly occur in other mental-health cases. ¶20.

However, the appellate court concluded that no mootness exception applied to her claim that the court deprived her of her right to counsel. ¶19, 21. It found that although questions of when standby counsel should take over for respondent might be expected to arise in any future proceedings, little likelihood existed that any such question would arise with similar facts. ¶21.

Standards of Review

The appellate court found that because the evidence relating to compliance with providing written information to respondent under section 2-102(a-5) was largely straightforward and undisputed, the question involved the application of law to essentially undisputed facts, and thus was a question of law, subject to *de novo* review. Citing *In re Laura H.,* 404 Ill. App. 3d 286, 290 (2010) (review of whether there has been compliance with section 2-102(a-5) is *de novo*). ¶23. Likewise, the court found that although respondent's claim that the State failed to prove that she exhibited deterioration of her ability to function or suffering is a challenge to the sufficiency of the evidence, her claim turned on the interpretation of section 2-107.1. ¶23. This too was considered to be a question of law. Citing *Moon v. Rhode*, 2016 IL 119572, ¶22 (interpretation of a statute was a question of law, so review was *de novo*). ¶23.

Compliance with the Section 2-102(a-5) Mandate for Information Concerning Alternatives to the Proposed Treatment

The appellate court addressed why the information respondent received upon admission – general information about the treatments available at the facility – did not satisfy section 2-102(a-5). ¶28. The court found that to make a reasoned decision, an individual should have a general idea of the advantages and disadvantages of his or her realistic choices. ¶33. "General information about mental-health treatments that might or might not be of use to a recipient does not help a recipient understand his or her choices." ¶33. "Moreover, the relevance of the information needs to be apparent." ¶33. "Merely advising a recipient that a treatment exists without advising him or her how it is relevant is not likely to help." ¶33.

The appellate court found that the information respondent received about alternatives to psychotropic medication was not adequate. ¶34. According to the testimony, when respondent was admitted, she apparently received group schedules and statement of expectations or rules. ¶34. However, there was no evidence that, when psychotropic medication was proposed, respondent received an explanation of how any treatment referred to in the schedules was an alternative to the medication. ¶34. Nor was there evidence that, when she received the schedules, she was told that she would need to refer to them later if medication were proposed. ¶34. "More critically, no suggestion exists in the evidence that the schedules usefully informed respondent what treatments were plausible alternatives for her." ¶34.

The appellate court concluded that the State did not show that respondent received sufficient information to allow her to make a reasoned decision, which was what was necessary to

achieve the legislature's purpose of section 2-102(a-5). ¶37. Thus, it did not deem the error harmless.

Sufficiency of the Evidence
of Respondent's Deterioration or Suffering under section 2-107.1(a-5)(4)(A).

The appellate court held that the circuit court erred in finding that respondent was subject to the involuntary administration of psychotropic medication based on her exhibiting deterioration in her ability to function and suffering. ¶39. It concluded that the evidence linking respondent's deterioration and suffering to her mental illness was insufficient. ¶39.

"We agree that the requirements of section 2-107.1(a-5)(4)(B) makes sense only on the assumption that the medication specifically addresses the deterioration, suffering, or threatening behavior." ¶39. The appellate court found that the State failed to show that the medication would alleviate respondent's deterioration of suffering and that the direct evidence of the effect of respondent's illness on her functioning was weak. ¶40, 41. Although there was testimony implying that respondent's illness had cost respondent her job and her family relationships, the record did not tell the appellate court whether it did so directly or through the cascading effects of a single incident. ¶41. The appellate court rejected the State's argument that it could reasonably infer that because respondent was homeless and unemployed, she had experienced a deterioration in her functioning. ¶42. "[T]he legislature cannot have intended that we countenance the involuntary medication of respondent on the basis of economic harm from her incarceration and commitment." ¶42.

The appellate court found that the evidence that respondent was suffering was similarly insufficiently linked to her illness and that the trial court relied only on respondent's unhappiness with her commitment. ¶43. The parties agreed that, in this context, "suffering" meant "experiencing distress or anguish"; it was thus not a synonym for "experiencing a specific condition." "Here, as in *Debra B.,* the State showed that respondent was experiencing the symptoms of a serious mental illness and that she was experiencing distress at her circumstances, but it failed to show that the proposed medication could treat that distress." ¶43. "More specifically, the State showed that respondent was experiencing delusions, but it failed to present evidence "provid[ing] any insights into why *** these symptoms caused *** suffer[ing]. *Debra B.,* 2016 IL App (5th) 130573, ¶45. The appellate court found that the evidence showed predominately that respondent's suffering was the result of her dislike of her confinement. ¶44. That said, the court noted that there was evidence of unpleasant-sounding delusions (respondent had reported that Center staff members had been replaced by their twins) and that those delusions were distressing, the inference was not clear and convincing. ¶44.

Summary written by Andreas Liewald

Involuntary Commitment: When a voluntary patient requests a discharge
Involuntary Medication: Written information to a consumer prior to medication

In re Wilma T., 2018 IL App (3rd) 170155 (Opinion filed April 24, 2018).

Wilma T., Respondent-Appellant, voluntarily admitted herself to a mental health facility. A petition for respondent's involuntary admission was filed stating that respondent had been a voluntary admittee, but had "submitted written notice of [her] desire to be discharged." Respondent's request for discharge was not signed by respondent, but stated "[p]atient requesting discharge, but refusing to sign" and was signed by three nurses. A petition for involuntary treatment (psychotropic medication) was simultaneously filed.

At the hearing for involuntary admission, a psychiatrist testified that "She [respondent] would not sign a five-day notice for discharge. *** but she would say that she might want to leave but then she would change her mind, so it would be considered voluntary." He further testified, "She would not sign the form, but there were two witnesses to her request to leave." The court granted the petition for involuntary admission.

The case then proceeded to a hearing on the petition for involuntary treatment. Although the psychiatrist testified that respondent was given written information regarding the side effects, benefits, and risks of the proposed medication, there was no indication that respondent was given written information regarding alternatives to the treatment. The court granted the treatment petition.

On appeal, Respondent argued the court erred by granting (1) the order for involuntary admission where she was a voluntarily admitted patient and did not file a written request for discharge, and (2) the order for involuntary treatment where respondent was not presented written information about less restrictive alternatives to medication.

The appellate court reversed the trial court's judgment.

Commencement of an involuntary admission proceeding when respondent did not submit a written request for discharge under section 3-403 of the Code.

The state conceded that respondent did not file a written notice of her desire to be discharged and that section 3-403 of the Code was not satisfied.[6] The general rule is that "a written request for discharge must precede the instituting of emergency commitment proceedings against voluntarily admitted patients.[7] An oral request is not sufficient "to activate the statutory requirements for initiating an involuntary admission proceeding."[8] "Where the record fails to show that the respondent submitted a written request for discharge prior to the initiation of involuntary admission proceedings, the involuntary admission order is invalid."[9] Here, respondent was a voluntary patient and did not file a written notice for discharge. "Consequently, the involuntary admission proceedings should not have been commenced." The

appellate court accepted the state's concession and found that the involuntary commitment order was invalid.

Written information regarding alternatives to proposed treatment under section 2-102(a-5) of the Code.

Respondent did not receive written information regarding alternatives to the proposed medication treatment. Although the state argued that respondent lacked the ability to understand any written information that may have been communicated regarding alternative treatment options and there was no evidence to show that she understood the information provided, the appellate court held that "Section 2-102(a-5) of the Code must be strictly complied with, so as to secure the liberty interest that a respondent has in refusing invasive medication.[10] Because of this, verbal notice does not constitute compliance with section 2-103(a-5) of the Code, and respondent cannot waive his [or her] right to written notice. If such notice is not given, then the state cannot establish that a respondent lacks the capacity to make a 'reasoned decision' about treatment, because the written notice forms the basis upon which such a decision can be made."[11] Strict compliance is required. "Thus, the State cannot establish that a respondent lacks the capacity to make a reasoned decision without the respondent receiving prior written notice."

The appellate court stated that it would be remiss if it did not note that this was the second time it had determined that respondent's involuntary administration of psychotropic medication order was improper for the same reason.[12] "Hopefully, the parties will take the necessary steps to ensure strict compliance occurs from this point forward."

Summary written by Andreas Liewald

Involuntary Commitment: Withdrawing a Request for Discharge

In re Jian L, 2018 IL App (4th) 170387 (Opinion filed January 29, 2018).

Jian L, Respondent-Appellant, was voluntarily admitted to a mental health facility. ¶1. He later filed a request to be discharged. ¶1. The same day he filed a request to be discharged, the State filed a petition for involuntary admission under section 3-601 of the Mental Health and Developmental Disabilities Code (Code) (405 ILCS 5/3-601). ¶1. Respondent withdrew his request to be discharged and argued that the State's petition for involuntary admission was no longer necessary. ¶1. The trial court rejected that argument and, after a hearing, granted the State's petition for involuntary admission. ¶1.

On Appeal, Respondent argued that (1) the trial court erred by adjudicating the petition for involuntary admission after she withdrew her request to be discharged or, in the alternative, 2) the certificates attached to the State's petition failed to comply with section 3-203 of the Code,

which provides that every petition, certificate and proof of services be executed under penalty of perjury as though under oath or affirmation. ¶2, 36.

Appellate court affirmed the trial court's judgment. ¶2, 40.

Adjudicating a petition for involuntary admission after Respondent has rescinded his request for discharge.

Respondent argued that the State may no longer proceed on its petition for involuntary admission once a patient has abandoned his request for discharge under section 3-403 of the Code. 405 ILCS 5/3-403. ¶21.

The appellate court cited *In re Splett,* 143 Ill.2d 225, 234 (1991), which held that when a patient voluntarily admits himself under section 3-403 of the Code, the State cannot file a petition for involuntary admission until the patient has made a written request for discharge. ¶23. It noted that the rule furthers the Code's purpose of encouraging voluntary admission. ¶23.

However, the appellate court held that the Code does not prohibit the State from continuing on a properly filed petition for involuntary admission after a respondent has withdrawn his request for discharge. ¶25. The appellate court declined to read such a limitation into the Code. ¶25. See *People v. Shinaul,* 2017 IL 120162, ¶17 ("Absent express language in the statute providing an exception, we will not depart from the plain language and read into the statue exceptions, limitations, or conditions that the legislature did not express."). ¶25.

The appellate court concluded that proceedings on a petition for involuntary admission filed under section 3-403 of the Code may continue despite the respondent's withdrawing his request for discharge from voluntary admission. ¶27.

Requirement that Certificates be executed under penalty of perjury.

Respondent argued that because the doctor's Certificates were not executed under penalty of perjury under sections 3-403 and 3-203 of the Code, the trial court's judgment must be reversed. 405 ILCS 5/3-403 and 203. ¶34, 36.

Citing *In re Wheeler,* 152 Ill. App. 3d 371, 373 (2d Dist. 1987), it held that any deficiencies in the certificates attached to the State's petition did not prevent the court from adjudicating the petition. ¶38. The appellate court noted that the allegations in the petition were attested to, under oath, at the hearing, respondent did not challenge the sufficiency of the evidence, and based upon the testimony of the hearing, the allegations of the petition were brought in good faith. ¶38. The appellate court "decline[d] to disturb the trial court's judgment because of a supposed technical violation in the certificates attached to the State's petition." ¶38.

Summary written by Andreas Liewald

Illinois Mental Health and Developmental Disabilities Confidentiality Act: A Consideration of Long-Term Care Facility Records

***Stuckey v. Renaissance at Midway*,** 2015 IL App (1st) 143111 (Opinion filed 12/18/15, corrected 1/5/16)

Plaintiff sought to recover damages from a long-term care facility for being physically assaulted there by another resident (referred to as "John Doe"). ¶1, 5. John Doe, who suffered from Alzheimer's disease and is presently deceased, was not named as a defendant in the complaint. ¶4, 5, 12.

Plaintiff filed interrogatories, seeking information about John Doe, including his name, address, social security number, whether a criminal background check had been completed on him, whether there were any prior incidents of aggression, and whether any complaints were ever made about the conduct of John Doe. ¶6. Defendant refused to respond to these discovery requests, asserting that the information was protected under the Health Insurance Portability and Accountability Act (HIPAA) (42 U.S.C. § 1320d *et seq.*). ¶6. Plaintiff then filed a motion to compel for an *in camera* inspection of John Doe's records, arguing that none of the information requested constituted medical information and that a qualified order could be entered to protect John Doe's privacy. ¶7. Defendant argued that plaintiff sought the production of information and documents protected by HIPAA, the physician-patient privilege (735 ILCS 5/8-802), and the Mental Health and Developmental Disabilities Confidentiality Act (Confidentiality Act) (740 ILCS 110/1 *et seq.*). ¶8. Plaintiff did not assert any exception to the Confidentiality Act authorized such disclosures. ¶9.

The circuit court entered an order requiring defendant to produce John Doe's records for an *in camera* inspection. ¶11. Defendant contended that the records reflected that John Doe was admitted to Renaissance for "mental illness" and was being treated there for "mental health services," and all of his records were protected by the Confidentiality Act. ¶12. The circuit court concluded that the vast majority of John Doe's records were medical records, and were not subject to production. ¶13. However, the circuit court found that a small portion of the records were discoverable in a partially-redacted form, principally from the nurses notes, and any account of physical acting out by John Doe. ¶13. Defense counsel informed the circuit court that the redacted records would not be produced, and asked the circuit court to enter a "friendly contempt." ¶13.

On appeal, defendants argue that the circuit court erred in ordering the production of John Doe's partially-redacted records and in holding defense counsel in contempt for the refusal to do so, since the disclosure of the records was protected under the provisions of the Confidentiality Act, and the plaintiff failed to show any exception to the Confidentiality Act applies. ¶16.

The appellate court held that the definition of "mental health or developmental disability services" or "services" in the Confidentiality Act is very broad, as it "includes but is not limited

to examination, diagnosis, evaluation, treatment, training, pharmaceuticals, aftercare, habilitation or rehabilitation." 740 ILCS 110/2. ¶23. The appellate court found that the records ordered by the circuit court constituted "records" or "communications" under the Confidentiality Act. ¶24. "[T]he Confidentiality Act defines records to include '*any record* kept by a therapist or by an agency in the course of providing mental health or developmental disabilities service to a recipient concerning the recipient and the services provided,' and communications are defined to include '*any communication* may be a recipient or other person to a therapist or to or in the presence of other persons during or in connection with providing mental health or developmental disability services to a recipient. Communication includes information which indicates that a person is a recipient.'" 740 ILCS 110/2. ¶24.

The appellate court found that the documents the circuit court required the long-term care facility to disclose constituted records and communications under the Confidentiality Act, thus bringing them under the broad, general statutory provision that "[a]ll records and communications shall be confidential and shall not be disclosed except as provided in this Act." 740 ILCS 110/3(a). ¶28. "[P]laintiff failed to make any attempt to demonstrate that any exception to the Confidentiality Act authorized disclosure below, and as a result the circuit court conducted no specific analysis and made no specific findings with respect to any possible exception to the protection offered by the Confidentiality Act." ¶30. "Under these particular circumstances, and with plaintiff having made no showing that any exception to the Confidentiality Act applies, we conclude that the trial court's discovery orders were improper." ¶30

Reverse and remanded. ¶36. Contempt order vacated. ¶36.

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Illinois Mental Health and Developmental Disabilities Confidentiality Act: Confidentiality of Witness' Mental Health Records

People v. Viramontes, 2017 IL App (1st) 142085 (Opinion January 9, 2017)

First District upheld a criminal conviction, finding in part that the trial court's refusal to tender to the defendant some but not all of a witness' mental health records for six years is not reversible error.

Background

Defendant challenged the trial court's decision to limit the disclosure of a witness's mental health records. ¶ 77. Prior to trial, the defense moved to produce all of a witness's mental health records; the witness was taking psychotropic drugs and Forensic Clinical Services recently evaluated her. ¶ 77. The trial court after an *in camera* review of all of the mental health records determined that several records were discoverable, including her 2010 admission to Cermak Hospital following an arrest; records from Forensic Clinical Services; and

records from Norwegian American Hospital from August 2008. ¶ 77. The court refused to tender other mental health records, all of which were dated from 2002-2008. ¶ 77.

What mental health records are admissible with regard to a witness' testimony

"It is well established under Illinois law 'evidence of a witness' mental condition is admissible to the extent it bears upon the credibility of the witness' testimony.'" ¶ 79 *citing, People v. Votava*, 223 Ill.App.3d 58, 74 (1991) (citing *People v. Monk*, 174 Ill.App.3d 528, (1988)).

Initially, the First District noted that mental health records, even reviewed *in camera*, can become part of the appellate record pursuant to Illinois Supreme Court rule 415(f). ¶ 80; Ill. S. Ct. R. 415(f).

The trial court's denying access of six years of mental health records was not an abuse of discretion, because the "vast majority of the records concerned depression, anxiety, and an eating disorder, none of which would be relevant to testing" the witness's credibility. ¶ 82 Conviction affirmed.

Illinois Mental Health and Developmental Disabilities Confidentiality Act: Whether Plaintiff Waived Privilege of Mental Health Records

***Phifer v. Gingher*,** 2017 IL App (3d) 160170 (Opinion filed March 30, 2017)

The Third District affirmed the finding the plaintiff's counsel in contempt for refusing to comply with the court's order requiring the production of plaintiff's mental health records in discovery, for the order does not violate the Mental Health and Developmental Disabilities Confidentiality Act.

Background

Plaintiff's complaint sought damages for "great pain and anguish both in mind and body" stemming from a car accident. ¶ 2 Citing privilege under the Mental Health and Developmental Disabilities Confidentiality Act, the plaintiff resisted defendant's discovery requests for plaintiff's mental health records. ¶ 2. Following an *in camera* review of plaintiff's mental health records, the court ordered plaintiff to produce the records; defendant's counsel refused and requested to be held in indirect civil contempt in order to facilitate appellate review of the discovery ruling. ¶ 3 At issue is whether "plaintiff waived her therapist/recipient privilege under the Act by placing her mental health at issue in this case." ¶ 24.

Whether the Plaintiff waived her privilege under the Mental Health and Developmental Disabilities Confidentiality Act.

Currently, "the case law provides that party may waive his or her statutory privilege by introducing his or her mental health condition through 'pleadings, answers to written discovery, a deposition, in briefs or motions, in argument before the court, or by stipulation.'" ¶ 25,

quoting *Reda v. Advocate Health Care*, 199 Ill.2d 47, 61 (2002). However, as the Illinois supreme court in *Reda* held "a neurological/physical injury such as a stroke and/or other brain damage does not *necessarily* create psychological damage or automatically place the plaintiff's mental health at issue." *Reda*, 199 Ill.2d. at 57 ¶ 25

The Third District held that this case differed from *Reda*, because in response to interrogatories, the plaintiff "affirmatively stated she was claiming "*psychiatric, psychological* and/or emotional injuries" as a result of this occurrence. (Emphasis added.)." ¶ 29. Also, during deposition she described injuries "to include anxiety in addition to memory loss, difficulty multitasking, headaches, frequent episodes of crying, and irrational fears interfering with her ability to drive or ride in a car and feel safe in the area where she lived." ¶30 Thus "the trial court correctly concluded the records at issue are relevant, probative, and not unduly prejudicial as required under the Act." ¶ 32

The Court also rejected the plaintiff's counsel argument that they stepped back from this claim: absent "any agreed order, stipulation, or document of record confirming plaintiff's decision to abandon damages based on the psychiatric, psychological and/or emotional injuries addressed by defendant's interrogatory" the claim is still alive. ¶¶ 34-35 Order affirmed.

Other Noteworthy Mental Health Cases

Contracts

Epstein v. Bochko et al, 2017 IL APP (1st) 160641 (May 11, 2017) (Selfreliance Ukrainian American Federal Credit Union – Respondent-Appellee).

The appellate court found that the circuit court properly granted respondent's (Selfreliance) motion for summary judgment where there were no issues of material fact and respondent was not liable for the fraudulently converted funds of petitioner-appellant's estate.

Background

Two caregivers for an elderly woman, Anna Polachanin (Anna), recovering from surgery, took her to an attorney and obtained power of attorney for property and health care for her. ¶3. Shortly after obtaining power of attorney, one of the caregivers took her to Selfreliance Ukrainian American Federal Credit Union (Selfreliance) to open a joint bank account. ¶4. Anna and the caregiver were able to open a joint account without the power of attorney. ¶4. The manager of Selfreliance noted that Anna walked into Selfreliance without assistance. ¶4. After opening the joint account, in a matter of four months, more than $300,000 of was deposited at Selfreliance and more than $250,000 of that amount was then transferred to bank accounts in Ukraine. ¶5. Shortly afterwards, a psychiatrist concluded that Anna was disabled by dementia and later opined that her dementia had been present for at least several years. ¶6. However, the psychiatrist could not offer an opinion regarding how Anna presented herself at Reliance when she initially opened the joint account. ¶6.Based upon the psychiatrist's report, the circuit court declared Anna a disabled person and appointed the public guardian (Epstein) as plenary guardian of Ann's estate and person. ¶7.

The public guardian filed a petition to recover assets from the caregivers, attorney and Selfreliance. ¶7. Count V of the eight-count petition stated that "Banks, Savings and Loans, and Credit Unions generally owe their customers a duty of ordinary care to maintain and guard a customer's accounts, and protect the account hold from fraud, abuse and waste". ¶7. Count VI alleged that the account agreement between Anna and Selfreliance was a nullity because she was incapable of entering into contracts at the time she signed the account agreement. ¶7. The public guardian requested that the court rescind the account agreement and order Selfreliance to reconvey all of the funds from the fraudulent wire transfers. ¶7.

Selfreliance filed a motion for summary judgement on counts V and VI of the petition. ¶8. Regarding Count V, the circuit court found that neither the Uniform Commercial Code nor any Illinois authority imposed a tort duty of ordinary care between a depositor and a bank, except with regard to negotiable instruments. ¶8. The circuit court found that since wire transfers are not negotiable instruments, Selfreliance did not breach any duty owed to Anna. ¶8. Regarding Count VI, the circuit court found that there no material facts to establish that Selfreliance either knew or should have known of Anna's condition at the time she opened the joint account. ¶9. The court noted that the only facts presented concerning Ann's mental condition on the date

the account was opned were from the psychiatrist, who testified that he could not offer an opinion regarding how she Anna appeared on that date. ¶9. The court found that there was not genuine issue of material fact and that Selfreliance was entitled to judgment as a matter of law. ¶9. Petitioner solely appealed Count VI. ¶9.

Analysis
No Genuine Issue of Material Fact

The appellate court found that it was clear from Selfreliance's employee that Selfreliance had no knowledge of Anna's incompetency when she signed the account agreement. ¶17. Regarding the psychiatrist's testimony, "he did not observe her on the date she went to Selfreliance to open the joint account and could not offer an opinion regarding how she presented herself on that date." ¶17. Thus, the psychiatrist "could not offer testimony regarding what respondent knew or should have known regarding Ann's mental condition." ¶17. The appellate court found it was clear from the evidence presented that Selfreliance entered into the contract in good faith, without taking advantage of its position and in ignorance of Ann's mental incapacity. ¶18. "Selfreliance was entitled to rely upon the legal presumption that every person is sane until the contrary is proven." Citing *In re Estate of Elias* 408 Ill.App.3d 301, 316 (2011).

Accordingly, the appellate court found that the circuit court correctly found that there was no question of material fact regarding Anna's competency on the date she opened the account. ¶19. In addition, the appellate court found that the circuit court correctly held that the account agreement should not be rescinded where there was no evidence in the record to show that Selfreliance knew or should have known of Anna's incompetency. ¶19.

Selfreliance's knowledge of Anna's Competency not Irrelevant

Petitioner cited *Jordan v. Kirkpatrick*, 251 Ill. 116 (1911) and *In re Estate of Trahey,* 25 Ill. App. 3d 727 (1975), asserting that even though respondent lacked knowledge of Anna's incapacity, the loss of her life savings should fall on Selfreliance because precedent dictates that Anna, who was incapable of entering into contract, should be protected. ¶21.

The appellate court distinguished petitioner's cited cases of *Jordan* and *Trahey.* In *Jordan,* at contrast with this case, the lender was seeking the benefit of the bargain he made with a person later found to be mentally incompetent. ¶23. Here, Selfreliance made no such claim against Anna and is not seeking to recover anything from her. ¶23. "Moreover, in *Jordan* the supreme court noted that the lender did not meet with the wife before making the transaction where" it was within the lender's power to have seen her and ascertained her mental condition before making the loan. *Jordan,* 251 Ill. at 121. ¶24. "The court observed that the evidence showed that the wife had just been released from the hospital and that bother her mental and physical conditions were "very bad."" *Id.* At 122.

The appellate court also found petitioner's reliance on *Trahey* misplaced. ¶25. In *Trahey,* the joint tenant who improperly opened a joint bank account with a mentally incompetent person, was found to be at fault for opening a joint account with a mentally disabled person, not the bank. ¶27. The appellate court noted that nowhere in the *Trahey's* opinion it was implied that the bank where the joint account was opened would have been liable for any fraudulently converted funds. ¶27. "Thus, consistent with *Trahey,* as the trial court recognized in its order, any loss should be made to fall upon those who defrauded Anna and not on Selfreliance." ¶27.

The appellate court found that the circuit court properly granted Selfreliance's motion for summary judgment where petitioner failed to show that there was a guine issue of material fact as to Anna's incompetency and that Selfreliance either knew or should have known or her incompetency. ¶28. Judgment of Circuit Court affirmed. ¶30.

Criminal Law

People v. Klein, 2016 IL App (2d) 141133 (December 9, 2016).

Second District upheld a conviction for unlawful possession of a weapon by a felon, even though the trial court did not hold a fitness hearing. ¶1. This despite the fact the purpose of the police call from the defendant's relatives was for an involuntary mental health commitment, and that the police department took the defendant into custody with the intention of getting him mental health treatment. ¶13. The defendant asked that this issue of fitness, not raised at trial, be review under the doctrine of plain error. ¶31. The Second District held that since the trial court did not make a finding of bona fide doubt as to the defendant's fitness to stand trial, the defendant was not entitled to a fitness hearing. ¶37. Judgment Affirmed. ¶40.

Special Concurrence:

"PRESIDING JUSTICE SCHOSTOK, specially concurring:

> Although I concur with the ultimate disposition in this case, I write separately to draw attention to the unfortunate circumstances that this case presents. It is obvious that the defendant's parents were desperately in need of obtaining mental health treatment for their son, the defendant, and never called the sheriff's department in order to facilitate an arrest. However, with their son's lack of cooperation and refusal of treatment at the mental health facility, the situation ultimately resulted in an arrest.
>
> In light of the defendant's mental health issues and other facts of this case, I find troubling the State's decision to prosecute the defendant on such evidence. Nonetheless, based on the controlling case law, I agree with the majority that the defendant's conviction must be affirmed." ¶¶ 41-43.

Criminal- Failure to Raise Mental State Ineffective Assistance of Counsel

People v. Durr, 2017 IL App (1st) 141899-U (February 3, 2017).

The First District affirmed the circuit court's dismissal of a defendant's petition for post-conviction relief, for he failed to make a substantial showing that the trial counsel was ineffective for not investigating his mental health issues and failing to request a fitness hearing.

Background

Defendant filed a *pro se* petition for post-conviction relief--though he pled guilty to his criminal charge-- alleging among other matters, counsel's failure to raise his mental status at trial. Post-conviction counsel filed a supplemental post-conviction petition alleging ineffective assistance of counsel because of the trial counsel's failure to investigate and obtain the defendant's medical history and request a fitness hearing even though the defendant was previously hospitalized for hearing voices and was taking Zyprexa. ¶ 7.

The circuit court, in granting the State's motion to dismiss the post-conviction petition, made the following observations: 1) the defendant's "supporting evidence did not establish that the defendant was unfit on the day he pled guilty because that evidence predated his guilty plea"; 2) that "mental health issues did not necessarily raise a *bona fide* doubt as to an individual's fitness and the record showed that the defendant understood the court proceedings" and; 3) defendant failed to attach documents to his motion corroborating the assertion that trial counsel knew of mental impairments or that at the time of his guilty plea he was taking psychotropic medication. ¶ 11.

Ineffective Assistance of Post-Conviction Counsel

Defendant argued in part that post-conviction counsel was ineffective because of the failure to attach the corroborating documents. ¶ 18. The First District denied this argument noting that the trial court record cited post-conviction counsel's difficulty in obtaining some of the medical records and did obtain the IDOC medical records, therefore the presumption that counsel provided reasonable assistance is not rebutted. ¶ 19.

Ineffective assistance of defendant's trial counsel for failure to investigate mental issues and by not requesting a fitness hearing

Defendant also argued that trial court counsel was ineffective for failing to investigate his mental health issues and for failing to request a fitness hearing. ¶ 23. The First District also rejected this argument. It noted that "the fitness to plead guilty and mental illness are not synonymous." ¶ 27. The court then explained that the key question is whether the defendant could understand the proceedings, not whether he was mentally ill for "[T]he existence of a mental disturbance or the need for psychiatric care does not necessitate a finding of *bona fide* doubt since '[a] defendant may be competent to [to plead guilty] even though his mind is otherwise unsound.' " ¶ 27 *citing, People v. Hanson*, 212 Ill.2d 212, 224–25 (2004).

Though "the defendant alleged that he had difficulty understanding his trial counsel, the judge, and the court proceedings on the date he pled guilty, these assertions are rebutted by the record." ¶ 30. "The transcript from the plea shows that the defendant was able to understand the proceedings and participate. He responded in a coherent and appropriate manner to all of the trial court's questions concerning his understanding of the plea agreement. At the end of the hearing, when asked by the trial court whether he had any questions, the defendant, in no uncertain terms, stated that he did not." ¶ 30.

That even though the defendant may have had mental health issues at the time he plead guilty, he has not shown that at the time of his guilty plea he did not understand the nature and purpose of the proceedings and his inability to assist in his defense. ¶ 30. For these reasons, the First District found that the defendant had not made a substantial showing that he was prejudiced by the trial counsel's alleged failures and therefore the claim of ineffective assistance of counsel must fail; the trial court properly dismissed the post-conviction petition. ¶ 31. Judgment affirmed. ¶ 32.

Criminal- Mens Rea

People v. Jackson, 2017 IL App (1st) 142879 (June 27, 2017) (Corrected July 24, 2017)

Background

After Jackson-defendant called 911 for an ambulance, paramedics arrived to find him "agitated," "nervous," "irrational," and "very uncooperative," suffering from some type of psychological issue and with an "altered" mental state. ¶1. The paramedics then called for police assistance. ¶1. After the police arrived, defendant screamed and flailed. ¶1. One police officer used his 50,000 volts taser on defendant, striking him 10 times, and the other officer tried to grab defendant and was kicked in the shins. ¶1, 3. Ultimately, the police subdued him and placed him into an ambulance to be transported to a hospital. ¶1. Defendant was charged with battery and resisting arrest, and after a jury trial, was convicted of the charges. ¶1.

The State did not prove defendant's mens rea or mental state.

The appellate court found that the evidence was insufficient to support a finding that defendant had the requisite mental state to commit the crimes of battery and resisting a peace officer. ¶24, 26. Rather, there was an abundance of evidence – almost all of it from the State witnesses – defendant was not "knowingly" acting during the incident. ¶26. Both paramedics, observed, on their arrival, that defendant was "nervous" and "agitated". ¶26. One paramedic though defendant was suffering from some type of psychological issue and the other paramedic though that defendant's mental state was altered. ¶26. For example, though the paramedics were in uniform, and driving a vehicle distinctively marked as an ambulance, defendant repeatedly denied they were paramedics and continued to call 911. ¶26. Although defendant exhibited verbal coherence, it does not indicate a "knowing" state of mind indicating that he understood what was happening to him. ¶26. The appellate court did not know the cause of defendant's behavior (ie epilepsy, drug intoxication, some undiagnosed mental illness, or being tasered 10 times), but did not need to know. ¶27. The appellate court found the State's evidence establishing defendant's *mens rea* or mental state, here his knowledge, was so

conflicting, so unsatisfactory, as to create reasonable doubt of defendant's guilt. ¶31. Accordingly, the evidence was insufficient to support defendant's conviction. ¶31.

The trial court neglected to ask potential jurors proper questions during jury selection.

Supreme Court Rule 431(b) mandates that a trial court ask potential jurors whether they "understand [ ] and accept [ ]" these four principles: (1) the defendant is presumed innocent; (ii) the State must prove the defendant guilty beyond a reasonable doubt; (iii) the defendant is not required to offer any evidence on his or her own behalf; and (iv) the defendant's failure to testify cannot be held against him or her. ¶37, Ill. sup. Ct. R. 431(b), *People v. Thompson,* 238 Ill.2d 598, 606-07 (2010). Failure to question the jurors on each of these four principles violated the rule. ¶37, citing *Thompson* 238 Ill. 2d at 607. During *voir dire,* the trial court neglected to use the words "understand and accept," but rather asked potential jurors if they disagreed with the four principles or would be unable to follow them. ¶38. The appellate court found that the State rightly conceded error on this issue. ¶38.

Admission of testimony of possible marijuana usage was plain error.

"Other-crimes" evidence may not be admitted to prove a defendant's propensity to commit a crime because a jury might convict the defendant not based on the evidence, but that the defendant deserves punishment. ¶40, *People v. Placek,* 184 Ill.2d 370, 385 (1998). Nonetheless, this type of evidence can be admitted to prove intent, *modus operandi,* identity, motive, absence of mistake, or any material fact other than propensity that is relevant to the case. ¶40, *People v. Donoho,* 204 Ill.2d 159, 170 (2003). Even when the evidence is admissible, the trial court must weigh its prejudicial effect versus its probative value, and exclude it if too prejudicial ¶40, *Placek,* 184 Ill.2d at 385.

Although the State argued that the testimony regarding a cannabis smell was relevant to the "continuing narrative" of defendant's arrest as it informed the actions of both the police and paramedics, the appellate court found that none of the evidence presented regarding the cannabis smell was, in fact, part of any continuing narrative. ¶41. Even if crimes that occur in close proximity will not be admitted as part of a continuing narrative "if the crimes are distinct and undertaken for different reasons at a different place at a separate time." ¶41, (internal quotations and citations omitted) *People v. Adkins*, 239 Ill.2d 1, 33 (2010). The appellate court found that assuming the cannabis smell indicated that defendant had illegally used marijuana, no medical evidence was introduced as to when or where he had used it, or that he was still under its influence during the incident. ¶41. There was nothing linking possible marijuana use with defendant's behavior, and there was nothing to indicate that the marijuana smell impacted anyone's actions, either the defendant's, the police's and the paramedics'. ¶41, 42. The witnesses consistently testified that defendant was irrational, uncooperative, and agitated, and that they were not sure why he was behaving the way he did. ¶42. "Admission of this evidence was error." ¶43.

The admission into evidence of "lay opinion" testimony from paramedics that defendant did not suffer from a seizure constituted error.

Lay witnesses can testify based on a rational perception if it is helpful for the determination of a fact in issue. ¶48, Ill. R. Evid. 701(a), (b); *People v. Donegan*, 2012 IL App (1st) 102325, ¶42. But, lay witnesses cannot testify to an opinion based on scientific, technical, or other specialized knowledge. ¶48, Ill. R. Evid. 701 (c); *Donegan,* 2012 IL App (1st) 102325, ¶42. The paramedics' lay opinion testimony was improper under Illinois Rule of Evidence 701, since they were not properly qualified as an expert witness on seizures. ¶51, 53, Ill. R. Ev. 702. If the paramedics had limited their testimony to their own observations or defendant's behavior, it would have been admissible. ¶54. The appellate court held that the admission of these lay opinions was error because it violated Illinois Rule of Evidence 701 and went to the ultimate question of fact to be decided by the jury. ¶57, *People v. Brown,* 200 Ill. App. 3d 566, 579 (1st Dist. 1990).

The prosecutor made improper comments during closing argument.

The appellate court found that the prosecutor made improper comments during closing argument about the marijuana smell and the opinion testimony. ¶75. However, it was not so serious that they denied defendant a fair trial or cast doubt on the reliability of the judicial process. ¶75.

Conclusion

The appellate court reversed the trial court's conviction. ¶81. The appellate court noted that battery against a police officer is a serious charge, but being kicked in the legs by a mentally unstable person (causing no serious injury) is not the type of touching that requires either specific or general deterrence. ¶3. The appellate court also noted that the officers should receive training in how to deescalate such a situation and that the prosecution was a waste of time and money. ¶3, 4.

Summary written by Andreas Liewald

DOC Services to Mentally Ill DOC inmate

Lisle v. Pfister, 2017 IL App (4th) 160360-U (May 9, 2017)

Fourth District affirmed the denial of a writ of *mandamus* filed by Lisle, a mentally ill DOC inmate, which alleged in part that DOC failed to provide him with adequate mental-health treatment along with a variety of accommodations. ¶ 48

The Constitution requires that inmates received "adequate medical care" which includes mental-health care. ¶ 49, *citing, People v. Manning*, 227 Ill. 2d 403, 422 (2008). The determination of what is adequate mental health treatment is not determined by the inmate, but by the mental health professional: "[t]he Illinois Administrative Code specifically provides that "[p]ersons committed to the Department [of Corrections] shall have access to mental health services *as determined by a mental health professional*." (Emphasis added.) 20 Ill. Adm. Code 415.40(a) (West 2005). ¶ 50.

The Court affirmed the denial of the writ of *mandamus* on the issue of mental health treatment since Lisle "received and is continuing to receive mental-health services in accordance with the determinations of DOC's mental-health professionals. It is not within the province of the

plaintiff or this court to second-guess the course of treatment prescribed by DOC personnel. *Hatch v. Szymanski*, 325 Ill. App. 3d 736 (2001)." ¶ 51.

Guardianship of Person and Estate

In re Estate of Marylou Kusmanoff, 2017 IL App (5th) 160129 (Opinion issued August 29, 2017)

This consolidation of three appeals concerned the guardianship of the person and estate of MaryLou Kusmanoff. ¶1. MaryLou and her son Michael Burgett, appealed the adjudication of MaryLou as a disabled person pursuant to section 11a-2 of the Probate Act (755 ILCS 5/11a-2) and the appointment her daughter, Carol Easterley, as guardian over her person and estate. ¶1. Mary Lou also appealed the circuit court's order, which denied her motion to take judicial notice of a Texas judgment finding that a guardianship of her person and estate was not required and to terminate the circuit court's adjudication of her disability. ¶1.

Facts

In April 2015, the circuit court entered an *ex parte* order adjudging MaryLou to be a disabled person, and appointed her daughter Carol as temporary guardian over her person and estate. ¶4. Carol alleged that MaryLou was a disabled adult incapable of managing her person or estate of approximately $750,000, and had been the victim of fraud and abuse. ¶4. Approximately one month after the initial order for temporary guardianship was entered, Michael Burgett moved MaryLou from the State of Illinois and transferred the majority of MaryLou's assets to his personal account in Texas. ¶7. Carol continued to be temporary guardian for a period of over seven months prior to a hearing on the petition for plenary guardianship, which began on December 2015. ¶4, 16. After the guardianship trial commenced in December of 2015 and the court heard the testimony of witnesses, the case was continued to March of 2016. 30. MaryLou then filed a motion to quash Carol's Illinois Supreme Court Rule 237 notice to compel her attendance at trial. ¶30. MaryLou argued that she intended to reside in Texas, was a resident under Texas law, and expressed a fear that the circuit court would require her to live in Illinois. ¶30. Mary Lou's motion was denied. ¶30. The circuit court then entered an order enjoining the parties from proceeding in a guardianship action in Texas. ¶34.

After further testimonies, the circuit court appointed Carol as plenary guardian of MaryLou's person and estate in March of 2016. ¶57, 58.

Analysis and Decision
Jurisdiction under the Guardianship Jurisdiction Act.

The appellate court reviewed the issue whether the circuit court had subject matter jurisdiction *de novo.* ¶72. The appellate court found that at the time Carol filed the petitions, Illinois was MaryLou's "home state" pursuant to section 201(a)(2) of the Guardianship Jurisdiction Act, and thus Illinois (not Texas) has jurisdiction to appoint a guardian over MaryLou's person and

estate. ¶73, 755 ILCS 8/201(a)(2). Furthermore, once the circuit court has appointed a guardian or issued a protective order, it has exclusive and continuing jurisdiction over the proceeding until it is terminated by the court or the order expires by its own terms. ¶73.

Irregularities in the Procedures Employed Throughout the Proceedings.

The appellate court stated that there is a requirement that a temporary guardianship not be extended beyond 120 days as well as the requirement that upon the filing of a petition for guardianship, the court shall set a date and place for a hearing on the petition within 30 days. ¶77, 755 ILCS 5/11a-4(b)(2) and 5/11a-10(a).The appellate court was concerned about the impact (a freeze on MaryLou's access to funds and she was ordered that she could not leave the residence of a nursing home or choose her own caregiver) the significant delay in the guardianship proceedings of over nearly a year. ¶77. The appellate court was further troubled by the fact that for the majority of the time the petition for guardianship was pending and temporary guardianship extended, there was no physician's report on file as required by section 11a-9 of the Probate Act. ¶78, 755 ILCS 5/11a-9.

"Perhaps most troubling was the circuit court's failure to procure an evidentiary statement by MaryLou regarding her preferences of caregiver and residence and the circuit court's utter disregard for the preferences that were communicated by MaryLou to the various witnesses in the case and through her attorney." ¶79. Section 11a-12(d) of the Probate Act required that the circuit court give due consideration to the preference of the disabled person as to a guardian. ¶79, 755 ILCS 5/11a-12(d). MaryLou requested to be excused from being present at the hearing, and the circuit court denied the request, contrary to section 11a11(a), which provides for the potential ward to be excused upon the mere showing that she refused to be present. ¶79, 755 ILCS 5/11a-11(a). The Circuit court could have ordered, on its own motion, that the testimony of a witness who is located in another state be procured by deposition or other means, including by telephone or other audiovisual or electronic means. ¶79, 755 ILCS 8/106. Instead, the circuit court guessed that she would want to stay in Texas but quoted the Rolling Stones, saying "you can't always get what you want." ¶79.

The appellate court considered the possibility of ordering a new trial based on the cumulative impact of the procedural irregularities, combined with its conviction, that the circuit court did not review and/or consider the medical evidence in determining whether Mary Lou was disabled. ¶80. However, because the appellate court did not wish to prolog the proceedings any further, leaving MaryLou's rights in limbo, it elected to review the record to determine the propriety of the circuit court's order in light of the applicable legal standards and its standard of review. ¶80.

Adjudication of Disability and Power to Appoint Guardian

The appellate court found that there was no clear and convincing evidence in the record from which the circuit court could conclude that MaryLou's mild to moderate cognitive deficits, manifesting as short-term forgetfulness and periods of confusion, prevented MaryLou from

communicating to others regarding her desires with respect to her living arrangements and the direction of her care. ¶87. Consequently, the appellate court reversed, without remanding, the circuit court's finding that MaryLou required a guardian of her person. ¶87.

Although the appellate court affirmed the circuit court's finding that MaryLou required a guardian of her estate, it found that there was not clear and convincing evidence in the record as to whether MaryLou lacked merely some, or lacked all, capacity to manage her estate. ¶90. The circuit court was required to determine whether a limited guardianship would be appropriate based on the level of MaryLou's disability. ¶90, 755 ILCS 5/11a-12(b) and (c). It found that the circuit court's conclusion that a plenary guardian was required was against the manifest weight of the evidence. ¶90. It vacated the circuit court's finding that a plenary guardianship was required and remanded for the limited purpose of an evidentiary hearing with respect to the exact parameters of the guardianship of MaryLou's estate that are necessary to effectuate the requirements of section 11a-3(b) and (c) of the Probate Act. ¶91, 755 ILCS 11a-3(b)

In addition, the appellate court instructed the circuit court that, should MaryLou so choose, she be permitted to be absent from the hearing pursuant to section 11a-11(a) of the Probate Act (755 ILCS 5/11a-11(a), and that her testimony be procured through electronic or other means as set forth in section 106 of the Guardianship Jurisdiction Act. ¶91, 755 ILCS 8/106.

Selection of Guardian

> Section 11a-12(d) of the Probate Act (755 ILCS 5/11a-12(d) provides in part:
> "The selection of the guardian shall be in the discretion of the court, which shall give due consideration to the preference of the disabled person as to a guardian, as well as the qualifications of the proposed guardian, in making its appointment. However, the paramount concern in the selection of the guardian is the best interest and well-being of the disabled person." ¶93.

The appellate court found that it was of great consideration that no matter the cause or source of MaryLou's feelings, the record expressed her strong and unequivocal desire that Carol not serve as guardian of her estate. ¶96. The appellate court held that under the circumstances, the circuit court abused its discretion in not appointing such a third party to act as limited guardian of MaryLou's estate. ¶97. It vacated that portion of the circuit court's order appointing Carol as guardian and remanded for proceedings in which the circuit appoints a corporation pursuant to section 11a-5(c) of the Probate Act as guardian of her estate. ¶97.

Order Denying MaryLou's Motion to Terminate Guardianship

The appellate court found no prejudicial error with regarding to the circuit court's failure to take judicial notice of the Texas judgment in the competing guardianship proceedings. ¶99. It

pointed the circuit court to section 11a-20 of the Probate Act (755 ILCS 5/11a-20 and that standards set forth therein for considering MaryLou's new petition to terminate and noted that, in light of its opinion, MaryLou's petition should only be adjudicated as it pertains to the guardianship of her estate, as the appellate court had held that Carol did not prove that MaryLou required a guardianship of her person. ¶99.
Summary written by Andreas Liewald

Guardianship- Petition to Discharge

In re Rocker, 2017 IL App (4th) 170133 (Opinion filed December 19, 2017).

Petitioner-Appellant, Leon C. Rocker, appealed the trial court's denial of his petition to terminate the guardianship of his estate. ¶1. Respondent argued (1) the trial court's order denying the petition to terminate guardianship was against the manifest weight of the evidence and (2) the trial court abused its discretion by admitting hearsay. ¶1. Appellate court affirmed trial court's judgment. ¶1, 54.

Background

In 2011, a plenary guardian was appointed for guardianship of the person and estate of Rocker. ¶3. The guardianship was established because family members discovered Rocker suffered from mental conditions and sent more than $100,000 to individuals soliciting money over the Internet. ¶3. In 2013, the guardianship of Rocker's person was terminated in an agreed stipulation by Rocker and his guardian, and in 2015, First Financial Bank, was appointed successor guardian of Rocker's estate. ¶3.

In 2016, Rocker filed a "Petition to Discharge Guardian and Terminate Guardianship." ¶5. Rocker alleged that he was no longer a disabled adult and no longer required a guardian. ¶5. Rocker further alleged that he had the capacity to perform the tasks necessary for the management of his person and estate. ¶5. To his petition, Rocker attached a physician's report, in which two medical professionals, Dr. Roberts and Dr. Whisenand, indicated that Rocker no longer suffered from a disability preventing him from managing his estate. ¶5.

In 2016, the trial court held a hearing on Rocker's petition to terminate guardianship. ¶7. At the hearing, the court heard testimony from Dr. Roberts, Dr. Whisenand, Rocker, and a trust officer from First Financial Bank. ¶7.

Dr. Roberts testified that he had initially advocated for the guardianship of Rocker's person and estate because Rocker's mental condition (bipolar disorder) caused him to be unable to manage his person or estate. ¶8. However, in the past two or three years, Rocker's condition had improved, and Dr. Roberts no longer believed guardianship was appropriate, despite the fact that Rocker made poor financial decisions. ¶8. Dr. Roberts testified that he was aware that Rocker sent money to Internet solicitors, many of whom appeared to be involved in scams. ¶8. However, Dr. Roberts opined Rocker's decision to send money to others was no longer the

product of a mental illness; rather, he believed Rocker was decisional and was making his decision of his own volition. ¶8.

Dr. Whisenand, who agreed with Dr. Robert's medical assessment, testified that Rocker's bipolar disorder was a condition he will have throughout his lifetime, but bipolar disorder may be effectively managed and go into remission. ¶9. Based upon his examination of Rocker, he believed Rocker was capable of making decisions free from the effects of bipolar disorder, even if those decisions were poor financial decisions. ¶9.

Rocker testified that he is a self-employed gardener and has between 35-50 clients. ¶10. He kept the money he made from his gardening business, which was not managed by his guardian. ¶10. Rocker testified that he sent money to people in need for religious and altruistic purposes, and for money in return. ¶11-12. Rocker was previously the victim of a scam, in which he lost $106,750. ¶13. The loss of this sum of money was the event which led his family to petition the trial court for guardianship. ¶13.

The trust officer for First Financial Bank testified that Rocker's estate was currently valued at approximately $420,000. ¶14. She testified that in 2016 Rocker had wired more than $9,600 to individuals in several countries and Rocker had indicated to her that he planned to continue sending money to individuals in need. ¶14. The trust officer believed that Rocker was incapable of managing his finances and therefore believed that guardianship of his estate was still necessary. ¶14.

In 2017 the trial court held a second hearing on Rocker's petition to terminate guardianship. ¶22. The trust officer was recalled to testify. ¶22. She testified that she accompanied Rocker to a Verizon store for him to obtain a new cellular phone. ¶22. The appointment took longer than expected, and Rocker needed to leave so he could get to a gardening job. ¶22. The officer stated that she would finish the appointment and bring Rocker's new phone to him afterward. ¶22. While she was waiting at the Verizon store, Rocker received several phone calls, and she wrote down the numbers. ¶22. Over the objection on hearsay grounds, the officer testified that she had spoken to a person named Williams, who had offered her a "promotion" for her to send money in return to receive more money. ¶23. Again over a hearsay objection, four emails were entered into evidence purporting a cash award of 2.5 million dollars. ¶24. Following her conversation with Williams, she received up to 25 phone calls a day from people soliciting money. ¶24. The officer also reviewed Rocker's Verizon statement, which notated several international phone calls. ¶25. She searched the phone numbers listed on the statement by using a website called "Spy-Dialer," a site that allows one to input a phone number and the site will generate a report, which will show the owner of the number and the location to which the number is associated. ¶25. The officer prepared a document, which listed the numbers, the location to which the phone number was associated, and relevant notes (ie, whether the number was disconnected). ¶25. The document was entered into evidence over a hearsay objection. ¶25. The officer reiterated her concern about Rocker's ability to manage his estate and indicated her belief he remained financially vulnerable. ¶27. She expressed concern about Rocker's ability to say no to people who contact him soliciting money. ¶27.

The trial court denied Rocker's petition to terminate guardianship. ¶32. The trial court indicated that this was not a case where the ward merely used his money in eccentric or bizarre ways. ¶32. Rather, this was a case where Rocker was not logical or rational with respect to the use of his funds and was incapable of resisting the Internet and phone solicitations. ¶32. The court indicate there was no basis for Rocker's belief his funds were not being used for charitable purposes or for any benefit to him, as he claimed. ¶32. The court concluded Rocker was still in need of guardianship of his estate so as to prevent it from suffering and waste. ¶32.

Analysis

Hearsay

Rocker asserted the trial court abused its discretion by allowing the bank officer to testify about the basis of her opinion that Rocker remained susceptible to scammers, specifically about (1) the conversation she had with Williams, (2) the four e-mails she received and (3) the document prepared by the bank officer, outlining the locations from which certain phone calls to her cellular phone had originated. ¶40. Rocker argued each of these bases constituted inadmissible hearsay. ¶40.

The appellate court defined hearsay as an out-of-court statement offered to prove the *truth of the matter asserted* and is generally inadmissible. Citing Ill. R. Evid. 801(c); and R. 802. ¶41. The appellate court found that the purpose for admitting the e-mails and testimony was to show why the bank officer believed Rocker remained susceptible to scams. ¶41. The conversation with Williams and the e-mails were offered not to prove the truth of the statements contained therein; rather they were offered to show the statements were incredible, thereby supporting the banks officer's opinion of Rocker's continued susceptibility. ¶41. The appellate court held that the trial court did not abuse its discretion by admitting the e-mails or allowing the bank officer to testify about her conversations with Williams because this evidence, by definition, was not hearsay. ¶41.

With respect to the bank officer's source of information from caller-identification feature of her cellular phone and the computer-generated output of the Spy-Dialer website, the appellate court found that this information was not hearsay. ¶42. Citing *People v. Caffey,* 205 Ill. 2d 52, 95 (2001) ("The information displayed on a caller ID device is not hearsay because there is no out-of-court asserter."). ¶42. Similarly, the computer-generated output from Spy-Dialer was not hearsay; there was likewise no human making an out-of-court assertion. Citing *People v. Holowko,* 109 Ill. 2d 187, 191-92 (1985) (concluding computer-generated records of telephone traces are not hearsay because the "evidence is generated instantaneously *** without the assistance, observations, or reports from or by a human declarant"). ¶42.

However, the appellate court found that a hearsay question was created by the fact the bank officer physically recorded the information into a document, as the recordation was an out-of-court statement written by a declarant. Citing Ill. R. Evid 801(a)-(c). ¶43. The appellate court found that the computer-generated information was not hearsay, and Rocker had not

persuaded it that the recordation of this information was hearsay. ¶45. The appellate court concluded that the trial court did not abuse its discretion by admitting the document. ¶45.

Termination of Guardianship

The appellate court noted that as cases involving guardianships present unique factual questions, it did not find Rocker's factual comparisons to other cases particularly useful. Citing *In re C.M.,* 305 Ill. App. 3d 154 (1999) (concluding where a case is *sui generis,* courts do not typically make factual comparisons to other cases). ¶49.

The appellate court found that there was substantial evidence presented – including Rocker's own admission – showing he intended to continue sending his money to Internet and phone solicitations many of which appear to be scams. ¶50. It noted that Rocker had given away thousands of dollars even since the guardianship was established. ¶50. Prior to the guardianship, Rocker had given away in excess of $100,000, and very likely much more. ¶50. The appellate court found that it was clear that Rocker had a permanent mental illness – he continued to have bipolar disorder. ¶51. While stable, he continued to receive treatment and medications. ¶51. The court also found that both Dr. Roberts and Dr. Whisehand noted his mental condition could make him susceptible to financial manipulation, and Whisenhand had only limited awareness of Rocker's financial choices. ¶51. The appellate court found that although Rocker's behavior and choices may be "decisional", they went far beyond poor financial decision making. ¶51. The appellate court concluded that the petitioner had not established by clear and convincing evidence that he was no longer disabled or that he was fully able to make financial decisions free from the effects of his disorder and manage his estate so as to prevent waste. ¶51. The court also concluded that it was not clearly evident from the record that Rocker was capable of managing his own estate such that his interest would be best served by terminating the guardianship; instead, the evidence tended to show his interests would be best served by continuing the guardianship to prevent further large-scale waste of his estate, especially in light of his own admission he intended to continue sending money to Internet solicitors. ¶52.

Summary written by Andreas Liewald

Not Guilty by Reason of Insanity

People v. Burks. 2016 IL App (1st) 152581-U.

First District held that a personality disorder may count as a mental illness for purposes involuntary commitment of a person found not guilty by reason of insanity. ¶ 1 Also, the First District upheld as not against the manifest weight of evidence the circuit court's holding that the defendant could reasonably expect to physically harm herself or others. ¶ 1

Not Guilty by Reason of Insanity- Post Acquittal Commitment

***People v. Bailey*,** 2016 IL App (3d) 150115 (opinion filed on February 10, 2016)

Defendant appealed the trial court's ruling that he was in need of mental health services on an inpatient basis following a finding of not guilty by reason of insanity (NGRI). ¶1.

Defendant was charged with aggravated battery. ¶3. The trial court found defendant NGRI, and ordered that he be remanded to the custody of the Department of Human Services and be evaluated to determine whether he was in need of mental health services. ¶4. A written evaluation concluded that Defendant was in need of mental health services on an inpatient basis. ¶5. The evaluation noted that Defendant had a history of noncompliance with his prescribed medication on an outpatient basis, and a long history of substance abuse and problems with the criminal legal system. ¶5, 6.

At trial, a doctor testified that Defendant was diagnosed with manic bipolar disorder, which was in partial remission because he had been taking his medications. ¶8. The doctor opined that Defendant was in need of inpatient treatment based on Defendant's history of noncompliance with his medications and lack of insight into his mental illness and substance abuse. ¶8. He believed that defendant would pose a risk of harm to himself or others if he were not hospitalized based on his mental illness. ¶8. Defendant's father testified that he would allow Defendant to live with him and would be able to help Defendant obtain his medications and make sure he took them. ¶14. The father was not concerned for his safety if Defendant were to live with him. ¶14. Defendant testified that if the judge allowed him to receive outpatient mental health treatment, he would likely try to obtain his own housing. ¶15. The trial court found Defendant in need of mental health services on an inpatient basis and remanded him to the custody of DHS. ¶16. The trial court noted that Defendant exhibited a lack of compliance with his recommended treatment, a lack of insight into his mental illness, and a lack of remorse for his crime. ¶17.

Under section 5-2-4 of the Unified Code of Corrections, after a finding of NGRI, the trial court shall order the defendant to be evaluated by DHS to determine if the defendant is in need of mental health services. ¶20. DHS is to provide the trial court with a report of its evaluation within 30 days. *Id.* ¶20. After receiving the report, the trial court must hold a hearing to determine if the defendant is in need of mental health services and, if so, whether the defendant is in need of mental health services on an inpatient or outpatient basis. *Id.* ¶20. A finding that a defendant needs mental health treatment on an inpatient basis must be established by clear and convincing evidence. 730 ILCS 5/5-2-4(g). ¶21. Such a finding "must be based upon an explicit medical opinion regarding the defendant's future conduct and cannot be based upon a mere finding of mental illness." *People v. Grant,* 295 Ill. App. 3d 750, 758 (1998). ¶21.

Relevant factors in determining whether a person is reasonably expected to inflict serious harm upon himself or another include "evidence of (1) prior hospitalization with the underlying facts

of that hospitalization and (2) defendant not taking his medication in the past and still not perceiving the value of continued medical treatment." *People v. Robin*, 312 Ill. App. 3d 710, 718 (2000). ¶21. "Even though a finding of dangerousness must be based on a specific medical opinion regarding defendant's possible future conduct, there does not need to be an expectation of immediate danger." *People v. Hager,* 253 Ill. App. 3d 37, 41 (1993). ¶21. "The mere possibility that defendant may not comply with the prescribed treatment is insufficient to sustain a finding of involuntary commitment." *Robin,* 312 Ill. App. 3d 718. ¶21.

The appellate court affirmed the trial court's ruling, finding that the trial court's determination that Defendant was in need of mental health services on an inpatient basis was not manifestly erroneous. ¶1, 23, 29. Factors which supported the trial court's determination of treatment on an inpatient basis included the Defendant's history of noncompliance with medications on an outpatient basis, Defendant's lack of insight into his mental illness and substance abuse, lack of remorse for his crime, and that he was not fully compliant with attending therapy groups on an inpatient basis. ¶23.

Not Guilty by Reason of Insanity-Petition for Discharge

People v. Gunderson, 2017 IL App (1st) 153533 (June 20, 2017)

The First District Court affirmed a trial court's denial of Petition for Discharge from the custody of Department of Human Services (DHS) for a recipient found not guilty by reason of insanity on an attempted murder charge. ¶1. Gunderson-petitioner argued that section 5-2-4(g) of the Unified Code of Corrections (Code) violated is right to due process, because it requires him to prove by clear and convincing evidence that he no longer suffers from a mental illness. ¶1, 730 ILCS 5/5-2-4(g). The appellate court found the statute constitutional. ¶1.

Background

In 2002, following a bench trial, petitioner was found not guilty by reason of insanity on an attempted murder and aggravated battery charge. ¶2. In 2015, Gunderson filed a motion for discharge from DHS, or for on-grounds pass privileges. ¶4. At the hearing on the motion, petitioner's mother testified that she believed that he had recovered from his illness, that he did not present a threat of harm to anyone, and that he could live with his parents. ¶4. Petitioner's treating psychiatrist recommended on-grounds pass privileges. ¶5. The treating psychiatrist testified that petitioner no longer showed any symptoms of mental illness – with schizophrenia in remission, that he was not prescribe any medication, and that he progressed well without medication since 2011. ¶5. Petitioner's social worker testified that although no one on the treatment team recommended discharge for him, she never saw petitioner act aggressively, saw no signs or symptoms of schizophrenia, and signed onto the recommendation for on-grounds passes to assess how well defendant could handle increased freedom. ¶6. A psychologist, who reviewed the treatment team's recommendations, agreed that petitioner should have on-grounds passes and that petitioner presented little risk of violent behavior. ¶7. Another psychiatrist who examined petitioner in 2003 and 2004 and briefly in 2015, opined that schizophrenia is always a lifelong illness that patients can control only with antipsychotic

medication. ¶8. The psychiatrist did not know of any studies that support his assertions, but he knew of no instance in which a schizophrenic patient recovered without remaining on antipsychotic medication for life. ¶9. He found that petitioner showed several signs of continuing schizophrenia and opposed the request for on-grounds pass privileges. ¶8, 9. Finally, a clinical psychologist testified that according to every controlled study of patients treated for schizophrenia for more than one year showed that schizophrenic patients given minimal medication, or no medication at all, had much better recovery rates than patients treated regularly with antipsychotics. ¶10. The clinical psychologist tested and interviewed petitioner, found that he no longer met the criteria for a diagnosis of schizophrenia. ¶12. He opined that petitioner presented only a low level of risk for adverse behavior with more freedom and concurred with the recommendation for on-grounds passes to assess his response to increased freedom. ¶12.

The trial judge found the clinical psychologist not credible and gave little weight to the testimony of his treatment team. ¶13. Instead the judge relied on his interpretation of petitioner's body language and the testimony of the second psychiatrist. ¶13. Although the judge relied on the second psychiatrist's opinion, the judge expressly said that he was not convinced that patients must have antipsychotic drugs for life to control schizophrenia. ¶13. The judge denied the motion for on-grounds passes and the motion for discharge. ¶13.

Issue Appealed

Whether section 5-2-4 of the Code, which requires petitioner found not guilty by reason of insanity to present clear and convincing evidence that he no longer meets the criteria for involuntary commitment before he can obtain discharge, is unconstitutional. 730 ILCS 5/5-2-4(g). ¶16, 26. Petitioner abandoned his pursuit of on-grounds passes. ¶16.

Analysis and conclusion

The appellate court found that petitioner presented a prima facie showing that he no longer suffered from a mental illness. ¶18. (While the treating psychiatrist diagnosed petitioner's condition as schizophrenia in remission, that diagnosis remained compatible with a finding that he no longer suffered from a mental illness. ¶17, *Levine v. Torvik,* 986 F.2d 1506, 1513-14 (6th Cir. 1993) *overruled in part on other grounds by Thompson v. Keohane,* 516 U.S. 99, 111 (1995). See also *Foucha v. Louisiana,* 504 U.S. 71, 85 (1992). ¶18.) However, section 5-2-4(g) requires a petitioner who seeks discharge to prove, by clear and convincing evidence, either that he has not mental illness or that he is not dangerous. ¶19. See *People v. Wolst,* 347 Ill. App. 3d 782, 790 (2004). The appellate court agreed with the *Wolst* court and its underlying reason under *United States v. Wattleton,* 296 F.3d 1184 (11th Cir. 2002), and held that section 5-2-4 of the Code does not violate petitioner's right to due process. ¶21, 26. Affirmed. ¶27.

Parental Rights

In re Genay M., 2017 IL App (2d) 160845-U (March 2, 2017).

The Second District reversed a lower court order terminating a mother's parental rights, noting that the State failed to prove by clear and convincing evidence that respondent's mental health episodes put the child at risk of harm.

Parental Rights

In re: S.L., a Minor, 2017 IL App (4th) 160865-U (April 11, 2017) 2017 WL 1364082

The Fourth District upheld the circuit court's order, which the birth mother appealed, making S.L. a ward of the court and granting guardianship and custody to DCFS. ¶¶ 1-3. It found that the court's order was not against the manifest weight of evidence because in part the psychologist's testimony that the mother, who suffered from bi-polar depression, "would need to take her medication, engage in mental-health counseling, and demonstrate long-term compliance with her treatment before she could properly parent a child. Further, respondent would need to develop and implement lifestyle changes to promote stability. If respondent stopped her medication or counseling, Dr. Osgood opined respondent would pose a danger to her children." ¶ 13. The Respondent mother had bouts of severe depression and made statements of self-harm in front of her children. ¶ 13. However, "The dispositional report noted respondent had made great strides. Respondent was employed, had stable housing, and was engaging in mental-health treatment that included psychotropic medication. However, according to the report, respondent failed to fully comprehend the importance of her medication in regulating her mental health." ¶ 51

Although the mother was making progress and was back on her medication after her child's birth, she had not yet been in long-term compliance with her medication and treatment and therefore the order adjudicating guardianship was not against the manifest weight of evidence. ¶ 44 It also upheld the dispositional finding of continued placement at the foster home; this order was not against the manifest weight of evidence, for though mother, has made great strides, she has only been on her "current treatment regimen for a few months, an insufficient amount of time to demonstrate the long-term compliance necessary to ensure the health and safety of S.L. The trial court remained hopeful that respondent's progress would allow S.L. to return home in the near future, but respondent must demonstrate long-term compliance with her mental-health treatment first." ¶ 52. Judgment Affirmed. ¶ 54.

Nursing Home Petition for Discharge

Lakewood Nursing & Rehabilitation Center, LLC v Department of Public Health, 2018 IL App (3d) 170177 (Opinion filed August 16, 2018).

On October 28, 2013, Lakewood Nursing and Rehabilitation Center (Lakewood) sent a resident of its facility, Helen Sauvageau, a notice of involuntary transfer or discharge and opportunity for hearing, for failing to pay for her stay there. ¶1, 3, 4. On November 1, 2013, Sauvageau filed a request for hearing which the parties agreed to stay, when Sauvageau applied for Medicaid. ¶1, 4. On January 13, 2014, her Medicaid application was denied. ¶1, 4. On January 15, 2014, Lakewood's attorney informed Illinois Department of Public Health (IDPH) of the denial and requested IDPH to set an intent to discharge hearing date. ¶4.

On February 10, 2014, a prehearing was held. ¶5. Lakewood filed a motion to dismiss its hearing request, arguing that the IDPH no longer had jurisdiction to hold a hearing because it would be doing so after the 10-day limitations period in section 3-411 of the Nursing Home Care Act (Act) (210 ILCS 45/3-411 (West 2014)). ¶5. IDPH denied the motion to dismiss, determining that the language within the section was directory rather than mandatory. ¶5.

On March 24, 2014, an evidentiary hearing was held. ¶6. The administrative law judge (ALJ) recommended, based on Sauvageau's stipulation that she owed money to Lakewood, that the notice of involuntary transfer or discharge should be approved 30 days subsequent to the receipt of the final ruling in the matter. ¶6. The chief ALJ adopted the recommendation in its final administrative order. ¶6.

Lakewood filed a complaint in the circuit court, alleging that the hearing and final order was void because they violate the statutory time requirements. ¶7. IDPH filed a motion to dismiss, arguing that Lakewood's claims were moot because Sauvageau no longer lived in the facility. ¶7. It also argued that the trial court only has jurisdiction to review final administrative decisions and the Sauvageau did not challenge the decision but rather sought "declaratory relief regarding the timing of the Department's actions." ¶7. The trial court granted the motion to dismiss. ¶7.

Lakewood appealed, and the appellate court reversed and remanded the trial court's decision in *Lakewood Nursing & Rehabilitation Center, LLC v Department of Public Health,* 2015 IL App (3d) 140899. The court stated that the time requirement issues that Lakewood presented were too premature for its review and would be better addressed on remand. *Id.* At ¶40.

On remand, the circuit court held that sections 3-411 Act's time requirements were directory. ¶11. It determined that section 3-814 of the Act, which gave IDPH authority to prepare transfer or discharge plans to ensure the protections of residents, allowed IDPH the discretion to approve the notice 30 days after the final ruling. ¶11. Lakewood appealed. ¶11.

The appellate court reversed the circuit court's judgment. ¶1.

Analysis

1. *IDPH's ruling was void because it violated statutory time requirements under Sections 3-411 of the Act (210 ILCS 45/3-411 (West 2014)), which provides that IDPH hold a hearing at the resident's facility not later than 10 days after a request for hearing is filed, and render a decision within 14 days after the filing of the hearing request.*

The appellate court found that the term "not later than 10 days" in section 3-411 constitutes negative language. ¶23. "Illinois courts, including the court, have determined that language prohibiting a further action constitutes negative language and, therefore, a mandatory." ¶23 (citations omitted). The appellate court determined that Sections 3-411 is mandatory. ¶23. Because the appellate court found that IDPH lacked jurisdiction, it did not determine whether IDPH erred when it did not render its decision within 14 days. ¶24.

2. *IDPH erred under section 3-413 of the Act (210 ILCS 45/3-411 (West 2014)) when it required Lakewood to keep Sauvageau as a resident for an additional 30 days after its decision.*

"Looking at the plain language of section 3-413, it does not give IDPH authority to approve the notice of transfer and discharge 30 days after the receipt of the final ruling." ¶26. (citations omitted). The section only required Lakewood to maintain Sauvageau as a resident for 34 days following the receipt of the notice or 10 days following the receipt of the final ruling. ¶27. Therefore, the appellate court found that IDPH's ruling regarding the 30-day extension was void. ¶27, citing *Walsh v. Champaign County Sheriff's Merit Comm'n*, 404 Ill. App. 3d 933, 938 (4th Dist. 2010). "(any action beyond the administrative agency's statutory authority is void)". ¶27.

Summary written by Andreas Liewald