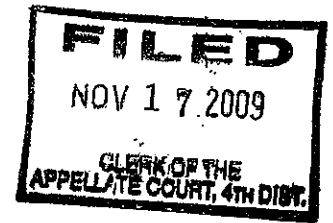


NO. 4-08-0952  
IN THE APPELLATE COURT  
OF ILLINOIS  
FOURTH DISTRICT



In re: Torski C., a Person Found Subject to Involuntary Admission, THE PEOPLE OF THE STATE OF ILLINOIS, Petitioner-Appellee,	) Appeal from ) Circuit Court of ) Sangamon County ) No. 08MH865
v.	)
TORSKI C., Respondent-Appellant.	) Honorable ) Esteban F. Sanchez, ) Judge Presiding.

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JUSTICE APPLETON delivered the opinion of the court:

In November 2008, a petition was filed for the emergency involuntary admission of respondent, Torski C., alleging he was mentally ill, unable to understand his need for treatment because of the nature of his illness, and reasonably expected to engage in dangerous conduct. In December 2008, the trial court conducted a hearing and granted the petition. The court ordered respondent hospitalized for no more than 90 days.

Respondent appeals, claiming the applicable statutory sections are void for vagueness, facially unconstitutional, and unconstitutional as applied. We hold the definition of "dangerous conduct" set forth in section 1-104.5 of the Mental Health and Developmental Disabilities Code (Mental Health Code) (405 ILCS 5/1-104.5 (West 2008)) void for vagueness. Further, we hold the application of that definition in section 1-119 of the Mental Health Code violates substantive due process. We vacate as void the court's order temporarily committing respondent to a mental-health institution.

## I. BACKGROUND

On November 19, 2008, respondent's mother filed a petition seeking respondent's involuntary admission to a mental-health facility pursuant to section 3-700 of the Mental Health Code (405 ILCS 5/3-700 (West 2008)). The petition sought respondent's immediate hospitalization and alleged he was mentally ill and, because of his illness, he was (1) reasonably expected to engage in dangerous conduct (see 405 ILCS 5/1-119(1) (West 2008)) and (2) unable to understand his need for treatment and, if he was not treated, he would be expected to suffer mental or emotional deterioration to the point that he would reasonably be expected to engage in dangerous conduct (see 405 ILCS 5/1-119(3) (West 2008)). The petition also alleged respondent had been experiencing paranoid delusions of people trying to break into his home to kill him.

The trial court ordered respondent detained at Memorial Medical Center for examination. By the next day, respondent had been evaluated by three qualified examiners, who all had determined that respondent was in need of inpatient mental-health care due to his delusions and paranoia. All examiners were concerned that defendant would harm himself, or someone else, with the firearm that he admittedly carried for protection. A report of the examination performed by psychiatrist Stacey Horstman indicated that respondent had been hospitalized between July 31, 2008, and August 12, 2008, for psychiatric care. No other psychiatric history was indicated. On December 2, 2008, Dr. Aura M. Eberhardt, a psychiatrist at McFarland Mental Health Center (McFarland), examined respondent and formed the same opinion as the previous examiners.

On December 5, 2008, the trial court conducted a hearing on the petition for involuntary hospitalization. The State moved to strike the allegation filed pursuant to section 1-119(1) of the Mental Health Code (405 ILCS 5/1-119(1) (West 2008)) and proceeded only on the allegation filed pursuant to section 1-119(3) (405 ILCS 5/1-119(3) (West 2008)) ("[a] person with mental illness who, because of the nature of his or her illness, is unable to understand his or her need for treatment and who, if not treated, is reasonably expected to suffer or continue to suffer mental deterioration or emotional deterioration, or both, to the point that the person is reasonably expected to engage in dangerous conduct").

Respondent's mother, Cassie Elston, testified that respondent was 31 years old and lived in his own apartment. She said in the past four or five months, respondent had become delusional. He reported (1) seeing an angel sitting on a nearby power station before it flew into his apartment, (2) he saw "[l]ittle bitty people," (3) he went to heaven and laid on God's feet, and (4) God speaks directly to him. Elston said: "Since [respondent] has been ill, he lives by that Bible." He had warned her that he will do whatever God tells him to do, including killing his 15-month-old son. Elston said her nephew, Barron Rice (a father figure to respondent), had been murdered three years earlier. Initially, after the murder, respondent was very angry. However, in the past few months, he had become delusional. Respondent told Elston that God had identified those responsible for the murder. God told him he needed to leave town because either someone was going to kill him or he was going to kill someone. For that reason, according to Elston, respondent carried a gun on his person at all times.

Elston said that in addition to Rice's murder, respondent had endured other personal traumatic experiences, such as his close friend having been sentenced to prison, a breakup with his girlfriend, and the birth of his child. She said respondent had "so much on his plate" that "he kind of flipped out." Prior to these events, "[t]here was never anything wrong with his mind." Elston believed "that with medication [respondent's] mind would be different." Respondent had recognized his problem and asked to see a doctor, but he was unable to get an appointment for several months.

Aura Eberhardt, a psychiatrist, testified that respondent was admitted to McFarland on November 20, 2008, and examined by her on December 2, 2008. She diagnosed respondent with psychosis, not otherwise specified, due to his paranoid delusions and auditory hallucinations. According to respondent's medical records, he had told another psychiatrist that he was "plotting to do evil to the guys that killed his cousin." He believed his best friend had placed recording devices in his home to record his prayers. Dr. Eberhardt feared that respondent would act on his paranoid delusions and harm himself or others. In her opinion, if respondent did not receive treatment, he would suffer or continue to suffer mental or emotional deterioration. She said respondent denied having a psychiatric illness or needing treatment; however, she believed he lacked the capacity to understand his need for treatment.

Dr. Eberhardt reported that on November 29, 2008, respondent slapped a female patient's face. She again opined that respondent was in need of involuntary hospitalization to prevent further harm to himself and others. She had formulated a treatment plan, which she described as the least-restrictive alternative. She believed

that once respondent was stabilized with treatment, he would do well in a group home.

On cross-examination, Dr. Eberhardt denied that religious ideas were an exception to the concept of a delusion. She said respondent had been attending group sessions and she had not yet prescribed any medication for respondent. The State rested.

Respondent testified on his own behalf and stated that he had graduated from high school and barber school. He had been a barber for nine years. He said he did not intend to kill anyone and denied that God had told him to do so. Respondent said he has talked to God and God talks to him, but in the context of prayer. He said he did not recall the conversation with his mother about his son but, if they had the conversation, it was most likely in the context of a Biblical story. He admitted that he would do whatever God asked him to do because he wanted to "win favor in God's eyes." When asked if he would kill his son if God asked him to, respondent stated:

"I'm pleading the [f]ifth [amendment] for that in the court of law, and as I just stated, I would not want to kill my son. I would want to teach my son values in life and why would I want to kill my son? I just stated not long ago[,] I would prefer to teach my son values. My aim is not to kill my son or kill no man for that reason. I strive to be a righteous man as I have told her before."

Respondent clarified that when he told his mother that he had seen angels, he meant that he had seen "the light." He did not mean that he saw angels fly.

He said he has an angel watching over him at all times. He did not recall the conversation with his mother about seeing "little people." He stated:

"No. I have never told my mother little people was [sic] coming into my apartment. I told my mother that these guys would--I have stated before--were out to kill me and that they had plotted on coming into my home to kill me, to even come into my home to kill me is what I told her."

Respondent said he was certain that some men "here in town" were trying to kill him. He asked his mother for help to move away, saying that he feared that either he would be killed or he would kill someone in self-defense. He denied carrying a gun with him at all times but admitted carrying a knife. He kept his gun at his apartment. He named for the court some of the men that he claimed wanted to kill him--those who were responsible for Rice's murder.

Respondent testified that the altercation at McFarland started when the female taunted him, calling him a "nigger" and cursing at him. He had warned her that he would slap her if she continued. She continued, "so [he] went over there and [he] slapped her as [he] told her [he] would." He said he felt that he was in control of himself, although he could not deny that he could be involved in dangerous conduct. He said that if the people that are "out for" him attack him, he would be involved in dangerous conduct. He said his friend had placed recording devices in his home and had stolen several copies of his house keys. He said the friend knew respondent "slept hard and he could sneak around in [his] house." He said he has been in danger in the

last few months.

The trial court questioned respondent as follows:

"THE COURT: Now, you testified just a few moments ago that you would get up in the middle of the night and hit--what did you say you hit?

A. No. I testified that my friend would tell me I should get up in the middle of the night and punch on my punching bag. I never said that I did. I said that he said that--he used to try to advise me and tell me, 'Man, you should get up in the middle of the night and punch on that punching bag', and it wouldn't be just me and him around a lot of the times when he said this. Somebody may say or if I said, 'Why that [sic]?' 'Man, you never know how a fight might break out, somebody in your house when you're sleeping', you know what I'm saying? 'You better change your locks.' So he was prepping me in case I woke up and one of his brothers or one of his associates was in my house, you know what I'm saying?

THE COURT: Is that what you believed?

A. Yes, yes."

Respondent rested.

After considering the evidence and arguments of counsel, the trial court

held the State had proved the allegations in the petition by clear and convincing evidence. The court ordered respondent involuntarily hospitalized for mental-health treatment at McFarland for a period not to exceed 90 days. This appeal followed.

## II. ANALYSIS

### A. Mootness

Initially, we note this case is moot. The trial court's order of December 5, 2008, authorizing respondent's involuntary hospitalization was limited to a period of 90 days. That period has since passed. However, a reviewing court may review otherwise moot issues pursuant to the public-interest exception to the mootness doctrine. In re Andrea F., 208 Ill. 2d 148, 156, 802 N.E.2d 782, 787 (2003). "The criteria for application of the public[-]interest exception are: (1) the public nature of the question; (2) the desirability of an authoritative determination for the purpose of guiding public officers; and (3) the likelihood that the question will recur." Andrea F., 208 Ill. 2d at 156, 802 N.E.2d at 787.

The issue in this case falls within the public-interest exception as respondent has raised constitutional questions concerning the construction of sections 1-119(3) and 1-104.5 of the Mental Health Code (405 ILCS 5/1-119(3), 1-104.5 (West 2008)). See In re Robert S., 213 Ill. 2d 30, 45-46, 820 N.E.2d 424, 433-34 (2004) (procedures to be followed for the involuntary treatment of an individual involve matters of substantial public concern and are oftentimes reviewable under the public-interest exception to the mootness doctrine). Therefore, we will proceed to review the case on the merits. The standard of review for constitutional questions, like other

questions of law, is de novo. People ex rel. Department of Corrections v. Millard, 335 Ill. App. 3d 1066, 1070, 782 N.E.2d 966, 969 (2003).

#### B. Involuntary-Commitment Standards

It is well established that the imposition of involuntary mental-health services implicate an individual's substantial liberty interests. Robert S., 213 Ill. 2d at 46, 820 N.E.2d at 434. The individual's liberty interests must be balanced against the State's interests (1) to provide care for persons unable to care for themselves and (2) to protect society from dangerous mentally ill persons. In re Robinson, 151 Ill. 2d 126, 130-31, 601 N.E.2d 712, 715 (1992). Civil commitment procedures implicate the State's parens patriae powers and police powers. The State acts in the role of parens patriae with the purpose of protecting the mentally ill individual by depriving him of his liberty, not to punish him, but to treat him. The State also utilizes its police power to protect its citizens against potentially dangerous acts of mentally ill persons. Lessard v. Schmidt, 349 F. Supp. 1078, 1084 (E.D. Wis. 1972), vacated on other grounds, 414 U.S. 473, 38 L. Ed. 2d 661, 94 S. Ct. 713 (1974). Under both of these powers, the State may, ultimately, deprive a mentally ill individual of his or her fundamental right to liberty. "Thus, the procedures set forth in the [Mental Health] Code are a legislative recognition that civil commitment is a deprivation of personal liberty. The purpose of the procedures is to provide adequate safeguards against unreasonable commitment." In re James, 191 Ill. App. 3d 352, 356, 547 N.E.2d 759, 761 (1989).

Respondent claims that sections 1-119(3) and 1-104.5 of the Mental Health Code (405 ILCS 5/1-119(3), 1-104.5 (West 2008)), effective June 1, 2008, violate the

due-process clause of the federal constitution. See U.S. Const., amends. V, XIV. Specifically, respondent argues that these statutory sections allow the State to involuntarily commit a person who refuses treatment without first requiring proof that he (1) is unable to make a rational decision to refuse treatment and (2) is considered a danger to himself or others. Respondent contends that both sections are facially unconstitutional, void for vagueness, and unconstitutional as applied.

"When analyzing the constitutionality of a statute on review, this court begins with the assumption that the statute is constitutional. [Citation.] \*\*\* If reasonably possible, this court has an obligation to construe a statute in a manner that would uphold its constitutionality. [Citation.] \*\*\* The party challenging the validity of a statute has the burden of establishing the statute's constitutional infirmity." People v. Molnar, 222 Ill. 2d 495, 508-09, 857 N.E.2d 209, 217 (2006). In any case, the burden is great, but it is especially great when the challenged statute addresses an issue in which the State has clearly defined powers, as is the case here. The State has a well-established, legitimate interest under its parens patriae power in providing care to persons unable to care for themselves and also has the authority under its police power to protect the community from mentally ill persons determined to be dangerous. Heller v. Doe, 509 U.S. 312, 332, 125 L. Ed. 2d 257, 278, 113 S. Ct. 2637, 2649 (1993).

Public Act 95-602 (Pub. Act 95-602, §5, eff. June 1, 2008 (2007 Ill. Laws 7839)), effective June 1, 2008, amended section 1-119 to provide as follows:

"'Person subject to involuntary admission' means:

(1) A person with mental illness and who because of