

2015 IL App (2d) 141007-U
No. 2-14-1007
Order filed February 18, 2015

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IN THE
APPELLATE COURT OF ILLINOIS
SECOND DISTRICT

<i>In re</i> JAMES D., a Minor.)	Appeal from the Circuit Court
)	of Winnebago County.
)	
)	Nos. 00-JD-076
)	97-JD-212
)	
(The People of the State of)	Honorable
Illinois, Petitioner-Appellee,)	Patrick K. Yarbrough,
v. James D., Respondent-Appellant).)	Judge, Presiding.

JUSTICE JORGENSEN delivered the judgment of the court.
Presiding Justice Schostok and Justice Hutchinson concurred in the judgment.

ORDER

- ¶ 1 *Held:* The trial court did not err in denying respondent's petition to terminate his registration as a sex offender.
- ¶ 2 In two separate cases, respondent, James D., was adjudicated a delinquent minor for two counts of aggravated criminal sexual assault (720 ILCS 5/12-14(b)(i) (West 1994)) and unlawful possession of a firearm (720 ILCS 5/24-3.1(a)(1) (West 1996)). Pursuant to the Illinois Sex Offender Registration Act (Act) (730 ILCS 150/1 *et seq.* (West 2012)), respondent was required to register as a sex offender (730 ILCS 150/3-5(a) (West 2012)). On December 11, 2011, respondent was successfully discharged from his two-year probationary sentence.

¶ 3 On August 12, 2014, pursuant to section 150/3-5(d) of the Act (730 ILCS 150/3-5(d) (West 2012)), respondent moved the court to terminate his registration as a sex offender. Section 3-5(d) provides, in pertinent part, that a court may terminate the registration of an adjudicated delinquent if the registrant shows, by a preponderance of the evidence, that he or she “poses no risk to the community.” 730 ILCS 150/3-5(d) (West 2012).

¶ 4 In support of his petition, respondent attached a letter, dated March 17, 2014, from Jeffrey Sundberg, a licensed clinical social worker. The letter explained that, from July 2000 through February 2002, at the recommendation of the Winnebago County juvenile probation department, Sundberg met with respondent in “periodically” scheduled individual sessions. According to Sundberg, in the summer of 1995, respondent, then age 14, committed aggravated criminal sexual assault against a seven-year-old female acquaintance and, further, in the summer of 1997, respondent committed, in Anoka County, Minnesota, a gross misdemeanor entitled “criminal sexual misconduct in the fifth degree,” against a 10-year-old female relative. Sundberg’s last meeting with respondent was on February 13, 2002.

¶ 5 At the request of respondent and his counsel, however, Sundberg met with respondent for one hour on March 11, 2014. Sundberg reported that, according to respondent and a Winnebago County criminal records check, respondent “apparently” was without additional sexually-related offenses. Respondent reported to Sundberg that, since approximately 1998, he had been involved with 20 to 30 similarly-aged or older female sexual partners, and, from 1998 to 2005, he had reportedly maintained a romantically-based cohabitative relationship. Moreover, respondent “allegedly has not fathered any children, denied an interest/involvement in any atypical sexual practices, denied participation in homosexual encounters, and denied the occurrence of any childhood sexual victimization.”

¶ 6 However, the letter also reported that respondent had been charged with violating the conditions of the sexual offender registry.¹ In 1999, he was convicted of aggravated assault with a deadly weapon. In 2001, he was convicted of battery. In 2009, he was convicted of illicit drug and weapons possession offenses. At the time of the writing of the letter, respondent had recently been released from an approximate four-year stay in the Illinois Department of Corrections.

¶ 7 Sundberg noted that respondent: (1) denied any present use of illicit substances; (2) had not acquired a high school diploma or its equivalency; and (3) was without full-time employment. Sundberg concluded:

“Based upon his apparent absence of documented sexual misconduct since 1997, I would consider him a low risk to sexually recidivate against minors. (Please note that none of the available actuarial measures consider an individual at ‘no-risk.’)”

¶ 8 A hearing was held on the petition. There, respondent introduced into evidence Sundberg’s letter, but presented no witnesses. The parties agreed that the court should also consider a victim-impact statement, and the court took judicial notice of the delinquency petition. The court heard oral argument from both sides.

¶ 9 On September 9, 2014, the court denied the petition. In announcing its ruling, the court noted that it was required to consider the following statutory factors: (1) the risk assessment performed by Sundberg; (2) respondent’s sex offender history; (3) evidence of respondent’s rehabilitation; (4) respondent’s age at the time of the offense; (5) information relating to respondent’s mental, physical, education, and social history; (6) the victim-impact statement; and (7) any other factors the court deemed relevant. See 730 ILCS 150/3-5(e) (West 2012). The

¹ Those charges were apparently dropped prior to the hearing on the petition.

court further noted that it was required to determine, based on those factors, whether respondent had demonstrated by a preponderance of the evidence that he posed no risk to the community. The court stated that it had reviewed Sundberg’s evaluation, which concluded, based on certain information and the interview with respondent, that respondent was a “low risk” to sexually recidivate against minors. The court noted that it had also considered respondent’s sex offender history, respondent’s age at the time of the offense, and the victim-impact statement. The court announced, “taking into consideration *all the factors* which the court is to consider, the court finds that this minor does not pose no risk to the community by a preponderance of the evidence. It appears that the report indicates that he is a low risk. And *the information* has been presented to the court leads the court to the decision that the minor’s petition *** [is denied.]” (Emphasis added.) Respondent appeals.

¶ 10

II. ANALYSIS

¶ 11

A. Statutory Interpretation

¶ 12 Respondent argues first that the trial court erred by interpreting section 3-5 of the Act to require a showing that respondent would never, under any circumstance, re-offend. Respondent argues that such a requirement would require “nothing short of clairvoyance” and would render the statute inapplicable to any possible person subject to the legislation. Respondent argues, therefore, that the court’s interpretation of the statute in such a manner is unjust and absurd and we must reverse.

¶ 13 We disagree. While we ordinarily review a statute *de novo* (*People v. Smith*, 342 Ill. App. 3d 289, 293 (2003)), here, we need not interpret the statute because the record reflects that the trial court interpreted it consistent with the interpretation urged by respondent. In other words, even accepting respondent’s argument that it is absurd to interpret section 3-5(d) as

requiring the complete absence of any risk of re-offending,² there is nothing in the record indicating that the trial court interpreted the statute to require that standard of proof. The court did not expressly state or otherwise indicate that it considered section 3-5(d) to require proof of the complete absence of any risk. Although the court stated that Sundberg's assessment found respondent to present a low risk of recidivism, as opposed to no risk, the statement is factually accurate, *i.e.*, the assessment *did* find respondent presented a low risk. The court did not indicate that it believed it was bound to deny the petition *because* the report found a low risk. To the contrary, the court correctly recounted that the statute required it to consider *multiple* factors to assess whether respondent had established, *by a preponderance of the evidence*, that he presents no risk to the community, and the court stated that, in finding that respondent had not met that standard, it had considered all of the information presented, including the victim impact statement, respondent's history, the assessment, and all other statutory factors. Accordingly, as there is nothing in the record reflecting that the court interpreted the statute to require proof of absolutely no risk of recidivism, we reject respondent's argument.

² See *In re Harold W.*, 2014 IL App (2d) 121235-U, ¶¶ 36-38 (statute's phrase "no risk" must be established by a preponderance of the evidence, not beyond any doubt, and, therefore, the term was not intended to mean the complete absence of any risk. "If beyond any doubt was the burden of proof, no juvenile sex offender could ever show that he presents a complete absence of any risk of reoffending, and hence he could never satisfy section 3-5(d). That would be absurd and unjust. It would also render the statute meaningless." The court concluded, however, that the record did not reflect that the trial court interpreted the statute to require a complete absence of risk.)

¶ 14

B. Manifest Weight of the Evidence

¶ 15 Respondent argues next that we must reverse because the court's decision to deny his petition was contrary to the manifest weight of the evidence. He asserts that the evidence reflects that he does not, as an adult, belong on a sex offender registry. Specifically, respondent notes that his offense occurred when he was a juvenile, he was successfully discharged from probation, he completed sex offender counseling, he has not re-offended, and the victim-impact statement does not reflect any tragic circumstances or impact on the victim. Respondent asserts that the wisdom of continuing registration for juvenile offenders has been questioned (citing *In re M.A.*, 2014 IL App (1st) 132540)³, and he argues it "seems clear that requiring a former minor to continue registration after completing counseling and being evaluated at the lowest [recognized] risk level available seems unreasonable. The passage of approximately [17] years without another sex offense further demonstrates the counseling and treatment worked." We disagree.

¶ 16 The trial court found that respondent did not meet his burden of establishing by a preponderance of the evidence his entitlement to relief. A preponderance of evidence is an amount of evidence from which a factfinder can conclude that a fact is more probable than not. See *In re Arthur H.*, 212 Ill. 2d 441, 464 (2004). We must consider whether the court's finding

³ In *In re M.A.*, the court noted that Illinois is among a minority of states requiring categorical registration of all juvenile offenders and that the Illinois Juvenile Justice Commission has recommended removing juveniles from the registry. *In re M.A.*, 2014 IL App (1st) 132540, ¶ 41. However, "unless and until" the legislature acts on that recommendation, the Act's provisions bear a rational relationship to the protection of the public and do not violate substantive due process. *Id.* at ¶¶ 42, 48.

that respondent did not meet his burden was contrary to the manifest weight of the evidence. *Eychaner v. Gross*, 202 Ill. 2d 228, 251 (2002). A judgment is contrary to the manifest weight of the evidence only where the findings are unreasonable or not based on the evidence. *Id.* We must draw all reasonable evidentiary inferences in support of the court's judgment, and we will not reverse the court's judgment unless the opposite conclusion is clearly apparent. *Wildman, Harrold, Allen & Dixon v. Gaylord*, 317 Ill. App. 3d 590, 599 (2000).

¶ 17 Although not precedential, our court's decision in *Harold W.* provides authority persuasive to our decision here. In *Harold W.*, the respondent had, at age 13, committed four different sexual acts against his 9-year-old sister. In 2006, he was adjudicated delinquent, sentenced to five years' probation, and ordered to register under the Act. In 2011, the respondent petitioned to terminate his registration and a hearing was held on the petition.

¶ 18 At the hearing, the respondent presented an assessment letter from Sundberg (the same social worker who provided the assessment in the instant case), which described the respondent's cooperation with and successful completion of counseling. In 2006, in his first evaluation of the respondent, Sundberg had opined that the respondent presented a moderate risk of re-offending, based in part on his assessment that the respondent had suppressed anger, found it difficult to express anger in acceptable ways, and that anger had, in the past, contributed to the respondent's sex offenses. In 2011, to prepare an assessment for the petition to terminate, Sundberg interviewed the respondent, spoke with the respondent's former probation officer, reviewed the respondent's community college transcripts, considered correspondence from the respondent's employer, and had the respondent psychologically tested. Sundberg noted that, since counseling, the respondent had not been arrested, had no apparent alcohol or drug problems, was active in school, and had no sexual interest in minors. Although the respondent had "power struggles"

with his parents, he worked out those differences with his parents, as opposed to sexually abusing his sister. Sundberg opined, like here, that the respondent was a “low risk” to re-offend and noted that “low risk” is the lowest recognized risk category. *Harold W.*, 2014 IL App (2d) 121235-U, ¶ 12.

¶ 19 At the hearing, the respondent presented four witnesses, including a high school teacher, his employer, a police officer, and his father, who testified that, with the exception of the respondent having stolen a computer mouse and hard drive to “get back” at his teacher, the respondent was, essentially, a trustworthy, honest, hardworking, and respectful young man. The victim testified that she did not fear the respondent. The respondent testified, noting that he had benefitted from counseling and that he was a different person than he was in 2006. A few months prior to the hearing, however, the respondent had moved out of his parents’ home because he had “buted heads pretty bad” with them.

¶ 20 The trial court denied the petition to terminate the respondent’s registration requirement. The court noted that it had considered all of the evidence and statutory factors, but, given that the theft of the mouse and hard drive, Sundberg’s assessment, and other evidence reflected that the respondent might have lingering anger-management issues (issues which contributed to the initial sexual abuse), the court could not find, based on a preponderance of the evidence, that the respondent presented no risk to the community. On appeal, this court affirmed, finding that the trial court’s judgment was not contrary to the manifest weight of the evidence. *Id.* at ¶ 44. Although the respondent had presented evidence demonstrating that he had made “significant strides in his rehabilitation, including lowering his risk of reoffending,” the State had presented evidence that the respondent had lingering anger issues, particularly with his family. *Id.* We concluded that, although we might have weighed the evidence differently, the trial court’s

judgment was not unreasonable or not based on the evidence, nor was the opposite conclusion clearly apparent. *Id.* We finally noted that, if the respondent continued to progress in his rehabilitative efforts, nothing precluded him from seeking such relief in the future. *Id.*

¶ 21 Here, when compared with that presented in *Harold W.*, the court was presented with little evidence concerning the petition. Like *Harold W.*, however, the court's findings based on the evidence were not unreasonable. For example, the court reviewed a victim-impact statement (that statement is sealed, but this court has reviewed it). While respondent is correct that the statement does not explicitly recount "tragic" consequences for the victim, it does relate that the victim experiences anxiety around men. The weight to be given to the statement and to the fact that the abuse has had a continuing impact on the victim was for the court to decide. We do not quarrel with its assessment.

¶ 22 The court also reviewed Sundberg's assessment. Although respondent makes much of the fact that Sundberg assessed him as "low risk" and that there is no recognized category of "no risk," the court could have reasonably determined that the low risk assessment should not be given great weight. Before his one-hour interview with respondent for this case, Sundberg had not seen respondent in 12 years. Unlike the assessment in *Harold W.*, where Sundberg interviewed the prior probation officer, performed psychological examinations, and reviewed other correspondence from persons recently associated with the respondent, Sundberg's assessment here was based almost exclusively on respondent's self-reporting. Although Sundberg apparently performed a records check in Winnebago County, the uncontested evidence reflects that respondent's sexual assault and misconduct crimes were not limited to Winnebago County and that they included sexual victimization of a relative in Minnesota. Sundberg's letter reflects that, after the sexually-related offenses, respondent was convicted of crimes involving

drugs, weapons, battery, and assault, and that he was “recently released” from a four-year stay in prison. In sum, given the relatively limited sources of Sundberg’s information, the fact that any positive information was self-reported by respondent and largely uncorroborated, and that there existed within the assessment information that reflects poorly on respondent’s overall rehabilitation with respect to his inclination to assault others, it was not unreasonable for the trial court to find that the “low risk” determination was not credible or was simply insufficient, alone, to carry respondent’s burden.

¶ 23 We further note that, unlike in *Harold W.*, the court here was not presented with any witnesses that could corroborate respondent’s rehabilitation, his social progress, or his reported “normal,” adult sexual relationships. None of respondent’s family members testified that, although respondent victimized a relative, they are not afraid of him or they have since had healthy relationships with him. No probation officer, employer, or other community leader or citizen proffered evidence to shed light on the risk respondent may pose to the community. As such, it is not clearly apparent that the court’s finding was unreasonable.

¶ 24 In sum, the court found that respondent did not establish that it is more likely than not that he presents no risk to the community. As we cannot say that the opposite conclusion is clearly apparent or that the court’s denial of the petition to terminate respondent’s registration was not based on the evidence, we affirm.

¶ 25 **II. CONCLUSION**

¶ 26 For the reasons stated, we affirm the judgment of the circuit court of Winnebago County.

¶ 27 Affirmed.