

2016 IL App (2d) 160069-U
No. 2-16-0069
Order filed October 18, 2016

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IN THE
APPELLATE COURT OF ILLINOIS
SECOND DISTRICT

In re COMMITMENT OF TIMOTHY BLOYER)	Appeal from the Circuit Court of Stephenson County
)	
)	No. 04-MR-50
)	
(The People of the State of Illinois, Petitioner-Appellee, v. Timothy Bloyer, Respondent-Appellant).)	Honorable David L. Jeffrey, Judge, Presiding.

JUSTICE BURKE delivered the judgment of the court.
Justices Zenoff and Hudson concurred in the judgment.

ORDER

- ¶ 1 *Held:* The trial court properly denied respondent's request for an independent evaluator on his petition for conditional release from commitment as a sexually violent person: respondent did not show that an independent evaluation might have changed the outcome, and more appropriate remedies existed for the State's failure to timely file the reports of its own evaluator.
- ¶ 2 Respondent, Timothy Bloyer, appeals the trial court's denial of his request for appointment of an independent evaluator in connection with his petition for conditional release from custody of the Department of Human Services (the Department), where he had been committed under the Sexually Violent Persons Commitment Act (Act) (725 ILCS 207/1 *et seq.*

(West 2014)). Respondent contends that he was denied due process by the late filing of reports and that appointment of an independent evaluator is the appropriate remedy. We affirm.

¶ 3

I. BACKGROUND

¶ 4 In July 2008, respondent was committed to the Department after a jury found that he was a sexually violent person based on the report of Dr. Craig Shifrin, who diagnosed respondent with pedophilia. Respondent had previously been convicted of multiple sex offenses, and Shifrin opined that it was substantially probable that respondent would engage in acts of sexual violence if not committed and treated under the Act.

¶ 5 As required by section 55 of the Act (725 ILCS 207/55 (West 2014)), respondent was periodically reexamined by Dr. Edward Smith and Dr. Christina Heath. Respondent declined to participate in the reexaminations, which prevented the doctors from conducting clinical interviews or administering tests. However, for each reexamination, the doctors reviewed respondent's clinical chart, which documented his history and showed a continuing refusal to participate in sex-offender treatment. They noted that respondent was consistently diagnosed with pedophilia, sexually attracted to males, nonexclusive type, and antisocial personality disorder. Analyzing how dynamic risk factors recognized by the scientific community impacted respondent's likelihood to reoffend, the doctors opined that respondent would likely engage in future acts of sexual violence and had not made sufficient progress to be conditionally released. In each year from 2009 to 2012, the State filed a motion for a periodic reexamination and a finding of no probable cause based on the reexamination reports, and, in each case, the court found no probable cause for an evidentiary hearing to determine whether respondent was still a sexually violent person.

¶ 6 In December 2013, Smith wrote a reexamination report, but it was not provided to the court. In January 2015, the State moved for a periodic reexamination and a finding of no probable cause based on Smith's November 2014 reexamination and report. Respondent filed a petition for conditional release and associated remedies. Respondent alleged that the failure to timely file the 2013 and 2014 reexamination reports deprived him of due process and he requested an independent evaluator to assess his condition. The State then filed the 2013 report, in which, as with the previous reports, Smith reported that respondent refused to meet with him and that respondent was still a sexually violent person who had not made sufficient progress to be conditionally released. The 2014 report does not appear in the record but a docket sheet indicates that it was filed in January 2015.

¶ 7 At a hearing, the State conceded that the 2013 report was untimely filed but argued that there was no prejudice to respondent, because, in light of his failure to participate in treatment and Smith's opinion that he was still a sexually violent person, he could not have established probable cause to believe that his condition had changed such that he was no longer a sexually violent person. The State also argued that the Act does not specify any consequence for failure to timely file a reexamination report. Respondent argued that the appropriate remedy was to appoint an independent evaluator. The court agreed that there was no prejudice, denied respondent's petition, and granted the State's motion. Respondent's motion to reconsider was denied, and he appeals.

¶ 8

II. ANALYSIS

¶ 9 Respondent contends that the trial court abused its discretion by denying his request for an independent evaluator. He argues that he was denied due process by the late filing of the reports and that appointment of an independent evaluator is the appropriate remedy.

¶ 10 Section 55(a) of the Act provides:

“If a person has been committed under Section 40 of this Act and has not been discharged under Section 65 of this Act, the Department shall submit a written report to the court on his or her mental condition at least once every 12 months after an initial commitment under Section 40 for the purpose of determining whether: (1) the person has made sufficient progress in treatment to be conditionally released and (2) the person’s condition has so changed since the most recent periodic reexamination (or initial commitment, if there has not yet been a periodic reexamination) that he or she is no longer a sexually violent person. At the time of a reexamination under this Section, the person who has been committed may retain or, if he or she is indigent and so requests, the court may appoint a qualified expert or a professional person to examine him or her.” 725 ILCS 207/55(a) (West 2014).

¶ 11 Any examiner conducting an examination must prepare a written report no later than 30 days after the date of the examination and provide a copy to the court. 725 ILCS 207/55(b) (West 2014). The court is not required to appoint an independent evaluator, and thus we review the denial of a request for one for an abuse of discretion. *People v. Botruff*, 212 Ill. 2d 166, 176 (2004).

¶ 12 In *Botruff*, our supreme court made clear that there is no abuse of discretion in denying a motion for an independent evaluator when nothing in the record demonstrates that the court would have found differently had an independent evaluator been provided. The court reasoned that “[i]t is rational not to appoint an independent evaluator when a respondent has shown no need for one, especially during perfunctory reexamination proceedings where the respondent has not affirmatively opted to petition for discharge.” *Id.* at 177-78.

¶ 13 Here, although respondent did petition for conditional release, respondent has not provided anything to show that Smith's opinion that respondent remained a sexually violent person was inaccurate. Given respondent's refusal to participate in treatment and Smith's consistent opinion that respondent has not made sufficient progress to be conditionally released, nothing in the record demonstrates that the court would have found differently had an independent evaluator been provided. (Obviously, respondent can only speculate that the independent evaluator would have supported his petition.) Accordingly, the court did not abuse its discretion in denying respondent's request.

¶ 14 Respondent contends that he was denied due process, arguing that he was denied a means for release from December 2013 to January 2015. He further contends that the appointment of an independent evaluator is the appropriate remedy. But nothing in the Act provides such a remedy for the untimely filing of a report, nor would the appointment of an independent evaluator cure the untimely filing of the report for an evaluation that had already been performed. Instead, *mandamus* would be an appropriate action to compel the filing of the report. See *State ex rel. Marberry v. Macht*, 262 Wis. 2d 720, 738 (2003). In addition, respondent retained the right to petition for discharge (725 ILCS 270/65(b)(1) (West 2014)). The court may also order a reexamination of a committed person at any time. 725 ILCS 207/55(c) (West 2014). Thus, contrary to respondent's argument that he was denied a means of release, there are sufficient and more appropriate remedies available for the State's failures in regard to the procedures of periodic reexamination. Here, as previously discussed, appointing an independent evaluator would serve no purpose, as the record contains nothing indicting that respondent does not remain a sexually violent person. Accordingly, the court did not err in denying respondent's request.

¶ 15

III. CONCLUSION

¶ 16 For the reasons stated, we affirm the trial court's denial of respondent's request for an independent evaluator. Accordingly, the judgment of the circuit court of Stephenson County is affirmed.

¶ 17 Affirmed.