

NOTICE

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2016 IL App (4th) 160236-U

NO. 4-16-0236

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED

December 28, 2016
Carla Bender
4th District Appellate
Court, IL

In re: the Detention of GREGORY MORRIS,)	Appeal from
THE PEOPLE OF THE STATE OF ILLINOIS,)	Circuit Court of
Petitioner-Appellee,)	Cass County
v.)	No. 98MR17
GREGORY MORRIS,)	
Respondent-Appellant.)	Honorable
)	Scott D. Larson,
)	Judge Presiding.

JUSTICE STEIGMANN delivered the judgment of the court.
Presiding Justice Knecht and Justice Holder White concurred in the judgment.

¶ 1 *Held:* The appellate court concluded that the trial court did not abuse its discretion by denying respondent's motion for an independent examination pursuant to the Sexually Violent Persons Commitment Act.

ORDER

¶ 2 In May 1999, a jury adjudicated respondent, Gregory Morris, a sexually violent person as defined by section 5(f) of the Sexually Violent Persons Commitment Act (725 ILCS 207/5(f) (West 1998)). That month, the trial court committed respondent to the care, custody, and control of the Illinois Department of Health and Human Services (IDHS) until such time as he was no longer sexually violent. Thereafter, periodic psychological reexaminations reports the State relied upon consistently concluded that respondent remained a sexually violent person.

¶ 3 In November 2015, the State filed a motion for a finding of no probable cause based on an October 2015 psychological reexamination report. The State's motion sought the trial court's ruling that no probable cause existed to warrant a hearing on whether respondent had

made sufficient progress to be conditionally released or discharged from IDHS' care, custody, and control. In January 2016, respondent filed a motion for an independent psychological reexamination as permitted by section 55(a) of the Act (725 ILCS 207/55(a) (West 2014)). Following a March 2016 hearing, the court (1) denied respondent's motion for an independent examination and (2) granted the State's motion for a finding of no probable cause.

¶ 4 Respondent appeals, arguing only that the trial court abused its discretion by denying his motion for an independent examination. We disagree and affirm.

¶ 5 I. BACKGROUND

¶ 6 A. The Pertinent Events Preceding Respondent's Appeal

¶ 7 In 1987, respondent was convicted of the aggravated criminal sexual assault (Ill. Rev. Stat. 1987, ch. 38, ¶ 12-14) of two women. In 1994, respondent was convicted of the aggravated criminal sexual assault (720 ILCS 5/12-14 (West 1992)) of 22-year-old L.P. Defendant's assault of L.P. occurred while he was on parole and attending sex-offender treatment. As a result of respondent's 1994 conviction, the trial court imposed a six-year prison term.

¶ 8 In May 1999, a jury adjudicated respondent a sexually violent person as defined by the Act. That month, the trial court committed respondent to IDHS' care, custody, and control until such time as he was no longer sexually violent. Respondent appealed, and this court affirmed. *In re Detention of Morris*, No. 4-99-0454 (Nov. 12, 2000) (unpublished order under Supreme Court Rule 23).

¶ 9 In May 2001, respondent filed a petition for relief from judgment under section 2-1401 of the Code of Civil Procedure (735 ILCS 5/2-1401 (West 2000)), which the trial court dismissed as untimely. Following a supreme court supervisory order (*In re Detention of Morris*, 201 Ill. 2d 568, 776 N.E.2d 236 (2002) (nonprecedential supervisory order)), this court reversed

the trial court's judgment and remanded for further proceedings (*In re Detention of Morris*, No 4-01-0685 (May 1, 2003) (unpublished order under Supreme Court Rule 23)).

¶ 10 On remand, the trial court dismissed respondent's section 2-1401 petition, finding that the allegations contained therein did not constitute sufficient grounds for relief under section 2-1401 of the Code. Respondent appealed, and this court affirmed. *In re Detention of Morris*, 362 Ill. App. 3d 321, 324, 840 N.E.2d 731, 735 (2005).

¶ 11 B. Respondent's Appeal in This Case

¶ 12 Since respondent's May 1999 commitment to IDHS, and as required by section 55(a) of the Act, the State has filed periodic psychological reexamination reports with the trial court "for the purpose of determining whether: (1) [respondent] has made sufficient progress in treatment to be conditionally released and (2) [respondent's] condition has so changed since the most recent periodic reexamination *** that he or she is no longer a sexually violent person." 725 ILCS 207/55(a) (West 2014).

¶ 13 In November 2015, the State filed a motion for a finding of no probable cause based on an October 2015 psychological reexamination report authored by Dr. Diana Dobier, a licensed clinical psychologist. The State's motion sought the trial court's ruling that no probable cause existed to believe that respondent is no longer a sexually violent person, and as a result, a subsequent evidentiary hearing on that issue was not warranted.

¶ 14 In her October 2015 psychological reexamination report, Dobier concluded to a reasonable degree of psychological certainty that (1) respondent had not made sufficient progress to be conditionally released and (2) respondent's condition had not changed such that Dobier could conclude that respondent was no longer a sexually violent person. In support of her clinical opinions, Dobier described the program used by IDHS' treatment and detention facility

(IDHS-TDF), as follows:

"Treatment at the [I]DHS-TDF is provided within the multi-component, full disclosure, cognitive-behavioral program, which emphasizes relapse prevention, wellness[,] and pharmacotherapy. Treatment, which focuses specifically on sexual offending, is the core of the [I]DHS-TDF treatment program. The treatment program has five specific [p]hases [detailed below]. The treatment [p]hases and their objectives are cumulative and sequential. The achievements in the earlier [p]hases are built upon, expanded[,] and refined in the later phases of treatment."

Dobier listed the five phases as follows: (1) assessment, (2) accepting responsibility, (3) self-application, (4) incorporation, and (5) transition.

¶ 15 Dobier explained that the goal of the assessment phase was the completion of psychological and psychosexual testing, which Dobier noted respondent had completed. In this regard, Dobier recounted an April 2002 polygraph examination, during which respondent denied sexually assaulting L.P. The polygraph examiner could not determine definitively the truthfulness of respondent's answers because respondent attempted to distort his breathing. After undergoing a May 2005 polygraph examination, during which respondent again denied sexually assaulting L.P., the examiner concluded that respondent's answers were not truthful.

¶ 16 Dobier explained further that the second phase—the accepting-responsibility phase—usually occurred in group settings and concentrated on the following issues:

"The residents strive for full disclosure and complete description of the sexual offense history[,] including those sexual offenses for

which they were not arrested, charged, or prosecuted. Full disclosure eliminates past and present secret keeping, increases accountability[,] and reduces re-offense risk. In addition, many residents have multiple, often interrelated paraphilic behaviors with similar and dissimilar elements. Full disclosure ensures that all of the resident's sexually deviant patterns are known, and their treatment will be comprehensive enough to address the similarities and dissimilarities across those behaviors."

¶ 17 Dobier's review of respondent's January 2015 "master treatment plan" revealed that respondent (1) regularly attended "power to change" group therapy sessions and (2) provided insightful feedback when he chose to do so. Dobier noted, however, that despite his participation, respondent "did not display a commitment to treatment" in that he "continued to express negatively towards treatment," "did not appear willing to accept that he must make changes in his life to progress in treatment," and insisted that he did not sexually assault L.P. Following a review of respondent's July 2015 "master treatment plan," Dobier opined that "[o]ne of [respondent's] barriers to treatment, that [respondent] had difficulty resolving was his continued insistence that he never sexually assaulted [L.P.]" Dobier noted that despite respondent's completion of the initial assessment phase, he had yet to complete any of the remaining four phases of his treatment program. Dobier opined that respondent was unwilling to change and focused on external barriers to his treatment program.

¶ 18 Dobier also documented that in January 2005, respondent completed a penile plethysmograph (PPG) evaluation, which involved measuring sexual arousal "in response to standardized stimuli." By sampling "galvanic skin response" and respiration during the PPG,

examiners can detect attempts at deception. Dobier reported the following results:

"The PPG results indicated there was a response on the penile trace of the Child Violent segment when [respondent] made some extraneous movements. There was additional evidence of response interference on the penile trace during the Female Teen Persuasiveness and Female Preschool Persuasiveness segments. Overall, the test results were considered valid. [Respondent] demonstrated significant arousal to Female Teen Persuasiveness."

Dobier noted that respondent had recently refused to participate in an updated PPG examination.

¶ 19 Based on actuarial testing performed on respondent, Dobier opined to a reasonable degree of psychological certainty that respondent suffered from the following mental disorders: (1) sexual sadism disorder and (2) narcissistic personality disorder with antisocial features. Dobier opined further that based on respondent's disorders, it was substantially probable that respondent would engage in further acts of sexual violence. Dobier concluded to a reasonable degree of psychological certainty that (1) respondent had not made sufficient progress to be conditionally released and (2) respondent's condition had not changed such that Dobier could conclude that respondent was no longer a sexually violent person.

¶ 20 In January 2016, respondent filed a motion for an independent psychological reexamination as permitted by section 55(a) of the Act (725 ILCS 207/55(a) (West 2014)). Following a March 2016 hearing, the court (1) denied respondent's motion for an independent examination and (2) determined that no probable cause existed to warrant an evidentiary hearing to determine whether respondent remained a sexually violent person.

¶ 21 This appeal followed.

¶ 22

II. ANALYSIS

¶ 23

A. The Pertinent Portions of the Act and the Standard of Review

¶ 24

Section 55(a) of the Act provides for periodic reexaminations of committed persons in order to determine whether they remain sexually violent persons (725 ILCS 207/55(a) (West 2014)). Specifically, the Act requires IDHS to "submit a written report to the court on [the committed person's] mental condition at least once every 12 months after an initial commitment." *Id.* The primary purpose of the written report is to determine 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 *** that he or she is no longer a sexually violent person." *Id.* The Act further provides that a committed person may retain "[an] expert or a professional person to examine him or her." 725 ILCS 207/55(a) (West 2014). If a committed person is indigent and makes a request, the court "may appoint" a qualified expert or a professional person. *Id.*

¶ 25

Because trial courts are not required to appoint independent evaluators (*In re Detention of Cain*, 341 Ill. App. 3d 480, 483, 792 N.E.2d 800, 803 (2003)), we review the denial of a request for an independent evaluation for an abuse of discretion (*People v. Botruff*, 212 Ill. 2d 166, 176, 817 N.E.2d 463 (2004)). "An abuse of discretion will be found only where the trial court's ruling is arbitrary, fanciful, unreasonable, or where no reasonable person would take the view adopted by the trial court." *People v. Hall*, 195 Ill. 2d 1, 20, 743 N.E.2d 126, 138 (2000).

¶ 26

B. Respondent's Claim

¶ 27

Respondent argues that the trial court abused its discretion by denying his motion for an independent examination. We disagree.

¶ 28

In *Botruff*, 212 Ill. 2d at 172, 817 N.E.2d at 466, the respondent requested an in-

dependent examination to rebut the findings of the psychological reexamination report filed by the State. The trial court denied respondent's motion because respondent did not provide any basis to rebut the report. *Id.* The appellate court reversed the trial court's judgment, concluding, in pertinent part, that section 25(e) of the Act (725 ILCS 207/25(e) (West 2000)) "mandates that an independent evaluator be appointed at any hearing under the Act upon the request of an indigent respondent, and to avoid equal protection concerns, a court must grant an indigent respondent's request for appointment of an independent evaluator during postcommitment proceedings." *Botruff*, 212 Ill. 2d at 172, 817 N.E.2d at 467.

¶ 29 The supreme court reversed the appellate court's judgment, noting that "[r]espondent's counsel provided the [trial] court with no reason or suggestion as a possible basis to rebut the [reexamination] report." *Id.* at 177, 817 N.E.2d at 470. The supreme court clarified the requirements of the Act, providing that a trial court does not abuse its discretion by denying a motion for independent examination when "nothing in the record demonstrates that [the] respondent's case was prejudiced or that the [trial] court would have found differently had an independent examiner been provided." *Id.* at 177, 817 N.E.2d at 469.

¶ 30 Eager to avoid a fate similar to the respondent in *Botruff*, respondent attempts to distinguish *Botruff* by raising arguments he claims rebut Dobier's October 2015 psychological reexamination report. In this regard, respondent directs our attention to the following issues: (1) Dobier relied on two polygraph examinations and a PPG that were over 10 years old; (2) Dobier misrepresented evidence of potential interference on his PPG examination that could have alternative, innocuous explanations; (3) the PPG "examiner failed to indicate that there were multiple levels of [arousal] response" and respondent's response to female teen persuasiveness was "low arousal," which is considered normal for heterosexual males; (4) Dobier failed to identify that on

other portions of the PPG examination, respondent's responses to stimuli were not interpretable as arousal; (5) respondent's progress in treatment provided an additional basis for rebuttal; and (6) respondent's actuarial testing results showed he was not likely to sexually reoffend. Essentially, respondent posits that because (1) Dobier relied on outdated tests and information, (2) he progressed in his treatment, and (3) Dobier's interpretation did not adequately portray information that could be construed as favorable, bases existed to rebut Dobier's October 2015 psychological reexamination report

¶ 31 In response, the State explains that although Dobier considered the results from respondent's PPG and polygraph exams, she also considered a wide variety of factors regarding his treatment, along with current information such as his current psychological state. Contrary to respondent's assertions, the State claims that respondent made minimal progress—completing only one of five treatment phases—and has consistently refused to participate fully in treatment, which was a primary factor supporting Dobier's conclusion that (1) respondent had not made sufficient progress to be conditionally released and (2) respondent's condition had not changed such that Dobier could conclude that respondent was no longer a sexually violent person. The State also claims that respondent's attempts to highlight favorable information from Dobier's psychological reexamination report to justify the appointment of an independent examiner neither contradicts nor undermines Dobier's ultimate conclusion that respondent remained a sexually violent person. We agree with the State.

¶ 32 We note that although respondent (1) disputes the methodology Dobier employed to formulate her conclusions and, alternatively, (2) places emphasis on information that was favorable to himself, we conclude that without more, respondent has not provided a sufficient basis to rebut Dobier's October 2015 psychological reexamination report. Indeed, respondent's

demonstrated unwillingness to comply with his treatment-program requirements undermines his assertion that his participation—which we view as meager given the length of time he has been in IDHS care, custody, and control—established a credible basis to rebut Dobier psychological reexamination report.

¶ 33 In this case, Dobier considered respondent's condition from a holistic perspective, considering not only the older PPG and polygraph results, but also current information, including respondent's 2015 "master treatment plan" and the associated progress notes. Despite Dobier's acknowledgement of respondent's progress in completing the first phase of his treatment, her psychological reevaluation report also documented that respondent had yet to complete any other phases, due largely to respondent's "negativity towards treatment" and "unwillingness to change."

¶ 34 Given these considerations, nothing in the record indicates that Dobier was prejudiced or that the trial court would have found differently after appointing an independent evaluator. Accordingly, we hold that the trial court did not abuse its discretion by denying respondent's motion.

¶ 35 III. CONCLUSION

¶ 36 For the foregoing reasons, we conclude that the trial court did not abuse its discretion in denying respondent's motion for an independent examination.

¶ 37 Affirmed.