2017 IL App (2d) 170266-U
No. 2-17-0266
Order filed December 14, 2017

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

In re COMMITMENT OF LAWRENCE SCHAUER	)	Appeal from the Circuit Court of Du Page County.
	)	No. 14-MR-182
(The People of the State of Illinois, Petitioner-Appellee v. Lawrence Schauer, Respondent-Appellant).	)	Honorable Paul M. Fullerton, Judge, Presiding.

JUSTICE ZENOFF delivered the judgment of the court.
Presiding Justice Hudson and Justice Schostok concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court's finding that respondent is a sexually violent person was affirmed where two experts testified that respondent had a mental disorder and that the mental disorder made it a substantial probability that respondent would commit further acts of sexual violence; the disposition of confinement at a secure treatment facility was not an abuse of discretion where the court considered all the factors required by the statute.

¶ 2 After a bench trial, respondent, Lawrence Schauer, was found to be a sexually violent person (SVP) and was committed to the Department of Human Services (DHS) by the circuit court of Du Page County. He appeals. For the reasons that follow, we affirm.

¶ 3 I. BACKGROUND

¶ 4 On February 13, 2014, the State filed a petition pursuant to section 15 of the Sexually Violent Persons Commitment Act (Act) (725 ILCS 207/15 (West 2014)), alleging that respondent was a SVP. The petition alleged that respondent had been convicted of the offense of aggravated criminal sexual abuse (725 ILCS 207/5(e) (West 2000)) and was sentenced to 7 years in the Illinois Department of Corrections (DOC). The petition further alleged that respondent suffered from a mental disorder and that respondent was dangerous to others because his mental disorder made it substantially probable that he would engage in further acts of sexual violence. At the time of the petition, respondent was within 90 days of discharge from a DOC facility for a sentence imposed upon his conviction for a sexually violent offense. See 725 ILCS 207/15(b-5) (West 2014). Attached to the petition was a psychological evaluation of respondent conducted by Dr. Barry M. Leavitt, Psy. D., on January 31, 2014. Dr. Leavitt concluded that respondent's mental disorder of unspecified paraphilic disorder made it "substantially probable" that respondent would engage in continued acts of sexual violence.

¶ 5 Following a probable cause hearing on April 14, 2014, the court ordered respondent to cooperate with an evaluation to be conducted by DHS to determine whether he was a SVP. Dr. Edward Smith, Psy. D., a DHS psychologist, conducted the evaluation of respondent and delivered his findings in a report dated June 12, 2014. Respondent later agreed to be interviewed by Dr. Smith and that interview, conducted on September 10, 2014, was included in an amended report dated October 28, 2014. Dr. Smith's conclusions largely aligned with Dr. Leavitt's conclusions, that respondent suffered from a mental disorder and the mental disorder created a substantial probability that respondent would engage in future acts of sexual violence.

¶ 6 Respondent's trial commenced on September 7, 2016. The State presented the following evidence. In January 2014, Dr. Leavitt, was retained by DOC to examine respondent, who

refused to participate in the examination. Dr. Leavitt reviewed respondent's master file from DOC, along with criminal records, court records, police reports, and reports written by other experts reasonably relied upon in these types of evaluations. On February 10, 2014, Dr. Leavitt prepared a report of his findings. In preparation for trial, Dr. Leavitt undertook a comprehensive review of the master treatment records at DHS dating from February 2014 to May 2016, including evaluations, progress notes, disciplinary reports, and the clinical record. Dr. Leavitt also considered respondent's offending history as part of his evaluation.

¶ 7 Dr. Leavitt testified that the qualifying offense upon which the petition was based took place on August 21, 2000. On that day, respondent became sexually aroused while drinking beer and observing women in bikinis. That night, respondent spent time watching a married couple through a window of their home. After the couple went to sleep, respondent broke into the home, went into the couple's bedroom, and lay down next to the woman. He placed his hands on top of her body and fondled her vagina. Respondent attempted to flee when she awoke, but he was kept at bay by her husband until police arrived. Respondent pleaded guilty to aggravated criminal sexual abuse as well as residential burglary.

¶ 8 Dr. Leavitt further testified to a cluster of activities that took place in the summer of 1993. On July 12, 1993, respondent was riding a bicycle in a forest preserve in Du Page County when he came upon a 26-year old woman jogging in the area. Respondent dismounted his bike and grabbed the woman. He attempted to drag her into a wooded area while she resisted. Respondent struggled with the woman and told her, "Just calm down [and] we'll get this over with real quick." She retrieved a knife from her purse and stabbed him twice in the hip. He flung her to the ground and paused to examine his wounds. The woman used the opportunity to

escape and alert the police. Respondent was arrested several weeks later, and he pleaded guilty to unlawful restraint and aggravated battery.

¶ 9 Eight days later, on July 20, 1993, respondent entered a home occupied only by a 12-year old girl. Respondent claimed to be seeking directions and a glass of water. The girl repeatedly asked him to leave. Instead, respondent attempted to shake her hand. The girl recoiled as he reached for her. Respondent then asked for a hug as he grabbed her arms and began pulling her toward him. The girl screamed for him to "get out" as she wrestled to free herself from his grip. Respondent fled the home and was arrested a short time later by police. Respondent admitted to the police that he entered the home and touched the girl. He was charged with battery and criminal trespass to residence, but not with a sex-related offense.

¶ 10 Two days later, on July 22, 1993, respondent was arrested for peeping for a "sustained period of time" through a woman's bedroom window while she was reading. The woman spotted respondent and phoned the police. The police arrived and observed the behavior. Following his arrest for disorderly conduct, respondent admitted to peeping at the woman as he drank a six-pack of beer.

¶ 11 Dr. Leavitt then testified to a police report made by respondent's mother. On August 3, 1993, shortly after his arrest for the forest preserve incident, respondent's mother contacted the police about respondent's persistent sexual interest in young children. She reported that respondent frequently watched young children at swimming pools. She further reported that respondent had maintained this unusual sexual interest in children for many years. She expressed concern that he might harm children if something was not done to intervene.

¶ 12 Dr. Leavitt further testified regarding a report completed by the Illinois Attorney General Investigations Division in 2013. The investigation included interviews of respondent's sister and

first cousin. The sister claimed that respondent sexually abused her and two of his other sisters throughout their childhood. The abuse began when the reporting sister was three years old and respondent was eight years old. It included forced fondling and penetration. Their parents once caught respondent fondling the reporting sister's partially nude body in a closet. The reporting sister stated that the parents had known of the abuse for years but never spoke of it or stopped it. The sisters tried to prevent the abuse by barricading their bedroom door and screaming for help when respondent tried to force his way through the barricade. The reporting sister recounted a lifelong struggle with bladder infections, which her doctor told her were consistent with molestation as a child. The report indicated that the oldest sister confided in a cousin that respondent repeatedly had sexual intercourse with her and her sisters. According to the cousin, the sisters barricaded their bedroom door and screamed for their father when respondent tried to break into the room. The cousin also recalled a time when respondent was caught peeping into the bedroom window of a 13-year old neighbor.

¶ 13 Dr. Leavitt further testified about a 1986 incident where respondent groped a 16-year old girl's breasts and a 1998 incident at a Dominick's store when respondent reported having a bomb in his backpack, and, upon exiting the store, he grabbed a store clerk's buttocks. He pleaded guilty to disorderly conduct.

¶ 14 Dr. Leavitt diagnosed respondent with three mental disorders as defined in the Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition (DSM-V): (1) unspecified paraphilic disorder, (2) alcohol use disorder in a controlled environment, and (3) other specified personality disorder with antisocial and narcissistic features. Dr. Leavitt opined that the unspecified paraphilic disorder was related to respondent's unwillingness or inability to control his sexually deviant urges over an extended period of time. Several factors contributed to Dr. Leavitt's

diagnoses and conclusions: multiple paraphilic interests and behaviors, long-standing voyeuristic tendencies, long-standing sexually deviant interest in children, some degree of sexualized violence in carrying out his sexual offending, and a strong sexual preoccupation that had persisted for many years. Dr. Leavitt used his records review and two actuarial sex offender risk assessment instruments to arrive at his conclusion that respondent had a paraphilic disorder that made him dangerous to others because the disorder created a substantial probability that respondent would commit future acts of sexual violence.

¶ 15 Dr. Smith testified that he was a DHS-employed clinical psychologist with an expertise in risk assessment of sexual offenders. He conducted an interview with respondent and performed a comprehensive records review of substantially the same materials as Dr. Leavitt. Dr. Smith diagnosed respondent with three mental disorders as defined in DSM-V: (1) other specified paraphilic disorder, nonconsenting females in a controlled environment, (2) alcohol use disorder in a controlled environment, and (3) other specified personality disorder with antisocial traits. Dr. Smith used his records review, along with two actuarial sex offender risk assessment instruments, to arrive at his conclusion that respondent was suffering from a mental disorder that made him dangerous to others because his disorder made it substantially probable that respondent would commit future acts of sexual violence.

¶ 16 The State then rested. Respondent presented no witnesses or evidence. On September 26, 2016, the court issued its ruling that respondent was a SVP. It ordered respondent committed to the continued custody of DHS until such time that he was no longer a SVP. The court then held a dispositional hearing on October 25, 2016, to determine whether respondent would be treated at a secure treatment facility or granted conditional release. Immediately prior to the hearing, respondent filed a motion to reconsider the finding of SVP. The court granted

respondent leave to amend the motion upon receipt of transcripts. At the end of the dispositional hearing, the trial court ordered that respondent was to remain in the custody of DHS at a secure facility for treatment until further order of the court. Respondent filed an amended motion to reconsider on January 12, 2017, which the trial court denied on March 9, 2017. Respondent filed a timely notice of appeal on April 7, 2017.

¶ 17 II. ANALYSIS

¶ 18 Respondent raises two issues on appeal: (1) the State failed to prove beyond a reasonable doubt that he is a SVP, and (2) even if he was correctly found to be a SVP, the trial court erred by placing him in a secure treatment facility rather than granting him conditional release.

¶ 19 The Act allows the State to petition the court for commitment of individuals to the custody of DHS prior to their release from incarceration for a sexually violent offense. 725 ILCS 207/40(a) (West 2014); *In re Detention of Hayes*, 321 Ill. App. 3d 178, 186 (2001). To prevail on its petition, the State must prove beyond a reasonable doubt that the person (1) has been convicted of a sexually violent offense, (2) is within 90 days of discharge from DOC for that offense, (3) has a mental disorder, and (4) is dangerous to others because the mental disorder creates a substantial probability that the person will engage in acts of sexual violence. See 725 ILCS 207/15, 35(a) (West 2014); *In re Detention of Tittlebach*, 324 Ill. App. 3d 6, 11 (2001). If the respondent is found to be a SVP, the court must then determine whether the respondent will be committed to a secure facility or granted conditional release. 725 ILCS 207/40(b)(2) (West 2014). The trial court has discretion to proceed to the dispositional hearing immediately following trial or at a later date. See 725 ILCS 207/40(b)(1) (West 2014); *In re Detention of Varner*, 315 Ill. App. 3d 626, 638-39 (2000).

¶ 20 When a respondent raises a reasonable doubt challenge, our standard of review is whether, after viewing the evidence in the light most favorable to the State, any rational trier of fact could find that the elements have been proved beyond a reasonable doubt. *Tittlebach*, 324 Ill. App. 3d at 11. Here, respondent challenges only the court's findings that (1) he suffers from a mental disorder and (2) he is dangerous to others because the mental disorder creates a substantial probability of future acts of sexual violence.

¶ 21 Respondent argues that Drs. Leavitt and Smith relied solely on respondent's prior offense history in arriving at their diagnoses under the DSM-V, and that they "subjectively" mischaracterized the offense history as sexually motivated. According to respondent, the doctors relied on a "gut" feeling that his prior acts were sexually motivated, rather than the evidence in the record. Respondent offers alternative non-sexual explanations for his acts, which the trial court reasonably rejected.

¶ 22 Respondent further urges that Drs. Leavitt and Smith, and thus the court, placed too little weight on "protective factors," such as respondent's advanced age and his history of participating in eight years of treatment, to evaluate his true risk of re-offending. He also complains that the doctors relied upon the information contained in the 2013 Attorney General investigation despite the Attorney General's report not having been admitted into evidence. Respondent further suggests that the doctors' reliance on respondent's mother's 1993 police report and the Attorney General's investigation was misplaced, because of their unreliable hearsay nature.

¶ 23 To the extent that respondent argues that his mother's 1993 report and the Attorney General's investigation could not be considered by Drs. Leavitt and Smith in forming their opinions, respondent's analysis is flawed. The Act specifically permits expert testimony from

evaluators and psychologists working on behalf of DOC and DHS. 725 ILCS 207/35(b) (West 2014). Our supreme court has held that such experts may provide opinions derived from data or reports presented to them "outside of court and other than by [their] own perception." *Wilson v. Clark*, 84 Ill. 2d 186, 193 (1981). Experts may rely upon evidence that would otherwise be inadmissible to form their opinions, provided the "facts are of a type reasonably relied upon by experts in a particular field." *Wilson*, 84 Ill. 2d at 193. It is for the trier of fact to assign appropriate weight to an expert's opinion, considering the "expert's credentials and the factual basis of his opinion." *Wiegman v. Hitch-Inn Post of Libertyville, Inc.*, 308 Ill. App. 3d 789, 799 (1999). Here, both doctors testified that they derived their opinions from information in reports that are reasonably relied upon by experts in their field. Respondent had the opportunity to cross-examine both doctors. Consequently, it was entirely appropriate for the experts to rely upon this information together with the other reports to form their opinions.

¶ 24 Additionally, we reject respondent's assertions that the experts' opinions were unreasonably subjective or that they relied solely on his offense history. Drs. Leavitt and Smith reviewed all available records. They both testified that in reaching their diagnoses they relied on their education, training, and experience in conducting sex offender evaluations and assessments. Indeed, respondent stipulated to their credentials as experts in the area of clinical psychology and sex offender evaluation and assessment. Doctor Leavitt testified that he had conducted several hundred of these risk assessments of sexual offenders. Dr. Smith reviewed the same records as Dr. Leavitt and conducted a two-hour interview of respondent. Both doctors independently arrived at substantially the same conclusions, namely that the offenses and acts were sexually motivated. Consequently, we determine that the court could have reasonably believed that the

doctors' conclusions were based on their years of education, training, and experience in the field, rather than mere "gut" feelings.

¶ 25 Furthermore, it is not the function of this court to retry the case. *People v. Steidl*, 142 Ill. 2d 204, 226 (1991). Whether a prior act was sexually motivated, or whether experts should rely on particular reports, goes to the weight of the evidence and the credibility of the witnesses. "[D]eterminations of the credibility of witnesses, the weight to be given to their testimony, and the reasonable inferences to be drawn from the evidence are responsibilities for the trier of fact." *Steidl*, 142 Ill. 2d at 226; see also *In re Detention of Welsh*, 393 Ill. App. 3d 431, 455 (2009) ("[I]t is the province of the trier of fact to evaluate witness credibility, resolve conflicts in the evidence, and draw reasonable inferences therefrom."). Here, two experts testified that respondent had a mental disorder and that the mental disorder made it a substantial probability that respondent would commit further acts of sexual violence. Both experts relied upon their comprehensive records review and risk assessment. Both were cross-examined extensively on their methods and findings. Additionally, although respondent insists that the doctors placed too little emphasis on certain protective factors, once again, it is not the function of this court to reweigh the evidence. Accordingly, we hold that any rational trier of fact could have found that the State proved beyond a reasonable doubt that respondent had a mental disorder that made it substantially probable that he would commit further acts of sexual violence and that he was a SVP.

¶ 26 We next address respondent's contention that the trial court erred when it did not order his conditional release. Section 40 of the Act mandates the trial court to determine whether the commitment of a respondent found to be a SVP "shall be for institutional care in a secure facility or for conditional release." 725 ILCS 207/40(b)(2) (West 2014). Our standard of review is

whether the trial court abused its discretion in committing respondent to a secure treatment facility. See *In re Commitment of Fields*, 2014 IL 115542, ¶ 33 (holding that the trial court abused its discretion when it failed to conduct a dispositional hearing); see also *In re Commitment of Brown*, 2012 IL App (2d) 110116, ¶ 20 (concluding that the trial court did not abuse its discretion in failing to grant conditional release when it considered the factors required by the Act). "An abuse of discretion occurs only when the trial court's decision is arbitrary, fanciful, or unreasonable or where no reasonable person would take the view adopted by the trial court." *Seymour v. Collins*, 2015 IL 118432, ¶ 41.

¶ 27 The Act requires the trial court to hold a dispositional hearing as soon as practicable following the entry of a judgment of SVP. 725 ILCS 207/40(b)(1) (West 2014). The trial court may hold the hearing immediately after trial or at a future date. 725 ILCS 207/40(b)(1) (West 2014); see also *Fields*, 2014 IL 115542, ¶ 48. In determining the appropriate disposition, the trial court shall consider (1) the nature and circumstances of the behavior that was the basis of the allegation in the petition, (2) the person's mental history and present mental condition, and (3) what arrangements are available to ensure that the person has access to and will participate in necessary treatment. 725 ILCS 207/40(b)(2) (West 2014).[1]

¶ 28 Respondent contends that, in light of his age, past treatment, and the true nature of his past offenses, the trial court abused its discretion by failing to grant conditional release.

[1] Respondent discusses five factors relied on in *In re Detention of Lenczycki*, 405 Ill. App. 3d 1041, 1050 (2010), but an earlier version of the statute applied there. The controlling version in this case, effective January 1, 2014, only lists three factors, which do not include where the respondent will live or how he will earn a living. 725 ILCS 207/40(b)(2) (West 2014).

Moreover, respondent claims that the trial court did not conduct a "full" and "fair" dispositional hearing, as it failed to articulate specific findings required under the Act. We disagree.

¶ 29 In support of his arguments, respondent cites *Brown*, 2012 IL App (2d) 110116. In *Brown*, this court held that the trial court did not abuse its discretion in denying a respondent conditional release where the trial court indicated that the respondent had a poor treatment record, no support system, and no employment skills. See *Brown*, 2012 IL App (2d) 110116, ¶ 20. Respondent argues that, contrary to *Brown*, the trial court here "made no such inquiries or findings." Respondent misreads the record. Although the court, upon finding respondent a SVP at the conclusion of the trial, ordered him committed to DHS pursuant to section 40 of the Act, it granted respondent's request for a dispositional hearing on a future date. The court remarked: "I'll give you a hearing date and you can provide me with what – well, let me give you a hearing date for dispositional hearing but I'm not – I'm not anticipating hearing any further evidence. I'm hearing arguments, is that correct?" Respondent never indicated that he wished to present additional evidence. At the dispositional hearing, respondent's attorney twice acknowledged that the court was familiar with the factors to be considered: "I know you know what you need to look at when you are determining disposition," and "Again, you know the elements to look at."

¶ 30 Following extensive arguments at the dispositional hearing, the court stated:

> "I agree with [respondent's counsel], this is about treatment. And the testimony the court heard, I heard from Dr. Leavitt and Dr. Smith. That was the only testimony I heard.
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> ***
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> So the court is going to - - the commitment order is going to be secured treatment continued at Rushville, continued in Phase 2. The Court did take into account the age of Mr. Schauer; he is 63. But both Dr. Leavitt and Dr. Smith also took that into account.

So the court has considered all the factors."

¶ 31 The Act itself makes no provision for the precise manner of the hearing, nor does it require explicit findings regarding the dispositional order. See 725 ILCS 207/40(b)(1-2) (West 2014). Respondent again cites *Brown* to support his contention that specific findings should be rendered for every element listed in the statute. But *Brown* did not hold that the trial court must in all cases make specific findings as to the factors listed in the Act. See *Brown*, 2012 IL App (2d) 110116, ¶¶ 19-20. The trial court in the present case stated unequivocally that it considered all the factors. The plain language of the statute required no more. Had the legislature intended otherwise, it could have so provided when it enacted the current version of this section of the Act. See *DeLuna v. Burciaga*, 223 Ill. 2d 49, 65 (2006). Respondent thus has not demonstrated that the trial court abused its discretion when it ordered that he be treated at a secure treatment facility.

¶ 32 III. CONCLUSION

¶ 33 For the reasons stated, we affirm the judgment of the circuit court of Du Page County.

¶ 34 Affirmed.