

NOTICE

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FILED

February 14, 2017
Carla Bender
4th District Appellate
Court, IL

2017 IL App (4th) 160387-U

NO. 4-16-0387

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

In re: the Commitment of KEVIN W. STANBRIDGE,)	Appeal from
THE PEOPLE OF THE STATE OF ILLINOIS,)	Circuit Court of
Petitioner-Appellee,)	Adams County
v.)	No. 05MR45
KEVIN W. STANBRIDGE,)	
Respondent-Appellant.)	Honorable
)	John C. Wooleyhan,
)	Judge Presiding.

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

ORDER

¶ 1 *Held:* The appellate court affirmed respondent's continued commitment to the care, custody, and control of the Illinois Department of Human Services pursuant to the Sexually Violent Persons Commitment Act.

¶ 1 Following an October 2007 trial, a jury determined that respondent, Kevin W. Stanbridge, was a sexually violent person as defined by the Sexually Violent Persons Commitment Act (725 ILCS 207/1 to 99 (West 2004)). In February 2008, the trial court committed respondent to the care, custody, and control of the Illinois Department of Human Services (IDHS) until such time as he was no longer sexually violent. Thereafter, periodic reexamination reports authored by a licensed clinical psychologist in accordance with section 55 of the Act (725 ILCS 207/55 (West 2014)) consistently concluded that respondent remained a sexually violent person.

¶ 2 In September 2014—following the filing of an August 2014 reexamination report—respondent *pro se* filed a motion for an independent examination. In October 2014, the

Illinois Attorney General (AG) filed a motion for a finding of no probable cause based upon the August 2014 report. The AG'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' custody.

¶ 3 While proceedings on the August 2014 reexamination report were pending, an August 2015 reexamination report concluded that respondent remained a sexually violent person. In December 2015, the AG filed a motion for a finding of no probable cause based upon the August 2015 report. Following an April 2016 hearing, the trial court (1) denied respondent's motion for an independent examination and (2) granted the AG's October 2014 and December 2015 motions for a finding of no probable cause.

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

¶ 5 I. BACKGROUND

¶ 6 This case represents respondent's fifth appeal before this court on issues governed by the Act. Because of the extensive history and the parties' familiarity with the issues presented, we outline only the facts necessary to provide context.

¶ 7 A. Respondent's Criminal Trial

¶ 8 In November 1999, the State charged respondent with aggravated criminal sexual abuse (720 ILCS 5/12-16(d) (West 1998)), alleging that he committed an act of sexual penetration with a 14-year-old boy by placing his mouth on the minor's penis. A jury later convicted respondent of that charge, and the trial court sentenced him to seven years in prison. In May 2004, this court reversed respondent's conviction and remanded the case for a new trial. *People v. Stanbridge*, 348 Ill. App. 3d 351, 810 N.E.2d 88 (2004). Following an April 2005 retrial, a

jury again convicted respondent of aggravated criminal sexual abuse. Respondent appealed, and this court affirmed his conviction and seven-year prison sentence. *People v. Stanbridge*, No. 4-05-0585 (June 14, 2007) (unpublished order under Supreme Court Rule 23).

¶ 9 B. Respondent's Commitment Trial

¶ 10 In May 2005—during respondent's appeal to this court following his second trial—the AG filed a petition to involuntarily commit respondent as a sexually violent person as defined by section 5(f) of the Act (725 ILCS 207/5(f) (West 2004)). During an October 2007 trial on the AG's commitment petition, the jury considered expert testimony from three licensed clinical psychologists, whom each testified about their psychological evaluations of respondent. The AG's two experts diagnosed respondent, in pertinent part, with "paraphilia, not otherwise specified, sexually attracted to adolescent males" but disagreed as to whether respondent satisfied the criteria for a diagnosis of "pedophilia, sexually attracted to males, nonexclusive type." Respondent's expert, Dr. Kirk Witherspoon, diagnosed respondent with a history of alcohol abuse that was in long-term remission. After the presentation of additional evidence and argument, the jury determined that respondent was a sexually violent person.

¶ 11 In February 2008, the trial court committed respondent to IDHS' care, custody, and control under section 40 of the Act (725 ILCS 207/40 (West 2004)) until he was no longer sexually violent. Respondent appealed, and this court affirmed. *In re Detention of Stanbridge*, No. 4-08-0163 (Nov. 19, 2008) (unpublished order under Supreme Court Rule 23).

¶ 12 C. Subsequent Proceedings Under the Act

¶ 13 Section 55(a) of the Act provides, as follows:

"If a person has been committed under Section 40 of this Act, and has not been discharged under Section 65 of this Act, [IDHS] 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) whether the person'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).

¶ 14 In August 2008, Dr. Edward Smith, a licensed clinical psychologist, submitted to the trial court, on IDHS' behalf, a six-month reexamination report on respondent's mental condition pursuant to section 55(a) of the Act. In his report, Smith diagnosed respondent with (1) paraphilia, not otherwise specified, sexually attracted to adolescent males, nonexclusive type; (2) alcohol abuse in a controlled environment; and (3) personality disorder not otherwise specified with antisocial traits. Smith's report provided the following required criteria for respondent's paraphilia-disorder diagnosis:

"A. Recurrent, intense sexually arousing fantasies, urges, or behaviors generally involving non-human objects, the suffering or humiliation of oneself or others, or children, or other non-consenting persons.

B. Present for at least [six] months.

C. These behaviors, sexual urges, or fantasies cause clinically significant distress or impairment in social, occupational, or other important areas of functioning."

Smith's August 2008 report ruled out that respondent suffered from "pedophilia, sexually attracted to males, nonexclusive type."

¶ 15 Smith concluded that respondent had "not made sufficient progress to lower his risk of sexual re-offense to the extent he is safe to be managed in the community on conditional release." In September 2008, the AG filed a motion for a finding of no probable cause based on Smith's reexamination report. The following month, the court granted the AG's motion, finding no probable cause shown to warrant an evidentiary hearing on whether respondent had made sufficient progress to be conditionally released or discharged from IDHS' custody.

¶ 16 In April 2009, respondent filed an amended petition for discharge from IDHS' custody under section 70 of the Act (725 ILCS 207/70 (West 2008)). In August 2009—while respondent's April 2009 amended petition for discharge was pending—IDHS submitted its required 18-month reexamination report, which Smith authored. Smith's report diagnosed respondent with the same disorders listed in his August 2008 report. Smith also concluded that respondent remained a risk to sexually reoffend. In October 2009, the AG filed a motion for a finding of no probable cause based on Smith's report.

¶ 17 In January 2010, the trial court held a hearing on respondent's amended petition for discharge and the AG's motion for a finding of no probable cause at which the court considered the reports submitted by Smith and Witherspoon and heard arguments of counsel. In February 2010, the court entered a written order (1) denying respondent's petition for discharge and (2) granting the AG's motion for a finding of no probable cause. Defendant appealed, and this court reversed, concluding that the trial court had abused its discretion by denying respondent's April 2009 amended petition for discharge from IDHS' custody. *In re Detention of Stanbridge*, 408 Ill. App. 3d 553, 563, 948 N.E.2d 1063, 1071 (2011). In November 2012, the supreme court re-

versed this court's opinion, concluding that the trial court properly dismissed respondent's petition for discharge. *In re Detention of Stanbridge*, 2012 IL 112337, ¶ 87, 980 N.E.2d 598.

¶ 18 Thereafter, Smith filed reexamination reports in August 2010 (30-month), August 2011 (42-month), and August 2012 (54-month), which were substantially similar to his 6- and 18-month reexamination reports—that is, Smith diagnosed respondent with the same disorders and concluded that respondent remained a risk to sexually reoffend. In each of his reports, Smith documented that his diagnoses were derived from the "*American Psychiatric Association Diagnostic and Statistical Manual 4th Edition—Text Revision* (DSM-IV-TR)."

¶ 19 In December 2012, respondent *pro se* filed a petition for discharge from IDHS' custody pursuant to section 65(b)(1) of the Act (725 ILCS 207/65(b)(1) (West 2012)), which his appointed counsel later adopted. In May 2013, the AG filed a motion to dismiss respondent's petition, arguing generally that respondent failed to allege sufficient facts to establish that he was no longer a sexually violent person. Following a July 2013 hearing, the trial court granted the AG's motion to dismiss.

¶ 20 Respondent appealed, arguing that because expert medical testimony presented at his October 2007 trial on the AG's commitment petition revealed a diagnosis of pedophilia, which Smith had since ruled out in his 54-month reexamination report, this change represented probable cause to warrant an evidentiary hearing on whether he had made sufficient progress to be conditionally released or discharged from IDHS' custody. This court rejected respondent's argument, noting that in his numerous reexamination reports, Smith had consistently (1) ruled out that respondent suffered from pedophilia and (2) concluded that respondent remained a substantial risk to reoffend. *In re Commitment of Stanbridge*, 2014 IL App (4th) 130703-U.

¶ 21 In August 2013, IDHS submitted its required 66-month reexamination report. In

that report, Smith documented that unlike his previous reexaminations, in which he derived his diagnoses from the DSM-IV-TR, Smith used the "*Diagnostic and Statistical Manual of Mental Disorders—Fifth Edition (DSM-5)*." Smith described the new DSM-5 standard as "the latest edition of the standard reference for clinical practice in the mental-health field," which he opined provided "the best available description of how mental disorders are expressed and can be recognized by trained clinicians."

¶ 22 Applying the DSM-5 standard, Smith determined that respondent met the criteria for the following disorders: (1) "other specified paraphilic disorder, non-consenting males, non-exclusive type"; (2) "alcohol abuse disorder, in a controlled environment"; and (3) "other specified personality disorder, with antisocial traits." Consistent with his previous reexamination reports, Smith ruled out that respondent suffered from "pedophilic disorder, sexually attracted to males, nonexclusive type."

¶ 23 As to respondent's propensity to engage in future acts of sexual violence, Smith provided the following summary, detailing the results of two actuarial tests and a diagnostic-screening tool:

"[Respondent] scored in the moderate-high risk category on the STATIC-99, in the moderate-low risk category on the STATIC-99R, and in the high[-]risk category on the MnSOST-R. [Respondent] has [five] additional risk factors (not measured by the risk actuarial instruments used in this reexamination) ***, which indicate he has additional risk factors likely contributing to his risk of sexual re-offense. These risk assessment instruments and additional risk factors suggest [respondent] is at a substantial probab-

ity to engage in acts of sexual violence."

The five aforementioned risk factors Smith identified encompassed (1) any personality disorder, (2) any substance abuse, (3) intoxication during the offense, (4) intimate-relationship conflicts, and (5) any deviant sexual interests. Smith's report also documented that although respondent participated in ancillary groups during the reporting period, he had not completed a "sexual offense specific treatment" program, which can lower the risk of sexual recidivism. Smith also noted that respondent has consistently declined to participate in such treatment.

¶ 24 Smith concluded his 66-month reexamination report by opining to a reasonable degree of psychological certainty that respondent (1) "has not progressed in treatment to the point where he can be safely managed in the community on conditional release," and (2) "should continue to be found a sexually violent person under the *** Act." Smith added that respondent's condition had not changed since his 54-month periodic reexamination.

¶ 25 In September 2013, the AG filed a motion for a finding of no probable cause based on Smith's 66-month reexamination report. Following argument at an October 2013 hearing on the AG's motion, the court entered a written order, finding that based upon Smith's 66-month reexamination report, no probable cause existed to warrant an evidentiary hearing on whether respondent remained a sexually violent person. Respondent appealed, and this court affirmed. *In re Commitment of Stanbridge*, 2014 IL App (4th) 131063-U.

¶ 26 D. The Issues on Appeal

¶ 27 In August 2014, IDHS submitted a 78-month reexamination report. Under the heading "Treatment Summary," Smith noted that although respondent was a participating member of the "Power to Change" group, respondent "continued to decline participation in sex[-] offender[-]specific treatment," opting instead to "remain focused on fighting his case legally."

Smith documented that during his interview with respondent, respondent (1) confirmed "he has no intention of participating in sex[-]offender[-]specific treatment" and (2) remained committed to "fight[ing] his case from a legal standpoint." Applying the DSM-5 standard, Smith opined that respondent met the criteria for the same mental disorders highlighted in his 66-month reexamination report—that is, (1) "other specified paraphilic disorder, non-consenting males, nonexclusive type"; (2) "alcohol abuse disorder, in a controlled environment"; and (3) "other specified personality disorder, with antisocial traits." Consistent with his previous reexamination reports, Smith ruled out that respondent suffered from "pedophilic disorder, sexually attracted to males, nonexclusive type." Smith concluded that respondent (1) "has not progressed in treatment to the point where he can be safely managed in the community on [c]onditional [r]elease" and (2) should continue to be found a sexually violent person as defined by the Act, noting that respondent's condition had not changed since his most recent periodic reexamination.

¶ 28 In September 2014, respondent *pro se* filed, in pertinent part, a motion requesting an independent examination, alleging that "his due process has been violated for the past six *** years based upon the lack of expertise, ethics and procedural standards of the current and previous examinations by *** Smith." In October 2014, the trial court appointed counsel. (Respondent's counsel later adopted respondent's filings.) That same month, the AG filed a motion for a finding of no probable cause based on Smith's August 2014 reexamination report.

¶ 29 While proceedings on the August 2014 reexamination report were pending, an August 2015 reexamination report—authored by Smith—concluded that respondent remained a sexually violent person because (1) respondent continued to decline participation in sex-offender-specific treatment and (2) his condition had not changed from his 78-month reexamination report. In December 2015, the AG filed a motion for a finding of no probable cause based

upon the August 2015 report.

¶ 30 Following an April 2016 hearing, the trial court (1) denied respondent's motion for an independent examination and (2) granted the AG's October 2014 and December 2015 motions for a finding of no probable cause.

¶ 31 This appeal followed.

¶ 32 II. ANALYSIS

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

¶ 34 Section 5(f) of the Act defines "sexually violent person" as follows:

"[A] person who has been convicted of a sexually violent offense, has been adjudicated delinquent for a sexually violent offense, or has been found not guilty of a sexually violent offense by reason of insanity and who is dangerous because he or she suffers from a mental disorder that makes it substantially probable that the person will engage in acts of sexual violence." 725 ILCS 207/5(f) (West 2014).

¶ 35 As previously noted, section 55(a) of the Act provides for periodic reexaminations of committed persons 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 [trial] 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." *Id.* If a committed person is indigent and makes a request, the court "may appoint" a qualified expert or a professional person. *Id.*

¶ 36 "A respondent may be entitled to funds to hire an expert witness where expert testimony is deemed 'crucial' to a proper defense." *In re Commitment of Kirst*, 2015 IL App (2d) 140532, ¶ 33, 40 N.E.3d 1215. A respondent establishes this standard by showing that "the expert services are 'crucial' to 'build a defense' and the defendant's financial ability to obtain his own expert will prejudice his case." *People v. Botruff*, 212 Ill. 2d 166, 177, 817 N.E.2d 463, 469 (2004)). Thus, the sole question before this court is whether respondent demonstrated that his case would be prejudiced if an independent examination was not performed, thereby showing that such an appointment was crucial to his defense. 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 examination for an abuse of discretion (*Kirst*, 2015 IL App (2d) 140532, ¶ 33, 40 N.E.3d 1215).

¶ 37 B. Respondent's Claim

¶ 38 Respondent contends that because Smith's August 2014 reexamination report did not include "standardized" psychological testing as required by title 59, chapter I, section 299.230 of the Illinois Administrative Code (Administrative Code) (59 Ill. Adm. Code 299.230 (2000)), Smith's report was not a valid reevaluation for purposes of the Act.

¶ 39 Section 229.230 of the Administrative Code, titled "Evaluation," provides, as follows:

"An evaluation shall be conducted pursuant to section 30 of the Act for the purpose of determining whether a detained person

meets the criteria for commitment as a sexually violent person under the Act. The evaluation shall consist of, but not be limited to, a mental status examination, *standardized* psychological tests, a social history including information concerning sexual behaviors, an assessment of alleged and self-reported sexual behaviors, and a review of available records. The evaluation may also include an objective sexual assessment." (Emphasis added.) *Id.*

Respondent then directs our attention to title 20, chapter VII, section 1905.240 of the Administrative Code (20 Ill. Adm. Code 1905.240 (2017)), titled "Adult Sex Offender Evaluation and Treatment," which he claims "establishes the requirements of the sex offender evaluation in pre-sentence evaluations." Respondent's reliance on those specific provisions of the Code is misplaced.

¶ 40 We agree with the AG that by its plain language, section 299.230 of the Administrative Code applies to initial commitment proceedings under section 30 of the Act instead of periodic reexaminations, which are governed by section 55 of the Act. See *Botruff*, 212 Ill. 2d at 175, 817 N.E.2d at 468 ("Section 55(a), by its plain language, specifically applies to *periodic* reexamination proceedings mandated by the Act" and "more specifically addresses the appointment of an independent examiner in periodic reexamination proceedings." (Emphasis in original.)). In addition, a different provision of the Administrative Code—that is, title 59, chapter I, section 299.320, titled "Periodic Re-Evaluation" (50 Ill. Adm. Code 299.320 (2000))—provides guidance that is substantially similar to sections 55(a) and 55(b) of the Act. Regarding respondent's claim that section 1905.240 of the Administrative Code provides guidance concerning the standardized psychological testing appropriate during periodic reexaminations, we note that sec-

tion of the Administrative Code has been repealed *in toto*. See 20 Ill Adm. Code 1905.240, repealed at 40 Ill. Reg. 16236 (eff. Jan. 1, 2017).

¶ 41 In *Botruff*, 212 Ill. 2d at 170, 817 N.E.2d at 465, a case also involving the trial court's denial of a respondent's motion for an independent examination to rebut the findings of a reexamination report, the appellate court reversed the trial court's judgment. In so doing, the appellate court concluded, 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.

¶ 42 The supreme court reversed the appellate court's judgment, noting that the "[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 court would have found differently had an independent examiner been provided." *Id.* at 177, 817 N.E.2d at 469.

¶ 43 In this case, respondent challenges Smith's use of the DSM-5 standard in conducting his August 2014 periodic reexamination. Essentially, respondent claims that the methodology Smith employed to formulate his opinion that respondent remained a sexually violent person was not sufficiently comprehensive because it did not also include psychological testing identified in section 1905.240 of the Administrative Code, which has since been repealed. However, even if section 1905.240 of the Administrative Code (1) had not been repealed and (2) applied to

periodic reexaminations, respondent has failed to demonstrate that an independent examination was crucial to his defense such that he was prejudiced by the trial court's denial. In other words, respondent has not established how additional psychological testing would have rebutted Smith's August 2014 reexamination report.

¶ 44 Here, Smith's August 2014 reexamination report established overwhelmingly that respondent remained a sexually violent person as defined by the Act. Applying the DSM-5 standard, which Smith stated represented "the best available description of how mental disorders are expressed and can be recognized by trained clinicians," Smith opined to a reasonable degree of psychological certainty that respondent (1) "has not progressed in treatment to the point where he can be safely managed in the community on [c]onditional [r]elease" and (2) should continue to be found a sexually violent person as defined by the Act, noting that respondent's condition had not changed since his most recent periodic reexamination.

¶ 45 Smith based his opinions on his examination, which showed that respondent suffered from the following disorders: (1) paraphilia, not otherwise specified, sexually attracted to adolescent males, nonexclusive type; (2) alcohol abuse in a controlled environment; and (3) personality disorder not otherwise specified with antisocial traits. Smith also noted that actuarial instrument testing and five other risk factors not derived from actuarial assessments reinforced his professional assessment regarding respondent's propensity to engage in a future act of sexual violence.

¶ 46 We are not persuaded by respondent's claim that further psychological testing would have rebutted Smith's August 2014 reexamination report given that respondent has (1) steadfastly refused to attend any sexual-offender-specific-treatment programs and (2) confirmed to Smith that that he would not participate in such treatment, opting instead to fight his commit-

ment solely by legal means. Because nothing in the record indicates that respondent was prejudiced or that the trial court would have found differently after appointing an independent evaluator, we conclude that the court did not abuse its discretion by denying respondent's motion for an independent examination.

¶ 47

III. CONCLUSION

¶ 48

For the foregoing reasons, we affirm the trial court's judgment.

¶ 49

Affirmed.