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2017 IL App (4th) 160496-U

NO. 4-16-0496

FILED
January 24, 2017
Carla Bender
4th District Appellate
Court, IL

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

In re: the Detention of RAYMOND RAINEY,	)	Appeal from
a Sexually Violent Person,	)	Circuit Court of
THE PEOPLE OF THE STATE OF ILLINOIS,	)	Morgan County
Petitioner-Appellee,	)	No. 98MR41
v.	)	
RAYMOND RAINEY,	)	Honorable
Respondent-Appellant.	)	Christopher E. Reif,
	)	Judge Presiding.

PRESIDING JUSTICE TURNER delivered the judgment of the court.
Justices Appleton and Knecht concurred in the judgment.

ORDER

¶ 1 *Held*: The circuit court did not err by finding no probable cause shown to warrant an evidentiary hearing where respondent still suffered from mental disorders, still had numerous risk factors for reoffending, and made no progress in his treatment plan since the last reexamination period.

¶ 2 Respondent, Raymond Rainey, a person committed under the Sexually Violent Persons Commitment Act (Act) (725 ILCS 207/1 *et seq.* (West 2014)), appeals the Morgan County circuit court's June 21, 2016, order, in which the court found no probable cause to warrant an evidentiary hearing on whether respondent was still a sexually violent person. On appeal, respondent argues the circuit court erred by finding no probable cause. We affirm.

¶ 3 I. BACKGROUND

¶ 4 In September 1998, the State filed its petition to have respondent committed as a sexually violent person pursuant to the Act. At a February 2000 hearing, respondent admitted he

was a sexually violent person. The circuit court accepted respondent's admission, adjudicated him a sexually violent person, and committed him to the Department of Human Services (Department). After a May 2000 dispositional hearing, the court ordered respondent placed in a secured institutional facility. In October 2001, this court affirmed respondent's adjudication as a sexually violent person and his commitment to a secured facility. *People v. Rainey*, 325 Ill. App. 3d 573, 758 N.E.2d 492 (2001).

¶ 5 In July 2003, respondent filed a *pro se* postjudgment motion challenging the constitutionality of the Act, which the circuit court dismissed. In June 2006, this court affirmed the circuit court's dismissal. *People v. Rainey*, No. 4-03-0854 (Mar. 30, 2006) (unpublished order under Supreme Court Rule 23). Over the years, respondent has received numerous reexaminations and remains committed to a secured facility. The reexamination preceding the one at issue in this appeal took place in April 2015. In August 2015, the circuit court found no probable cause was shown to believe respondent was no longer a sexually violent person. Respondent appealed, and this court affirmed the circuit court's judgment. *In re Detention of Rainey*, 2016 IL App (4th) 150702-U.

¶ 6 In April 2016, Diana Dobier, Psy.D, a licensed clinical psychologist, conducted the 190-month reevaluation at issue in this appeal. The report noted respondent was 60 years old, and this was his sixteenth reexamination. In preparing the report, Dobier interviewed respondent, reviewed approximately 12 documents, and talked to another psychologist. The report set forth respondent's relevant history, including his criminal, sexual, and treatment histories. Dobier also explained the Department had a five-phase treatment program. The five phases, in order, were the following: (1) assessment, (2) accepting responsibility, (3) self-application, (4) incorporation, and (5) transition. Respondent completed the assessment phase in January 2006.

He was still in phase two and had only received "completion checks for Anger Management" in January 2012 and "attending the Treatment Foundations group" in May 2013. For the year under review, respondent had not received any completion checks. Dobier's report also noted respondent "demonstrated limited commitment to the treatment process and he tended to put forth the bare minimum effort." Respondent sporadically attended recreational therapy groups and stopped attending the communications therapy group, which was recommended by his treatment team. While respondent asked "to return to the Treatment Foundations group and additional 'side groups,' " respondent did not attend the groups to which he was referred. Moreover, respondent intermittently met with his primary therapist. His treatment team did note respondent had been more respectful and generally pleasant to work with during the previous six months. However, respondent still experienced some difficulties with roommates, and in April 2015, his roommate alleged respondent inappropriately touched him.

¶ 7 According to Dobier's report, respondent's November 2015 master treatment plan indicated he was still in phase two and had the following problem areas that were active discharge barriers: (1) assessment procedures incomplete, (2) sexual dangerousness, (3) lack of adaptive coping skills, and (4) lack of responsible living skills. Respondent continued to have behavioral and adjustment problems as he was found guilty of several minor rule violations and a major violation for interfering with facility operations. During the reexamination period, he had been placed on both close management status and special management status for his behavior.

¶ 8 Additionally, Dobier opined respondent suffered from the following mental disorders: (1) pedophilic disorder, nonexclusive type, sexually attracted to females; (2) alcohol use disorder, in sustained remission, in a controlled environment; and (3) antisocial personality disorder with borderline personality traits. She explained her reasoning for those diagnoses. As to

the issue of respondent's dangerousness, she used the Static-99R and the Static-2002R risk assessments. Respondent placed in the low-moderate risk category on the former assessment and the moderate risk category on the latter assessment. Dobier also noted respondent had the following risk factors for future sexual offending: (1) antisocial personality disorder, (2) impulsiveness, (3) procriminal attitudes, (4) sexual interest in children, (5) self-regulation problems, (6) poor problem-solving, (7) substance abuse, and (8) noncompliance with supervision. Dobier further stated respondent had additional, empirical risk factors such as his (1) repeat reoffending after legal intervention and consequences, (2) continuing to seek underage victims while in prison, and (3) living with a woman with a prepubescent child prior to his most recent conditional release revocation. Dobier opined respondent had no protective factors such as age, medical condition, or sex-offender treatment. She further found that, based on his mental disorders, respondent was substantially probable to engage in acts of sexual violence. She also opined respondent (1) had not changed since his last examination, (2) had not made sufficient progress in his treatment, and (3) should continue to be committed to the Department's treatment and detention facility for secure care and sexual offense specific treatment.

¶ 9 On May 11, 2016, the State filed a motion for a finding of no probable cause based upon Dobier's 190-month reexamination report. In its motion, the State noted respondent had not affirmatively waived his right to petition the court for discharge, and thus section 65(b)(1) of the Act (725 ILCS 207/65(b)(1) (West 2014)) required the circuit court to hold a probable-cause hearing.

¶ 10 On June 21, 2016, the circuit court held the probable-cause hearing. After the attorneys made their arguments on probable cause, the court found no probable cause was shown

to believe respondent was no longer a sexually violent person. That same day, the court entered its written order.

¶ 11 On June 30, 2016, respondent filed a timely notice of appeal in sufficient compliance with Illinois Supreme Court Rule 303 (eff. Jan. 1, 2015), and thus this court has jurisdiction under Illinois Supreme Court Rule 301 (eff. Feb. 1, 1994). See 725 ILCS 207/20 (West 2014) (noting the proceedings under the Act are civil in nature).

¶ 12 II. ANALYSIS

¶ 13 Respondent's sole contention on appeal is the circuit court erred by finding no probable cause was shown to warrant an evidentiary hearing to determine whether respondent was still a sexually violent person. The State disagrees, arguing the circuit court's decision was correct.

¶ 14 At the time of each reexamination under the Act, the committed person receives notice of the right to petition the circuit court for discharge. 725 ILCS 207/65(b)(1) (West 2014). If the committed person does not affirmatively waive that right, like respondent in this case, the court must "set a probable cause hearing to determine whether facts exist to believe that since the most recent periodic reexamination ***, the condition of the committed person has so changed that he or she is no longer a sexually violent person." 725 ILCS 207/65(b)(1) (West 2014). At such a probable-cause hearing, the court only reviews the reexamination reports and hears the parties' arguments. 725 ILCS 207/65(b)(1) (West 2014). If the court finds probable cause does exist, then it must set an evidentiary hearing on the issue. 725 ILCS 207/65(b)(2) (West 2014). Since the circuit court only considered Dobier's reexamination report and the facts contained in that report are not in dispute, our review of the court's finding of no probable cause is *de novo*. See *In re Commitment of Kirst*, 2015 IL App (2d) 140532, ¶ 50, 40 N.E.3d 1215.

¶ 15 With all probable-cause hearings under the Act, the circuit court's role is "to determine whether the movant has established a *plausible account* on each of the required elements to assure the court that there is a substantial basis for the petition." (Emphasis in original.) (Internal quotation marks omitted.) *In re Detention of Stanbridge*, 2012 IL 112337, ¶ 62, 980 N.E.2d 598 (quoting *In re Detention of Hardin*, 238 Ill. 2d 33, 48, 932 N.E.2d 1016, 1024 (2010)). For a respondent to receive an evidentiary hearing under section 65(b)(2) of the Act, the court must find a plausible account exists that the respondent is "no longer a sexually violent person." 725 ILCS 207/65(b)(2) (West 2014). Thus, a respondent is only entitled to an evidentiary hearing if plausible evidence shows the respondent (1) no longer suffers from a mental disorder or (2) is no longer dangerous to others because his or her mental disorder no longer creates a substantial probability he or she will engage in acts of sexual violence. *Stanbridge*, 2012 IL 112337, ¶ 68, 980 N.E.2d 598 (quoting 725 ILCS 207/5(f), 15 (West 2008)). Under the Act, "substantially probable" means "much more likely than not." (Internal quotation marks omitted.) *In re Commitment of Curtner*, 2012 IL App (4th) 110820, ¶ 37, 972 N.E.2d 351; see also *In re Detention of Hayes*, 321 Ill. App. 3d 178, 188, 747 N.E.2d 444, 453 (2001).

¶ 16 In this case, Dobier found respondent still suffered from (1) pedophilic disorder, nonexclusive type, sexually attracted to females; (2) alcohol use disorder, in sustained remission, in a controlled environment; and (3) antisocial personality disorder with borderline personality traits. While the Static-99R assessment placed respondent in the low-moderate risk category for reoffending, the Static-2002R placed respondent in the moderate risk category. Dobier's report noted respondent had eight recognized risk factors and three additional, empirical risk factors that increased his risk to reoffend. Moreover, neither his age nor his medical condition decreased his risk. The aforementioned evidence indicates respondent still suffered from mental

disorders and was dangerous to others because his mental disorders created a substantial probability he would engage in acts of sexual violence.

¶ 17 Since the prior reexamination, respondent had not moved forward at all in his treatment plan. He was still in phase two, which he had been in since 2006, and had not received any completed checks for the review period. He had also not participated in any sex-offender-specific treatment, failed to complete the communication group, and only sporadically attended the recreational therapy groups.

¶ 18 Respondent notes his most recent penile plethysmograph showed significant arousal for a "[f]emale adult persuasive," which was considered normal. However, that test was in June 2012 and does not alone establish a plausible account respondent no longer meets the definition of a sexually violent person, especially in light of respondent's continued behavioral issues and his failure to engage in sex-offender treatment. Respondent claims he has made some progress in treatment. However, he failed to complete the communication group, failed to attend two other groups he requested to attend, and only sporadically attended recreational therapy groups. Moreover, while respondent claimed he is less likely to offend due to his age, Dobier did not find any further reduction in risk was warranted based on respondent's age. Thus, we disagree with respondent the facts contained in Dobier's report show respondent had made sufficient progress in his treatment to warrant an evidentiary hearing.

¶ 19 Last, in support of his argument, respondent cites the case of *In re Commitment of Wilcoxen*, 2016 IL App (3d) 140359, ¶ 1, 48 N.E.3d 277, where the reviewing court reversed the circuit court's order finding no probable cause existed to warrant an evidentiary hearing to determine if the respondent was still sexually dangerous. We need not address whether the case properly applied the standards for determining whether an evidentiary hearing is warranted, as

the facts are distinguishable from the case before us. In *Wilcoxen*, 2016 IL App (3d) 140359, ¶ 39, 48 N.E.3d 277, while the 61-year-old respondent was still in phase two, he attended five group sessions three days per week and had successfully completed "mindfulness, maintaining healthy interpersonal relationships, thinking errors, decision-making, and confronting his personal history and his history of offending." The facts showed the respondent's commitment to his treatment program, which was a change in his attitude from his initial refusal to engage in treatment. *Wilcoxen*, 2016 IL App (3d) 140359, ¶ 43, 48 N.E.3d 277. The reviewing court also noted the data provided by the independent examiner showing sexual behaviors are reduced in men over their lifespan and sexual arousal reduces with age, thus making older males less likely to reoffend with age. *Wilcoxen*, 2016 IL App (3d) 140359, ¶ 45, 48 N.E.3d 277. Last, the State's examiner rated respondent as moderate to high risk on the Static-99R and low risk on the Static-2002R, and the independent examiner rated the respondent as a moderate risk on the Static-99R. *Wilcoxen*, 2016 IL App (3d) 140359, ¶ 47, 48 N.E.3d 277. The reviewing court concluded the evidence set forth a plausible account that both the respondent and the professional understanding of pedophilia had changed such that a substantial probability no longer existed that respondent was a sexually violent person and likely to reoffend. *Wilcoxen*, 2016 IL App (3d) 140359, ¶ 49, 48 N.E.3d 277.

¶ 20 Unlike the respondent in *Wilcoxen*, respondent had "demonstrated limited commitment to the treatment process and he tended to put forth the bare minimum effort." Moreover, respondent had not successfully completed a treatment group in more than two years. Further, while respondent's risk assessments were low-moderate and moderate, Dobier noted respondent had exhibited 11 risk factors for reoffending. Additionally, Dobier discussed the various studies on age and recidivism and noted the research had been criticized for its limitations.

She noted age is reflected in the actuarial risk assessment instruments she used and declined to find respondent's risk should be reduced further based on his age.

¶ 21 Accordingly, we find the circuit court did not err by finding probable cause was not shown to warrant an evidentiary hearing.

¶ 22 III. CONCLUSION

¶ 23 For the reasons stated, we affirm the Morgan County circuit court's judgment.

¶ 24 Affirmed.