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IN THE  
APPELLATE COURT OF ILLINOIS  
SECOND DISTRICT

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<i>In re</i> THE COMMITMENT OF FRANKIE N. WALKER, SR., a Sexually Violent Person	)	Appeal from the Circuit Court of Lake County.
	)	No. 07—MR—152
	)	
(The People of the State of Illinois, Petitioner-Appellee, v. Frankie N. Walker, Sr., Respondent-Appellant).	)	Honorable Victoria A. Rossetti, Judge, Presiding.

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JUSTICE HUDSON delivered the judgment of the court.  
Justice Burke and Justice Schostok concurred in the judgment.

**ORDER**

*Held:* The trial court properly dismissed respondent's section 2—1401 petition attacking the order finding him a sexually violent person; because there had been no dispositional order, there was no final judgment subject to attack under section 2—1401.

Respondent, Frankie N. Walker, Sr., appeals from an order dismissing his petition under section 2—1401 of the Code of Civil Procedure (Code) (735 ILCS 5/2—1401 (West 2008)). That petition attacked an order under section 35 of the Sexually Violent Persons Commitment Act (Act) (725 ILCS 207/35 (West 2006)) finding him to be a sexually violent person (SVP). Because the court had not entered a dispositional order under section 40 of the Act, no final judgment existed. Therefore, respondent's petition was premature, and we affirm the dismissal.

## BACKGROUND

For convenience of reference, we start by reviewing the four steps in commitment proceedings under the Act.

The proceedings must begin with a petition under section 15 (725 ILCS 207/15 (West 2006)). The petition must allege a qualifying conviction (or insanity acquittal), a mental disorder, and danger to others because of the mental disorder.

The second step is a probable-cause hearing under section 30 (725 ILCS 207/30 (West 2006)). The court determines whether probable cause exists to believe that the respondent would be subject to commitment after a trial under section 35 (725 ILCS 207/35 (West 2006)):

“(a) Upon the filing of a petition under Section 15 of this Act, the court shall review the petition to determine whether to issue an order for detention of the person who is the subject of the petition. The person shall be detained only if there is cause to believe that the person is eligible for commitment under subsection (f) of Section 35 of this Act. A person detained under this Section shall be held in a facility approved by the Department. \*\*\* A detention order under this Section remains in effect until the person is discharged after a trial under Section 35 of this Act or until the effective date of a commitment order under Section 40 of this Act, whichever is applicable.

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(c) If the court determines after a hearing that there is probable cause to believe that the person named in the petition is a sexually violent person, the court shall order that the person be taken into custody if he or she is not in custody and shall order the person to be

transferred within a reasonable time to an appropriate facility for an evaluation as to whether the person is a sexually violent person.” 725 ILCS 207/30(a), (c) (West 2006).

The third step is trial under section 35:

“(f) If the court or jury determines that the person who is the subject of a petition under Section 15 is a sexually violent person, the court shall enter a judgment on that finding and shall commit the person as provided under Section 40 of this Act. If the court or jury is not satisfied beyond a reasonable doubt that the person is a sexually violent person, the court shall dismiss the petition and direct that the person be released unless he or she is under some other lawful restriction.

(g) A judgment entered under subsection (f) of this Section on the finding that the person who is the subject of a petition under Section 15 is a sexually violent person *is interlocutory to a commitment order under Section 40* and is reviewable on appeal.” (Emphasis added.) 725 ILCS 207/35(f), (g) (West 2006).”

The fourth stage is commitment under section 40:

“(a) If a court or jury determines that the person who is the subject of a petition under Section 15 of this Act is a sexually violent person, the court shall order the person to be committed to the custody of the Department [of Human Services] \*\*\*.

(b)(1) The court shall enter an initial commitment order under this Section pursuant to a hearing held as soon as practicable after the judgment is entered that the person who is the subject of a petition under Section 15 is a sexually violent person. If the court lacks sufficient information to make the determination required by paragraph (b)(2) of this Section immediately after trial, it may adjourn the hearing

and order the Department to conduct a predisposition investigation or a supplementary mental examination, or both, to assist the court in framing the commitment order. \*\*\*

(2) An order for commitment under this Section shall specify either institutional care in a secure facility, as provided under Section 50 of this Act, or conditional release.” 725 ILCS 207/40(a), (b)(1), (b)(2) (West 2006).

On February 5, 2007, the Attorney General filed a petition for the commitment of respondent under the Act. The next day, the court found that probable cause existed pursuant to section 30 and ordered respondent’s detention by the Department of Human Services (Department).

Five months later, respondent and the State entered into a series of stipulations as a substitute for trial. In particular, respondent agreed to a finding that he was an SVP. The final stipulation was:

“The People and the Respondent stipulate and agree that the Respondent is committed to the custody of the Department of Human Services for control, care and treatment in a secure setting until his dispositional hearing.”

The court ordered a predisposition investigation, and the appointed expert filed his report about two months later.

Seven months after that, respondent filed a motion in which he sought withdraw the stipulations and to proceed to trial. He asserted that he had learned that some of the conclusions stated by the State’s experts as bases for finding that respondent was subject to commitment were contrary to accepted psychiatric opinion.

The State responded, asserting that respondent had not, among other things, shown good cause for withdrawing the stipulations. It also asserted that the request was “unseasonable” in the

sense that he could have made it earlier, not in the sense that he had missed a specific deadline. The court denied respondent's motion about two months after he filed it.

Shortly after this, respondent sought dismissal of his court-appointed counsel and leave to proceed *pro se*. He also filed a motion for leave to file an interlocutory appeal. The court denied leave for the interlocutory appeal but dismissed appointed counsel.

On February 24, 2010, or a little more than three years after the State filed the original petition, respondent filed a "Motion for Relief from Judgment." In it, respondent claimed that the SVP adjudication was the result of several errors. The petition did not specifically refer to section 2—1401 of the Code. The State responded. It treated the motion as a petition under section 2—1401, but asserted that no final judgment existed, so that section 2—1401 relief was unavailable. Respondent, in his reply, did not dispute that his "motion" was a petition under section 2—1401.

On April 22, 2010, the court entered an order that treated the motion as a section 2—1401 petition and dismissed it on the basis that there had not yet been a final order. Respondent filed a timely notice of appeal.

#### ANALYSIS

On appeal, respondent argues that his section 35 adjudication was a final order that he could challenge under with a section 2—1401 petition. He points to the final stipulation:

"The People and the Respondent stipulate and agree that the Respondent is committed to the custody of the Department of Human Services for control, care and treatment in a secure setting until his dispositional hearing."

He suggests that this was a final and enforceable order under which he has been committed as he awaits the section 40 dispositional hearing. He also argues that fairness requires that he be able to raise defects in the stipulations to the trial court.

The State repeats its argument that, because the court had not entered a final order, section 2—1401 relief was unavailable. We agree.

We review *de novo* the dismissal of a section 2—1401 petition. See *People v. Vincent*, 226 Ill. 2d 1, 14-17 (2007). Section 2—1401 relief is available only with respect to a final order. *S.C. Vaughan Oil Co. v. Caldwell, Troutt & Alexander*, 181 Ill. 2d 489, 497 (1998). As we discuss, an adjudication of fact, when the court must decide some consequence that follows from that fact, is not a final order. Thus, absent a section 40 commitment order, section 2—1401 relief is unavailable against a section 35 SVP order.

An adjudication is final only when the court has decided the consequences attached to that adjudication. A criminal conviction is not a final judgment until the court has imposed sentence. *People v. Baldwin*, 199 Ill. 2d 1, 5 (2002). A contempt finding is not a final order unless the court has imposed a penalty. *In re Marriage of Gutman*, 232 Ill. 2d 145, 153 (2008). A finding of civil liability is not a final order without an adjudication of damages. *Morgan v. Richardson*, 343 Ill. App. 3d 733, 739 (2003). Similarly, an adjudication that a person is an SVP cannot be final without the court's decision on the appropriate form of commitment. Section 35(g) of the Act states the same thing in different terms: "A judgment entered under subsection (f) of this Section on the finding that the person who is the subject of a petition under Section 15 is a sexually violent person is interlocutory to a commitment order under Section 40." 725 ILCS 207/35(g) (West 2006).

Respondent argues that, because the court entered a judgment when it found him to be an SVP, a final order existed. This is incorrect. A court promptly enters a judgment when a jury reaches a guilty verdict. However, as we noted, no final order exists until the court sentences the defendant. This example shows that a “judgment” is not synonymous with a “final order.” To the extent that respondent’s arguments bear the implication that the entry of judgment on a jury verdict is final without the sentence, those arguments are misdirected—largely because they confuse finality with importance—and we need not address them further.

Respondent also argues that the inclusion of an enforceable commitment order among the stipulations made that order final. This argument, although logical, misunderstands the nature of the commitment order in the stipulations. Certain orders, such as preliminary injunctions and rulings on bail, are not final dispositions, but instead are enforceable to prevent difficult-to-reverse changes (such as the destruction of property at issue in a suit or a defendant’s flight) until the court can make a final disposition. Section 30 provides for such interim detention upon a finding of probable cause. 725 ILCS 207/30(a) (West 2006). That order “remains in effect until the person is discharged after a trial under Section 35 of this Act or until the effective date of a commitment order under Section 40 of this Act, whichever is applicable.” 725 ILCS 207/30(a) (West 2006). Here, the stipulation for commitment was not something for which the Act provided. However, we think that it is best understood as nothing more than an acknowledgment of the continued effect of the section 30 detention order. An order under section 30 causes a respondent’s detention, but that does not make it final any more than an order concerning bail is final for causing a defendant’s detention.

In response to arguments by the State, respondent asserts that the purpose of section 2—1401 is defeated if he cannot use it as a vehicle to raise his claims of error. He describes the purpose of

the section as allowing a party to present facts that, had the court known them, would have prevented entry of the judgment. On this point, respondent misunderstands what it means for an order to be nonfinal. A “nonfinal” order is subject to modification by the court *without* resort to section 2—1401. See *Washington Mutual Bank, F.A. v. Archer Bank*, 385 Ill. App. 3d 427, 431-32 (2008) (holding that, because the trial court could freely modify a judgment for as long as it remained nonfinal, the court erred when it applied section 2—1401 standards to a party’s filing that requested modification of the judgment). Counsel for respondent followed correct procedure when he filed a motion to withdraw the stipulations. Moreover, this court would have the power to consider the propriety of the trial court’s ruling on that motion if respondent files an appeal from the final judgment under section 40. See *Burtell v. First Charter Service Corp.*, 76 Ill. 2d 427, 434-36 (1979); *In re D.R.*, 354 Ill. App. 3d 468, 472-74 (2004) (both holding that a reviewing court can review any interlocutory order that is a step in the progression leading to the final judgment). That no such review has been available is a consequence only of the unusual delay in the section 40 disposition.

#### CONCLUSION

For the reasons we have stated, we affirm the dismissal of respondent’s section 2—1401 petition.

Affirmed.