

No. 1-11-0343

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IN THE  
APPELLATE COURT OF ILLINOIS  
FIRST DISTRICT

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<i>In Re:</i> COMMITMENT OF RONALD WALKER,	)	Appeal from the
	)	Circuit Court of
(The People of the State of Illinois,	)	Cook County.
	)	
Petitioner-Appellee,	)	No. 03 CR 80001
	)	
v.	)	
	)	
Ronald Walker,	)	Honorable
	)	Joseph Kazmierski,
Respondent-Appellant).	)	Judge Presiding.

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JUSTICE HALL delivered the judgment of the court.

Justices Karnezis and Rochford concurred in the judgment.

**ORDER**

¶ 1 **Held :** (1) The respondent's failure to properly preserve his alleged errors forfeited appellate review. (2) Neither the criminal nor the civil plain-error doctrine applied as none of the alleged errors had merit. (3) Court did not need to address cumulative error argument.

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¶ 2 Following a jury trial, respondent Ronald Walker was found to be a sexually violent person under the Sexually Violent Persons Commitment Act (725 ILCS 207/1 *et seq.* (West 2008) (the Act)). Following a dispositional hearing, the trial court committed respondent Walker to the Department of Human Services (DHS) for care and treatment. Respondent Walker appeals contending that: (1) the trial court's admission of inadmissible and prejudicial testimony was reversible error; (2) this court should apply the plain error doctrine to review the errors not preserved; and (3) the cumulative effect of the errors necessitated a new trial.

¶ 3 **FACTS**

¶ 4 Defendant Walker was scheduled to be released from the Department of Corrections (DOC) on March 5, 2003. On March 4, 2003, the State filed a petition pursuant to the Act seeking the commitment of respondent Walker to the DHS as a sexually violent person.

Following a hearing, the trial court found probable cause to believe that respondent Walker was a sexually violent person and ordered him detained in a facility approved by the DHS, pending evaluations by DHS.

¶ 5 Prior to trial, the State filed an amended petition. The amended petition alleged that respondent Walker had been convicted of two counts of aggravated criminal sexual assault and sentenced to consecutive terms of nine years on each count. The amended petition alleged that, following an evaluation, Dr. Jacqueline Buck, a clinical psychologist, diagnosed respondent Walker as suffering from the following mental disorder: "Paraphilia, Not Otherwise Specified, sexually attracted to non-consenting persons, non-exclusive type." This disorder affected respondent Walker's "emotional or volitional capacity which predisposes the Respondent to

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commit acts of sexual violence." The amended petition further alleged that respondent Walker's mental disorder made it "substantially probable that he will engage in acts of sexual violence."

Respondent Walker's jury trial commenced on December 9, 2009.

¶ 6 Dr. Buck testified on behalf of the State. Following an initial screening by another doctor, respondent Walker was referred to her for an interview to determine if he was a candidate for commitment as a sexually violent person. Dr. Buck had reviewed the files of two thousand prisoners of which approximately 240 she selected to interview. On January 28, 2003, she conducted an interview with respondent Walker. Thereafter, she updated her initial evaluations with reports from respondent Walker's DOC file several times prior to October 2009.

¶ 7 Dr. Buck testified that as part of her evaluation, she considered respondent Walker's criminal history of sexually violent offenses. As a 24-year-old, respondent Walker pleaded guilty and was sentenced to 6 years' imprisonment for a 1987 aggravated criminal sexual assault of an 11-year-old girl, whom he lured away from her mother with the promise of a radio. In 1994, respondent Walker, then 33 years of age, was charged with sexually assaulting a 14-year-old girl. He pleaded guilty to two counts of aggravated criminal sexual assault and received two nine-year-terms of imprisonment to be served consecutively. According to the facts of that case, respondent Walker had been visiting a woman, whom he described as a prostitute. The victim was a friend of the woman's young daughter. Respondent Walker persuaded the victim to accompany him to the store for cigarettes. In an alley, he threatened the victim with a knife and raped her. In discussing the case with Dr. Buck, respondent Walker denied sexually assaulting the victim. The victim had begged him for money and when he refused to give her any, she

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falsely accused him of the assault.

¶ 8 Dr. Buck also considered respondent Walker's criminal history of a nonsexual nature.

While on parole from the 1987 offenses, he was found guilty of trespass to a residence, for which he was placed on probation. In 1993, he was convicted of unlawful use of a weapon by a felon, violating his parole, for which he received a two-year sentence. In addition, respondent violated an order of protection taken out against him by his ex-wife. His parole was violated, and he was sent back to prison, though he only served a few days.

¶ 9 Dr. Buck also considered respondent Walker's record while in the DOC. His record reflected discipline for repeatedly disobeying direct orders and possession and use of drugs and drug paraphernalia. Respondent Walker admitted to her that he had problems with alcohol and that he had been drinking at the time of the first sexual assault. He lied to the judge in 1993 and 1994, that he was addicted to cocaine and heroin, in an effort to avoid a prison sentence.

However, Dr. Buck was uncertain as to the truth or falsity of his statement to the judge. Also relevant was respondent Walker's behavior while at the DHS. Respondent Walker refused to participate in the sex offender program or any of the other therapy groups dealing with substance abuse, relationships or social skills.

¶ 10 Dr. Buck further testified that the significant factors of the two sexual assaults were that the victims were children whom respondent Walker lured away from their parents or friends with bribes and took to locations where they could be sexually assaulted. Dr. Buck also found respondent Walker's constant parole violations significant in forming her ultimate opinion.

¶ 11 Dr. Buck further testified that respondent Walker was offered sex offender treatment

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while in the DOC, but he refused because he did not wish to be an outcast among the other inmates. He also vacillated between whether he had or had not committed the offenses. Since his detention with the DHS, respondent Walker had not participated in sex offender treatment, even though the inmates of the facility are all sex offenders.

¶ 12 Dr. Buck diagnosed respondent Walker with "paraphilia, not otherwise specified. Sexually attracted to non-consenting female. Non-exclusive type." Secondly, she diagnosed him with alcohol, cannabis and cocaine abuse in a controlled environment, for which he had not received any treatment in either the DOC or the DHS.

¶ 13 Finally, Dr. Buck diagnosed respondent Walker with a narcissistic personality disorder with antisocial traits and described how he met the criteria for the disorder. Respondent Walker had a "grandiose sense of self-importance," stressing his middle-class upbringing on the "Gold Coast." He was obsessed with fantasies of his brilliance and intelligence. He did achieve three associates degrees while he was in the DOC, but he rejected sex offender treatment because he did not wish to be seen as a less than superior person by other inmates. Respondent Walker exploited his victims, *i.e.*, bribing them, to get what he wanted. He failed to display empathy, often blaming the victim. Respondent Walker refused to admit any responsibility for his behavior. He told Dr. Buck that he had no idea of the harm he had done, and he had no idea as to what he could have done to prevent himself from committing the second offense. Finally, respondent Walker showed arrogance by considering himself better than the other inmates, the staff and his victims. According to Dr. Buck, respondent Walker's mental disorder paraphilia diagnosis affected his emotional and volitional capacity by predisposing him to commit sexually

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predatory acts against children, which rendered him dangerous.

¶ 14 Dr. Buck explained her use of several actuarial tools in assessing respondent Walker's risk for re-offending. The Minnesota Sex Offender Screening Tool, Revised (MnSOST-R) utilizes historical and current data. Based on her review of the files and her interview with respondent Walker, he scored in the high risk category; 88% of persons in this category re-offend within six years. Under the Violence Risk Appraisal Guide (VRAG), respondent's score placed him in a category where 55% re-offended within 7 years and 64% re-offended within 10 years. Under the Sex Offender Recidivism Appraisal Guide (SORAG), respondent Walker's score made him at extremely high risk to re-offend. Under the HARE psychopathy checklist revised (PCL-R), a score of 30 or higher indicated high psychopathy. While the average person would score between 6 and 12, respondent Walker scored 27. Dr. Buck opined that it was substantially probable that if respondent Walker were released into the community without sex offender treatment, he would sexually re-offend.

¶ 15 Dr. Barry Leavitt, a clinical and forensic psychologist, testified for the State. Following the probable cause hearing, Dr. Leavitt was assigned to do a clinical evaluation of respondent Walker. The doctor's first evaluation was based on respondent Walker's records. His second evaluation was based on his May 2006, interview with respondent Walker. Dr. Leavitt found respondent Walker to be resistant to a discussion of any aspect of his sexual crimes. Of significance to the doctor was respondent Walker's expressed belief that there was no need for him to participate in sex offender treatment and that no such treatment was relevant to dealing with the particular issues he had. Respondent Walker's denials of alcohol and substance abuse in

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the face of the records and his own admissions, showed a tendency to distort the truth.

¶ 16 Dr. Leavitt diagnosed respondent Walker with paraphilia, not otherwise specified, sexually attracted to non-consenting persons, non-exclusive type; alcohol and cannabis abuse within a controlled environment; and suffering from a narcissistic personality disorder, with antisocial personality features. Based on the actuarial risk assessment tools, the records and his interview with respondent Walker, Dr. Leavitt opined that respondent Walker possessed a substantial probability of re-offending in the future, and that he saw him as a high risk for offending in a sexually violent way sometime in the future.

¶ 17 Dr. William Hillman, a clinical psychologist, testified for respondent Walker. Dr. Hillman diagnosed respondent Walker with paraphilia, not otherwise specified and with a personality disorder, not otherwise specified. While respondent Walker did have characteristics of both the narcissistic type and some antisocial features, after talking to people who knew him, Dr. Hillman concluded that he did not have a narcissistic personality. Using the actuarial tools for risk assessment, Dr. Hillman placed respondent Walker in the low to moderate range for re-offending.

¶ 18 Dr. Hillman opined that while respondent Walker did suffer from a mental disorder, that mental disorder did not impair his volitional capacity. Dr. Hillman further opined that it was very unlikely that he would engage in acts of sexual violence in the future.

¶ 19 Following deliberations, the jury found respondent Walker a sexually violent person. Respondent Walker's motion for a new trial was denied. Following a hearing, the trial court committed respondent Walker to the DHS for treatment in a secure facility. Following the denial

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of respondent Walker's amended motion for a new trial, he filed this appeal.

¶ 20

#### ANALYSIS

¶ 21 Respondent Walker contends that the trial court's evidentiary rulings denied him a fair trial. The State responds that respondent Walker forfeited all of his alleged errors

¶ 22

#### I. Forfeiture

¶ 23 In order to preserve an error for appellate review, both an objection at trial and a written posttrial motion are necessary. *Wilbourn v. Cavalenes*, 398 Ill. App. 3d 837, 855 (2010). Illinois Supreme Court Rule 366(b) (2)(iii) (eff. Feb. 1, 1994)) provides that in cases tried to a jury, "[a] party may not urge as error on review of the ruling on the party's post-trial motion any point, ground, or relief not specified in the motion." A posttrial motion must contain the points relied upon, "particularly specifying the grounds in support thereof." 735 ILCS 5/2-1202(b) (West 2008).

¶ 24 Respondent Walker concedes that only one of the issues he raised in this appeal was preserved for review. He maintains that the trial court's error in admitting into evidence a pretrial court order was properly preserved for review, by objecting to the testimony and raising the error in his posttrial motion.

¶ 25 At trial, Dr. Buck testified: "In this case, I had court orders from the Judge to interview Mr. Walker. And attempted to do so. But he refused to enter the room and refused - -." Defense counsel's objection was overruled. Paragraphs 11 and 13 of respondent Walker's amended posttrial motion alleged as follows:

"11. Walker was denied a fair trial because of repeated inappropriate, immaterial, and

irrelevant remarks made by Dr. Jacqueline Buck during her testimony before the jury.

\* \* \*

13. At trial, the trial court erred in allowing Dr. Buck to testify on matters outside the scope of her expertise and to use this information in reaching a conclusion when the information would not be reasonably relied upon by an expert in clinical psychology in coming to an opinion."

¶ 26 A posttrial motion need not specify errors in detail; the motion need only indicate the grounds upon which the movant relies with sufficient particularity for the trial court to be able to identify the error complained of. *Lyon Metal Products, L.L.C. v. Protection Mutual Insurance Co.*, 321 Ill. App. 3d 330, 339-40 (2001). Nothing in paragraphs 11 and 13 of the amended posttrial motion would have identified the alleged error regarding the admission of the pretrial order for the trial court. Therefore, this error is forfeited as well.

¶ 27 We conclude that respondent Walker has forfeited the errors he raised in this appeal.

¶ 28 II. Plain Error

¶ 29 Respondent Walker requests that this court review his forfeited errors under the plain-error doctrine. See Ill. S. Ct. R. 615(a) (eff, August 27, 1999). The State responds that because commitment proceedings under the Act are civil in nature, the "civil plain error doctrine" applies.

¶ 30 Under the plain-error doctrine, a court may consider a forfeited error when either: "(1) the evidence is close, regardless of the seriousness of the error, or (2) the error is serious, regardless of the closeness of the evidence.'" *People v. Span*, 2011 IL App (1st) 083037, ¶ 73 (quoting *People v. Herron*, 215 Ill. 2d 167, 186-87 (2005)). The plain-error doctrine is set forth

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in supreme court rules governing criminal appeals. Ill. S. Ct. R. 615(a) (eff, August 27, 1999).

¶ 31 The State relies on *Wilbourn*. In that case, this district recognized that the plain-error doctrine may apply in civil cases but limited the doctrine's application to those cases " ' where the act complained of was a prejudicial error so egregious that it deprived the complaining party of a fair trial and substantially impaired the integrity of the judicial process.' " *Wilbourn*, 398 Ill. App. 3d at 856 (quoting *In re Marriage of Saheb*, 377 Ill. App. 3d 615, 627 (2007)). Under either analysis, we must first determine whether error occurred. See *Span*, 2011 IL App (1st) 083837, ¶ 73 (in conducting a plain-error analysis, the court determines, first, if error occurred); *In re Charles K.*, 405 Ill. App. 3d 1152 (2010) (applying a doctrine analogous to the plain-error doctrine in an involuntary commitment case, the court would first determine if error occurred, and if so, whether the respondent suffered any prejudice as a result).

¶ 32 III. Did Error Occur

¶ 33 A. *Allowing Dr. Leavitt to Interpret the Act*

¶ 34 On direct examination, Dr. Leavitt was asked to describe the Act. In response, the doctor testified as follows:

"[The Act] is a civil commitment act that was established in January of 1998 here in Illinois. It involved the civil commitment of individuals who are deemed to meet the criteria, under the Illinois law, for potential civil commitment.

Basically, that is a law that is designed to be able to identify individuals who have a certain mental disorder, who, as a result of their mental disorder, possess a high likelihood of re-offending, without the opportunity for further secure care treatment."

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¶ 35 Respondent Walker maintains that Dr. Leavitt was not competent to testify to the legislature's purpose in creating the Act. He also maintains that whether a respondent has a qualifying mental disorder and the likelihood of re-offending are jury questions. He further maintains that Dr. Leavitt misstated the legal standard for finding a person a sexually violent person under the Act and included an element not required by the Act.

¶ 36 Experts are not competent to give testimony amounting to statutory interpretation. *LID Associates v. Dolan*, 324 Ill. App. 3d 1047, 1058 (2001). In *Chicago Title & Trust Co. v. Brescia*, 285 Ill. App. 3d 671 (1996), this court held that the trial court committed reversible error in allowing an expert witness to testify as to the definition of " 'charge of ' " in a Structural Work Act case and remanded for a new trial. *Brescia*, 258 Ill. App. 3d at 682. In *LID Associates*, the reviewing court found reversible error where the expert witnesses testified to a standard of fiduciary care which was not supported by Illinois law and differed from the trial court's instructions to the jury. *LID Associates*, 324 Ill. App. 3d at 1059. See also *Christou v. Arlington Park Race Tracks Corp.*, 104 Ill. App. 3d 257 (1982) (cross-examination which conveyed to the jury that there was a constitutional bar to making a statute retroactive was improper as both prejudicial and an incorrect statement of the law).

¶ 37 The complained-of testimony occurred at the beginning of Dr. Leavitt's testimony and conveyed nothing more than a brief overview of the Act. In describing the Act, Dr. Leavitt spoke in general terms. Any reference to the definitions of terms or criteria required by the Act was not given as part of his expert opinion. Therefore, the complained-of testimony by Dr. Leavitt did not amount to an interpretation of the Act.

¶ 38                    *B. Admission of Evidence of Respondent Walker's Prior Arrests*

¶ 39    Respondent Walker contends that it was error to admit evidence of his prior arrests that did not lead to convictions.

¶ 40    Dr. Leavitt testified that as part of his evaluation, he considered respondent Walker's arrests for battery and harassment. The arrests were not introduced as substantive evidence but as a factor that Dr. Leavitt considered in his evaluation and in diagnosing respondent Walker with a narcissistic personality disorder, with antisocial personality features. In *In re Commitment of Hooker*, 2012 IL App (2d) 101007, the court held that the respondent's multiple arrests, even if the crimes were not specified, were relevant bases for the experts' diagnosis of a personality disorder with antisocial tendencies. *Hooker*, 2012 IL App (2d) 101007, ¶ 65.

¶ 41    Therefore, the admission of respondent Walker's prior arrests was not error.

*C. Dr. Buck's Testimony Describing the DOC's Screening Process*

¶ 42    Respondent Walker contends that Dr. Buck's testimony that only a very small percentage of inmates are selected for a full evaluation allowed the jury to infer that he must be a sexually violent person as he was selected for a full evaluation. Other than to point out that even relevant evidence may be excluded if there is a danger of undue prejudice, respondent Walker fails to cite any relevant authority in support of his argument that he was unduly prejudiced by Dr. Buck's testimony describing the screening process. Therefore, the error is forfeited. Ill. S. Ct. R. 341(h)(7) (eff. July 1, 2008).

¶ 43    *D. Dr. Buck's References to Respondent Walker and the Victims and Their Families*

¶ 44    Respondent Walker contends Dr. Buck made numerous inappropriate references to him

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and to the victims and their families that were so prejudicial as to impact the outcome of the trial.

" [A]ppeals to the passion or sympathy of the jury are improper and sufficient cause for reversing a judgment unless it can be said that the prejudice suffered was so minimal that it did not impact upon the outcome of the trial.' " *Downey v. Dunnington*, 384 Ill. App. 3d 350, 388 (2008) (quoting *Lorenz v. Siano*, 248 Ill. App. 3d 946, 953 (1993)).

¶ 45 Dr. Buck explained that respondent Walker's early life did not fit with that of a person having an antisocial personality disorder, but that after the age of 24, respondent Walker was "a train wreck." Dr. Buck also testified that the mother of one of the victim's was only "a single woman trying to make ends meet." We are satisfied that the sustaining of the defense counsel's objections to those remarks eliminated any prejudice to respondent Walker.

¶ 46 Dr. Buck also testified that a capacity for empathy was part of the diagnostic criteria and that respondent Walker did not demonstrate any empathy for the people around him, describing him as the "Lone Ranger." While respondent Walker maintains the reference to the "Lone Ranger" amounted to prejudicial "name calling," we are of the opinion that Dr. Buck's reference merely illustrated why she determined respondent Walker lacked empathy. Dr. Buck also referred to respondent Walker as someone who continued to violate the law. Contrary to respondent Walker's argument, the fact that respondent Walker continued to violate the law was a factor in her evaluation and therefore relevant to her determination as to whether he was a sexually violent person and his potential for re-offending.

¶ 47 Respondent Walker then contends that Dr. Buck continually emphasized her opinion that his victims were little girls, the children of prostitutes, and came from seedy families. However,

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the jury was aware of the victims' actual ages of 11 and 14. Moreover, Dr. Buck testified that it was respondent Walker who used the terms "prostitutes" and "seedy people" in reference to his victims and their families. It was her opinion that respondent Walker's use of those terms reflected one of the criteria for a narcissistic personality. Therefore, the testimony was relevant to her diagnosis.

¶ 48 In any event, we fail to find any possible prejudice sufficient to have impacted the jury verdict in this case. To do so, we would have to infer that the jury completely disregarded the testimony of all the doctors, including that of respondent's own expert, Dr. Hillman, as well as the jury instructions applicable to the consideration of the evidence. We will not attribute such "simplemindedness" to the jury in this case. See *Downey*, 384 Ill. App. 3d at 388-89 ( the reviewing court "believed better of the jury" and declined to find that the improper reference to the defendant's father as a "clergyman" required a reversal of the verdict).

¶ 49 *E. Lack of Participation in Sex Offender Treatment*

¶ 50 Respondent Walker contends that Dr. Buck's testimony that he refused to participate in sex offender treatment was a denial of his right to remain silent, provided in section 25 of the Act. See 725 ILCS 207/25(c)(2) (West 2008). His reliance on *In re Detention of Anders*, 304 Ill. App. 3d 117 (1999) is misplaced. *Anders* held that under the Act, a respondent's right to remain silent only applied to hearings conducted after the commitment petition was filed. *Anders*, 304 Ill. App. 3d at 121. Moreover, the court in *Anders* agreed with the interpretation of section 25(c)(2) in *In re Detention of Tiney-Bey*, 302 Ill. App. 3d 396 (1998). In that case, the court held that section 25(c)(2) was a "specific provision granting a respondent the right to remain silent,

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which only applies in *hearings* under the [Act]." (Emphasis in original.) *Tiney-Bey*, 302 Ill. App. 3d at 401.

¶ 51 Respondent Walker argues that even if relevant, the emphasis on his refusal to participate prejudiced him. Both Dr. Buck and Dr. Leavitt found respondent Walker's refusal to participate in sex offender treatment a factor in their evaluations. Dr. Leavitt found it to be a significant factor. We find that the relevancy of the evidence outweighed the prejudice to respondent Walker.

¶ 52 *F. Admission of Pretrial Order*

¶ 53 Respondent Walker contends that Dr. Buck's testimony regarding the contents of a court order was inadmissible and irrelevant hearsay. Dr. Buck testified that she had court orders to interview respondent Walker, but when she attempted to do so, he refused to enter the room.

¶ 54 Respondent Walker argues that the State failed to show that the pretrial order was evidence that Dr. Buck reasonably relied on to form her opinion or was the type of document reasonably relied upon by experts in her field, citing *In re Detention of Isbell*, 333 Ill. App. 3d 906 (2002).

¶ 55 In order to constitute hearsay, the statement must be offered to prove the truth of the matter asserted. *People v. Gonzales*, 379 Ill. App. 3d 941, 954 (2008). Where the out-of-court statement is offered to prove its effect on the listener's mind or to show why the listener subsequently acted as he did, the statement does not constitute hearsay and is admissible. *Gonzales*, 379 Ill. App. 3d at 941.

¶ 56 After the trial court overruled the objection, Dr. Buck testified: "Refused to talk to me and

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refused to sign the refusal form. So, this, again, is prepared from documentation from the time of my 2008 report to my 2009 report." In this case, Dr. Buck was explaining why her October 15, 2009, evaluation was prepared from documentation rather than an interview with respondent Walker. Therefore, Dr. Buck's testimony does not constitute inadmissible hearsay.

¶ 57 As to possible prejudice, respondent Walker points out that the court order merely authorized Dr. Buck to re-interview him and therefore, it wrongly insinuated to the jury that he refused to obey a court order. Coming as it did in Dr. Buck's testimony as to her evaluation updates, we find no reason to assume that the effect of respondent Walker's refusal to be interviewed on the jury would have been any different if Dr. Buck testified that the court "authorized" her rather than "ordered" her to re-interview respondent Walker. Moreover, the pretrial order did not require respondent Walker to do anything, *i.e.*, it did not require him to cooperate with Dr. Buck. Therefore, we fail to find any prejudice to respondent Walker.

¶ 58

#### IV. Conclusion

¶ 59 In summary, respondent Walker failed to preserve any of the errors he raised on appeal. Therefore, he has forfeited review of those errors. We need not determine whether the criminal or civil plain-error doctrine applies in this case, as we have determined that no error occurred. In the absence of any error, there can be no cumulative error.

¶ 60 The judgment of the circuit court is affirmed.

¶ 61 Affirmed.

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