FIRST DIVISION
August 10, 2015

No. 1-11-2815



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IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

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| *In re* COMMITMENT OF STEPHEN SMITH, | ) | Appeal from the |
| (THE PEOPLE OF THE STATE OF ILLINOIS, | ) | Circuit Court of |
| | ) | Cook County. |
| Petitioner-Appellee, | ) | |
| | ) | |
| v. | ) | No. 05 CR 80005 |
| | ) | |
| STEPHEN SMITH, | ) | Honorable |
| | ) | Paul P. Biebel, Jr., |
| Respondent-Appellant). | ) | Judge Presiding. |

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JUSTICE CONNORS delivered the judgment of the court.
Presiding Justice Delort and Justice Cunningham concurred in the judgment.

**O R D E R**

¶ 1 *Held*: After finding respondent to be a sexually violent person, the court did not err in granting the State's request for a second evaluation of respondent, which recommended placement in a secure facility for treatment, after an initial evaluation by a different expert indicated a secure setting was not required.

¶ 2 Following a bench trial, the trial court found respondent Stephen Smith to be a sexually violent person under the Sexually Violent Persons Commitment Act (the Act) (725 ILCS 207/1 *et seq*. (West 2008)). Respondent was committed to a secure facility for treatment after a dispositional hearing was held. On appeal, respondent contends the trial court erred when, prior

to the dispositional hearing, the court granted the State's request for a second evaluation of respondent after the initial psychologist appointed by the court concluded that respondent did not require commitment in a secure setting. We affirm.

¶ 3 On July 13, 2005, the State filed a petition pursuant to the Act, alleging that respondent was a sexually violent person. The petition alleged that respondent, who was born in 1965, had been convicted in 2000 of the offense of predatory criminal sexual assault (720 ILCS 5/12-14.1(a)(1) (West 1994)) and was sentenced to 15 years in prison and that respondent had been convicted in 1998 of aggravated criminal sexual abuse (720 ILCS 5/12-16(c) (1)(i) (West 1994)) and was sentenced to three years of probation. The petition alleged that respondent was scheduled for release from incarceration within 90 days of the filing of the petition. The petition alleged that respondent suffered from the mental disorder of pedophilia as to females and that he was dangerous to others because his mental disorders created a substantial probability that he would engage in future acts of sexual violence.

¶ 4 Attached to the petition was a psychological evaluation of respondent on June 21, 2005, by Dr. Joseph W. Proctor, a clinical psychologist working for the Illinois Department of Corrections. Dr. Proctor concluded that respondent's mental disorder of pedophilia and additional risk factors made it substantially probable that he would engage in continued acts of sexual violence should he be released into the community. A probable cause hearing was set, and on July 18, 2005, an agreed order was entered indicating that probable cause was found. Respondent was admitted to the Illinois Department of Human Services Treatment and Detention Facility (DHS-TDF) in Rushville.

¶ 5 After a delay of several years, on February 10, 2009, the State filed an amended petition seeking respondent's commitment as a sexually violent person based on respondent's convictions and on the evaluation of Dr. Proctor. A bench trial was held on September 14, 2009. The parties stipulated to respondent's predatory criminal sexual assault conviction as the commission of a sexually violent offense.

¶ 6 The State presented the testimony of Dr. Proctor and Dr. Ray Quackenbush, a licensed clinical psychologist. Dr. Proctor testified that in forming his opinion that respondent posted a continued risk to the community, respondent's convictions for sex offenses were significant. Dr. Proctor noted that respondent's earlier aggravated criminal sexual abuse conviction involved seven charges related to a six-year-old girl that occurred when respondent was a Chicago police officer. Dr. Proctor also said respondent's subsequent predatory criminal sexual assault conviction involved an eight-year-old girl who claimed respondent forced her to perform oral sex while she was between the ages of five and eight if she wanted to be fed meals.

¶ 7 Dr. Proctor testified that when he asked respondent about those events, he denied committing the offenses and said the girls were 12 years old. Dr. Proctor found it noteworthy that respondent committed the latter offense while the proceedings on the first offense were ongoing. He also noted respondent did not participate in sex offender treatment while he was incarcerated. Dr. Proctor found that respondent suffered from the mental disorder of pedophilia, with a sexual attraction to females, and that he was predisposed to commit acts of sexual violence.

¶ 8 Dr. Proctor described a series of tests he performed to support his opinion, stated in his 2005 report, that it was "substantially probable" that respondent would commit similar sexual

offenses in the future. He testified his opinion at the time of trial was the same as stated in the 2005 report because no factors had changed.

¶ 9 Dr. Quackenbush testified that he performed an evaluation of respondent on behalf of DHS following the trial court's 2005 finding of probable cause on the State's petition to have respondent found a sexually violent person. Dr. Quackenbush reviewed respondent's records and then interviewed respondent in July 2005. He also prepared updated reports in 2007, 2008 and 2009. In preparing the 2009 report, Dr. Quackenbush reviewed treatment records from DHS and the facts of the offenses with which respondent had been charged. He interviewed respondent, who admitted to the offenses; however, he reported that respondent "would minimize the seriousness of things" and "provide[] answers that tended to shift the responsibility for what he did away from himself." Dr. Quackenbush found it significant that respondent had not participated in any sex offender treatment during his incarceration.

¶ 10 Dr. Quackenbush diagnosed respondent with pedophilia, namely sexual attraction to young girls, as evidenced by his strong sexual urges and behavior over a period of six months or longer to prepubescent girls, or girls under the age of 13. Respondent's pedophilia was also evidenced by his adult age at the time of the offenses and the disruption or impairment to his life due to that behavior, specifically his incarceration. Dr. Quackenbush opined that respondent therefore met the criteria of a sexually violent person and was likely to reoffend.

¶ 11 On October 13, 2009, the court found respondent to be a sexually violent person. The court initially stated it had "enough information" to enter a commitment order, but upon prompting by the State, the court ordered a predisposition investigation to be completed on or before December 3, 2009.

¶ 12 On November 23, 2009, Dr. David Suire, a licensed clinical psychologist, submitted a report indicating he had interviewed respondent on October 21, 2009. Dr. Suire reviewed the evaluations and reports previously submitted by Dr. Proctor and Dr. Quackenbush and other materials relating to respondent and the sexual offenses. He concluded that if respondent were to be conditionally released, it was not substantially probable he would commit future acts of sexual violence and he did not require a secure setting such as the DHS-TDF to reduce the risk of future acts.

¶ 13 In January 2010, the court granted the State's request for an independent evaluation of respondent for the predisposition investigation and appointed Dr. Barry Leavitt as the State's expert to perform an independent predisposition investigation. In February 2010, Dr. Leavitt submitted a report indicating that respondent refused to be interviewed. Dr. Leavitt reviewed Dr. Suire's report, along with the evaluations and reports of Dr. Proctor and Dr. Quackenbush and records relating to respondent and his criminal offenses. He opined that respondent continued to require mental health treatment both related and unrelated to his sex offenses. Dr. Leavitt concluded that the least restrictive and most appropriate environment for respondent was to be placed within the secure-care sex offender treatment setting at the DHS-TDF facility in Rushville.

¶ 14 On April 6, 2010, respondent asked the court to reconsider its ruling that respondent was a sexually violent person and its ruling allowing the State to obtain a second predisposition investigation report. He first asserted the court should weigh Dr. Suire's opinion together with the reports of Dr. Proctor and Dr. Quackenbush in reconsidering the determination that he is a sexually violent person. In addition, respondent attached the report of Dr. Suire to his motion and

asserted the State should not have been allowed to obtain the opinion of Dr. Leavitt after Dr. Suire already concluded respondent's placement in a secure facility was not required.

¶ 15 On July 7, 2010, the court heard arguments on respondent's motions. The State asserted respondent had the opportunity to present evidence at the hearing to determine whether he was a sexually violent person. Noting the testimony of Dr. Proctor and Dr. Quackenbush, the trial court denied the motion for reconsideration of its determination that respondent was a sexually violent person. The court also denied respondent's motion challenging the appointment of Dr. Leavitt.

¶ 16 On April 14, 2011, the court held a dispositional hearing to aid in the entry of a commitment order. Counsel for respondent agreed to have the court review the reports of Dr. Suire and Dr. Leavitt and that the court would render its ruling "based upon the reports." The State submitted Dr. Leavitt's report, recommending a secure-care setting, and respondent's counsel submitted Dr. Suire's report, which concluded that such confinement was not required. The court heard arguments at a later date.

¶ 17 On July 26, 2011, the trial court ordered that respondent be committed to DHS for treatment in a secure facility. In a written opinion, the court concluded the least restrictive setting that would serve respondent's treatment needs while protecting the community's safety concerns was for respondent to be placed in secure-care sex offender treatment at the DHS-TDF facility in Rushville. In its written opinion, the court reviewed the facts surrounding respondent's offenses and summarized the reports of Dr. Suire and Dr. Leavitt, noting the disparity in their recommendations for respondent. The court noted those experts agreed in their diagnoses and neither doctor stated that respondent no longer suffered from pedophilia and would not benefit

from treatment. The court also noted Dr. Suire's statement that respondent would be less likely to participate in treatment if placed on conditional release.

¶ 18 On appeal, respondent contends the trial court committed reversible error in allowing the State to obtain a second predisposition evaluation from Dr. Leavitt following the report from Dr. Suire that placement in a secure setting was not needed. He contends the Act does not allow the State to obtain numerous evaluations in search of a recommendation that respondent should be committed to a secure care setting. The State responds that the Act does not limit the number of experts that can be appointed as part of a predisposition investigation.

¶ 19 The Act allows the State to extend the incarceration of criminal defendants beyond the time they would otherwise be released if they are found to be a sexually violent person. *In re Commitment of Brown*, 2012 IL App (2d) 110116, ¶ 13. A "sexually violent person" is one who has been convicted of a sexually violent offense 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 2008).

¶ 20 After the State files a petition under the Act, the court must hold a hearing to determine whether probable cause exists to believe that the respondent is a sexually violent person. 725 ILCS 207/15(c) (West 2008). If the court determines that probable cause exists, it must order the respondent to be taken into custody and transferred to an appropriate facility for an evaluation as to whether the individual is a sexually violent person. 725 ILCS 207/30(b) (West 2008). The State may obtain more than one evaluation for use at a trial as to whether a respondent should be committed as a sexually violent person. *In re Commitment of Brown*, 2012 IL App (2d) 110116,

¶ 16. At trial on the petition, the State must prove the petition's allegations beyond a reasonable doubt. 725 ILCS 207/35(d) (West 2008).

¶ 21 As soon as is practicable after a judgment that the respondent is a sexually violent person, the court shall enter an initial commitment order pursuant to a hearing. 725 ILCS 207/40(b)(1) (West 2008); see also *In re Commitment of Fields*, 2014 IL 115542, ¶ 49 (resolving split of authority by holding that a dispositional hearing is required prior to entering an order of commitment). On appeal from an order committing a respondent to a secure facility, we review the trial court's decision for an abuse of direction. *In re Detention of Lieberman*, 379 Ill. App. 3d 585, 608-09 (2007).

¶ 22 The order of commitment entered after such a hearing must specify whether the respondent should be placed in a secure facility for treatment or be conditionally released. 725 ILCS 207/40(b)(2) (West 2008). The version of section 40(b)(1) in effect at the time of the proceedings in this case provided the following procedure for making that determination:

> "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. A supplementary mental examination under this Section shall be conducted in accordance with section 3-804 of the Mental Health and Developmental Disabilities Code (405 ILCS 5/3-804)." 725 ILCS 207/40(b)(1)(West 2008).

¶ 23 Section 40(b)(1) invests the trial court with broad discretionary powers to request such an investigation and to continue the hearing to obtain additional information. See *In re Detention of*

*Tittlebach*, 324 Ill. App. 3d 6, 12-13 (2001); see also generally *People v. Winterhalter*, 313 Ill. App. 3d 972, 981 (2000). Respondent does not cite to any authority that a finite number of experts can be consulted as part of a predisposition investigation.

¶ 24 Respondent does not, and can not, assert that he was prevented from offering evidence at the dispositional hearing. Indeed, the record of the July 2010 hearing at which the trial court denied respondent's motion challenging the appointment of Dr. Leavitt reveals that respondent's counsel elected not to present evidence at the dispositional hearing. The record indicates that respondent's counsel had contemplated presenting an expert witness at trial. Counsel told the court his expert would testify later at the dispositional hearing, stating his intention "to use her."[1] Instead, when that hearing took place, respondent's counsel agreed that the court should render a decision based on the reports of Dr. Suire and Dr. Leavitt. Even though those two experts recommended different dispositions, it was the role of the trial court to weigh their testimony and assess their credibility in issuing a ruling in this case. See *In re Detention of Welsh*, 393 Ill. App. 3d 431, 455 (2009).

¶ 25 We note that the current version of the section 40(b)(1) addresses the State's use of multiple experts. See 725 ILCS 207/40(b)(1) (eff. Jan. 1, 2011). When the court granted the State's request for Dr. Leavitt's evaluation, section 40(b)(1) did not address the ability of the State to have its own experts evaluate a respondent during a dispositional hearing prior to an order of commitment. Section 40(b)(1) has been amended to include this final sentence: "The State has the right to have the person evaluated by experts chosen by the State." 725 ILCS

[1] Respondent's counsel's reference to a female indicates that the expert was someone other than those already mentioned in this order, who are male.

207/40(b)(1) (eff. Jan. 1, 2011). However, our conclusion in this case is not altered by the absence of that language in the statute in 2010. The statute in effect at the time of these proceedings did not address or limit the amount of information the court could allow to assist it in the entry of a commitment order. See 725 ILCS 207/40(b)(1) (West 2008). Moreover, respondent was not prevented from offering conclusions of his own experts. The fact that Dr. Leavitt's conclusion differed from that of Dr. Suire does not mean Dr. Leavitt's conclusion should not have been considered by the court.

¶ 26 In conclusion, section 40(b)(1) of the Act does not dictate the number of evaluations that can be completed as part of a predisposition investigation to assist the trial court in entering an initial commitment order in a sexually violent person case. Thus, the court did not err in granting the State's request for an evaluation of respondent by Dr. Leavitt.

¶ 27 Accordingly, the judgment of the trial court is affirmed.

¶ 28 Affirmed.