

2015 IL App (2d) 130314-U
No. 2-13-0314
Order filed March 4, 2015

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IN THE
APPELLATE COURT OF ILLINOIS
SECOND DISTRICT

<i>In re</i> DETENTION OF RICHARD KASTMAN,)	Appeal from the Circuit Court of Lake County.
)	
Plaintiff-Appellee,)	
)	
)	No. 93-CM-4621
)	
(The People of the State of Illinois, Respondent-Appellee, v. Richard Kastman, Petitioner-Appellant).)	Honorable Thomas M. Schippers, Judge, Presiding.

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

ORDER

¶ 1 *Held:* The trial court's determination that respondent remained a sexually dangerous person and that it was substantially probable that he would reoffend if not confined was not against the manifest weight of the evidence. Further, the trial court did not improperly shift the burden of proof to respondent. We affirmed.

¶ 2 In 1994, a jury found respondent, Richard Kastman, to be a sexually dangerous person pursuant to section 3 of the Sexually Dangerous Persons Act (the Act) (725 ILCS 205/2 (West 1992)). The trial court ordered respondent committed to the Department of Corrections (the Department) until he recovered from his mental disorders and was no longer sexually dangerous. In 2010, respondent filed an application for discharge or conditional release, claiming that he

completed his treatment. Following an evidentiary hearing, the trial court denied respondent's application. Respondent timely appealed, contending that (1) the State failed to demonstrate by clear and convincing evidence that he would sexually reoffend if placed on conditional release; and (2) the trial court improperly shifted the burden of proof. We affirm.

¶ 3

I. BACKGROUND

¶ 1 On September 30, 1993, the Waukegan police department charged respondent with disorderly conduct and public indecency. On November 2, 1993, the State initiated civil commitment proceedings, seeking to declare respondent a sexually dangerous person. On April 20, 1994, a jury returned a verdict finding that respondent is a sexually dangerous person. On June 1, 1994, the trial court entered an order finding respondent a sexually dangerous person and appointing the Department as his guardian. The trial court ordered respondent committed to the Department's custody "until [respondent] has recovered from his mental disorders and is no longer a sexually dangerous person as determined by this [c]ourt ***." Respondent has been committed at the Big Muddy River Correctional Center (Big Muddy) since 1994.

¶ 4 On April 10, 2010, respondent filed an application for discharge or conditional release. On July 2, 2012, the trial court conducted an evidentiary hearing. The State first called Jessica Stover, a licensed social worker. Stover testified that she received her license in 2008 and, that same year, the Illinois Sex Offender Management Board authorized her to perform sex offender evaluations. In October 2010, Stover began working at Big Muddy, where she serves as a social worker to 166 individuals committed as sexual dangerous persons by facilitating group therapy sessions. Stover is part of a "socio-psychiatric recovery evaluation team" that evaluates sexually dangerous persons applying for recovery. The team meets with individuals applying for recovery, and reviews records and other materials. The evaluation team then assesses whether

the individual has reached a point where his or her recidivism is reduced, and recommends a treatment plan for the evaluation. The purpose of the evaluation is to determine if the sexually dangerous person has reached a level of recovery where she or he could be released into the community, either with or without conditions.

¶ 5 Stover testified that she has known respondent since 2010 and has worked with him for “several months” in group therapy sessions, but at the time of the hearing, respondent was no longer part of her group therapy sessions. Kastman had been in sex offender treatment from 1996 to 2005, although he had been suspended “numerous times” during that period; respondent has been in treatment consistently since 2005. Stover believed that respondent still needed “sex offender specific treatment” and that respondent “[had] not reached a point in treatment where he can effectively manage or reduce his risk of future recidivism.”

¶ 6 Dr. Angeline Stanislaus, a forensic psychiatrist, testified next on the State’s behalf. Stanislaus testified that she is board certified in general psychiatry and forensic psychiatry. Stanislaus began working with sexually dangerous persons at Big Muddy in 1994 by providing psychiatric treatment to committed individuals who have other mental health issues. Since May 2004, Stanislaus has evaluated between 250 and 300 sexually dangerous persons, with more than 60% being pedophiles. Stanislaus started treating respondent in 2004 by providing him with psychotropic medication to treat his depression and panic attacks. When Stanislaus first met with respondent, he had been seeing another psychiatrist since 1994. Stanislaus reviewed respondent’s medical records and interviewed him, and diagnosed him with major depressive disorder and panic disorder. Stanislaus prescribed respondent an antidepressant and “met with him regularly.” Stanislaus did not treat respondent specifically for sex offending because that treatment is provided in group therapy and she does not participate in group therapy.

¶ 7 With respect to respondent's socio-psychiatric evaluation, Stanislaus reviewed respondent's criminal history, which included looking at individual investigative reports related to every case for which respondent had been arrested, charged, or convicted; and also records from the Department of Corrections. Stanislaus, along with Stover and Dr. Mark Carich, also interviewed respondent for 6 ½ hours over the course of 2 days in October 2011. During the interview, respondent was "very pleasant and cooperative," "not agitated," and spoke fluently while answering questions with "elaborate responses." Stanislaus testified regarding respondent's criminal history dating back to 1977 and opined that he had engaged in "two specific types" of sexual behavior: flashing to children and soliciting sex from young boys. During the interview, respondent related that, a year-and-a-half prior, "he had a sexual fantasy of another victim [named Steve] who was 11 or 12 years old that he had met in 1992." During the interview, respondent acknowledged that he was sexually attracted to boys aged 9 to 11.

¶ 8 Stanislaus diagnosed respondent as having pedophilia sexual attraction to males and females, exhibitionism, "alcohol dependent in a controlled environment," major depressive disorder, and panic disorder. Stanislaus testified that the treatment program at Big Muddy is a "cognitive behavioral model based group therapy," which involves active participation group therapy. Stanislaus testified that respondent has been in treatment since 1994, but "decided to apply himself more in treatment in 2005, and since then he stated that he has been making a certain amount of progress." Respondent acknowledged to Stanislaus, that he has not completed his "sex offense cycle," which "basically means [that] you understand psychological factors that fuel sexual offending, and then you look at various triggers *** and how it led to continue the cycle."

¶ 9 Stanislaus opined that respondent “has made progress” since the last evaluation in 2008. However, “he was not to the point where he has really addressed all the issues he needs to address, [or] made consistent sustainable progress in those areas so he could contain himself from offending again. Stanislaus explained that respondent related to him during the October 2011 interview that, when he was in segregation, he would have “flashing fantasies.” Stanislaus considered that “an area of concern” because “the moment stress comes in *** he then escapes back into how he knew how to deal with it through sexual fantasies or flashing.” Stanislaus testified that the “other concern” is respondent’s negative mental state or “emotional discontrol.” Stanislaus noted an example that occurred in September 2011, where respondent had a disagreement with a cellmate “regarding some items.” Instead of trying to resolve that misunderstanding, respondent “got angry and explosive,” was given the institutional violation of assault of an inmate, and placed in segregation. Stanislaus testified that lack of emotional control is a risk factor of recidivism to continue to propagate sexual offending behaviors. Stanislaus opined that respondent has the propensity to commit sexual offenses. Stanislaus opined that respondent was a sexually dangerous person based on his mental disorders of exhibitionism and pedophilia, and that those disorders have been coupled with the propensity to commit sexual offenses. Stanislaus testified that respondent was “substantially likely to commit sexual offenses” if he were placed on conditional release because he had not developed “enough sexual arousal control” or addressed the psychological factors that had led to sexual offending. Stanislaus testified that Big Muddy was the safest place for respondent.

¶ 10 During cross-examination, Stanislaus could not recall a single note from group therapy regarding respondent’s arousal control, or a note reflecting respondent discussing arousal control while in group therapy. Stanislaus admitted that she could not recall whether respondent’s

treatment providers, other than Dr. Carich, told her that respondent had a problem with arousal control. Stanislaus acknowledged that she never spoke with respondent's sister, but maintained that respondent would not have a social network if released because respondent lives in Illinois, his sister lives in Wisconsin, and his parents are deceased. Stanislaus acknowledged that respondent went to church, but she did not know if church was a social activity. Stanislaus acknowledged that, in a semi-annual report dated January 2008, respondent scored "excellent" for arousal control. Stanislaus clarified that she did not rely on semi-annual evaluations when reaching her opinion. Stanislaus did not speak with anyone, treatment providers or other inmates, who were in respondent's cycle groups. Stanislaus acknowledged that sexually dangerous persons on conditional release could be prescribed Depo Provera, a female hormone that reduces sex drive, and Antabuse, a medication that makes a person physically ill if he or she consumes alcohol. When asked if she considered GPS monitoring when forming her opinion that respondent should remain in custody, Stanislaus said that "[t]here's no point" because she did not know what type of GPS system was available. Stanislaus clarified that she considered GPS monitoring when forming her opinion that respondent should not be conditionally released, but she was "not thinking real time."

¶ 11 Dr. Mark Carich, a licensed counselor, testified next on the State's behalf. Carich testified that he began working at Big Muddy in 1995 and "took over" the sexually dangerous persons program in 2004. The goal of the program is recovery, which Carich defined as "the capability of maintaining absence from sexually offending."

¶ 12 Carich testified that in October 2011, he participated in respondent's evaluation pursuant to a court order after respondent filed his recovery petition. Carich opined that respondent "got real serious" with the recovery program in 2005 and "has been with it ever since." Since 2005,

respondent has had less program sanctions or violations, and has been more compliant. Respondent was “making a lot of progress.” (r.6416.) Carich testified, however, that respondent needed to do a couple of things to be deemed recovered, which included identifying his offense process, developing intimate but non-sexual relationships with other individuals, managing his anger issues, and learning sexual regulation skills with respect to arousal control. Carich diagnosed respondent with pedophilia, anti-social personal disorder, and exhibitionism. Carich testified that respondent continues to suffer from pedophilia, which is an attraction to prepubescent children. Respondent continues to suffer from exhibitionism, which involves exposing his genitals to other people. Carich testified that respondent would engage in sex offenses in the future if not confined. Carich further testified that respondent was not ready for conditional release because the progress that he had made was “fragile” and respondent would “end up [reoffending].” The State rested after Carich’s testimony.

¶ 13 Respondent first called William Hillman. Hillman is licensed in clinical psychology and board certified in forensic psychology. Hillman first met respondent in 2005 and had seen him “several times,” albeit with a gap from 2006 through 2011. Hillman testified that, in 2006, his opinion was that if respondent controlled his alcohol dependence, his risk of reoffending was low. Hillman testified that in 2011, he again reached the opinion that, if respondent refrains from alcohol and participates in community-based sex offender treatment, he is unlikely to reoffend. Hillman based his opinion on reviewing an evaluation he made in 2005, reviewing Carich’s treatment reports, and interviewing respondent three times. Hillman testified that respondent expressed an appreciation for his treatment, and “[c]ompared to *** 1993, his receptivity and his interest in treatment had completely changed.” Hillman testified that respondent had accepted responsibility for his sexual offense history. Hillman acknowledged

that Carich testified that respondent had not completed treatment, but testified that the treatment Carich recommended was available in the community. According to Hillman, “the amount of time [respondent] spends in treatment, my impression was that he could get more treatment in the community.” Therefore, Hillman believed that respondent was not substantially likely to reoffend if placed on conditional release, so long as respondent met certain conditions. Hillman believed that respondent made “impressive progress” between 2005 and 2010.

¶ 14 Hillman testified that respondent was aware of “the experience of deviant sexual arousal” and the need to divert his attention when he has such experiences. Respondent acknowledged to Hillman that he still has deviant sexual fantasies, but claimed that he does not have them as often. Hillman believed that respondent could be placed on conditional release despite having deviant sexual fantasies because respondent “conveyed a greater sense of responsibility” and skills to divert his attention to avoid deviant fantasies and arousals. Hillman testified that his opinion that respondent be placed on conditional release included the following conditions: refrain from consuming alcohol, participate in alcohol-recovery activities, continue with treatment, and be supervised by parole agents who could facilitate his integration into the community. Hillman believed that respondent was “more likely than not” to follow through with alcohol-recovery treatment. Hillman further testified that certain medications, such as Antabuse or disulfiram, would assist respondent with his treatments.

¶ 15 Respondent next called Dr. Karen L. Chantry, a licensed clinical psychologist. Chantry was a staff psychologist for the Lake County circuit court for 14 ½ years, where she performed fitness evaluations, psychological evaluations, and sex offender evaluations. Chantry met with respondent in February 2012 to discuss his treatments, and to assess his amenability and risk level for outpatient treatment. Chantry explained how she conducted respondent’s evaluation

and concluded that if he was released “with no conditions,” his sexual recidivism risk would be high. However, if he was placed on conditional release and certain programs were implemented, the risk would be low. Those conditions included respondent living in a group home, as opposed to living on his own; following a forensic psychiatrist’s medication recommendation, which would include an anti-depressant and Depo-Provera to reduce his arousal; involving himself in a residential substance abuse treatment program; committing to a sex offender treatment program; involving himself in social activities with same-aged individuals; working at least a part-time job; and complying with supervision requirements. Chantry believed that, with proper supervision, respondent would follow her recommendations.

¶ 16 During cross-examination, Chantry acknowledged that she had no prior experience evaluating sexually dangerous persons, that she had never provided treatment to a sexually dangerous person who was on conditional release, and that she was not currently providing treatment to sex offenders. Chantry acknowledged that, at the time she interviewed respondent, he was not involved in a relapse prevention group. Respondent rested after Chantry’s testimony.

¶ 17 On August 31, 2012, the trial court found that the State had established by clear and convincing evidence that respondent was a sexually dangerous person and that there was a substantial probability that he would reoffend if placed on conditional release. The trial court found that the experts agreed “to one extent or another” that if respondent was released without any monitoring, there would be a substantial likelihood that he would reoffend. The trial court noted that the evidence was “generally undisputed” that respondent was not serious about treatment until 2005, but since then, respondent had “steadily progressed” with treatment and made “significant strides.” Respondent was no longer in denial regarding his pedophilia, had

reduced his entitlement attitude, had become more emotionally connected to his family, and realized that alcohol reduces his inhibitions.

¶ 18 The trial court, however, noted that respondent was in phase two of a four-stage treatment process. The trial court found credible Stanislaus' and Carich's testimony that, although respondent made significant progress, further progress must be attained before he could be safely released into the community. The trial court further found probative testimony regarding respondent's inconsistency with respect to his sexual identity, and specifically, respondent's inconsistent statements to various treatment providers that he is homosexual but also fantasizes about adult females. The trial court noted that the "experts agree[d] that identifying one's sexuality is *** key to addressing the necessary issues to prevent reoffending."

¶ 19 The trial court was "trouble[d]" by Hillman's testimony that respondent could be conditionally released if he abstained from alcohol because that testimony "rest[ed] predominantly on [respondent] not consuming alcohol, and not on his pedophilia and the core issues that must be addressed to deal with that." The trial court further noted that the evidence reflected that respondent was not serious about treatment until 2005, yet Hillman recommended respondent's release in 2005. The trial court found that its "greatest concern" about Hillman's testimony was that it was predicated on respondent being prescribed Antabuse, yet Hillman acknowledged that he could not prescribe the medication and was not sure if respondent would be compatible with the medication. The trial court noted that Chantry's testimony was also predicated on prescribing respondent certain medications, but she was unsure whether those medications were compatible with respondent.

¶ 20 The trial court found credible the testimony from the State's witnesses that respondent was not ready for release. Thus, the trial court concluded that the State had proven by clear and

convincing evidence that respondent was a sexually dangerous person, and further, that it was substantially probable that respondent would reoffend if placed on conditional release. Respondent timely appealed after the trial court denied his postjudgment motion.

¶ 21

II. ANALYSIS

¶ 22

A. Sufficiency of Evidence

¶ 23 Respondent's first contention on appeal is that the State failed to prove by clear and convincing evidence that he would sexually reoffend if placed on conditional release.

¶ 24 Pursuant to section 9(a) of the Act, a respondent who has been found to be a sexually dangerous person may submit an application to the trial court setting forth facts demonstrating that he has recovered. 725 ILCS 205/9(a) (West 2010). The trial court must then conduct a hearing (725 ILCS 205/9(b) (West 2010)), during which the State bears the burden of proving by clear and convincing evidence that the respondent still meets the statutory definition of a "sexually dangerous person" (*People v. Hancock*, 2014 IL App (4th) 131069 ¶ 140). A person is sexually dangerous if: (1) she or he suffered from a mental disorder for at least one year prior to the filing of the petition, (2) the mental disorder is accompanied by criminal propensities to commit sex offenses, (3) he or she has demonstrated such propensities toward acts of sexual assault or sexual molestation of children, and (4) there is an explicit finding that it is substantially probable that the person would engage in the commission of sex offenses in the future if not confined. *People v. Donath*, 2013 IL App (3d) 12025, ¶ 37. On review, a trial court's determination that the respondent is still sexually dangerous will not be disturbed unless it was against the manifest weight of the evidence, which occurs when an opposite conclusion is clearly apparent. *Id.* ¶ 38.

¶ 25 In this case, the trial court’s determination that respondent remained a sexually dangerous person and to deny his conditional release was not against the manifest weight of the evidence. All three of the State’s expert witnesses testified that respondent remained sexually dangerous. Specifically, Stover testified that respondent had not yet reached the point in his treatment where he could “effectively manage or reduce his risk of future recidivism.” Stanislaus testified that respondent remained sexually dangerous due to his mental disorders of exhibitionism and pedophilia, those disorders have been coupled with the propensity to commit sexual offenses, and that respondent was “substantially likely to commit sexual offenses” if placed on conditional release. Stanislaus’ testimony emphasized that respondent had not yet developed sufficient “sexual arousal control” or addressed the psychological factors that had led to sexual offending. Finally, Carich testified that respondent continued to suffer from pedophilia and exhibitionism, and that respondent would engage in sex offenses in the future if not confined. Carich further testified that the progress respondent had made in treatment was “fragile,” and therefore, respondent was not ready for conditional release.

¶ 26 We recognize that respondent presented his own expert witnesses, which respondent argues “were much more qualified not only with respect to their formal education, licensures, and achievements, but also in the sense that they had each treated sex offenders in the community.” As noted above, those witness, Hillman and Chantry, both testified that respondent could be placed on conditional release under certain conditions. However, it was for the trial court, as the trier of fact, to determine what weight should be given to the testimony from the State’s witnesses compared to Hillman’s and Chantry’s testimony, and we find nothing in the record that would require us to substitute our judgment for that of the trial court. See *id.* (holding that the trial court’s determination to deny respondent’s application for conditional release was

not against the manifest weight of the evidence even though respondent presented expert testimony that he was a good candidate for conditional release).

¶ 27

B. Burden Shifting

¶ 28 Respondent's second contention on appeal is that the trial court improperly shifted the burden of proof. Respondent argues that "again and again in its oral ruling, the trial court indicated that it had 'no information' about the medications that Hillman and Chantry proposed[.]" and therefore, the trial court believed that it was "without sufficient medical testimony to conclude that such a medical regimen is appropriate or even feasible." Respondent notes that the trial court said that it "could not consider" the medical testimony and concluded that without such testimony "the opinions of [Chantry and Hillman] fail." According to respondent, "[n]ot only did the trial court shift the burden, it discounted the *entire defense* because of the lack of medical testimony. This is the definition of shifting the burden of proof." (Emphasis in the original.)

¶ 29 Respondent does not direct us to any authority providing that, in a civil proceeding under the Act, reversal is warranted if the trial court improperly shifted the burden of proof to a respondent. Nonetheless, even if reversal is the appropriate remedy, respondent misconstrues the nature of the trial court's holding. Our careful review of the record reflects that the trial court considered the testimony of each witness. With respect to Hillman and Chantry, the trial court noted that it was concerned about their testimony that they were not sure if respondent would be compatible with the recommended medications. In addition, the trial court expressly relied on the State's affirmative evidence when issuing its ruling. Specifically, it noted that the State's witnesses testified that, although respondent made progress with his treatment, further progress must be attained before he could be safely released into the community. The trial court expressly

found probative testimony regarding respondent's inconsistent statements to treatment providers that he is homosexual but also fantasizes about adult females. Thus, when viewed in a larger context, we conclude that the trial court's comments did not show that it shifted the burden to respondent. See *People v. Howery*, 178 Ill. 2d 1, 33-34 (1997) (holding that, in a criminal proceeding, the trial court did not improperly shift the burden of proof to the defendant, but instead, the trial court relied on the State's affirmative evidence and also properly considered the defendant's theory at trial before determining that it failed).

¶ 30

III. CONCLUSION

¶ 31 For the reasons stated, we affirm the judgment of the circuit court of Lake County.

¶ 32 Affirmed.