2015 IL App (2d) 141016-U
No. 2-14-1016
Order filed March 30, 2015

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

In re TERRY H., a Minor,	)	Appeal from the Circuit Court
	)	of Winnebago County
	)	
	)	No. 06-JD-67
	)	
	)	Honorable
(The People of the State of Illinois, Petitioner-Appellee, v. Terry. H., Respondent-Appellant).	)	Patrick K, Yarbrough, Judge, Presiding.

JUSTICE HUDSON delivered the judgment of the court.
Justices McLaren and Birkett concurred in the judgment.

ORDER

¶ 1 *Held*: Where evidence was conflicting and a licensed evaluator did not find that respondent presented no risk to reoffend, trial court could find that respondent did not carry his burden of establishing that he posed no risk to the community; therefore, trial court's decision was not against the manifest weight of the evidence.

¶ 2 Respondent, Terry H., appeals an order of the circuit court of Winnebago County denying his motion to terminate sex-offender registration. Respondent contends that the trial court's decision is contrary to the manifest weight of the evidence. For the reasons that follow, we affirm.

¶ 3 Section 3-5(d) of the Sex Offender Registration Act (Act) states that a court "may upon a hearing on the petition for termination of registration, terminate registration if the court finds that the registrant poses no risk to the community by a preponderance of the evidence based upon the factors set forth in subsection (e)." 730 ILCS 150/3-5(d) (West 2014). Section 3-5(e) directs a court to consider the following factors:

> "(1) a risk assessment performed by an evaluator licensed under the Sex Offender Evaluation and Treatment Provider Act;
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> (2) the sex offender history of the adjudicated juvenile delinquent;
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> (3) evidence of the adjudicated juvenile delinquent's rehabilitation;
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> (4) the age of the adjudicated juvenile delinquent at the time of the offense;
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> (5) information related to the adjudicated juvenile delinquent's mental, physical, educational, and social history;
>
> (6) victim impact statements; and
>
> (7) any other factors deemed relevant by the court." 730 ILCS 150/3-5(e) (West 2014).

As these are factual matters, the manifest-weight standard of review controls our analysis. See *In re Austin W.*, 214 Ill. 2d 31, 51-52 (2005). Therefore, we will not disturb the trial court's decision unless an opposite conclusion is clearly apparent. See *In re Gwynne P.*, 215 Ill. 2d 340, 354 (2005). Though the statute does not expressly assign it to respondent, we hold that, as the party bringing the motion, the burden of proof at trial was his. *Cf. People v. Patterson*, 192 Ill. 2d 93, 131 (2000) (holding burden is on party moving for substitution of a judge to establish prejudice); *Technology Innovation Center, Inc. v. Advanced Multiuser Technologies Corp.*, 315 Ill. App. 3d 238, 243 (2000) (holding burden is on party moving for sanctions); *People v. Smith*, 248 Ill. App. 3d 351, 358 (1993) (motion *in limine*); *People v. McGuire*, 216 Ill. App. 3d 705,

709 (1991) (motion for termination of court supervision). On appeal, respondent, as the appellant, bears the burden of establishing that the trial court erred. See *TSP-Hope, Inc. v. Home Innovators of Illinois, LLC*, 382 Ill. App. 3d 1171, 1173 (2008).

¶ 4 The trial court began its decision by stating the burden of proof and reciting the factors set forth in section 3-5(e). It then explained that respondent was placed on court supervision for aggravated criminal sexual abuse. Based on allegations that he violated his supervision, he was placed on probation for two years. The original risk assessment performed in October 2006 indicated respondent was at a low risk to reoffend. A risk assessment performed in November 2013 placed respondent at a low to moderate risk to reoffend. This report stated that respondent had a history of noncompliance with treatment, lack of insight, and a manipulative nature. It also stated that respondent was minimizing the seriousness of the offense. The trial court acknowledged that respondent had graduated from high school, was successfully discharged from probation, completed anger management counseling, had successfully completed sex-offender treatment, and was working. After detailing this evidence, the trial court stated that it could not find, by a preponderance of the evidence, that respondent constituted no risk to the community.

¶ 5 Given the state of the record, we certainly cannot say that an opposite conclusion is clearly apparent. As noted above, section 3-5(e) of the Act directs a court to consider seven factors (730 ILCS 150/3-5(e) (West 2014)). The first consideration is an assessment performed by a licensed evaluator. The most recent such evaluation stated respondent had a low-to-moderate risk of reoffending. Defendant takes issue with this evaluation, arguing that since his initial evaluation indicated that he was at a low risk of reoffending and that in the period between the two evaluations, he successfully completed sex-offender treatment, it is implausible that his

risk level would have increased. This, he asserts, "suggests an errant evaluation." We partially agree; it is possible to infer an invalid evaluation is such a manner. However, it is equally possible that it was the initial evaluation that was inaccurate as the latter one. If it was the intial evaluation that was erroneous, it is possible that defendant's initial risk was higher and the risk following treatment was actually lower. Moreover, we note that the evaluations were performed by different evaluators, so the difference may have simply been one of opinion. Resolving conflicts in expert opinions is a matter primarily for the trial court *Flynn v. Cohn*, 154 Ill. 2d 160, 169 (1992). We perceive no reason that the first evaluation was so persuasive or the second so deficient that the trial court was required to credit the first and reject the second. Furthermore, we also note the testimony of Ericka Potter, petitioner's counselor. She stated that "[i]t doesn't appear that he has all the tools that he's gonna [*sic*] need to live independently," and she questioned whether he ever would. She added that petitioner will "always need to have some sort of counseling services in place for him." Thus, her testimony suggests that without family support and counseling services, petitioner would be at risk to reoffend. In short, this factor weighs strongly against granting respondent's motion.

¶ 6 The second factor—"the sex offender history of the adjudicated juvenile delinquent"—weighs somewhat in respondent's favor. After the initial incident that gave rise to this action, respondent did not engage in any further conduct of that nature. However, he committed one violation of a condition of his supervision by going to an amusement park without permission or supervision. The third factor concerns "evidence of the adjudicated juvenile delinquent's rehabilitation." This factor also favors respondent to a degree, as he successfully was discharged from juvenile probation and he completed sex offender treatment. However, the most recent evaluation noted facts that weigh against respondent as well. For example (according to the trial

court), it states that respondent continued to minimize the offense and has a lack of insight about it. Moreover, the second evaluation recommended respondent engage in counseling in a group setting. While respondent did successfully complete the treatment he was offered, it did not include a group component. Thus, while the third factor weighs in respondent's favor, the weight to which it is entitled is undermined somewhat.

¶ 7 The fourth factor is respondent's age at the time of the offense. He was 15. The parties offer no sustained argument on this point, and it does not appear to be a significant factor in this case. The fifth factor concerns "information related to the adjudicated juvenile delinquent's mental, physical, educational, and social history." Respondent points out that he graduated high school and has held various jobs. No victim impact statement was filed in this case, so the sixth factor does not apply. Finally, no additional considerations (factor seven) appear in the record.

¶ 8 The evidence in this case is conflicting—some favors respondent; some does not. Given the state of the record before us, we cannot say that an opposite conclusion is *clearly* apparent. Keeping in mind that it was respondent's burden to show by a preponderance of the evidence that he presents no danger to the community, the trial court could have simply determined that the evidence was inconclusive and respondent did not fulfill that burden. Moreover, we are unable to discern that the trial court committed error in attributing greater weight to the second evaluation than the other evidence in the record. In short, the trial court's decision is not contrary to the manifest weight of the evidence. We therefore affirm its judgment.

¶ 9 Affirmed.