

2015 IL App (2d) 150198-U
No. 2-15-0198
Order filed December 23, 2015

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IN THE
APPELLATE COURT OF ILLINOIS
SECOND DISTRICT

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| <i>In re</i> COMMITMENT OF DAVID J. BROWN,) |) Appeal from the Circuit Court |
|) |) of Winnebago County. |
|) |) |
|) |) No. 99-MR-245 |
|) |) |
| (The People of the State of Illinois, Petitioner- |) Honorable |
| Appellee, v. David J. Brown, Respondent- |) Rosemary Collins, |
| Appellant). |) Judge, Presiding. |

JUSTICE BURKE delivered the judgment of the court.
Justices McLaren and Spence concurred in the judgment.

ORDER

- ¶ 1 *Held:* The trial court did not abuse its discretion in denying respondent's motion to strike the reexamination report, and therefore, the order of no probable cause, which was based on the report, is affirmed.
- ¶ 2 In 2007, respondent, David J. Brown, was civilly committed pursuant to the Sexually Violent Persons Commitment Act (SVP Act) (see 725 ILCS 207/1 *et seq.* (West 2014)). Respondent continues to reside in a secure Department of Human Services (DHS) treatment facility and has received annual reexaminations since 2008, as required by section 55(a) of the SVP Act (725 ILCS 55(a) (West 2014)). In 2014, the State filed a motion for a finding of no probable cause to believe that respondent was no longer a sexually violent person based on

respondent's statutorily required periodic reexamination report. Respondent filed a motion to strike the report, which was denied. Thereafter, the circuit court of Winnebago County entered a finding of no probable cause based on the report. Respondent appeals from that order, solely contending that the trial court abused its discretion in denying his motion to strike the report. We affirm.

¶ 3

I. BACKGROUND

¶ 4 On March 27, 2007, respondent was found to be a sexually violent person following a stipulated bench trial. The trial court committed respondent to secure care in the custody of DHS for residential treatment. Respondent appealed the judgment and we affirmed. *In re Commitment of David J. Brown*, 2013 IL App (2d) 080353-U.

¶ 5 From 2011 through 2013, the State filed motions for periodic reexamination and findings of no probable cause as required by the SVP Act, which were granted by the trial court. Pertinent to this appeal is the motion for periodic reexamination and finding of no probable cause filed by the State on September 30, 2014, based on a reexamination report prepared by Dr. Diana Dobier.

¶ 6 On November 18, 2014, respondent filed a motion to strike the reexamination report.¹ Respondent's motion alleged two bases as grounds to strike the report. First, he argued that Dr. Dobier had consulted with a psychologist who was not at that time licensed to conduct sex offender evaluations under the Sex Offender Evaluation and Treatment Provider Act (see 225 ILCS 109/90(a) (West 2014)). Second, respondent alleged that Dr. Dobier had breached her ethical duties under the Illinois Administrative Code because respondent's treatment and evaluation records were shared with independent contractors of DHS.

¹Respondent's motion to strike was filed and, although it was not made a part of the official record, we granted respondent's motion to supplement the record on appeal.

¶ 7 The court denied respondent's motion to strike, holding that "these individuals were under contract to perform services. *** The confidentiality is specifically set out by statute and can be disclosed. All were covered by that. I believe that they could discuss it and they did discuss it under the terms of the statute, and I think there was no ethical violation, no procedural violation, [and] no violation at all." Thereafter the court proceeded on the motion for no probable cause. Based upon the report of respondent's periodic reexamination, the trial court found no probable cause to believe either that respondent was no longer a sexually violent person or that he was entitled to conditional release. Respondent timely appeals.

¶ 8 II. ANALYSIS

¶ 9 Respondent appeals from the trial court's no probable cause determination. Respondent's only challenge to this ruling is his contention that the trial court erred in denying his motion to strike Dr. Dobier's reexamination report. Specifically, respondent contends that the report should have been stricken because it violates the Sex Offender Evaluation and Treatment Provider Act (225 ILCS 109/90(a) (West 2014)) and the Mental Health and Developmental Disabilities Confidentiality Act (Confidentiality Act) (740 ILCS 110/9.3 (West 2014)). We review the trial court's evidentiary rulings for an abuse of discretion. *In re Detention of Isbell*, 333 Ill. App. 3d 906, 915 (2002). An abuse of discretion occurs if the ruling is arbitrary or unreasonable or if no reasonable person would take the view adopted by the court." *Id.*

¶ 10 A. Compliance with the Sex Offender Evaluation and Treatment Provider Act

¶ 11 Respondent's first argument is largely undeveloped and is arguably subject to forfeiture. Nevertheless, from what this court can glean from the motion to strike and his appellate brief, respondent contends that the trial court should have stricken the report because Dr. Weitzl, a

mental health professional who neither conducted the sex evaluation nor authored the report, was not licensed to conduct sex offender evaluations under the Sex Offender Evaluation and Treatment Provider Act. Respondent appears to maintain that, because Dr. Weitzl was not licensed when she gave input to Dr. Dobier, the report was invalid, and because it was invalid, it should have been stricken. We find this argument meritless for two reasons.

¶ 12 First, as explained by Dr. Dobier in the reexamination report, she only “conferred with” Dr. Weitzl “regarding this examination.” However, respondent fails to explain what information Dr. Weitzl related to Dr. Dobier or what Dr. Weitzl’s involvement was with respondent.

¶ 13 Second, under the SVP Act, professionals conducting periodic reevaluations must be licensed under the Sex Offender Evaluation and Treatment Provider Act. See 725 ILCS 207/55(b) (West 2014); see also 225 ILCS 109/90(a) (West 2014). Respondent concedes that his reevaluation was conducted by Dr. Dobier, and he does not assert that Dr. Dobier was unlicensed at the time of the reevaluation. Instead, he argues that Dr. Weitzl, who was listed as a source of information on Dr. Dobier’s report, was unlicensed. As aptly pointed out by the State, respondent fails to explain how Dr. Weitzl’s lack of a license negates Dr. Dobier’s license as the evaluating professional. There is no requirement that every individual who provides information for a reexamination report must be licensed; only the professional who conducts the reevaluation must be licensed. Accordingly, we reject respondent’s first argument and find the trial court did not abuse its discretion.

¶ 14 B. Compliance with the Confidentiality Act

¶ 15 Respondent next argues that the trial court erred in denying his motion to strike because the reexamination report violates the Confidentiality Act. The State contends that this argument is forfeited because respondent failed to cite the Confidentiality Act before the trial court but

argued that Dr. Dobier had breached her ethical duties under the Illinois Administrative Code, which does not provide a suppression remedy. While respondent's motion to strike makes no reference to the Confidentiality Act or any alleged violation of that law, the State relied on section 9.3 of the Confidentiality Act (740 ILCS 110/9.3 (West 2014)) in its argument during the hearing before the trial court on respondent's motion to strike. Consequently, the argument concerning the Confidentiality Act is not forfeited.

¶ 16 Nevertheless, respondent's argument, as noted by the State, does not contain specific allegations such as identification of the person who allegedly revealed confidential information and to whom it was disclosed, and more importantly, the information that was allegedly revealed. A reviewing court is entitled to have issues clearly defined with pertinent authority cited and coherent arguments presented; arguments inadequately presented on appeal are forfeited. *Spinelli v. Immanuel Lutheran Evangelical Congregation, Inc.*, 118 Ill. 2d 389, 401 (1987); *Hutchings v. Bauer*, 212 Ill. App. 3d 172, 183 (1991). Statements unsupported by argument or citation of relevant authority do not merit consideration on review. *Hutchings*, 212 Ill. App. 3d at 183; *People v. Trimble*, 181 Ill. App. 3d 355, 356 (1989). A reviewing court will not become an advocate for, as well as the judge of, points the appellant seeks to raise. *Trimble*, 181 Ill. App. 3d at 356. Respondent's argument that he is entitled to relief based upon an alleged breach of confidentiality is forfeited.

¶ 17 If respondent is referring to any information disclosed by Dr. Weitzl to Dr. Dobier, that disclosure would be permissible under section 9.3 of the Confidentiality Act, as the trial court so held. "Disclosure may be made without consent by any therapist or other treatment provider providing mental health or developmental disabilities services pursuant to the provisions of the [SVP Act] or who previously provided any type of mental health or developmental disabilities

services to a person who is subject to an evaluation, investigation, or prosecution of a petition under the [SVP Act].” 740 ILCS 110/9.3 (West 2014). Both Drs. Weitzl and Dobier were employed by an independent contractor providing SVP services for respondent pursuant to a contract with DHS. In addition, the SVP Act provides that “[a]ll examiners retained by or appointed for any party shall have reasonable access to *** the person’s past and present treatment records and patient health care records.” 725 ILCS 207/25(e) (West 2014). DHS may share confidential treatment information with other entities as well, including “physicians,” “therapists,” or “healthcare providers” that are “receiving payments from [DHS],” so long as the information is shared for purposes of “admission, treatment, planning, coordinating care, discharge, or governmentally mandated public health reporting.” 740 ILCS 110/9.2 (West 2014). Dr. Dobier was preparing a report for the court as part of her duties for DHS. Presumably, Dr. Weitzl was providing SVP services for respondent. Pursuant to the Confidentiality Act, such disclosures are authorized both to the court and to DHS.

¶ 18

III. CONCLUSION

¶ 19 In sum, we find the circuit court of Winnebago County did not abuse its discretion in denying respondent’s motion to strike the reexamination report. Accordingly, the order of no probable cause entered by the circuit court, which was based on the reexamination report, is affirmed.

¶ 20 Affirmed.