

NOTICE
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2015 IL App (4th) 140720-U
NO. 4-14-0720

FILED
March 2, 2015
Carla Bender
4th District Appellate
Court, IL

IN THE APPELLATE COURT
OF ILLINOIS
FOURTH DISTRICT

In re: the Detention of RAYMOND RAINEY, a)	Appeal from
Sexually Violent Person,)	Circuit Court of
THE PEOPLE OF THE STATE OF ILLINOIS,)	Morgan County
Petitioner-Appellee,)	No. 98MR41
v.)	
RAYMOND RAINEY,)	Honorable
Respondent-Appellant.)	Christopher E. Reif,
)	Judge Presiding.

JUSTICE TURNER delivered the judgment of the court.
Justices Knecht and Appleton concurred in the judgment.

ORDER

- ¶ 1 *Held:* The trial court did not err by denying respondent's motion for the appointment of an independent expert where counsel's reasoning for the request did not provide a possible basis to refute the reexamination report given respondent's actions during the review period.
- ¶ 2 The trial court did not abuse its discretion by finding no probable cause shown to warrant an evidentiary hearing where respondent still suffered from mental disorders, still had numerous risk factors for reoffending, had an increase in behavioral problems, and made no progress in his treatment plan since the last reexamination period.
- ¶ 3 Respondent, Raymond Rainey, a person committed under the Sexually Violent Persons Commitment Act (Act) (725 ILCS 207/1 *et seq.* (West 2012)), appeals the Morgan County circuit court's July 29, 2014, order that denied his request for the appoint of an independent examiner and declared no probable cause was shown for an evidentiary hearing on whether respondent was no longer a sexually violent person. On appeal, respondent argues the trial court

erred by (1) denying his motion for the appointment of an independent expert and (2) concluding no probable cause was shown to warrant an evidentiary hearing on whether respondent was no longer a sexually dangerous person. We affirm.

¶ 4

I. BACKGROUND

¶ 5 In September 1998, the State filed its petition to have respondent committed as a sexually violent person pursuant to the Act. At a February 2000 hearing, respondent admitted he was a sexually violent person. The trial court accepted respondent's admission, adjudicated him a sexually violent person, and committed him to the Department of Human Services. After a May 2000 dispositional hearing, the court ordered respondent placed in a secured institutional facility. In October 2001, this court affirmed respondent's adjudication as a sexually violent person and commitment to a secured facility. *People v. Rainey*, 325 Ill. App. 3d 573, 758 N.E.2d 492 (2001).

¶ 6

In July 2003, defendant filed a *pro se* postjudgment motion challenging the constitutionality of the Act, which the trial court dismissed. In June 2006, this court affirmed the trial court's dismissal. *People v. Rainey*, No. 4-03-0854 (Mar. 30, 2006) (unpublished order under Supreme Court Rule 23). Over the years, respondent has received numerous reexaminations and remains committed to a secured facility. The reexamination preceding the one at issue in this appeal took place in April 2013. In May 2013, the trial court found no probable cause was shown to believe respondent was no longer a sexually violent person. Respondent appealed, and this court affirmed the trial court's judgment. *In re Detention of Rainey*, 2014 IL App (4th) 130507-U.

¶ 7

In April 2014, Diana Dobier conducted the 166-month reexamination at issue in this appeal. Respondent refused to be interviewed by Dobier, and the report noted the uncertain-

ty of the influence of the information only respondent possessed on the recommendations and opinions in the report. The report noted respondent was 58 years old, and this was his fourteenth reexamination. In preparing the report, Dobier reviewed more than 13 documents and talked to two other psychologists. The report set forth respondent's relevant history, including his criminal, sexual, and treatment histories. Dobier noted that, during the past year, respondent was not involved in sex-offender-specific treatment. In addition to recreational groups, respondent only participated in the treatment-foundations and "DBT/Mindfulness" groups, which are part of the engagement program designed to prepare respondent for the rigors of sex-offender treatment. In September 2013, respondent quit the treatment-foundations group and refused to follow the appropriate procedures for returning to the group. Respondent also did not successfully complete the other group because of his failure to complete the required homework assignments and show some evidence of his practice of the mindfulness skills. The report also noted that, in October 2013, respondent was placed on temporary secure status as a result of him making serious threats against staff.

¶ 8 Additionally, Dobier opined, to a reasonable degree of psychological certainty, respondent suffered from the following mental disorders: (1) pedophilic disorder, nonexclusive type, sexually attracted to females; (2) alcohol use disorder, in sustained remission, in a controlled environment; and (3) antisocial personality disorder with borderline personality traits. She explained her reasoning for those diagnoses. As to the issue of respondent's dangerousness, she used the Minnesota Sex Offender Screening Tool Revised (MnSOST-R) and the Static-99R risk assessments. Respondent placed in the high risk category on the first assessment and in the low-moderate risk category on the latter assessment. Dobier also noted respondent had the following risk factors for future sexual offending: antisocial personality disorder, impulsiveness,

procriminal attitudes, sexual interest in children, self-regulation problems, poor problem solving, substance abuse, and noncompliance with supervision. Respondent had no protective factors such as age, medical condition, or sex-offender treatment. Dobier found that, based on his mental disorders and assessed risk, respondent was substantially probable to engage in acts of sexual violence. She also opined respondent (1) had not changed since his last examination, (2) had not made sufficient progress in his treatment to be conditionally released, and (3) remained in need of institutional care in a secured facility.

¶ 9 On May 2, 2014, the State filed a motion for a finding of no probable cause based upon Dobier's 166-month reexamination report. In its motion, the State noted respondent had not affirmatively waived his right to petition the court for discharge, and thus section 65(b)(1) of the Act (725 ILCS 207/65(b)(1) (West Supp. 2013)) required the trial court to hold a probable-cause hearing.

¶ 10 On July 29, 2014, the trial court held the probable-cause hearing. There, respondent's counsel made a motion for the appointment of an independent expert to examine respondent. In support of his motion, respondent's counsel first noted a prior appointed examiner had opined respondent was a low risk of offending and placing respondent in a different setting was appropriate. While counsel asked the trial court to take judicial notice of prior proceedings in this case, the trial court did not state on the record it would do so. Second, counsel pointed out respondent was not personally examined by Dobier. Last, counsel argued Dobier's report was similar to the one she did the previous year and thus a fresher perspective would give the court a better picture of respondent's current condition. The court denied the motion. After the attorneys made their arguments on probable cause, the court found no probable cause was shown to believe respondent was no longer a sexually violent person. In making that finding, the court

noted that, based upon Dobier's report, respondent was not even making a sincere effort at attaining sufficient progress. That same day, the court entered the written order.

¶ 11 On August 6, 2014, defendant filed a timely notice of appeal in sufficient compliance with Illinois Supreme Court Rule 303 (eff. May 30, 2008), and thus this court has jurisdiction under Illinois Supreme Court Rule 301 (eff. Feb. 1, 1994). See 725 ILCS 207/20 (West 2012) (noting the proceedings under the Act are civil in nature).

¶ 12 II. ANALYSIS

¶ 13 A. Independent Expert

¶ 14 Respondent first asserts the trial court erred by denying his request for the appointment of an independent expert pursuant to section 55(a) of the Act (725 ILCS 207/55(a) (West Supp. 2013)). The State disagrees, asserting the trial court properly exercised its discretion in denying respondent's motion for an independent expert.

¶ 15 Whether to appoint an independent expert under section 55(a) is a matter that rests within the trial court's sound discretion. *People v. Botruff*, 212 Ill. 2d 166, 176, 817 N.E.2d 463, 469 (2004). Thus, we review the matter for an abuse of discretion. *Botruff*, 212 Ill. 2d at 176, 817 N.E.2d at 469. " 'An abuse of discretion will be found only where the trial court's ruling is arbitrary, fanciful, unreasonable, or where no reasonable person would take the view adopted by the trial court.' " *In re Detention of Erbe*, 344 Ill. App. 3d 350, 374, 800 N.E.2d 137, 157 (2003) (quoting *People v. Hall*, 195 Ill. 2d 1, 20, 743 N.E.2d 126, 138 (2000)).

¶ 16 In *Botruff*, 212 Ill. 2d at 177, 817 N.E.2d at 470, the respondent's counsel did not provide the trial court with a possible basis to rebut the report. Our supreme court found it was "rational not to appoint an independent evaluator when a respondent has shown no need for one, especially during perfunctory reexamination proceedings where the respondent has not affirma-

tively opted to petition for discharge." *Botruff*, 212 Ill. 2d at 177-78, 817 N.E.2d at 470. It concluded that, "[w]ithout more, the court did not abuse its discretion by denying respondent's request for an independent evaluation." *Botruff*, 212 Ill. 2d at 178, 817 N.E.2d at 470.

¶ 17 In *In re Detention of Cain*, 341 Ill. App. 3d 480, 483, 792 N.E.2d 800, 803 (2003), the reviewing court found no fault with the trial court's decision not to appoint an independent examiner. There, the trial court had specifically noted that, appointing the respondent an expert would provide no assistance to the court, "given that there had been absolutely no change in [the respondent's] condition and he had been resistant to sex offender treatment." *Cain*, 341 Ill. App. 3d at 483, 792 N.E.2d at 803.

¶ 18 Here, as in *Botruff*, the probable-cause proceeding in this case was a perfunctory reexamination as respondent did not file a petition for discharge. The reasons provided by respondent's counsel for requesting an independent examiner did not provide a possible basis to refute Dobier's report given respondent's refusal to meaningfully engage in sex-offender treatment during the review period. As in *Cain*, the report indicated respondent had been resistant to sex-offender treatment, and if anything, respondent's condition had gotten worse. We also note respondent's counsel did not point out any factual errors in Dobier's report. Moreover, respondent's counsel did not provide a reason for respondent's refusal to comply with the State's examiner. Without a good reason for not participating in the State's examination, respondent should not be rewarded with a different expert for his decision to refuse to comply with the State's examiner. Accordingly, we find the trial court did not abuse its discretion by denying respondent's motion for an independent examiner.

¶ 19 B. Probable Cause

¶ 20 Respondent also asserts the trial court erred by finding no probable cause was shown to warrant an evidentiary hearing to determine whether respondent was still a sexually violent person. The State disagrees, arguing the trial court's decision was correct.

¶ 21 At the time of each reexamination under the Act, the committed person receives notice of the right to petition the trial court for discharge. 725 ILCS 207/65(b)(1) (West Supp. 2013). If the committed person does not affirmatively waive that right, like respondent in this case, the trial court must "set a probable cause hearing to determine whether facts exist to believe that since the most recent periodic reexamination ***, the condition of the committed person has so changed that he or she is no longer a sexually violent person." 725 ILCS 207/65(b)(1) (West Supp. 2013). At such a probable-cause hearing, the court only reviews the reexamination reports and hears the parties' arguments. 725 ILCS 207/65(b)(1) (West Supp. 2013). If the court finds probable cause does exist, then it must set an evidentiary hearing on the issue. 725 ILCS 207/65(b)(2) (West Supp. 2013). Whether or not probable cause exists to warrant a further evidentiary hearing is another matter resting in the trial court's sound discretion, and thus we will not disturb a trial court's probable-cause determination absent an abuse of that discretion. *Cain*, 341 Ill. App. 3d at 482, 792 N.E.2d at 803.

¶ 22 With all probable-cause hearings under the Act, the trial court's role is "to determine whether the movant has established a *plausible account* on each of the required elements to assure the court that there is a substantial basis for the petition." (Emphasis in original; internal quotation marks omitted.) *In re Detention of Stanbridge*, 2012 IL 112337, ¶ 62, 980 N.E.2d 598 (quoting *In re Detention of Hardin*, 238 Ill. 2d 33, 48, 932 N.E.2d 1016, 1024 (2010)). For a respondent to receive an evidentiary hearing under section 65(b)(2) of the Act, the court must find a plausible account exists that the respondent is "no longer a sexually violent person." 725 ILCS

207/65(b)(2) (West Supp. 2013). Thus, a respondent is only entitled to an evidentiary hearing if plausible evidence shows the respondent (1) no longer suffers from a mental disorder or (2) is no longer dangerous to others because his or her mental disorder no longer creates a substantial probability he or she will engage in acts of sexual violence. *Stanbridge*, 2012 IL 112337, ¶ 68, 980 N.E.2d 598 (quoting 725 ILCS 207/5(f), 15 (West 2008)). Under the Act, "substantially probable" means "much more likely than not." (Internal quotation marks omitted.) *In re Commitment of Curtner*, 2012 IL App (4th) 110820, ¶ 37, 972 N.E.2d 351; see also *In re Detention of Hayes*, 321 Ill. App. 3d 178, 188, 747 N.E.2d 444, 453 (2001).

¶ 23 In this case, Dobier found respondent still suffered from (1) pedophilic disorder, nonexclusive type, sexually attracted to females; (2) alcohol use disorder, in sustained remission, in a controlled environment; and (3) antisocial personality disorder with borderline personality traits. The latter two diagnoses increase respondent's predisposition to engage in acts of sexual violence. While the Static-99R assessment placed respondent in the low-moderate risk category for reoffending, the MnSOST-R placed respondent in the high risk category. The report noted respondent had eight risk factors that increased his risk to reoffend, and neither his age nor his medical condition decreased his risk. The aforementioned evidence indicates respondent still suffered from a mental disorder and was dangerous to others because his mental disorders created a substantial probability he would engage in acts of sexual violence.

¶ 24 Since the prior April 2013 reexamination, respondent had an increase in behavioral issues, including being placed on temporary secure status for making threats against staff. In September 2013, he quit his treatment-foundations group, and when he later wanted to return to the group, he refused to follow the procedures for his return. He also did not successfully complete the "DBT/Mindfulness" group due to his failure to complete the required homework and

