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2015 IL App (4th) 140844-U

NO. 4-14-0844

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED

August 5, 2015

Carla Bender
4th District Appellate
Court, IL

In re: the Commitment of CHRISTOPHER LEE)	Appeal from
LANE, a Sexually Violent Person,)	Circuit Court of
THE PEOPLE OF THE STATE OF ILLINOIS,)	Adams County
Petitioner-Appellee,)	No. 07MR19
v.)	
CHRISTOPHER LEE LANE,)	Honorable
Respondent-Appellant.)	William O. Mays,
)	Judge Presiding.

JUSTICE HOLDER WHITE delivered the judgment of the court.
Presiding Justice Pope and Justice Steigmann concurred in the judgment.

ORDER

¶ 1 *Held:* The appellate court affirmed, concluding the trial court did not err in finding no probable cause was shown to warrant an evidentiary hearing under section 65(b)(2) of the Sexually Violent Persons Commitment Act.

¶ 2 In October 2007, respondent, Christopher Lee Lane, was committed as a sexually violent person pursuant to the Sexually Violent Persons Commitment Act (Act) (725 ILCS 207/1 *et seq.* (West 2006)). Following respondent's 78-month reexamination, the State filed a motion for a finding of no probable cause to believe respondent is no longer a sexually violent person, which the Adams County circuit court granted in September 2014. On appeal, respondent argues the trial court erred when it found no probable cause was shown to warrant an evidentiary hearing because his 78-month reexamination report provided a plausible account of a change in his mental condition. We disagree and affirm.

¶ 3

I. BACKGROUND

¶ 4 In February 2007, the State filed a petition to have respondent committed as a sexually violent person under the Act. Attached to the petition was an initial commitment evaluation, completed by Dr. M. Bellew-Smith. Bellew-Smith's report indicated respondent met the criteria in the Diagnostic and Statistical Manual Fourth Edition, Text Revision (DSM-IV-TR) for paraphilia not otherwise specified (NOS), a congenital or acquired condition affecting respondent's emotional or volitional capacity and predisposing him to engage in acts of sexual violence.

¶ 5 In September 2007, respondent, through counsel, filed a written admission and waiver, conceding he is a sexually violent person and that he should receive care in a secure facility. Later that month, the trial court accepted respondent's admission and waiver, and respondent was committed to the custody of the Illinois Department of Human Services (Department).

¶ 6 Pursuant to the Act, respondent was reexamined every 12 months by Dr. David Suire, a licensed clinical psychologist. Each reexamination report maintained respondent suffered from paraphilia NOS, sexually attracted to teenage minor females. Based upon each of these reexaminations, the State moved for a finding of no probable cause to believe respondent was no longer a sexually violent person. The trial court granted each motion.

¶ 7 In January 2014, Suire conducted respondent's 78-month reexamination. Respondent agreed to be interviewed and told Suire he was ready to be released into the community. Although he was not currently in treatment, respondent explained he was trying to get into an "extra help group." Respondent indicated he was referred to do four weeks of Power to Change and Extra Help groups, but he missed one session and was told he would need to repeat the group. Respondent did not agree with this decision and felt his treatment team "did

not keep their word." Respondent's treatment team indicated he missed three sessions rather than only one.

¶ 8 In his 78-month reexamination report, Suire indicated respondent showed "noteworthy improvement" in his ability to comply with facility rules and procedures and to manage his day-to-day behaviors. However, respondent was terminated from sex-offender-specific (Core) treatment in March 2009 and had not returned. At the time of his reexamination, respondent was not engaged in any treatment programming other than recreational groups. Respondent was referred to an ancillary group designed to help him overcome major treatment barriers but made little progress as his attendance in the group was "episodic."

¶ 9 A master treatment plan from January 2013 suggested respondent had improved and was participating in several group programs. The plan also indicated he had not been referred to the Behavioral Committee since 2011. However, a December 2013 nontreatment review showed respondent later received a violation for trading and trafficking and warnings for attempted staff manipulation and violation of rules.

¶ 10 Suire opined, to a reasonable degree of scientific certainty, respondent suffers from at least three mental disorders. According to the DSM-IV-TR, respondent suffers from (1) paraphilia NOS, sexually attracted to teenage minor females; (2) alcohol dependence; and (3) antisocial personality disorder, with borderline traits. Based on the Diagnostic and Statistical Manual Fifth Edition (DSM-5), the latest edition of the standard reference manual for clinical practice in the mental health field, respondent suffers from (1) other specified paraphilic disorder, sexually attracted to teenage minor females; (2) alcohol use disorder; and (3) antisocial personality disorder, with borderline traits. Suire noted, regardless of which reference is used,

the first diagnosis under both the DSM-IV-TR and the DSM-5 is a mental disorder as defined by the Act, making it substantially probable respondent will engage in acts of sexual violence.

¶ 11 Suire utilized multiple screening tools to predict respondent's dangerousness and risk of recidivism, including the STATIC-99, STATIC-99R, and the Minnesota Sex Offender Screening Tool Revised (MnSOST-R). Respondent scored in the moderate high risk range on the STATIC-99, the high risk range on the STATIC-99R, and the highest risk range (refer) on the MnSOST-R. In addition, Suire noted respondent exhibited a number of empirically identified risk factors for future sexual offending, including (1) deviant sexual interest or preference; (2) impulsiveness or recklessness; (3) self-regulation problems; (4) intoxication during an offense; (5) a personality disorder; (6) violation of conditional release; and (7) substance abuse. Neither his age nor his medical condition reduced his risk of reoffending.

¶ 12 Based on respondent's past history, risk factors, and prior failure to benefit from legal intervention and supervision, Suire made the following recommendations:

"(1) [Respondent] has *not* made sufficient progress in treatment to be conditionally released.

(2) [Respondent's] condition has *not* so changed since the most recent periodic reexamination *** that he is no longer a sexually violent person."

¶ 13 In March 2014, the State filed a motion for a finding of no probable cause based upon Suire's 78-month reexamination report. Respondent was provided with a written notice of his right to petition for discharge and a waiver form. Defendant refused to sign the waiver form, and in September 2014, the trial court held a probable-cause hearing on the State's motion. During the hearing, the State noted respondent was not currently in treatment and refused to

continue with sex-offender-specific treatment. Respondent's counsel indicated respondent was involved in some ancillary groups and seems to be doing better with following rules and "is moving towards at least getting some of the treatment started, although not in the treatment classes." Counsel further stated, "He seems to be having good times and not so good times."

¶ 14 Following the hearing, the trial court granted the State's motion for a finding of no probable cause, concluding respondent had not made sufficient progress in treatment and his condition had not changed enough since his last periodic reexamination to support a finding that he was no longer a sexually violent person.

¶ 15 This appeal followed.

¶ 16 II. ANALYSIS

¶ 17 On appeal, respondent argues the trial court erred when it found no probable cause was shown to warrant an evidentiary hearing on the issue of whether he remains a sexually violent person in need of institutional care. For the following reasons, we disagree.

¶ 18 A. Rules Governing Reexamination Under the Act

¶ 19 After a person has been committed under the Act, the Department is required to submit a written report to the trial court at least once every 12 months for the purpose of determining whether (1) the person has made sufficient progress in treatment to be conditionally released and (2) the person's condition has so changed since the most recent periodic reexamination that he or she is no longer a sexually violent person. 725 ILCS 207/55 (West 2012).

¶ 20 At the time of each reexamination under the Act, the Department provides the committed person with notice of the right to petition the trial court for discharge. 725 ILCS 207/65(b)(1) (West 2012). If the committed person does not affirmatively waive the right to

petition, 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 2012). If the committed person does not file a petition for discharge, but does not waive the right to do so, "the probable cause hearing consists only of a review of the reexamination reports and arguments on behalf of the parties." 725 ILCS 702/65(b)(1) (West 2012). If the court finds probable cause does exist, it must set an evidentiary hearing on the issue. 725 ILCS 207/65(b)(2) (West 2012).

¶ 21 For a respondent to receive an evidentiary hearing under section 65(b)(2) of the Act, the trial court must find probable cause exists that the respondent is "no longer a sexually violent person." 725 ILCS 207/65(b)(2) (West 2012). Pursuant to statute, a sexually violent person is one "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 2012). Thus, a respondent is only entitled to an evidentiary hearing if a plausible account demonstrates 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. See *In re Detention of Stanbridge*, 2012 IL 112337, ¶ 68, 980 N.E.2d 598 (quoting 725 ILCS 207/5(f) (West 2008)).

¶ 22 B. Standard of Review

¶ 23 As an initial matter, we note the parties dispute the appropriate standard of review in this case. As mentioned above, where a committed person chooses not to file a petition for discharge but declines to affirmatively waive his right to do so, as was the case here, the evidence at the probable-cause hearing consists only of the reexamination report and the

arguments of the parties. 725 ILCS 207/65(b)(1) (West 2012). Respondent contends our review under these circumstances is *de novo*. See *Addison Insurance Co. v. Fay*, 232 Ill. 2d 446, 453, 905 N.E.2d 747, 752 (2009) ("[W]here the evidence before a trial court consists of depositions, transcripts, or evidence otherwise documentary in nature, a reviewing court is not bound by the trial court's findings and may review the record *de novo*"). The State contends we have previously reviewed the issue for an abuse of discretion. See *In re Commitment of Blakey*, 382 Ill. App. 3d 547, 551, 904 N.E.2d 40, 43 (2008) ("[T]he trial court's decision not to proceed to an evidentiary hearing following a probable-cause hearing is reviewed only for an abuse of discretion[.]").

¶ 24 While we agree the Illinois Supreme Court's ruling in *Addison* appears to support a *de novo* review under these circumstances, we find we need not resolve the issue at this juncture because the outcome remains the same under either standard.

¶ 25 C. No Probable Cause Was Shown To Warrant An Evidentiary Hearing

¶ 26 Suire's 78-month reexamination report indicates, as it did in previous years, respondent suffers from (1) paraphilia NOS, sexually attracted to teenage minor females; (2) alcohol dependence; and (3) antisocial personality disorder, with borderline traits, as those disorders are defined in the DSM-IV-TR. Evaluating respondent under the DSM-5, Suire indicated respondent suffers from (1) other specified paraphilic disorder, sexually attracted to teenage minor females; (2) alcohol use disorder; and (3) antisocial personality disorder, with borderline traits.

¶ 27 Respondent points out his diagnosis of paraphilia NOS, sexually attracted to teenage minor females, based upon the DSM-IV-TR, was changed or amended to other specified paraphilic disorder, sexually attracted to teenage minor females in the DSM-5. He argues such a

change in diagnosis, without more from the State, provided a plausible account that he no longer has a mental disorder that makes it substantially probable he will engage in acts of sexual violence. We disagree.

¶ 28 The "change" respondent refers to is not a change in diagnosis; it is a change in the *name* of the diagnosis. "Other Specified Paraphilic Disorder" is the term used by the DSM-5 to refer to what the DSM-IV-TR labeled "Paraphilia, Not Otherwise Specified (NOS)." Both characterizations refer to paraphilic disorders not specifically referenced in the manual. Accordingly, respondent's contention that a *Frye* hearing was required to determine whether "Other Specified Paraphilic Disorder" has gained general acceptance in the psychological and psychiatric communities is without merit. See *Detention of Stanbridge*, 2012 IL 112337, ¶¶ 79-81, 980 N.E.2d 598 (noting the purpose of the reexamination report is to determine whether respondent's condition has improved, not to relitigate disputes about the scientific validity of his initial diagnosis). Respondent's diagnosis in the reexamination report is the same diagnosis that served as the basis for his initial commitment and the same diagnosis appearing in each periodic reexamination report thereafter.

¶ 29 In addition, Suire's 78-month reexamination report indicates respondent scored in the moderate high risk range on the STATIC-99, the high risk range on the STATIC-99R, and the highest risk range (refer) on the MnSOST-R. The report also identified seven empirical risk factors which increased respondent's risk of recidivism, and that neither his age nor his medical condition decreased such risk. As stated in the reexamination report, these factors, along with respondent's past history and current mental disorders, make it "substantially probable" he will engage in acts of sexual violence if released into the community.

¶ 30 Moreover, respondent has not participated in Core treatment since 2009. While he contends on appeal this is due to his need for extra help as a result of his mental limitations, Suire's 78-month reexamination report indicates respondent has refused to attend any form of treatment, blaming staff members for his failure to do so. While the record does indicate there was a period of time where defendant was on the highest privilege-living status and had not been referred to the Behavioral Committee, respondent's December 2013 nontreatment review, as documented in Suire's report, indicates respondent subsequently received a violation for trading and trafficking and warnings for attempted staff manipulation and violation of rules. As noted in the State's brief, temporary improvement in behavior does not create probable cause to believe respondent is no longer a sexually violent person in light of Suire's unequivocal opinion that respondent still suffers from a mental disorder and remains substantially likely to reoffend.

¶ 31 Because the most recent report indicates respondent continues to suffer from a mental disorder which makes it substantially probable he will engage in acts of sexual violence, we conclude the trial court did not err in finding no probable cause was shown to warrant an evidentiary hearing.

¶ 32 III. CONCLUSION

¶ 33 For the reasons stated, we affirm the trial court's judgment.

¶ 34 Affirmed.