

NOTICE

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2016 IL App (4th) 150702-U

NO. 4-15-0702

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED

March 30, 2016

Carla Bender

4th District Appellate

Court, IL

In re: the Detention of RAYMOND RAINEY,)	Appeal from
a 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.
Presiding Justice Knecht and Justice Appleton concurred in the judgment.

ORDER

¶ 1 *Held:* The circuit court did not err 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 two behavioral incidents, and made no progress in his treatment plan since the last reexamination period.

¶ 2 Respondent, Raymond Rainey, a person committed under the Sexually Violent Persons Commitment Act (Act) (725 ILCS 207/1 *et seq.* (West 2014)), appeals the Morgan County circuit court's August 6, 2015, order, in which the court found no probable cause to warrant an evidentiary hearing on whether respondent was still a sexually violent person. On appeal, respondent argues the circuit court erred by finding no probable cause. We affirm.

¶ 3 I. BACKGROUND

¶ 4 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 circuit court accepted respondent's admission, adjudicated him a sexually violent person, and committed him to the Department of Human Services (Department). 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 his commitment to a secured facility. *People v. Rainey*, 325 Ill. App. 3d 573, 758 N.E.2d 492 (2001).

¶ 5 In July 2003, respondent filed a *pro se* postjudgment motion, challenging the constitutionality of the Act, which the circuit court dismissed. In June 2006, this court affirmed the circuit 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 *People v. Rainey*, No. 4-03-0854 (Mar. 30, 2006) (unpublished order under Supreme Court Rule 23).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 2014. In May 2014, the circuit court found no probable cause was shown to believe respondent was no longer a sexually violent person. Respondent appealed, and this court affirmed the circuit court's judgment. *In re Detention of Rainey*, 2015 IL App (4th) 140720-U.

¶ 6 In April 2015, Diana Dobier, Psy.D, a licensed clinical psychologist, conducted the 179-month reevaluation at issue in this appeal. The report noted respondent was 59 years old, and this was his fifteenth reexamination. In preparing the report, Dobier interviewed respondent, reviewed more than 13 documents, and talked to another psychologist. The report set forth respondent's relevant history, including his criminal, sexual, and treatment histories. Dobier also explained the Department had a five-phase treatment program. The five phases, in order, were the following: (1) assessment, (2) accepting responsibility, (3) self-application, (4) incorporation, and (5) transition. Respondent completed the assessment phase in January 2006.

He was still in phase two and had only received the following two "completion checks": (1) anger management in January 2012 and (2) attending a treatment-foundations group in May 2013. For the year under review, respondent had not received any completion checks. Dobier's report also noted respondent had quit the treatment-foundations group and refused to follow the appropriate procedures for returning to the group. Further, respondent had quit the autobiography group because he did not feel he should have to share details from his personal past. Additionally, he stopped attending the distress-tolerance group in January 2015. Respondent did participate in several recreational-therapy groups and did demonstrate some "prosocial behaviors" in structured group activities. Respondent's treatment team had tried to engage him in clinical groups, but respondent " 'put forth the bare minimum effort' " and had " 'not demonstrated significant commitment to the treatment process.' "

¶ 7 Respondent's November 2014 master treatment plan indicated respondent was still in phase two and had the following problem areas: active discharge barriers, assessment procedures incomplete, sexual dangerousness, lack of adaptive coping skills, and lack of responsible living skills. Respondent had continued to deny the sexual offense for which he had been charged and convicted. Moreover, respondent had multiple appearances before the behavioral committee for violations related to his difficulties in controlling his temper and frustration. During the review period, respondent was placed on temporary secure status for (1) threatening his roommate because his roommate laughed at him and (2) fighting.

¶ 8 Additionally, Dobier opined 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 Static-99R and the Static-2002R risk assessments. Respondent placed in the low-moderate risk category on the former assessment and the 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, and (3) should continue to be committed to the Department's treatment and detention facility for secure care and sexual-offense-specific treatment.

¶ 9 On April 30, 2015, the State filed a motion for a finding of no probable cause based upon Dobier's 179-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 2014)) required the circuit court to hold a probable-cause hearing.

¶ 10 On August 6, 2015, the circuit court held the probable-cause hearing. 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 respondent had not made the progress required. That same day, the court entered the written order.

¶ 11 On September 2, 2015, respondent filed a timely notice of appeal in sufficient compliance with Illinois Supreme Court Rule 303 (eff. Jan. 1, 2015), and thus this court has ju-

isdiction under Illinois Supreme Court Rule 301 (eff. Feb. 1, 1994). See 725 ILCS 207/20 (West 2014) (noting the proceedings under the Act are civil in nature).

¶ 12

II. ANALYSIS

¶ 13 Respondent's sole contention on appeal is the circuit 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 circuit court's decision was correct.

¶ 14 At the time of each reexamination under the Act, the committed person receives notice of the right to petition the circuit court for discharge. 725 ILCS 207/65(b)(1) (West 2014). If the committed person does not affirmatively waive that right, like respondent in this case, the 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 2014). 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 2014). 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 2014). Since the circuit court only considered Dobier's reevaluation report and the facts contained in that report are not in dispute, our review of the court's finding of no probable cause is *de novo*. See *In re Commitment of Kirst*, 2015 IL App (2d) 140532, ¶ 50, 40 N.E.3d 1215.

¶ 15 With all probable-cause hearings under the Act, the circuit 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 2014). 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).

¶ 16 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 Static-2002R placed respondent in the moderate risk category. Dobier's 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 mental disorders and was dangerous to others because his mental disorders created a substantial probability he would engage in acts of sexual violence.

¶ 17 Since the prior reexamination, respondent had not moved forward at all in his treatment plan. He was still in phase two, which he had been in since 2006, and had not received

any completed checks for the review period. He had also not participated in any sex-offender-specific treatment and continued to deny the sexual offense on which he had been convicted.

The only therapy groups he had stayed in were the recreational therapy groups.

¶ 18 Respondent notes his most recent penile plethysmograph showed significant arousal for a "[f]emale adult persuasive," which was considered normal. However, that test was in June 2012 and does not alone establish a plausible account respondent no longer meets the definition of a sexually violent person, especially in light of respondent's behavioral issues and his failure to engage in sex-offender treatment. Moreover, while respondent claimed he is less likely to offend due to his age, Dobier did not find a reduction in risk was warranted based on respondent's age. Thus, we disagree with respondent the facts contained in Dobier's report show respondent had made sufficient progress in his treatment to warrant an evidentiary hearing.

¶ 19 Accordingly, we find the circuit court did not err by finding probable cause was not shown to warrant an evidentiary hearing.

¶ 20 III. CONCLUSION

¶ 21 For the reasons stated, we affirm the Morgan County circuit court's judgment.

¶ 22 Affirmed.