2017 IL App (5th) 170082-U

NO. 5-17-0082

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

In re COMMITMENT OF DUSTIN WOLF	)	Appeal from the
	)	Circuit Court of
	)	St. Clair County.
	)	
	)	No. 12-MR-190
	)	
	)	Honorable
(The People of the State of Illinois, Petitioner-Appellee, v. Dustin Wolf, Respondent-Appellant).	)	Robert P. LeChien, Judge, presiding.

PRESIDING JUSTICE MOORE delivered the judgment of the court.
Justices Welch and Cates concurred in the judgment.

ORDER

¶ 1 *Held*: We affirm the order of the circuit court of St. Clair County that denied the respondent's motion, filed pursuant to section 2-1401 of the Code of Civil Procedure (735 ILCS 5/2-1401 (West 2016)), to vacate his commitment as a sexually violent person, because the respondent has forfeited his arguments on appeal, and because, forfeiture notwithstanding, the motion was untimely.

¶ 2 The respondent, Dustin Wolf, appeals the order of the circuit court of St. Clair County that denied his motion to vacate his commitment as a sexually violent person, which he filed pursuant to section 2-1401 of the Code of Civil Procedure (the Code) (735 ILCS 5/2-1401 (West 2016)). For the following reasons, we affirm.

¶ 3 FACTS

¶ 4 The facts necessary to our disposition of this appeal follow. On May 25, 2012, the State filed, in the circuit court of St. Clair County, a petition (the petition) pursuant to the Sexually Violent Persons Commitment Act (the Act) (725 ILCS 207/1 *et seq.* (West 2012)) wherein the State alleged that the respondent was a sexually violent person requiring commitment. The State further alleged in the petition that, *inter alia*: (1) the respondent soon would complete his seven-year sentence for his April 5, 2010, conviction of the offense of aggravated criminal sexual abuse; (2) a clinical psychologist, Dr. M. Bellew-Smith, had evaluated the respondent and concluded the respondent suffered from, *inter alia*, pedophilia and mild mental retardation; and (3) the respondent was dangerous to others as a result of his mental disorders, which made it "substantially probable" the respondent would "engage in acts of sexual violence." Counsel was appointed to represent the respondent.

¶ 5 On October 4, 2012, the respondent signed a pleading styled as a "Sexually Violent Person Admission Findings and Order" wherein he "certifie[d]" that, *inter alia*, each of the following propositions was "true and correct" and wherein the court accepted his admissions, entered judgment on the petition, and ordered the respondent committed to the custody of the Illinois Department of Human Services: (1) the respondent understood the petition's "allegations and request for relief"; (2) the respondent "knowingly and intelligently" admitted the allegations in the petition; (3) the respondent "knowingly and intelligently" waived "his right to a jury trial, his right to confront and cross-examine witnesses, his right to testify and to present a defense, and his right to require" the State to prove its case beyond a reasonable doubt; (4) the respondent was "not under the influence of any drugs, medication or alcohol at the time the admission was entered"; (5) the respondent was not "forced or coerced to enter the admission" and had instead "made the admission knowingly and voluntarily"; (6) the respondent understood that there would

be no predisposition investigation and that he would remain committed until he was "no longer a Sexually Violent Person"; and (7) a sufficient factual basis for his admissions existed.

¶ 6 At a hearing held on October 4, 2012, before the Honorable Stephen P. McGlynn, the respondent agreed that he: (1) had spoken with counsel before the hearing; (2) was not under the influence of any drug or medication or alcohol that might affect his judgment; (3) understood he could have a hearing in which he forced the State to attempt to prove the allegations in the petition; and (4) understood he would remain committed until he was no longer a sexually violent person. Judge McGlynn noted that the respondent would have the opportunity to have "future hearings" and "subsequent evaluations," then asked, "But for now you are comfortable not proceeding forward on a full hearing and just accepting that if the evidence was presented that likely there would be an order entered confining you anyway?" The respondent stated, "Yes, sir." When asked, he stated that he did not have any questions for the court, and that no one had made any promises to him for "something favorable or a benefit," or made any threats against him. Judge McGlynn then asked the respondent's counsel if he wished to put anything on the record. Counsel stated, "I have spent time with my client, the respondent, have read each and every paragraph, one through seven, have gone through the proposed order, and he agrees to signing such document." Judge McGlynn then accepted the document and entered it as the order of the court.

¶ 7 Subsequently, pursuant to the Act (see 725 ILCS 207/55(a) (West 2016)), three annual reexaminations of the respondent were conducted, after each of which the respondent was ordered to remain committed. On November 15, 2016, while a ruling with regard to the fourth annual reexamination of the respondent was pending, the respondent filed a motion, pursuant to section 2-1401 of the Code (735 ILCS 5/2-1401 (West 2016)) (the section 2-1401 motion), to vacate his commitment. Therein, the respondent alleged that, *inter alia*, his "mental capacity

made it impossible for him to understand the full nature and gravity of the proceedings and to fully understand the waiver of his rights." Acknowledging that the section 2-1401 motion was filed "beyond the two-year statutory requirement," the respondent alleged that "his mental handicap as diagnosed by the State's evaluator, served as a legal disability which should not be counted against respondent." In an affidavit filed with the section 2-1401 motion on November 15, 2016, the respondent averred that he was "of sound mind and body" and that at the time he signed the October 4, 2012, admission and order of commitment, he "did not understand all of the rights [he] was giving up." He further averred that "[i]t wasn't until a couple years later, after speaking with people in the Rushville Treatment Facility, that [he] realized what [he] had waived by signing that order."

¶ 8 The State subsequently responded in writing to the section 2-1401 motion. On February 14, 2017, following a hearing on the section 2-1401 motion, the Honorable Robert P. LeChien entered an order in which he denied the section 2-1401 motion. The respondent filed a timely notice of appeal, after which Judge LeChien stayed, until the conclusion of this appeal, a ruling with regard to the fourth annual reexamination of the respondent.

¶ 9 ANALYSIS

¶ 10 On appeal, the respondent contends the denial of the section 2-1401 motion was in error because: (1) Judge LeChien incorrectly applied the law related to proceedings pursuant to section 2-1401; (2) the respondent had a "diminished mental capacity" that served as "a legal disability" that would excuse the late filing of the section 2-1401 motion; and (3) the respondent should have been afforded an evidentiary hearing on the question of fact of whether he had a diminished mental capacity that constituted a legal disability. We first note that we may affirm the ruling of a trial judge on any basis supported by the record. See, *e.g.*, *Evans v. Lima Lima Flight Team, Inc.*, 373 Ill. App. 3d 407, 418 (2007); see also, *e.g.*, *People v. Johnson*, 208 Ill. 2d 118, 134

(2003). We may do so because the question before us on appeal is the correctness of the result reached by the trial judge, rather than the correctness of the reasoning upon which that result was reached. See, *e.g.*, *Johnson*, 208 Ill. 2d at 128. Consequently, if Judge LeChien reached the correct result in this case, it is not relevant whether he misapplied the law related to section 2-1401 proceedings.

¶ 11 Therefore, we turn to the second and third arguments advanced on appeal by the respondent. With regard to both arguments, the respondent has cited no authority, and presented no cogent and coherent argument based upon that authority, in support of his claims of error. Accordingly, the respondent has forfeited consideration of these claims of error. See Ill. S. Ct. R. 341(h)(7) (eff. Jan. 1, 2016) (argument must contain the contentions of the appellant, the reasons therefor, and the citation of authorities; points not argued in an opening brief are forfeited and shall not be raised in the reply brief, in oral argument, or in a petition for a rehearing); see also, *e.g.*, *Ameritech Services, Inc. v. Illinois Workers' Compensation Comm'n*, 389 Ill. App. 3d 191, 208 (2009) (when party fails to support argument with citation to authority, party has forfeited claim on appeal).

¶ 12 Forfeiture notwithstanding, the State is correct in its assertion that the claims are without merit. We begin with the claim the respondent had a "diminished mental capacity" that served as "a legal disability" that would excuse the late filing of the section 2-1401 motion. A motion pursuant to section 2-1401 "filed more than two years after the challenged judgment cannot be considered absent a clear showing that the person seeking relief was under a legal disability or duress or the grounds for relief were fraudulently concealed." *People v. Pinkonsly*, 207 Ill. 2d 555, 562 (2003). As the State aptly notes, this court has held that "[a] person suffers from a 'legal disability' where he or she is 'entirely without understanding or capacity to make or communicate decisions regarding his [or her] person and totally unable to manage his [or her]

estate or financial affairs.' " *In re Doe*, 301 Ill. App. 3d 123, 126-27 (1998) (quoting *Estate of Riha v. Christ Hospital*, 187 Ill. App. 3d 752, 756 (1989)). As a result, "where a legal disability is alleged, the record must contain sufficient allegations of fact from which one could conclude that the person seeking to be found legally disabled was incompetent or suffered from a serious mental disorder which made that person entirely without understanding or capacity to make or communicate decisions regarding his [or her] person and totally unable to manage his [or her] estate or financial affairs." *Id*. at 127. Moreover, a developmental disability such as autism is not automatically a legal disability. *Id*.

¶ 13 Although it is true that in 2012, Dr. Bellew-Smith diagnosed the respondent with "mild mental retardation," and that, several years previously, while still a juvenile, the respondent was at one point deemed unfit to stand trial on an earlier, unrelated aggravated criminal sexual assault charge, it is also true that in 2014, Dr. Richard Travis, a licensed clinical psychologist and licensed sex offender evaluator conducting one of the annual reexaminations of the respondent, ruled out mild mental retardation, and that while still a juvenile, the respondent was restored to fitness and eventually stood trial on the initial charge against him. In the present case, the adult respondent's on-the-record exchange with Judge McGlynn at the October 4, 2012, hearing at which Judge McGlynn accepted the "Sexually Violent Person Admission Findings and Order," described in detail above, also demonstrates that the respondent was clear, coherent, and able to understand the consequences of his actions on that date. Other evidence in the record further demonstrates the ability of the respondent to articulate his positions and needs, and to function at a much higher intellectual level than initially surmised. Accordingly, the respondent has failed to make a "clear showing" (see *People v. Pinkonsly*, 207 Ill. 2d 555, 562 (2003)) that he was " 'entirely without understanding or capacity to make or communicate decisions regarding his person and totally unable to manage his *** estate or financial affairs.' " *In re Doe*, 301 Ill. App.

3d 123, 126-27 (1998) (quoting *Estate of Riha v. Christ Hospital*, 187 Ill. App. 3d 752, 756 (1989)). Thus, even if he had not forfeited his second argument on appeal, it would fail.

¶ 14 With regard to the claim that the respondent should have been afforded an evidentiary hearing on the question of fact of whether he had a diminished mental capacity that constituted a legal disability, the respondent presents no argument that he ever requested, in the trial court, an evidentiary hearing. Our independent review of the record on appeal demonstrates that the respondent made no such request in the section 2-1401 motion. Nevertheless, Judge LeChien set the case for hearing and held a hearing. At the hearing, the respondent did not request permission to present evidence. The respondent simply presented argument. Thus, even if the respondent had not forfeited this argument, there is no basis in the record on appeal to find error.

¶ 15 In short, forfeiture notwithstanding, the respondent has provided no basis upon which Judge LeChien could have found the section 2-1401 motion to be timely and reached its merits. Moreover, we are aware of no such basis. Accordingly, we conclude the section 2-1401 motion was untimely, and we affirm Judge LeChien's order on that basis.

¶ 16 CONCLUSION

¶ 17 For the foregoing reasons, we affirm the order of the circuit court of St. Clair County that denied the respondent's motion, pursuant to section 2-1401 of the Code (735 ILCS 5/2-1401 (West 2016)), to vacate his commitment as a sexually violent person.

¶ 18 Affirmed.