2018 IL App (4th) 170822-U

NO. 4-17-0822

FILED
October 24, 2018
Carla Bender
4th District Appellate
Court, IL

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

In re THE COMMITMENT OF KEVIN W. STANBRIDGE, a Sexually Violent Person	)	Appeal from the Circuit Court of Adams County
(The People of the State of Illinois, Petitioner-Appellee, v. Kevin W. Stanbridge, Respondent-Appellant).	)	No. 05MR45 Honorable John C. Wooleyhan, Judge Presiding.

JUSTICE STEIGMANN delivered the judgment of the court.
Justices Holder White and Turner concurred in the judgment.

ORDER

¶ 1 *Held:* The appellate court dismissed respondent's appeal because the trial court had not entered a final and appealable order, and thus, the appellate court lacked jurisdiction.

¶ 2 In May 2005, the State filed a petition to commit respondent, Kevin W. Stanbridge, to the Department of Human Services pursuant to the Sexually Violent Persons Commitment Act (Act). 725 ILCS 207/15 (West 2004). The trial court appointed Betsy Bier to represent respondent in the commitment proceedings. In October 2007, a jury found respondent to be a sexually violent person. 725 ILCS 207/5(f) (West 2004). Respondent filed a direct appeal, and the trial court appointed Todd Eyler to represent him on appeal. In November 2008, this court affirmed the trial court's judgment. *In re the Detention of Kevin W. Stanbridge*, No. 4-08-0163 (2008) (unpublished order under Illinois Supreme Court Rule 23).

¶ 3 In February 2010, respondent filed a *pro se* petition for relief from judgment pur-

suant to section 2-1401 of the Code of Civil Procedure (Code) (735 ILCS 5/2-1401 (West 2010)), in which he argued he was denied effective assistance of counsel on appeal. At the time, and throughout the proceedings below, respondent was represented by Bier in the trial court. The court took no action on respondent's *pro se* petition. In 2011 and 2016, respondent filed *pro se* motions seeking a ruling on his section 2-1401 petition.

¶ 4 In June 2017, the trial court found that Bier was respondent's counsel for all proceedings before the court and, as a result, respondent could not file motions on his own behalf. The court struck all of respondent's pending *pro se* petitions and motions. Respondent filed a *pro se* motion to reconsider, and the trial court struck the motion because it was filed without authority.

¶ 5 Respondent appeals, arguing (1) the trial court erred by striking his *pro se* petition and motions, (2) he should have been granted a hearing in accordance with *People v. Krankel*, 102 Ill. 2d 181, 464 N.E.2d 1045 (1984), and (3) his petition pursuant to section 2-1401 pleaded sufficient facts to state a claim for ineffective assistance of counsel. We conclude this court lacks jurisdiction because no final appealable order has been entered.

¶ 6 I. BACKGROUND

¶ 7 A. Respondent's Detention

¶ 8 In November 1999, the State charged respondent with aggravated criminal sexual abuse (720 ILCS 5/12-16(d) (West 1998)). Following a jury trial, respondent was convicted and later sentenced to seven years in prison. In May 2004, this court reversed respondent's conviction and remanded the case for a new trial. *People v. Stanbridge*, 348 Ill. App. 3d 351, 810 N.E.2d 88 (2004). Following an April 2005 retrial, a jury convicted respondent of aggravated criminal sexual abuse.

¶ 9 In May 2005, the State petitioned the trial court to detain respondent pursuant to the Act. In July 2005, the court appointed Bier as counsel for respondent in the commitment proceedings.

¶ 10 Following an October 2007 trial on the State's petition, a jury adjudicated respondent a sexually violent person as defined by section 5(f) of the Act (725 ILCS 207/5(f) (West 2004)). In February 2008, the trial court ordered respondent committed to a secure facility for institutional care until "such time as [r]espondent is no longer a sexually violent person."

¶ 11 Later in February 2008, respondent appealed, and the trial court appointed Eyler to represent him on appeal. During the pendency of the appeal, Bier represented respondent in all proceedings under the Act in the trial court.

¶ 12 In November 2008, this court affirmed the trial court's judgment on direct appeal. *In re the Detention of Kevin W. Stanbridge*, No. 4-08-0163 (2008) (unpublished order under Illinois Supreme Court Rule 23).

¶ 13 B. Respondent's *Pro Se* Filings

¶ 14 In February 2010, respondent filed a *pro se* petition for relief from judgment pursuant to section 2-1401of the Code in which he argued he was denied effective assistance of counsel on direct appeal. As part of his petition, respondent requested the trial court appoint counsel to represent him on that petition. Bier never adopted the *pro se* petition, and the court never took any action on it.

¶ 15 In September 2011, respondent filed a *pro se* motion seeking a ruling on his section 2-1401 petition. Respondent asked the trial court to enter a final order on the petition so that he could appeal the court's decision. Respondent also requested the court appoint Bier to represent him on the petition. Bier did not adopt the motion, nor did the court take any action on it.

¶ 16 In October 2016, respondent filed another *pro se* motion seeking a judgment on his section 2-1401 petition and requesting Bier be appointed as his counsel. Respondent explained that he had filed a petition for a writ of *habeas corpus* in federal court and the court had denied his petition because his section 2-1401 petition was still pending in state court. See *Stanbridge v. Scott*, No. 15-3300, 2016 WL 5858978 (C.D. Ill. Oct. 5, 2016) vacated by *Stanbridge v. Scott*, No. 16-3642, 2017 WL 4574501 (7th Cir. Mar. 24, 2017).

¶ 17 In June 2017, the trial court entered a written order striking respondent's *pro se* section 2-1401 petition and his subsequent *pro se* motions. The court found the pleadings were improperly filed because respondent was represented by counsel and was barred from filing pleadings *pro se*. The court also noted that Bier had not adopted any of the pleadings and found that Bier was appointed to represent respondent generally and not solely at the periodic hearings required under the Act.

¶ 18 In July 2017, respondent filed a *pro se* motion to reconsider. In October 2017, the trial court struck respondent's motion to reconsider because it was not adopted by his counsel.

¶ 19 This appeal followed.

¶ 20 II. ANALYSIS

¶ 21 Respondent appeals, arguing (1) the trial court erred by striking his *pro se* petition and motions, (2) he should have been granted a hearing in accordance with *People v. Krankel*, 102 Ill. 2d 181, 464 N.E.2d 1045 (1984), and (3) his petition pursuant to section 2-1401 pleaded sufficient facts to state a claim for ineffective assistance of counsel. We conclude this court lacks jurisdiction over this case because no final appealable order has been entered.

¶ 22 A. The Jurisdiction of Appellate Courts

¶ 23 "[A] reviewing court has an independent duty to *sua sponte* consider questions of

jurisdiction." *People v. Vari*, 2016 IL App (3d) 140278, ¶ 7, 48 N.E.3d 265. In the absence of an applicable exception, "[i]t is a well-settled axiom that an appellate court's jurisdiction is limited to appeals from final judgments." *Id.* ¶ 8. A final judgment is "a determination by the court on the issues presented by the pleadings which ascertains and fixes absolutely and finally the rights of the parties in the lawsuit." (Internal quotation marks omitted.) *Id.* ¶ 9. In other words, a final judgment is a determination on the merits which, "if affirmed, the only thing remaining is to proceed with the execution of the judgment." (Internal quotation marks omitted.) *Id.*

¶ 24 B. Respondent's *Pro Se* Filings Were Improper

¶ 25 It is well settled that "[a] defendant has the right to proceed either *pro se* or through counsel; he has no right to some sort of hybrid representation whereby he would receive the services of counsel and still be permitted to rile *pro se* motions." *People v. Stevenson*, 2011 IL App (1st) 093413, ¶ 30, 960 N.E.2d 739 (citing *People v. Handy*, 278 Ill. App. 3d 829, 836, 664 N.E.2d 1042, 1046 (1996)). "Accordingly, '[w]hen a defendant is represented by counsel, he generally has no authority to file *pro se* motions, and the court should not consider them.' " *In re Sean N.*, 391 Ill. App. 3d 1104, 1106, 911 N.E.2d 1094, 1095 (2009) (quoting *People v. Serio*, 357 Ill. App. 3d 806, 815, 830 N.E.2d 749, 757 (2005)).

¶ 26 In *Sean N.*, this court concluded these rules apply equally "in a proceeding to involuntarily administer treatment" because "[a] respondent, like a criminal defendant, has the right to choose to represent himself or have counsel represent him." (Emphasis omitted.) *Id.* We now conclude these rules likewise apply to proceedings under the Sexually Violent Persons Commitment Act.

¶ 27 In this case, the trial court properly declined to consider the *pro se* motions because they were filed without authority and never adopted by respondent's appointed counsel.

Instead of addressing the motions, the court simply struck them as improperly filed. As such, the court did not enter a final order.

¶ 28 It is well settled that even an order striking a complaint is not final and appealable if the plaintiff has the ability to refile the action. *Vari*, 2016 IL App (3d) 140278, ¶¶ 10-13. Here, respondent's counsel could have refiled the petition or adopted it and the petition would have been properly before the trial court. Accordingly, the court's order striking respondent's *pro se* petition is not a final order, and this court lacks jurisdiction.

¶ 29 C. *Krankel* Does Not Apply

¶ 30 Normally, a lack of jurisdiction would end our inquiry. However, one of the exceptions to the prohibition on hybrid representation is that defendants are allowed to file *pro se* motions claiming ineffective assistance of counsel against their trial counsel. *Stevenson*, 2011 IL App (1st) 093413, ¶ 30. Defendant argues he is entitled to a *Krankel* hearing because his petition alleged ineffective assistance of counsel. We disagree.

¶ 31 First, *Krankel* does not apply to cases under the Act because a respondent has other avenues to "vindicate his or her right to counsel." *In re Commitment of Walker*, 2014 IL App (2d) 130372, ¶¶ 55, 56, 19 N.E.3d 205. The proper method to raise ineffective assistance claims is filing a petition pursuant to section 2-1401 of the Code of Civil Procedure. *Id.* ¶ 55 (citing *People v. Lawton*, 212 Ill. 2d 285, 298, 818 N.E.2d 326, 334 (2004)). Here, respondent chose the proper procedural vehicle to raise his claims, but, as we explained earlier, he is not permitted to raise them *pro se* while he has appointed counsel. Respondent's remedy, if he does not like the decisions of his current counsel, is to request that the trial court appoint new counsel.

¶ 32 Second, even if *Krankel* applied, respondent was not entitled to a hearing because he was not alleging his current counsel was ineffective. Instead, respondent asserted claims of

ineffective assistance of counsel against his *appellate* counsel in a prior appeal, not against his *current* counsel. Accordingly, his current counsel would not have a conflict if she raised an ineffective assistance claim, which is one of the chief purposes of the common law procedure established by *Krankel*. See *People v. Taylor*, 237 Ill. 2d 68, 75, 927 N.E.2d 1172, 1176 (2010) (explaining appointing new counsel avoids "the conflict of interest that trial counsel would experience if trial counsel had to" argue his own ineffectiveness) (internal quotation marks omitted).

¶ 33 D. Respondent's Remaining Arguments Are Moot

¶ 34 Because respondent's *pro se* petition was not before the court and *Krankel* does not provide an exception to the bar on hybrid representation, we need not consider whether respondent's petition pleaded sufficient facts to state a claim for ineffective assistance of counsel.

¶ 35 III. CONCLUSION

¶ 36 For the reasons stated, we conclude this court lacks jurisdiction to review the trial court's order striking respondent's *pro se* section 2-1401 petition because it is not a final and appealable order. Accordingly, we dismiss the appeal.

¶ 37 Appeal dismissed.