2019 IL App (1st) 172592-U

SIXTH DIVISION
January 18, 2019

No. 1-17-2592

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellant, v. KARI FORD, Defendant-Appellee (Illinois Department of Corrections, Intervenor-Appellant).	)	Appeal from the Circuit Court of Cook County. No. 78 CR 94201 Honorable Alfredo Maldonado, Judge Presiding.

PRESIDING JUSTICE DELORT delivered the judgment of the court.
Justice Harris concurred in the judgment.
Justice Connors concurred in part and dissented in part.

ORDER

¶ 1 ***Held:*** The doctrine of sovereign immunity does not bar defendant's claim. The SDP Act obligates IDOC to provide for defendant's "care and treatment" while defendant resides outside IDOC's institutional setting. Affirmed.

¶ 2 Defendant Kari Ford was adjudged a sexually dangerous person pursuant to the Sexually Dangerous Persons Act (Ill. Rev. Stat. 1977, ch. 38, ¶ 105) (the SDP Act). Defendant subsequently filed a motion to compel intervenor, the Illinois Department of Corrections

(IDOC), to comply with the circuit court's order granting defendant's conditional release and to "fund appropriate housing and support." The circuit court granted defendant's motion. IDOC appeals, contending that sovereign immunity bars defendant's claim, or in the alternative, that the SDP Act does not obligate it to provide for defendant's "care and treatment" while defendant resides outside of IDOC's institutional setting. We affirm the judgment of the circuit court of Cook County.

¶ 3 BACKGROUND

¶ 4 Beginning in the 1970s, when defendant was a teenager, he began sexually assaulting elderly women. Defendant estimated that he assaulted nine women by the time he was 21. In 1978, the State charged defendant with two counts of sexual assault. In 1979, pursuant to the SDP Act, the circuit court adjudicated defendant a sexually dangerous person and appointed the Director of the Illinois Department of Corrections (the Director) as his legal guardian.

¶ 5 In March 2016, defendant filed a *pro se* "application showing recovery" that asked the court for a hearing to determine whether he was still a sexually dangerous person, and if not, for a conditional release from IDOC. On that same day, the court ordered a "socio-psychiatric report" on defendant. The report, which was signed on April 28, 2016, concluded that defendant "appears no longer sexually dangerous as defined in [the SDP Act] and does not need to remain in an institutional setting." The report recommended that defendant be released to "the community under conditions and supervision." The report noted that defendant had previously been granted conditional release but "struggled with coping" and indicated that it was "of the utmost importance" that defendant attend sex offender treatment and substance abuse treatment to prevent relapse, as well as mental health treatment to manage his psychological symptoms.

¶ 6 On January 13, 2017, following a hearing, the circuit court granted defendant's *pro se* petition for conditional release, "subject to conditions set by [IDOC]," which were to be submitted to the court by February 23, 2017. The record does not indicate that IDOC ever submitted any proposed conditions to the court.

¶ 7 On May 10, 2017, defendant filed a motion to (1) approve his proposed conditions, (2) compel IDOC to comply with the circuit court's order granting defendant's conditional release, and (3) "fund appropriate housing and support for" him. Defendant's motion stated that, following the January 2017 hearing, defendant was returned to the Big Muddy River Correctional Center and has remained there. Defendant added that he had no financial resources to pay for individual housing and could not obtain employment or receive disability payments unless he were released from prison. Defendant's motion stated, "There are currently no transitional housing facilities or homeless shelters in the state of Illinois that accept sex offenders." Defendant's motion further argued that, with no prospect of independently obtaining housing, defendant faced "the likelihood of lifetime imprisonment due solely to his inability to pay for his housing and basic subsistence," which would enable him to comply with the order.

¶ 8 Defendant further argued that there were three reasons that his continued institutionalization would frustrate the purpose of section 8 of the SDP Act (which provides that the Director, as guardian, is to furnish care and treatment designed to effect recovery). First, defendant would not receive drug or alcohol treatment within the institution. In addition, defendant's recovery progress requires "more advanced sex offender group therapy" than that available in the institution. Finally, defendant stated that he would never be deemed fully recovered because he could never show that he is no longer dangerous outside of an institutional setting.

¶ 9 IDOC filed a petition to intervene, which included its response to defendant's motion. In its response, IDOC first argued that the doctrine of sovereign immunity barred defendant's motion because defendant's request was a "separate action from the commitment proceedings and more akin to a request for mandamus relief." IDOC also argued that the SDP Act's plain language did not require it to pay for the housing and living expenses of a sexually dangerous person on conditional release. Instead, according to IDOC, the Director's guardianship duties are limited to sexually dangerous persons who are committed to IDOC's facilities and not those on conditional release from those facilities. Finally, IDOC contended that defendant's conditional release was analogous to a convicted sex offender released on mandatory supervised release (MSR). Specifically, IDOC argued that a convicted sex offender can be "violated at the door" of the prison on the first day of his MSR if IDOC cannot locate a suitable host site where the offender could reside and remain in compliance with his MSR terms. IDOC noted that courts have rejected challenges from convicted sex offenders facing those circumstances. It explained that those courts reasoned that IDOC's decision to hold the sex offender in custody was discretionary, and the sex offender's status—and not his indigence—resulted in the continued confinement. After noting that licensed transitional facilities for sex offenders "do not currently exist," IDOC argued that the court should deny defendant's motion because IDOC's decision to retain custody of defendant "until such a location exists" was similarly discretionary.

¶ 10 On September 21, 2017, following a hearing, the circuit court issued a written opinion granting defendant's motion. The court rejected IDOC's argument that sovereign immunity barred defendant's claim, finding that defendant's motion did not constitute a "separate or new cause of action." Rather, according to the court, defendant's motion for payment of basic housing and living expenses was an "organic extension" of the State's original petition seeking a

finding that defendant was a sexually dangerous person and that, "[m]uch like legal fees, housing and basic living expenses constitute necessary expenditures."

¶ 11 The court further found that, even if defendant were living outside of an IDOC facility, the Director, as defendant's guardian, would not be relieved of his guardianship obligations unless defendant were found to be fully recovered and discharged. The court concluded that these guardianship obligations include not only legal fees but also "essential expenses" (*e.g.*, housing and living costs) while on conditional release.

¶ 12 Finally, the court rejected IDOC's argument that, since conditional release for sexually dangerous persons is analogous to MSR for convicted sex offenders, the Director has the same discretion to retain physical custody of defendant in the absence of suitable housing (and despite the conditional release order). The court noted that it granted conditional release following a hearing, whereas the Director grants MSR at his or her discretion. The court further observed that conditional release is "the penultimate step before discharge," but discharge would become impossible if defendant could not "avail himself of the opportunity to attain full recovery" because he could not afford the costs related to conditional discharge. The court ordered the Director to fund defendant's "reasonable housing and living expenses on conditional release" until defendant became self-sufficient and no longer indigent. IDOC's timely appeal followed.

¶ 13 During the briefing stage of this appeal, defendant's attorney noted that, although IDOC secured a residential placement for defendant in October 2017, the State filed a petition to revoke defendant's conditional release in June 2018, alleging that he had violated certain terms of the conditional release order. IDOC subsequently filed a motion to dismiss this appeal as moot and asked that we vacate the circuit court's order requiring IDOC to pay for defendant's living expenses while on conditional release. In response to this court's order asking for additional

briefing, IDOC stated that, should this court decline to vacate the circuit court's order, we should not dismiss the appeal as moot and instead address it under the collateral consequences mootness exception. The issue was again presented at oral argument. Since the record before us is still unclear as to whether the circuit court has yet entered any order specifically finding defendant to be in violation pursuant to section 10 of the SDP Act (725 ILCS 205/10 (West 2016)), we decline to dismiss this appeal as moot. We now turn to the merits of this appeal.

¶ 14 ANALYSIS

¶ 15 *Standard of Review*

¶ 16 The State raises two issues in this appeal: (1) whether the State Lawsuit Immunity Act (the Immunity Act) bars defendant's claim; and in the alternative, (2) whether the SDP Act requires that IDOC fund defendant's housing and living expenses. These issues concern statutory interpretation, a question of law that we review *de novo*. See *State Building Venture v. O'Donnell*, 239 Ill. 2d 151, 160 (2010).

¶ 17 *Sovereign Immunity*

¶ 18 IDOC first contends that the circuit court erred in rejecting IDOC's argument that the doctrine of sovereign immunity barred defendant's claim that the Director must fund defendant's living expenses while on conditional release. As in the circuit court, IDOC contends that defendant's motion–seeking payment of his housing and reasonable living expenses–constitutes a separate and new cause of action that may only be brought pursuant to the Court of Claims Act (705 ILCS 505/1 *et seq.* (West 2016)). Defendant responds in part that sovereign immunity does not bar this claim because the claim was a natural outgrowth of the proceedings the State initiated against him pursuant to the SDP Act, and the SDP Act explicitly grants jurisdiction to the circuit court for all proceedings brought under the SDP Act. Defendant explains that, since

he is indigent, he lacks the financial resources for private housing, *i.e.*, "the means necessary to reenter the community and meet the requirement of his conditional release," rendering the court's order of conditional release "meaningless." Defendant further argues that there is no statutory or constitutional basis for his continued institutional confinement, and denying him the "means to effectuate his recovery" would violate his statutory and constitutional right to receive the necessary treatment to ensure his recovery.

¶ 19 The purpose of sovereign immunity is to (1) protect the state from interference with the performance of governmental functions and (2) preserve and protect state funds. *People ex rel. Manning v. Nickerson*, 184 Ill. 2d 245, 248 (1998). The Illinois Constitution of 1970 abolished the doctrine of sovereign immunity except "as the General Assembly may provide by law." Ill. Const.1970, art. XIII, § 4. In turn, the legislature enacted the State Lawsuit Immunity Act (the Immunity Act) in 1972, which now provides in pertinent part that the State "shall not be made a defendant or party in any court except "as provided in the *** Court of Claims Act." 745 ILCS 5/1 *et seq.* (West 2016). With certain exceptions not relevant here, section 8(a) of the Court of Claims Act states that the court of claims has exclusive jurisdiction to hear and determine claims against the State "founded upon any law." 705 ILCS 505/8(a) (West 2016).

¶ 20 In *People v. Wilcoxen*, 358 Ill. App. 3d 1076 (2005), *appeal denied*, 217 Ill. 2d 591 (2005) (Table), the defendant, who had been adjudged a sexually dangerous person under the Act and committed to IDOC, filed for discharge based upon his alleged recovery, and the circuit court appointed an attorney to represent him. *Id.* at 1077. After a jury found that the defendant had not recovered and he was returned to IDOC's custody, the defendant's appointed attorney filed a petition for fees, which the court granted and ordered IDOC to pay. *Id.* The court rejected IDOC's argument that sovereign immunity barred the claim. *Id.*

¶ 21 The appellate court affirmed, holding that section 1 of the Immunity Statute was clear: "The General Assembly's reinstatement of such immunity does not apply unless the State has been 'made a defendant or party' in the case at issue." *Id.* at 1078 (citing 745 ILCS 5/1 (West 2002)). The *Wilcoxen* court noted that the State was not the defendant, and "Wilcoxen did not 'make' the State a party; rather, the State chose to become a party by initiating proceedings under the Act and maintaining Wilcoxen's commitment in the IDOC." *Id.* The court further rejected the State's argument that the State was transformed into a defendant because Wilcoxen petitioned for attorney's fees and the petition "somehow created its own case with realigned parties." The court characterized the defendant's petition for attorney fees as "a component of the original action against Wilcoxen (filed by the State as plaintiff)." *Id.* The court further held that the State (*i.e.*, the defendant's guardian)—rather than the county—was the "correct source of payment for the person's essential expenses." *Id.*

¶ 22 We agree with the circuit court that the doctrine of sovereign immunity does not apply here. On this issue, the case before us is virtually indistinguishable from *Wilcoxen*. Section 1 of the Immunity Act makes it clear that, if the State has been made a defendant or party in a case, the doctrine of sovereign immunity applies and jurisdiction vests with the Court of Claims. 745 ILCS 5/1 (West 2016). Like the *Wilcoxen* defendant's petition, however, Ford's motion to compel IDOC to pay for his housing and reasonable living expenses until he obtains employment did not make the State a defendant or a party to a case because his motion was a natural outgrowth from the original proceeding under the Act that *the State* initiated as plaintiff. The State originally sought (and obtained) the circuit court's determination that defendant was a sexually dangerous person, and he was committed to IDOC's custody and imprisoned. Defendant petitioned for conditional release, which the court granted, but there are no

transitional housing facilities or homeless shelters in this state that accept sex offenders. Defendant would therefore immediately be returned to prison for lack of funds to pay for private housing. Being incarcerated would then prevent him from either obtaining employment or receiving disability payments. In effect, despite the circuit court's order granting defendant conditional release from prison, defendant would nonetheless spend the rest of his life imprisoned solely because of the State's failure to provide for appropriate transitional housing that would enable defendant to continue (and perhaps complete) his recovery. Defendant's motion, in effect, merely asked the court to require the State to comply with the earlier order granting conditional release.

¶ 23 Nonetheless, IDOC claims that the rationales in *Wilcoxen* and its progeny (*People v. Carter*, 392 Ill. App. 3d 520 (2009), *appeal denied*, 188 Ill. 2d 568 (2000) (Table); *People v. Downs*, 371 Ill. App. 3d 1187 (2007), *appeal denied*, 224 Ill. 2d 581 (2007) (Table)) are "unsound and should not be followed" because they are inconsistent with our supreme court's holding in *People ex rel. Manning v. Nickerson*, 184 Ill. 2d 245 (1998). We disagree.

¶ 24 In *Nickerson*, the plaintiff, the director of the Illinois Department of Conservation, filed a complaint against the defendant seeking an injunction to compel the defendant, *inter alia*, to remove a building that was allegedly on part of a state park. *Id.* at 247. The defendant counterclaimed, seeking (1) a judicial determination of the boundary line between the defendant's property and the state park, (2) ejectment of the state from his land, and (3) money damages for "the common law torts of trespass, emotional distress, and slander of title." *Id.* Although the trial court dismissed the defendant's counterclaim based upon the doctrine of sovereign immunity, the appellate court reversed the trial court. *Id.* at 247-48.

¶ 25 Our supreme court, however, reversed the appellate court with respect to the defendant's tort claims, but affirmed the appellate court with respect to the property claims. *Id.* at 250. The court explained that the defendant's tort claims related to the plaintiff's official duties as a state employee, and that section 8(d) of the Court of Claims Act (705 ILCS 505/8(d) (West 1996)) "could not be more clear: tort claims against the state must be brought in the Court of Claims." *Id.* at 249. Here, defendant did not file a stand-alone tort claim against the State; instead, he filed a motion that sought to simply enforce the terms of the circuit court's earlier order granting his petition for conditional release. Both of defendant's filings were wholly dependent upon the State's original petition under the SDP Act. *Nickerson* is therefore unavailing.

¶ 26 Finally, IDOC notes that Public Act 98-88, which amended section 5 of the SDP Act, provides that the county where commitment proceedings were brought—rather than the State—is responsible for attorney fees and costs in proceedings brought under the SDP Act. See P.A. 98-88, § 5 (eff. July 15, 2013). IDOC argues that the legislature's amendment of section 5 "soon after" the decision in *Carter* (in 2013) establishes that *Wilcoxen*, *Carter*, and *Downs*—all of which held that the State, rather than the county, is financially responsible for those costs—misconstrued the legislature's intent. In support, IDOC relies upon *Wells Fargo Bank, N.A. v. Maka*, 2017 IL App (1st) 153010.

¶ 27 IDOC's reliance upon *Maka*, however, is misplaced. There, the court was called upon to determine whether a mortgagee's violation of the Residential Mortgage License Act of 1987 (the License Act) (205 ILCS 635/1-1 *et seq.* (West 2012)) rendered a mortgagor's obligation to that mortgagee void. *Id.* ¶ 1. The defendant relied upon a Second District opinion, which held that violations of the License Act result in a void mortgage. *Id.* The *Maka* court, however, noted that a subsequent amendment to the License Act "stated in plain language that, "The changes made to

this Section by this amendatory Act of the 99th General Assembly *are declarative of existing law*." (Emphasis in the original.) *Id.* ¶ 20. The *Maka* court quoted extensively from the legislative debates, which specifically indicated that it was a clarification resulting from an appellate court case. *Id.* ¶ 22 (citing 99th Ill. Gen. Assem., House Proceedings, Mar. 17, 2015, at 27-28 (statements of Representatives Franks and Nekritz)). The court then held that the debates and legislative history supported the conclusion that the amendment simply clarified the prior statute "and must be accepted as a legislative declaration of the meaning of the original provision." *Id.* ¶ 23. In addition, the court examined the amendment and concluded that it was "consistent with the preexisting provisions of the License Act which do not provide for any private remedies for violations of its licensing requirements, such as a private right of action or the right of a mortgagor to avoid a mortgage obtained by an unlicensed lender." *Id.* ¶ 20. Here, by contrast, IDOC provides no such legislative history or debates in support of its claim, and we cannot find any. Furthermore, the amendment here added a new provision that was not "consistent with the preexisting provisions." *Id.* Therefore, IDOC's reliance upon *Maka* fails.

¶ 28 *The SDP Act*

¶ 29 In the alternative, IDOC contends that, should we hold that defendant's claim is not barred by the doctrine of sovereign immunity, IDOC is nonetheless not responsible for the costs of defendant's "care and treatment" while defendant resides outside IDOC's institutional setting. Specifically, IDOC argues that, under the common law, a guardian is not personally liable for the ward's support, even if the ward cannot "provide for the necessities of his life." IDOC further argues that its nonpayment of defendant's living expenses is consistent with IDOC's "established practice of not paying them for inmates released on MSR." Finally, IDOC asserts that a contrary holding would place "wards living in the community under the Director's guardianship in a

better financial position than the State's other disabled adult wards who, though perhaps also indigent and in need of residential placement, cannot obtain it from the State."

¶ 30 When construing a statute, our goal is to "ascertain and give effect to the intent of the legislature." *Kean v. Wal-Mart Stores, Inc.*, 235 Ill. 2d 351, 361 (2009). This inquiry begins with the language of the statute, "the best indicator of legislative intent." *Id.* Where the language in the statute is clear and unambiguous, we apply the statute as written without resort to extrinsic aids of statutory construction. *Landis v. Marc Realty, LLC*, 235 Ill. 2d 1, 6-7 (2009). It is appropriate to employ a dictionary to ascertain the meaning of an otherwise undefined word or phrase. *Id.* at 8 (citing *People v. Beachem*, 229 Ill. 2d 237, 244-45 (2008)).

¶ 31 On the other hand, a statute is ambiguous if it can be understood by reasonably well-informed persons in two or more different senses. *Beachem*, 229 Ill. 2d at 246. In that instance, the court may look beyond the language employed and consider the purpose behind the law and the evils the law was designed to remedy, as well as other sources such as legislative history. *Home Star Bank & Financial Services v. Emergency Care & Health Organization, Ltd.*, 2014 IL 115526, ¶ 24. We may not, however, depart from the statute's plain language by "reading into it exceptions, limitations, or conditions that conflict with the clearly expressed legislative intent." *Metropolitan Life Insurance Co. v. Hamer*, 2013 IL 114234, ¶ 18. Since all provisions of a statutory enactment are viewed as a whole, we do not construe words and phrases in isolation; instead, they are interpreted in light of other relevant portions of the statute. *Carver v. Sheriff of La Salle County*, 203 Ill. 2d 497, 507-08 (2003). We further presume that the General Assembly did not intend absurdity, inconvenience or injustice. *Id.* at 508. When the wording of a statute is allegedly in conflict, we must interpret it in a manner that avoids inconsistency and gives effect

to the statute as intended by the legislature where such an interpretation is reasonably possible. *Ferguson v. McKenzie*, 202 Ill. 2d 304, 311-12 (2001).

¶ 32 This issue requires that we construe section 8 of the SDP Act. It is well established that "treatment, not punishment, is the aim of the [SDP Act]." *People v. Allen*, 107 Ill. 2d 91, 100-01 (1985), *aff'd*, 478 U.S. 364 (1986). Moreover, as our supreme court stated long ago, since our legislature "thought that sexually dangerous persons suffer from a mental illness," its intent was that, "instead of being criminally punished for their criminal sexual offenses, they be committed to the Department of Corrections *for treatment* until they are no longer considered sexually dangerous, and then discharged." (Emphasis added.) *People v. Cooper*, 132 Ill. 2d 347, 355 (1989). The *Cooper* court further held that, even while on conditional release, a sexually dangerous person remains designated as such and subject to treatment until he is discharged. *Id.*

¶ 33 Section 8 of the SDP Act provides in relevant part as follows:

> "If the respondent is found to be a sexually dangerous person then the court shall appoint the Director of [IDOC] guardian of the person found to be sexually dangerous and such person shall stand committed to the custody of such guardian. The Director of [IDOC] as guardian shall keep safely the person so committed until the person has recovered and is released as hereinafter provided. The Director of [IDOC] as guardian shall provide care and treatment for the person committed to him designed to effect recovery. ***. The Director may place that ward in any facility in [IDOC] or portion thereof set aside for the

> care and treatment of sexually dangerous persons." 725 ILCS 205/8 (West 2016).

Although the SDP Act designates the Director of IDOC (the Director) as the guardian of a sexually dangerous person, the person "remains under the jurisdiction of the court which initially committed him until that court expressly finds that he is not sexually dangerous." *Cooper*, 132 Ill. 2d at 355; see also *People v. Kastman*, 2015 IL App (2d) 141245, ¶ 20 (holding that, although the Director is the committed person's guardian, that person "remains, until recovered ***, a ward of the committing court").

¶ 34 Section 9(e), which concerns conditional release, provides in part that if the circuit court finds that the committed person no longer appears to be dangerous, but "it is impossible to determine with certainty under conditions of institutional care that the person has fully recovered," the court shall enter an order allowing the person to go at large "subject to the conditions and supervision by the Director" that in the court's opinion will adequately protect the public. 725 ILCS 205/9(e) (West 2016).

¶ 35 In this case, IDOC first argues that, under the common law, a guardian is not personally liable for the ward's support, even if the ward cannot "provide for the necessities of his life." In support of this point, IDOC relies upon various out-of-state cases dating before 1920. IDOC further notes that (1) section 11a-5 of the Probate Act of 1978 (the Probate Act) (755 ILCS 5/11a-5 (West 2016)) prohibits any state agency from serving as guardian of a ward if the agency provides residential services to the ward, and (2) section 32 of the Guardianship and Advocacy Act (the Guardianship Act) (20 ILCS 3955/32 (West 2016)) states that the "State Guardian shall not provide direct residential services to its wards." According to IDOC, these two statutes illustrate that the legislature did not intend for the State to provide for housing and living

expenses for sexually dangerous persons who have been ordered conditionally released but where the State has failed to secure transitional housing. IDOC's argument is without merit.

¶ 36 IDOC's reliance upon out-of-state cases is misplaced. We are not bound by out-of-state decisions, particularly where, as here, we are interpreting an Illinois statute. *People v. Reese*, 2015 IL App (1st) 120654, ¶ 70, *reversed in part on other grounds*, 2017 ILCS 120011.

¶ 37 Furthermore, the Director's duties as guardian differs markedly from the guardianship duties in the statutes IDOC cites. The duties of the Director, as guardian for a sexually dangerous person, include providing "care and *treatment*" for the person, and the Director must "keep safely" the person committed "*until the person has recovered* and is released ***." (Emphases added.) 725 ILCS 205/8 (West 2016). By contrast, neither the Probate Act nor the Guardianship Act require that guardians appointed under those acts devote themselves to their ward's treatment or recovery. See 755 ILCS 5/11a-17 (West 2016) (duties of the personal guardian); 755 ILCS 5/11a-18 (West 2016) (duties of the estate guardian); 20 ILCS 3955/32 (West 2016) (providing that the State Guardian shall have the same powers and duties as a private guardian as provided in the Probate Act).

¶ 38 Furthermore, although IDOC is partially correct that "statutes should be construed with reference to the principles of the common law" (*Scott v. Dreis & Krump Manufacturing Co.*, 26 Ill. App. 3d 971, 983 (1975)), this is not "always" the case, as it states in its brief. Rather, that only holds true where a contrary indication is either "specified or clearly to be implied" (*Id.*). See also *Advincula v. United Blood Services*, 176 Ill. 2d 1, 17 (1996) (stating that "common law meanings of words and terms may be assumed to apply in statutes *** to the extent that they appear fitting and absent evidence indicating a contrary meaning"). Here, the requirement that the Director, as guardian, provide treatment until recovery adds a new requirement not found in

the guardianship duties under either the Probate Act or Guardianship Act. We must therefore reject IDOC's argument that the Director's guardianship duties are limited to those defined under the common law.

¶ 39 IDOC next argues that its nonpayment of defendant's living expenses is consistent with IDOC's "established practice of not paying them for inmates released on MSR." This argument is meritless. Convicted criminals on MSR are not under the guardianship of the Director; individuals on conditional release are. Compare 730 ILCS 5/3-3-7(a)(3) (West 2016) (requiring that individuals on MSR "report to an agent of" IDOC), with 725 ILCS 205/8 (West 2016) (providing that the court shall appoint the Director to be the guardian of the person found to be sexually dangerous). In addition, MSR is a term of years that is automatically added onto a prison sentence, which may be imposed solely for punitive purposes. 730 ILCS 5/5-4.5-15(c) (West 2016) (providing that, except for life sentences, "every sentence includes a term in addition to the term of imprisonment," which is called either parole or mandatory supervised release); *People v. Smith*, 246 Ill. App. 3d 647, 653 (1993) ("The ideal sentence is one which adequately punishes the offender for his misconduct, safeguards the public ***, and reforms and rehabilitates the offender ***."). Conditional release is not automatically granted (a committed individual may go directly from institutionalized treatment to full discharge) and it is part of the SDP Act, which is rehabilitative, not punitive. 725 ILCS 205/9(e) (West 2016); *Allen*, 107 Ill. 2d at 100-01. Finally, the Prisoner Review Board sets the conditions for MSR and determines whether a violation of those conditions warrant the revocation of MSR. 730 ILCS 5/3-3-1(a)(5) (West 2016). Under conditional release, the circuit court sets the conditions, determines whether they have been violated, and if so, revokes conditional release. 725 ILCS 205/9(e) (West 2016). Since MSR and conditional release are fundamentally different, IDOC's argument fails.

¶ 40 Finally, IDOC asserts that a contrary holding would place "wards living in the community under the Director's guardianship in a better financial position than the State's other disabled adult wards who, though perhaps also indigent and in need of residential placement, cannot obtain it from the State." This argument, however, suffers from the same flaws as IDOC's prior argument. In this case, the Director's guardianship duties to defendant are prescribed by statute and include providing for defendant's care *and treatment* until his discharge. 725 ILCS 205/8 (West 2016). We may not depart from the plain language of section 8 of the SDP Act by "reading into it exceptions, limitations, or conditions that conflict with the clearly expressed legislative intent." *Metropolitan Life Insurance Co.*, 2013 IL 114234, ¶ 18. Defendant's treatment requires that he obtain more advanced services than the prison can provide. Without this treatment, however, there appears to be no reasonable likelihood that defendant can reach full recovery and eventual discharge from state guardianship. Since the Director's guardianship duties statutorily require the provision of treatment for sexually dangerous persons committed to his care, the fact that other disabled indigent wards cannot obtain state-provided housing assistance cannot alter our holding. IDOC's final argument on this point is therefore unavailing.

¶ 41 CONCLUSION

¶ 42 In sum, the doctrine of sovereign immunity does not bar defendant's claim, and the SDP Act obligates IDOC to provide for defendant's "care and treatment" while defendant resides outside IDOC's institutional setting. Accordingly, we affirm the judgment of the Circuit Court of Cook County.

¶ 43 Affirmed

¶ 44 JUSTICE CONNORS, concurring in part and dissenting in part.

¶ 45 I concur with the majority that the doctrine of sovereign immunity does not bar defendant's claim, but respectfully disagree with the majority that the SDP Act obligates the Director of the IDOC, as guardian for defendant, to pay for all costs of his care, treatment, and living expenses outside the IDOC's institutional setting.

¶ 46 As it relates to defendant in this case, section 8 of the SDP Act provides that: (1) the court shall appoint the Director as guardian of defendant; (2) defendant shall stand committed to the custody of the guardian; (3) the Director, as guardian, shall keep safely defendant until he has recovered and is released; (4) the Director, as guardian, shall provide care and treatment for defendant to effect recovery; (5) treatment provided for defendant by the Director, as guardian, shall be in conformance with standards promulgated by the Sex Offender Evaluation and Treatment Provider Act; and (6) the Director may place defendant in an IDOC facility set aside for the care and treatment of sexually dangerous persons. See 725 ILCS 205/8 (West 2016). " Legislative use of the word 'may' is generally regarded as indicating a permissive or directory reading, whereas use of the word 'shall' is generally considered to express a mandatory reading." (Internal quotations marks omitted.) *People v. Bilelegne*, 381 Ill. App. 3d 292, 295 (2008). Thus, items (1) through (5) contain mandates, while item (6), which uses the word "may," indicates the Director has some discretion in placement.

¶ 47 These are the only authorized actions that the Director, as guardian, can perform pursuant to the statute. There is no authorization or mandate that the Director be responsible for the payment of any costs for the care or treatment of defendant that cannot be directly provided through IDOC. Additionally, the "as guardian" language is not defined in the Act, and as a result, there is ambiguity as to what authority the guardian possesses.

¶ 48 The majority recognizes that a statute is ambiguous if it can be understood by reasonably well-informed persons in two or more different senses (*Beachum*, 229 Ill. 2d at 246), and that in such an instance, the court may look beyond the language employed and consider other sources (*Home Star Bank & Financial Services*, 2014 IL 115526, ¶ 24.). I find it appropriate to consider section 11a of the Probate Act, which provides instruction for "Guardians for Adults with Disabilities." 755 ILCS 5/11a (West 2016).

¶ 49 There are various forms of guardianship under the Probate Act—for example, plenary, limited, guardian of the person, guardian of the estate, temporary guardian, short term and standby guardian. *Id.* The Probate Act provides detailed descriptions of the powers and duties of each one of these types of guardians. Unlike, the provision of the SDP Act at issue here, there is no ambiguity as to what these guardians can or cannot do. All Probate Act guardians act as the guardian in this case does—with court overview. Pursuant to statute, the guardian of the person can only make personal decisions for their ward, and has no authority to spend funds of the ward. See 755 ILCS 5/11a-17 (West 2016). Conversely, the guardian of the estate must manage the assets of the ward, and can expend funds on behalf of the ward. See 755 ILCS 5/11a-18 (West 2016). In this case, the Director, as guardian, is only authorized to perform those functions granted to him by statute.

¶ 50 I find it necessary to consider *Wilcoxen* and its progeny, *Carter* and *Downs*, not only through the lens of sovereign immunity but also through the lens of guardianship. In *Wilcoxen*, the court stated that the circuit court had " 'inherent power' to enter an order ensuring that [the defendant's attorney] did not suffer an intolerable sacrifice and burden as a result of his appointment." *Wilcoxen*, 358 Ill. App. 3d at 1079 (quoting *People ex rel. Conn v. Randolph*, 35 Ill. 2d 24, 29 (1966)). Contrary to what defendant suggests in his brief, *Wilcoxen* does not say

that the circuit court possessed the inherit power to enter an order requiring the state to pay attorney fees. A careful look at *Conn*, the case quoted by *Wilcoxen* in its holding, discloses that the fee allowance in that case was based on *Gideon v. Wainwright*, 372 U.S. 335 (1963), which required states, pursuant to the sixth amendment of the United State Constitution, to provide attorney fees for criminal defendants who are unable to afford them. The conclusion in *Wilcoxen* that IDOC, as the defendant's guardian, was the correct source of payment for the defendant's attorney fees was seemingly based on the right to counsel in criminal proceedings and the mere existence of a guardianship, and did not address the fact that the Director, as guardian, had no legal authority to pay fees pursuant to the SDP Act.

¶ 51 *Downs* follows suit in mandating that IDOC, as guardian, is liable for attorney fees. *Downs*, 371 Ill. App. 3d at 1191. The *Downs* court distinguished the facts before it from *In re Detention of Campbell*, 319 Ill. App. 3d 621 (2001), a case in which the appellate court held that the trial court erred in ordering the IDOC to pay the fees of a court-appointed attorney for an individual who was adjudicated a sexually violent person under the Sexually Violent Persons Commitment Act (725 ILCS 207/1 *et seq.* (West 1998)) incarcerated within IDOC. The *Downs* court, in realizing that the Sexually Violent Persons Commitment Act did not establish a guardianship relationship between the defendant and the IDOC, relied on the one fact that the SDP Act does establish the Director, as guardian, and the Sexually Violent Persons Commitment Act does not, to find a result that differed from *Campbell*. *Downs*, 371 Ill. App. 3d at 1190. The guardianship established in the SDP Act clearly needs definition and further explanation. Based on the analysis and interpretation of the SDP Act in the foregoing cases and the majority in this case, its power and responsibility currently appear to be endless.

¶ 52 As the majority recognizes, the Director, as guardian, holds only the authority granted to him by statute. The language of section 8 of the SDP Act itself is the best indication of statutory intent. See *Burke v. 12 Rothschild's Liquor Mart, Inc.*, 148 Ill. 2d 429, 442 (1992). "Where a statute lists the things to which it refers, there is an inference that all omissions should be understood as exclusions, despite the lack of any negative words of limitation." *Id.* Here, there is no statutory authority given to the Director, as guardian, to expend funds for the costs of defendant's care or treatment or living expenses. I find problematic the majority's position on this issue because I believe it incorrectly enlarged the scope of responsibility of the Director, as guardian, under the statute. It is well-settled that "[a] judicial interpretation of a statute is considered part of the statute itself until the legislature amends it contrary to that interpretation." *People v. Woodard*, 175 Ill. 2d 435, 444 (1997). As a result, the majority's interpretation of the SDP Act has expanded the duties of the Director, as guardian of a sexually dangerous person, beyond what the legislature intended. If it was the legislature's intent to require the Director, as guardian, to fund all costs of a defendant ward's care, treatment, and living expenses outside of its facilities, then that should have been expressly stated in the SDP Act. As the SDP Act is currently written, I do not believe the Director has such a responsibility.

¶ 53 Defendant argues that all reference to the Probate Act, and cases that construe it, should be disregarded. I disagree. Section 11a-17(a) of the Probate Act (755 ILCS 5/11a-17(a) (West 2016)), states that the guardian of the person "shall have custody of the ward" and "shall make *provision* for their support, care, comfort, health, education and maintenance, and professional services as are appropriate." (Emphasis added.) Section 11a-17(a) does not provide responsibility for the guardian to pay for said care and maintenance. Section 8 of the SDP Act mandates that the Director, as guardian, shall *provide* care and treatment—a charge almost

identical to that stated in the Probate Act. (Emphasis added.) On a daily basis, guardians who are appointed under the Probate Act for indigent persons (both private and from the Office of the State Guardian) inquire into, and obtain, whatever government or private benefits are available for their wards. There is no case law that mandates these guardians to personally pay for these costs.

¶ 54 Also, it is worthwhile to note that cases that interpret and discuss the SDP Act *do* consider and cite probate cases as authority. See, *e.g.*, *People v. Kastman*, 2015 IL App (2d) 141245, ¶ 20. The trial court referred to the Probate Act in its order as follows:

> "Under Illinois law, 'guardian' has a well settled meaning. The Illinois Probate Code requires that a guardian, among other things, make decisions for a person with a legal disability, provide for the person's care, as appropriate, and assist in the development of the person's maximum self-reliance and independence. 755 ILCS 5/11a-3; 755 ILCS 5/11a-17(a). While a guardian safeguards the interests of a person with a legal disability, the person is a ward of the court under its protection and jurisdiction. *People v. Delores W. (In re Mark W.)*, 228 Ill. 2d 365, 374-75 (2008)."

¶ 55 The majority expands upon the rulings of *Wilcoxen* and its progeny in a manner that has no firm legal basis as to the Director, as guardian. Further, it places the Director of the IDOC in the untenable position of taking actions far beyond what the statute allows. For the foregoing reasons, I would find that the SDP Act does not grant any authority for the Director to provide funding for defendant's care, treatment, or living expenses while he resides outside IDOC's institutional setting.