2019 IL App (5th) 180142-U

NO. 5-18-0142

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

In re COMMITMENT OF DAVID L. MACKEL	)	Appeal from the
	)	Circuit Court of
(The People of the State of Illinois,	)	Madison County.
	)	
Petitioner-Appellee,	)	
	)	
v.	)	No. 00-MR-154
	)	
David L. Mackel,	)	Honorable
	)	Janet Heflin,
Respondent-Appellant).	)	Judge, presiding.

PRESIDING JUSTICE OVERSTREET delivered the judgment of the court.
Justices Chapman and Moore concurred in the judgment.

ORDER

¶ 1 *Held*: The circuit court properly found that there was no probable cause for an evidentiary hearing on the issue of whether the respondent remained a sexually violent person.

¶ 2 In 2006, the respondent, David L. Mackel, was adjudicated to be a sexually violent person pursuant to the Sexually Violent Persons Commitment Act (Act) (725 ILCS 207/1 *et seq.* (West 2016)). He was committed to the Illinois Department of Human Services (Department) for care and treatment until such time as he was no longer a sexually violent person as defined in the Act. In May 2017, pursuant to section 55(a) of the Act

(*id.* § 55(a)), the State filed an annual reexamination report in which a clinical psychologist opined that the respondent remained a sexually violent person. The State filed a motion requesting the court to find, based on the report, that there was no probable cause for an evidentiary hearing on the issue of whether the respondent remained a sexually violent person. The circuit court entered judgment finding no probable cause and continued the respondent's commitment with the Department for care and treatment. The respondent now appeals, challenging the circuit court's finding of no probable cause. For the following reasons, we affirm.

¶ 3 BACKGROUND

¶ 4 In March 2000, the respondent was nearing the end of a five-year prison sentence for aggravated criminal sexual abuse. The State filed a petition seeking to commit the respondent to the Department as a sexually violent person under the Act, alleging that he suffered from a paraphilia disorder and a personality disorder and was "dangerous to others because his mental disorders created a substantial probability that he will engage in acts of sexual violence." In November 2006, after a bench trial, the circuit court found that the respondent was a sexually violent person as defined under the Act. On April 28, 2008, the circuit court entered a dispositional order that committed the respondent "to the custody of the Illinois Department of Human Services for control, care and treatment until such time as he is no longer a sexually violent person."

¶ 5 As required under section 55(a) of the Act (725 ILCS 207/55(a) (West 2016)), in 2009, 2010, 2011, 2012, 2013, 2014, 2015, and 2016, the respondent underwent annual reexaminations to determine whether he remained a sexually violent person. The State

submitted the annual reexamination reports to the circuit court for its review. After reviewing each of these reports, the circuit court found that no probable cause existed for an evidentiary hearing on the issue of whether the respondent remained a sexually violent person as defined under the Act. Accordingly, the respondent remained committed for treatment under the Act after each reexamination.

¶ 6 The appeal in the present case concerns the annual reexamination that occurred in 2017. In May 2017, the Department conducted the required reexamination and prepared a report of its reexamination. The report addressed whether the respondent had made sufficient progress in treatment to be conditionally released and whether the respondent's condition had changed since the last reexamination (2016) such that he was no longer a sexually violent person. The evaluation was conducted by Amy Louck Davis, who is a licensed sex offender evaluator and licensed clinical psychologist. Davis prepared a 20-page report of her reexamination. Davis noted that her report was based on her interview of the respondent and a review of the respondent's treatment files, including past evaluations.

¶ 7 The report included a summary of the respondent's criminal record, which includes three convictions for aggravated criminal sexual abuse. The victims in these offenses were 14, 15, and 16 years old. The report also described uncharged sexual offenses that the respondent admitted to having committed involving sexual contact with other victims that were between 15 and 17 years old. In her report, Davis described disciplinary violations involving sexual misconduct that the respondent committed while in the Department of Corrections. According to Davis's report, the respondent briefly

attended sex offender treatment while he was incarcerated, but he was "generally disruptive," believed that teen-age boys were "old enough to make up their own minds about having sex with him," and denigrated the treatment program. He was terminated from the program for noncompliance.

¶ 8 Davis's report described the treatment services that the Department provided to the respondent after his commitment to the Department under the Act. She described the treatment as "a multi-component, full disclosure, cognitive behavior program, which emphasizes relapse preventions, wellness and pharmacotherapy Treatment, which focuses specifically on sexual offending." The program involved five "Phases" with cumulative and sequential objectives. Davis reported that the respondent initially participated in Phase I and Phase II of the Department's program. In 2012, however, the respondent began "engaging in treatment interfering behaviors and had failed to integrate treatment objectives." He engaged in inappropriate behaviors, including, among others, propositioning other residents for sex and engaging in inappropriate behaviors with his roommate. On December 26, 2013, the respondent withdrew his consent for treatment. He requested to be returned for treatment on February 12, 2014, and his "Treatment Team" provided him the necessary steps to resume treatment, including re-signing the consent to treatment paperwork and working on identifying his barriers to treatment.

¶ 9 Davis noted in her report that "[d]uring the year under review, [the respondent] did not participate in treatment." She reported that the respondent had "been unable to abide by the facility's rules and regulations and [had] repeatedly been referred to the Behavioral Committee for his behavior." During her interview of the respondent, Davis

asked him, on a scale of 0 to 10, what his risk of reoffending might be. The respondent answered, "a zero because I have had 18 years to think about what I have done. I don't want this lifestyle anymore. I don't want to create any more victims or hurt anyone. I have hurt myself and my family enough."

¶ 10 Based on her reexamination, Davis concluded that, to a reasonable degree of psychological certainty, the respondent continued to suffer from one or more mental disorders that affected his emotional or volitional capacity and predisposed him to engage in acts of sexual violence. Davis concluded that, due to the respondent's mental disorder, it was substantially probable that he would engage in acts of sexual violence. Accordingly, Davis determined that the respondent's condition had not changed since the last examination and that he should continue to be found a sexually violent person under the Act.

¶ 11 On June 5, 2017, the State filed a motion asking the court to enter an order finding that no probable cause existed that would justify an evidentiary hearing on the issue of whether the respondent was no longer a sexually violent person. Prior to a hearing on the State's motion, on January 22, 2018, the respondent filed a motion to compel treatment in which he alleged that he had "completed numerous ancillary treatment groups but [had] not been provided with sex offender specific treatment which would lower his risk to recidivate if released." He alleged that he had "not been provided adequate care and treatment of his underlying mental disorders or his possible attention deficit disorder to progress towards his release." He requested the court to enter an order to compel the State

to provide sex offender specific treatment or to "disgorge" him from the Department's custody.

¶ 12 On February 26, 2018, the circuit court conducted a hearing on the State's motion. At the beginning of the hearing, the court asked the respondent's attorney whether the respondent had a response to the motion. The respondent's attorney referred to the allegations in the motion to compel treatment, arguing that the evidence would show that the respondent had "not been able to progress or proceed to sex offender specific treatment." The respondent's attorney told the court that the respondent "recognized the fact that he will not get out of custody until he completes that treatment" and that he and the respondent were "scratching their heads and trying to figure out how we can progress to the next step." The respondent's attorney stated:

> "So, no, we don't have a response for the Motion today but we would ask that the Court set for hearing an opportunity for us to explore this idea and find out, is he being denied certain treatment? Is he being denied medical treatment that would allow him to complete the sex offender specific treatment? And at this point, no, we do concede that we do not have any response to the State's Motion."

¶ 13 The court stated that it understood that the respondent was "due for another evaluation in early April." The court stated:

> "So at which point once that report is received and if appropriate the State would be filing another Petition for Finding No Probable Cause. So we are going to set this for status in May to see if all the reports are in and petitions are filed, and if they are then the court will set an evidentiary hearing regarding your motions that

are on file regarding treatment and then also [determine whether] no probable cause is appropriate."

The court asked whether that sounded "doable for everybody," and the State and the respondent's attorney both responded, "Yes." The State then told the court that it had "a proposed Order concerning the 2017 re-evaluation." The prosecutor stated, "Being that there is no objection we can have an Order granting our motion for finding of no probable cause." The court stated, "All right," and entered the written order without any objection.

¶ 14 The circuit court's written order stated that it had reviewed Davis's report dated May 12, 2017. Based on its review of the report, the court found that "there [was] no probable cause to warrant an evidentiary hearing to determine whether the [respondent was] still a sexually violent person pursuant to 725 ILCS 207/65(b)(2) and in need of inpatient treatment on a secure basis." The court ordered the respondent to remain committed to "institutional care in a secure facility as previously ordered by [the court]." In a docket entry, the court noted that it continued the hearing on the respondent's motion to compel treatment on the respondent's motion and without objection from the State.

¶ 15 On March 2, 2018, the respondent filed *pro se* notice of appeal from the "Motion Finding No Probable Cause/ Was Heard on 2/26/2018."

¶ 16 ANALYSIS

¶ 17 The Act allows for the involuntary commitment of sexually violent persons for "control, care and treatment until such time as the person is no longer a sexually violent person." 725 ILCS 207/40(a) (West 2016). After being committed under the Act, the State must submit a written report based on an evaluation of the committed person's

mental condition "at least once every 12 months after an initial commitment." *Id*. § 55(a). At the time of the annual examination by the State, the committed person receives notice of his right to petition the court for discharge, and if the person does not affirmatively waive that right, the court must set a probable cause hearing to determine whether facts exist that warrant a hearing on whether the respondent remains a sexually violent person. *Id*. § 65(b)(1).

¶ 18 In the present case, the respondent did not affirmatively waive his right to petition for discharge. The court, therefore, was obligated to conduct the probable cause hearing as set forth in the statute.

¶ 19 At the probable cause hearing, the circuit court must determine whether a probable cause exists that the respondent is no longer a sexually violent person. *Id.* § 65(b)(2). A committed person is no longer a sexually violent person when he (1) no longer has "a mental disorder" or (2) is no longer dangerous to others because his mental disorder no longer creates a substantial probability that he will engage in acts of sexual violence. *Id*. § 5(f); see *In re Detention of Stanbridge*, 2012 IL 112337, ¶¶ 68, 72.

¶ 20 At this stage of the proceeding, the circuit court must consider all of the reasonable inferences that can be drawn from the facts in evidence. *In re Detention of Hardin*, 238 Ill. 2d 33, 48 (2010). The court should not closely scrutinize the evidence or choose between conflicting facts or inferences. *Id.* at 53. Instead, the court's role is limited to determining whether some plausible evidence or reasonable inference based on the evidence could support a finding that the respondent was no longer a sexually violent

person. *Id*. at 51-52. The legislature intended for a postcommitment probable cause hearing to be preliminary in nature and a summary proceeding. *Id*. at 52.

¶ 21 We have previously held that we review a trial court's probable cause determination under the abuse of discretion standard. *In re Detention of Cain*, 402 Ill. App. 3d 390, 396 (2010). Other districts have held that the *de novo* standard of review applies when a reviewing court evaluates a trial court's finding of no probable cause. See, *e.g.*, *In re Detention of Lieberman*, 2011 IL App (1st) 090796, ¶ 40. Here, we need not resolve this conflict with respect to the standard of review because we affirm the circuit court's ruling under either standard of review.

¶ 22 On appeal, the respondent has not shown that probable cause existed that would justify an evidentiary hearing to determine whether he was no longer a sexually violent person. In fact, in his motion to compel treatment, he admitted that he had not completed "sex offender specific treatment which would lower his risk to recidivate if released." At the probable cause hearing, his attorney told the court that the respondent understood that completion of such treatment was required before he could "get out of custody." We agree with the State that the allegations in the motion to compel treatment "defeat[ ] any argument that [the respondent] has progressed sufficiently to warrant a finding of probable cause." The circuit court found that the respondent remained a sexually violent person after reexaminations in 2009, 2010, 2011, 2012, 2013, 2014, 2015, and 2016. The respondent has not cited any evidence of any progress or other relevant change in circumstances since 2016 that would support a probable cause finding. See *In re Detention of Stanbridge*, 2012 IL 112337, ¶ 76.

¶ 23 The respondent's argument focuses on section 40(b)(2) of the Act (725 ILCS 207/40(b)(2) (West 2016)), which sets out factors the circuit court should consider in determining whether a sexually violent person should be committed to a secure facility or have conditional release. That section provides that "[i]n determining whether commitment shall be for institutional care in a secure facility or for conditional release, the court shall consider the nature and circumstances of the behavior that was the basis of the allegation in the petition [alleging that the person was a sexually violent person], the person's mental history and present mental condition, and what arrangements are available to ensure that the person has access to and will participate in necessary treatment." *Id*.

¶ 24 The issues set out in section 40(b)(2) of the Act were addressed by the circuit court when it entered its dispositional order in 2008, committing the respondent to the Department for care and treatment in a secure facility. At the probable cause hearing, the validity of the original commitment order was not at issue. *In re Commitment of Smego*, 2017 IL App (2d) 160335, ¶ 24. As we have explained, the issue before the circuit court at the February 26, 2018, probable cause hearing was whether there was some plausible evidence or reasonable inference based on the evidence that could support a finding that the respondent was no longer a sexually violent person. The only evidence before the circuit court was Davis's 20-page report in which she described her reexamination of the respondent and outlined the basis of her conclusion that he had not made sufficient progress in treatment. Accordingly, the circuit court ruled correctly in finding no probable cause for an evidentiary hearing on that issue.

¶ 25 The respondent argues that the circuit court erred in failing to ensure that he had access to necessary treatment pursuant to section 40(b)(2) and erred in failing "to order the Department to conduct an investigation and mental examination to assist in identifying [r]espondent's specific treatment needs and frame a commitment order consistent with those needs pursuant to section 40(b)(1)." We disagree.

¶ 26 Davis's 20-page report contains a descriptive overview of the treatment services offered by the Department. The report describes the respondent's failure to cooperate with the services offered and that, during the evaluation year, he did not participate in any services. The report further stated:

> "[The respondent's] treatment team completed a review of [the respondent's] non-treatment status on October 6, 2016 (typically completed one or two times per year for residents not actively participating in treatment). [The respondent] met briefly with a member of the treatment team and stated that he was interested in treatment but did not want to attend the recommended group (Power to Change group). He was provided the opportunity to review the plan for re-entry to treatment (i.e. attend Mentoring group for four consecutive meetings and complete written assignments demonstrating an awareness of his treatment barriers)."

¶ 27 Davis noted that the "treatment program at [the Department had] five treatment Phases including: Assessment, Accepting Responsibility, Self-Application, Incorporation, and Transition." Davis described the Department's mental examination of the respondent, the Department's identification of the respondent's specific treatment needs stemming from his mental disorder, and the respondent's "Progress in Treatment," including his

revocation of consent to treatment and failure to participate in treatment during the 12 months preceding the report. The circuit court's judgment was based on Davis's report, and the court's finding of no probable cause and continuing the respondent's commitment to the Department complied with the requirements of the Act.

¶ 28 Finally, we note that, prior to the probable cause hearing, the respondent had filed the motion to compel treatment in which he alleged that the Department was not offering him the treatment he needed. However, by agreement of the parties, the court continued the hearing on that motion and reset the motion for an evidentiary hearing to be held at a later date. Therefore, the merits of the motion to compel treatment are not before us in this appeal as the circuit court has not addressed its merits.

¶ 29 CONCLUSION

¶ 30 For the foregoing reasons, we affirm the circuit court's February 26, 2018, judgment finding no probable cause for an evidentiary hearing on the issue of whether the respondent remains a sexually violent person.

¶ 31 Affirmed.