

NOTICE

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2014 IL App (4th) 130507-U

NO. 4-13-0507

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED

April 10, 2014

Carla Bender

4th District Appellate

Court, IL

In re: the Detention of RAYMOND RAINEY,)	Appeal from
THE PEOPLE OF THE STATE OF ILLINOIS,)	Circuit Court of
Petitioner-Appellee,)	Morgan County
v.)	No. 98MR41
RAYMOND RAINEY,)	
Respondent-Appellant.)	Honorable
)	Christopher E. Reif,
)	Judge Presiding.

JUSTICE TURNER delivered the judgment of the court.
Presiding Justice Appleton and Justice Knecht concurred in the judgment.

ORDER

- ¶ 1 *Held:* The trial court did not err by denying respondent's motion for the appointment of an independent expert, which was based on a statement in the reexamination report that it was unknown what affect the information only respondent knew may have influenced the opinions and recommendations in the report.
- ¶ 2 The trial court did not abuse its discretion 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, and had made little progress in his treatment plan since the last reexamination period.
- ¶ 3 Respondent, Raymond Rainey, a person committed under the Sexually Violent Persons Commitment Act (Act) (725 ILCS 207/1 *et seq.* (West 2012)), appeals the Morgan County circuit court's May 28, 2013, order that declared no probable cause shown for an evidentiary hearing on whether respondent was no longer a sexually violent person. On appeal, respondent argues the trial court erred by (1) denying his motion for the appointment of an inde-

pendent expert and (2) concluding no probable cause shown to warrant an evidentiary hearing on whether respondent was no longer a sexually dangerous person. We affirm.

¶ 4

I. BACKGROUND

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

¶ 6

In July 2003, defendant filed a *pro se* postjudgment motion challenging the constitutionality of the Act, which the trial court dismissed. In June 2006, this court affirmed the trial 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 2012.

¶ 7

Diana Dobier conducted the 154-month reexamination at issue in this appeal in April 2013. Respondent refused to be interviewed by Dobier. The report noted respondent was 57 years old, and this was his thirteenth reexamination. In preparing the report, Dobier reviewed more than 13 documents and talked to two other psychologists. The report set forth respondent's relevant history, including his criminal, sexual, and treatment history. Dobier summarized respondent's treatment progress for the period under review as "very limited" and noted, *inter alia*,

respondent's failure to participate in sex-offender specific treatment. Dobier opined, to a reasonable degree of psychological certainty, respondent suffered from the following mental disorders: (1) pedophilia, sexually attracted to females, nonexclusive; (2) alcohol in a controlled environment; and (3) antisocial personality disorder with borderline features. She explained her reasoning for those diagnoses. As to the issue of respondent's dangerousness, she used the Minnesota Sex Offender Screening Tool and the Static-99R risk assessments. Respondent placed in the high risk category on the first assessment and in the low to moderate risk category on the latter assessment. Dobier also noted respondent had the following risk factors for future sexual offending: any deviant sexual interest, antisocial personality disorder, impulsiveness, procriminal attitudes, sexual interest in children, self-regulation problems, poor problem solving, and non-compliance 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 future acts of sexual violence. She also opined respondent had not made sufficient progress in his treatment to be conditionally released and remains in need of institutional care in a secured facility.

¶ 8 On May 2, 2013, the State filed a motion for a finding of no probable cause based upon Dobier's 154-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 2012) (text of section effective until Jan. 1, 2014)) required the trial court to hold a probable-cause hearing.

¶ 9 On May 28, 2013, the trial court held the probable cause hearing. At the beginning of the hearing, respondent's counsel made a motion for the appointment of an independent expert to examine respondent. Respondent's counsel noted that, for some reason, respondent did

not speak with the State's examiner this time. Counsel then noted his reasoning for requesting the independent examiner was that Dobier indicated in the report that "it's not known how information only [respondent] would have or could have provided may have influenced the opinions and recommendations contained within this report." The court denied the motion, noting respondent's lack of participation with the State's examiner. Thereafter, the attorneys made brief arguments, and the court found no probable cause shown to believe respondent was no longer a sexually violent person. That same day, the court entered the written order.

¶ 10 On June 20, 2013, defendant filed a timely notice of appeal in compliance with Illinois Supreme Court Rule 303 (eff. May 30, 2008), and thus this court has jurisdiction under Illinois Supreme Court Rule 301 (eff. Feb. 1, 1994). See 725 ILCS 207/20 (West 2012) (noting the proceedings under the Act are civil in nature).

¶ 11 II. ANALYSIS

¶ 12 A. Independent Expert

¶ 13 Respondent first asserts the trial court erred by denying his request for the appointment of an independent expert pursuant to section 55(a) of the Act (725 ILCS 207/55(a) (West 2012) (text of section effective until Jan. 1, 2014)). The State disagrees, asserting the trial court properly exercised its discretion in denying respondent's motion for an independent expert.

¶ 14 Whether to appoint an independent expert under section 55(a) is a matter that rests within the trial court's sound discretion. *People v. Botruff*, 212 Ill. 2d 166, 176, 817 N.E.2d 463, 469 (2004). Thus, we review the matter for an abuse of discretion. *Botruff*, 212 Ill. 2d at 176, 817 N.E.2d at 469. " 'An abuse of discretion will be found only where the trial court's ruling is arbitrary, fanciful, unreasonable, or where no reasonable person would take the view

adopted by the trial court.' " *In re Detention of Erbe*, 344 Ill. App. 3d 350, 374, 800 N.E.2d 137, 157 (2003) (quoting *People v. Hall*, 195 Ill. 2d 1, 20, 743 N.E.2d 126, 138 (2000)).

¶ 15 In *Botruff*, 212 Ill. 2d at 177, 817 N.E.2d at 470, the respondent's counsel did not provide the trial court with a possible basis to rebut the report. Our supreme court found it was "rational not to appoint an independent evaluator when a respondent has shown no need for one, especially during perfunctory reexamination proceedings where the respondent has not affirmatively opted to petition for discharge." *Botruff*, 212 Ill. 2d at 177-78, 817 N.E.2d at 470. It concluded that, "[w]ithout more, the court did not abuse its discretion by denying respondent's request for an independent evaluation." *Botruff*, 212 Ill. 2d at 178, 817 N.E.2d at 470.

¶ 16 This case is similar to *Botruff*. First, the probable cause proceeding in this case was a perfunctory reexamination as respondent did not file a petition for discharge. Second, respondent's counsel did not provide a possible basis to refute the report. The only reason respondent's counsel gave for his request of an independent expert was Dobier's statement "it was not known how information only [respondent] could have provided may have influenced the opinions and recommendations contained within this report." Respondent's counsel did not provide a reason for respondent's refusal to comply with the State's examiner and did not point out a specific fact that could have affected Dobier's report. Additionally, we note respondent's counsel did not ask the trial court to take judicial notice of any evidence in respondent's prior proceedings, and thus we disregard respondent's appellate arguments based on such evidence. Respondent's counsel's basis for the request was essentially respondent's noncompliance with the State's examiner, which does not refute the State's report. Moreover, any possible basis for refuting the report with an independent examiner would be pure speculation and conjecture as this point as it is unknown what additional information respondent could provide an independent examiner if he

chose to participate. Such conjecture is insufficient to show a need for an independent examination. Further, without a good reason for not participating in the State's examination, respondent should not be rewarded with a different expert for his decision to refuse to comply with the State's examiner. Accordingly, we find the trial court did not abuse its discretion by denying respondent's motion for an independent examiner.

¶ 17 B. Probable Cause

¶ 18 Respondent also asserts the trial court erred by finding no probable cause shown to warrant an evidentiary hearing to determine whether respondent was still a sexually violent person. The State disagrees, arguing Dobier's reexamination report detailed how respondent continued to suffer from mental disorders and failed to participate in sex-offender specific treatment.

¶ 19 At the time of each reexamination under the Act, the committed person receives notice of the right to petition the trial court for discharge. 725 ILCS 207/65(b)(1) (West 2012) (text of section effective until Jan. 1, 2014). If the committed person does not affirmatively waive that right, like respondent in this case, the trial 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 2012) (text of section effective until Jan. 1, 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 2012) (text of section effective until Jan. 1, 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 2012) (text of section effective until Jan. 1, 2014). Whether or not probable cause exists to warrant a further evidentiary hearing is another matter resting in

the trial court's sound discretion, and thus we will not disturb a trial court's probable cause determination absent an abuse of that discretion. *In re Detention of Cain*, 341 Ill. App. 3d 480, 482, 792 N.E.2d 800, 803 (2003).

¶ 20 With all probable-cause hearings under the Act, the trial 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 2012) (text of section effective until Jan. 1, 2014). Thus, a respondent is only entitled to an evidentiary hearing if plausible evidence shows that (1) the respondent no longer suffers from a mental disorder or (2) the respondent 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)).

¶ 21 In this case, Dobier found respondent still suffered from (1) pedophilia, sexually attracted to females, nonexclusive; (2) alcohol in a controlled environment; and (3) antisocial personality disorder with borderline features. The latter two diagnoses increase respondent's risk of sexual violence. One risk assessment placed respondent in the low to moderate risk category, and the other one placed respondent in the high risk category. Dobier also found eight additional risk factors further increased his risk. Dobier further noted respondent's age did not decrease his risk, and respondent did not suffer from a medical condition that would decrease his risk. Dobier

¶ 26

Affirmed.