

NOTICE

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2014 IL App (4th) 131063-U

NO. 4-13-1063

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED

August 25, 2014
Carla Bender
4th District Appellate
Court, IL

In re: the Commitment of KEVIN STANBRIDGE,)	Appeal from
THE PEOPLE OF THE STATE OF ILLINOIS,)	Circuit Court of
Petitioner-Appellee,)	Adams County
v.)	No. 05MR45
KEVIN STANBRIDGE,)	
Respondent-Appellant.)	Honorable
)	William O. Mays,
)	Judge Presiding.

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

ORDER

¶ 1 *Held:* The appellate court affirmed, concluding that the trial court did not err by finding that no probable cause existed to warrant an evidentiary hearing on whether respondent had made sufficient progress to be conditionally released or discharged from State custody under the Sexually Violent Persons Commitment Act.

¶ 2 Following an October 2007 trial, a jury determined that respondent, Kevin Stanbridge, was a sexually violent person as defined by the Sexually Violent Persons Commitment Act (725 ILCS 207/1 to 99 (West 2004)). In February 2008, the trial court committed respondent to the care, custody, and control of the Illinois Department of Human Services (IDHS) until such time as he was no longer sexually violent.

¶ 3 In September 2013, the State filed a motion for a finding of no probable cause based on a statutorily mandated medical-reexamination report. The State's motion requested that the trial court enter an order finding that no probable cause existed to believe that respondent was

no longer a sexually violent person, which would have precluded a further evidentiary hearing on that issue. Following an October 2013 hearing, the court granted the State's motion.

¶ 4 Respondent appeals, arguing that the trial court erred by granting the State's motion for a finding of no probable cause. Because we conclude that the medical-reexamination report supported the court's determination, we affirm.

¶ 5 I. BACKGROUND

¶ 6 This case represents respondent's fourth appeal before this court on issues governed by the Act. Because of the extensive history of this case and the parties' familiarity with the issues presented, we outline only the facts necessary to provide the proper context.

¶ 7 A. Respondent's Criminal Trial

¶ 8 In November 1999, the State charged respondent with aggravated criminal sexual abuse (720 ILCS 5/12-16(d) (West 1998)), alleging that he committed an act of sexual penetration with a 14-year-old boy by placing his mouth on the minor's penis. A jury later convicted respondent of that charge, and the trial court sentenced him 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. Respondent appealed, and this court affirmed his conviction and seven-year prison sentence. *People v. Stanbridge*, No. 4-05-0585 (June 14, 2007) (unpublished order under Supreme Court Rule 23).

¶ 9 B. Respondent's Commitment Trial

¶ 10 In May 2005—during the pendency of respondent's appeal to this court following his second trial—the State filed a petition to involuntarily commit respondent as a sexually violent person under section 5(f) of the Act (725 ILCS 207/5(f) (West 2004)). During an October

2007 trial on the State's commitment petition, the jury considered expert testimony from three licensed clinical psychologists, who testified about their respective psychological evaluations of respondent. The State's first expert diagnosed respondent, in pertinent part, with "pedophilia, sexually attracted to males, nonexclusive type" and "paraphilia, not otherwise specified, sexually attracted to adolescent males." The State's second expert agreed with the first expert's diagnosis of paraphilia but disagreed that respondent suffered from pedophilia. Respondent's expert diagnosed him with a history of alcohol abuse that was in long-term remission. Thereafter, the jury determined that respondent was a sexually violent person.

¶ 11 In February 2008, the trial court committed respondent to the care, custody, and control of the IDHS pursuant to section 40 of the Act (725 ILCS 207/40 (West 2004)), until such time as he was no longer sexually violent. Respondent appealed, and this court rejected his claim that the State failed to prove beyond a reasonable doubt that he was a sexually violent person. *In re Detention of Stanbridge*, No. 4-08-0163 (Nov. 19, 2008) (unpublished order under Supreme Court Rule 23).

¶ 12 C. Subsequent Proceedings Under the Act

¶ 13 Section 55(a) of the Act provides, as follows:

"If a person has been committed under Section 40 of this Act, and has not been discharged under Section 65 of this Act, [IDHS] shall submit a written report to the court on his or her mental condition at least once every 12 months after an initial commitment under Section 40 for the purpose of determining whether: (1) the person has made sufficient progress in treatment to be conditionally released and (2) whether the person's condition has so changed since

the most recent periodic reexamination *** that he or she is no longer a sexually violent person." 725 ILCS 207/55(a) (West 2012).

¶ 14 In August 2008, Dr. Edward Smith, a licensed clinical psychologist, submitted to the trial court, on IDHS' behalf, a six-month reexamination report on respondent's mental condition pursuant to section 55 of the Act. In his report, Smith diagnosed respondent with (1) paraphilia, not otherwise specified, sexually attracted to adolescent males, nonexclusive type; (2) alcohol abuse in a controlled environment; and (3) personality disorder not otherwise specified with antisocial traits. Smith's report provided the following required criteria for respondent's paraphilia-disorder diagnosis:

"A. Recurrent, intense sexually arousing fantasies, urges, or behaviors generally involving non-human objects, the suffering or humiliation of oneself or others, or children, or other non-consenting persons.

B. Present for at least [six] months.

C. These behaviors, sexual urges, or fantasies cause clinically significant distress or impairment in social, occupational, or other important areas of functioning."

Smith's August 2008 report ruled out that respondent suffered from "pedophilia, sexually attracted to males, nonexclusive type."

¶ 15 Smith concluded that respondent had "not made sufficient progress to lower his risk of sexual re-offense to the extent he is safe to be managed in the community on conditional release." In September 2008, the State filed a motion for a finding of no probable cause based on

Smith's reexamination report. The following month, the court granted the State's motion, finding that no probable cause existed to warrant an evidentiary hearing on whether respondent had made sufficient progress to be conditionally released or discharged from IDHS' custody.

¶ 16 In April 2009, respondent filed an amended petition for discharge from IDHS' custody under section 70 of the Act (725 ILCS 207/70 (West 2008)). In August 2009—while respondent's April 2009 amended petition for discharge was pending—IDHS submitted its required 18-month reexamination report, which Smith authored. Smith's report diagnosed respondent with the same disorders listed in his August 2008 report. Smith also concluded that respondent remained a risk to sexually reoffend. In October 2009, the State filed a motion for a finding of no probable cause based on Smith's report.

¶ 17 In January 2010, the trial court held a hearing on respondent's amended petition for discharge and the State's motion for a finding of no probable cause at which the court considered the reports submitted by Smith and Witherspoon and heard arguments of counsel. In February 2010, the court entered a written order (1) denying respondent's petition for discharge and (2) granting the State's motion for a finding of no probable cause. Defendant appealed, and this court reversed, concluding that the court had abused its discretion by denying respondent's April 2009 amended petition for discharge from IDHS' custody. *In re Detention of Stanbridge*, 408 Ill. App. 3d 553, 563, 948 N.E.2d 1063, 1071 (2011). In November 2012, the supreme court reversed this court's opinion, concluding that the trial court properly dismissed respondent's petition for discharge. *In re Detention of Stanbridge*, 2012 IL 112337, ¶ 87, 980 N.E.2d 598.

¶ 18 Thereafter, Smith filed reexamination reports in August 2010 (30-month), August 2011 (42-month), and August 2012 (54-month), which were substantially similar to his 6- and 18-month reexamination reports—that is, Smith diagnosed respondent with the same identified

disorders and concluded that respondent remained a risk to sexually reoffend. In each of his reports, Smith documented that his diagnoses were derived from the "*American Psychiatric Association Diagnostic and Statistical Manual 4th Edition—Text Revision (DSM-IV-TR)*."

¶ 19 In December 2012, respondent *pro se* filed a petition for discharge from IDHS' custody pursuant to section 65(b)(1) of the Act (725 ILCS 207/65(b)(1) (West 2012)), which his appointed counsel later adopted. In May 2013, the State filed a motion to dismiss respondent's petition, arguing generally that respondent failed to allege sufficient facts to establish that he was no longer a sexually violent person. Following a July 2013 hearing, the trial court entered an order granting the State's motion to dismiss respondent's December 2012 petition for discharge from IDHS' custody.

¶ 20 Respondent appealed, arguing that because expert medical testimony presented at his October 2007 trial on the State's commitment petition revealed a diagnosis of pedophilia, which Smith had since ruled out in his 54-month reexamination report, this change represented probable cause to warrant an evidentiary hearing on whether he had made sufficient progress to be conditionally released or discharged from IDHS' custody. This court rejected respondent's argument, noting that in his numerous reexamination reports, Smith had consistently (1) ruled out that respondent suffered from pedophilia and (2) concluded that respondent remained a substantial risk to reoffend. *In re Commitment of Stanbridge*, No. 4-13-0703 (May 1, 2014) (unpublished order under Supreme Court Rule 23).

¶ 21 D. The Issues on Appeal

¶ 22 In August 2013, IDHS submitted its required 66-month reexamination report. In that report, Smith documented that unlike his previous reexaminations, in which he derived his diagnoses from the DSM-IV-TR, he used the "*Diagnostic and Statistical Manual of Mental Dis-*

orders—*Fifth Edition* (DSM-5)." Smith described the new standard, as follows:

"The DSM-5 is the latest edition of the standard reference for clinical practice in the mental-health field. The current diagnostic criteria are the best available description of how mental disorders are expressed and can be recognized by trained clinicians. The DSM-5 is intended to serve as a '*practical, functional, and flexible guide*' for organizing information that can aid in the accurate diagnosis and treatment of mental disorders." (Emphasis in original.)

¶ 23 Using the DSM-5 standard, Smith determined that respondent met the criteria for the following disorders: (1) "other specified paraphilic disorder, non-consenting males, nonexclusive type"; (2) "alcohol abuse disorder, in a controlled environment"; and (3) "other specified personality disorder, with antisocial traits." Smith's report provided the following required criteria for respondent's paraphilic-disorder diagnosis:

"Over a period of at least six months, recurrent and intense sexual arousal involving sexual activity with non-consenting adults, as manifested by fantasies, urges, or behaviors. The fantasies, sexual urges, or behaviors cause clinically significant distress or impairment in social, occupational, or other important areas of functioning."

Consistent with his previous reexamination reports, Smith ruled out that respondent suffered from "pedophilic disorder, sexually attracted to males, nonexclusive type."

¶ 24 As to propensity to engage in future acts of sexual violence, Smith provided the following summary, detailing the results of two actuarial tests and a diagnostic-screening tool:

"[Respondent] scored in the moderate-high risk category on the STATIC-99, in the moderate-low risk category on the STATIC-99R, and in the high[-]risk category on the MnSOST-R. [Respondent] has [five] additional risk factors (not measured by the risk actuarial instruments used in this reexamination) ***, which indicate he has additional risk factors likely contributing to his risk of sexual re-offense. These risk assessment instruments and additional risk factors suggest [respondent] is at a substantial probability to engage in acts of sexual violence."

The five aforementioned risk factors Smith identified encompassed (1) any personality disorder, (2) any substance abuse, (3) intoxication during the offense, (4) intimate-relationship conflicts, and (5) any deviant sexual interests. Smith's report also documented that although respondent participated in ancillary groups during the reporting period, he had not completed a "sexual offense specific treatment" program, which can lower the risk of sexual recidivism. Smith also noted that respondent has consistently declined to participate in such treatment.

¶ 25 Smith concluded his 66-month reexamination report by opining to a reasonable degree of psychological certainty that respondent (1) "has not progressed in treatment to the point where he can be safely managed in the community on conditional release," and (2) "should continue to be found a sexually violent person under the *** Act." Smith added that respondent's condition had not changed since his 54-month periodic reexamination.

¶ 26 In September 2013, the State filed a motion for a finding of no probable cause based on Smith's 66-month reexamination report. Following argument at an October 2013 hearing on the State's motion, the court entered a written order, finding that based upon Smith's 66-

month reexamination report, no probable cause existed to warrant an evidentiary hearing on whether respondent remained a sexually violent person.

¶ 27 This appeal followed.

¶ 28 II. THE TRIAL COURT'S NO-PROBABLE-CAUSE DETERMINATION

¶ 29 A. The Standard of Review

¶ 30 Although not an issue raised by either party in this appeal, we note in passing that in respondent's brief to this court, he cites *People v. Pitman*, 211 Ill. 2d 502, 512, 813 N.E.2d 93, 101 (2004), for the proposition that our standard of review is *de novo*. The State's brief cites *In re Detention of Cain*, 341 Ill. App. 3d 480, 482, 792 N.E.2d 800, 803 (2003), for the proposition that "whether facts exist that warrant a hearing on whether the person is still a sexually violent person is a matter resting in the sound discretion of the court."

¶ 31 At the October 2013 hearing on the State's motion for a finding of no probable cause, the trial court considered only Smith's 66-month reevaluation report and the parties' brief arguments, as mandated by the Act. See 725 ILCS 207/60(c) (West 2012) ("The probable cause hearing shall consist of a review of the examining evaluators' reports and arguments on behalf of the parties."). Under such circumstances the supreme court has stated that "where the evidence before a trial court consists of depositions, transcripts, or evidence otherwise documentary in nature, a reviewing court is not bound by the trial court's findings and may review the record *de novo*. *Addison Insurance Co. v. Fay*, 232 Ill. 2d 446, 453, 905 N.E.2d 747, 752 (2009).

¶ 32 Although *Cain* seems to conflict with the supreme court's guidance in *Fay*, we need not resolve that issue because our conclusion would remain the same under either standard.

¶ 33 B. Respondent's Change-of-Condition Claims

¶ 34 As previously noted, the issue before this court concerns the propriety of the trial

court's ruling that no probable cause existed to warrant an evidentiary hearing on whether respondent remained a sexually violent person. In challenging that ruling, respondent is required to establish a "plausible account" that a change in his condition renders him no longer a sexually violent person. *In re Detention of Stanbridge*, 2012 IL 112337, ¶¶ 58, 72, 980 N.E.2d 598. Examples of such plausible accounts could include "a change in the committed person, a change in the professional knowledge and methods used to evaluate a person's mental disorder or risk of reoffending, or even a change in the legal definitions of a mental disorder or a sexually violent person, such that a trier of fact could conclude that the person no longer meets the requisite elements." *Id.* ¶ 72, 980 N.E.2d 598.

¶ 35 In support of his argument that the trial court erred by granting the State's motion for a finding of no probable cause, respondent renews a contention that this court has previously considered and rejected—namely that probable cause existed to warrant an evidentiary hearing because the evidence presented at his October 2007 trial on the State's commitment petition revealed a diagnosis of pedophilia, which Smith had since ruled out in his 54-month and 66-month reexamination reports. Respondent asserts that this change represented probable cause to warrant an evidentiary hearing on whether he had made sufficient progress to be conditionally released or discharged from IDHS' custody. Respondent has provided no reason why this contention, which we rejected at the 54-month stage, should prevail at the 66-month stage.

¶ 36 Respondent's second contention essentially challenges only Smith's diagnosis that he met the DSM-5 criteria of "other specified paraphilic disorder, non-consenting males, nonexclusive type," which respondent characterizes as "highly suspect, if not specious." Specifically, respondent asserts that because the DSM-5 criteria contained the requirement "involving sexual activity," which is not present in the DSM-IV-TR criteria, and respondent did not have any sexu-

al activity during the reporting period, a trier of fact could have concluded that his condition had so changed that he no longer had a mental disorder that made it substantially probable he would commit further acts of sexual violence.

¶ 37 We reject respondent's assertion that the aforementioned criteria of diagnosis literally require a respondent to engage in sexual activity with nonconsenting adults during the reporting period before a psychologist can ascribe that diagnosis. Simply put, the plain language of the criteria does not require such a result. We also reject as meritless respondent's assertion that given Smith's report, a trier of fact could have concluded that he no longer had a mental disorder because the "last offense that supports [that] diagnosis occurred in 1999."

¶ 38 In this case, IDHS complied with section 55 of the Act in that it submitted to the court a 66-month reexamination report, which Smith, a licensed clinical psychologist, authored. In his report, which covered August 2012 to August 2013, Smith explained that using the latest edition of the standard reference for clinical practice in the mental-health field, he concluded that respondent suffered from three distinct mental disorders that were either congenital or acquired conditions affecting his emotional or volitional capacity. Coupled with five additional risk factors and respondent's refusal to participate in appropriate sex-offender treatment, Smith opined to a reasonable degree of psychological certainty that respondent remained substantially probable to engage in future acts of sexual violence. Given Smith's report, we conclude that respondent has failed to establish a plausible account that a change in his condition renders him no longer a sexually violent person.

¶ 39 III. CONCLUSION

¶ 40 For the reasons stated, we affirm the trial court's judgment.

¶ 41 Affirmed.