2014 IL App (2d) 121235-U
No. 2-12-1235
Order filed April 18, 2014

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

In re HAROLD W., a Minor	)	Appeal from the Circuit Court
	)	of Winnebago County.
	)	
	)	No. 06-JD-27
	)	
(The People of the State of Illinois,	)	Honorable
Petitioner-Appellee, v. Harold W.,	)	K. Patrick Yarbrough,
Respondent-Appellant).	)	Judge, Presiding.

JUSTICE McLAREN delivered the judgment of the court.
Presiding Justice Burke and Justice Hudson concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court did not err in denying respondent's petition to terminate his registration as a sex offender: the court did not misinterpret the applicable statute to require respondent to show, per a literal reading, that he posed absolutely no risk of reoffending, and, in light of the evidence of respondent's persistent anger-management issues, the court's finding that respondent posed a sufficient risk to justify denial of his petition was not against the manifest weight of the evidence.

¶ 2 Respondent, Harold W., appeals the judgment of the circuit court of Winnebago County denying his petition to terminate his registration as a sex offender. Because the trial court correctly interpreted the statutory provision applicable to respondent's petition to terminate, and because its decision was not against the manifest weight of the evidence, we affirm.

¶ 3 I. BACKGROUND

¶ 4 In January 2006, a delinquency petition was filed that alleged that respondent, who was 13 years old, had committed four different sexual acts against his 9-year-old sister.[1] On October 20, 2006, respondent admitted to, and was adjudicated a delinquent on, two counts of criminal sexual abuse. See 720 ILCS 5/12-15(a)(2) (West 2006). Respondent was sentenced to five years' probation and ordered to register pursuant to the Sex Offender Registration Act (Act) (730 ILCS 150/3 (West 2006)).

¶ 5 On November 21, 2011, respondent filed a "petition for termination of registration as a sex offender." In doing so, he relied on section 3-5(d) of the Act. See 730 ILCS 150/3-5(d) (West 2010). That section provides, in pertinent part, that a court may terminate the registration of an adjudicated delinquent if he shows, by a preponderance of the evidence, that he "poses no risk to the community." 730 ILCS 150/3-5(d) (West 2010).

¶ 6 On January 21, 2012, the trial court conducted a hearing on respondent's petition. The following facts are taken from the hearing. In January 2006, as part of his disposition, respondent was referred to Jeffrey Sundberg, a licensed clinical social worker, for a sex offender assessment. Following that assessment, Sundberg counseled respondent until he completed his probation in October 2011.

¶ 7 According to Sundberg, respondent was cooperative and "invested in his counseling." The counseling focused on the circumstances that contributed to respondent's sexual abuse of his sister and the need to ensure that he did not repeat that behavior. According to Sundberg, the frequency of counseling with respondent decreased over the course of treatment, and respondent successfully completed the counseling.

[1] Respondent is adopted. His sisters are the natural-born children of his adoptive parents.

¶ 8 Pursuant to the petition to terminate, Sundberg prepared an updated assessment. In doing so, he interviewed respondent, spoke to respondent's former probation officer, reviewed respondent's community college transcripts, considered correspondence from respondent's current employer, and had respondent psychologically tested.

¶ 9 Sundberg considered two primary factors in assessing respondent's risk of reoffending: whether he was diagnosed as antisocial or psychopathic, and whether he had any deviant sexual interests. The latter consideration focused on whether respondent was sexually interested in, or focused on, children.

¶ 10 As for the first factor, testing did not indicate that respondent suffered from either an antisocial personality disorder or any psychopathy. Additionally, Sundberg considered that, during the time he counseled him, respondent had not been arrested, had not shown any problematic alcohol or drug use, and had not been expelled from school. Respondent had been "largely involved in prosocial activities" in school, such as athletics. He generally worked at least part time and had no peer problems. Thus, Sundberg opined that respondent was not antisocial.

¶ 11 Sundberg also concluded that respondent did not have "any kind of primary sexual interest in children." There were no indications that respondent was sexually interested in minors. To Sundberg's knowledge, respondent had age-appropriate relationships with females.

¶ 12 Based on his evaluation, Sundberg opined that respondent was a low risk to reoffend. Sundberg explained that "low risk" is the lowest recognized risk category and that none of the risk measures that he is familiar with include a "no risk" category.

¶ 13 When Sundberg first evaluated respondent in 2006, he assessed him as a moderate risk to reoffend. That was based on several facts. Respondent, at an early age, had looked regularly at

pornography, which resulted in his being "prematurely sexualized." Additionally, respondent had not felt like a part of his family, especially after his sisters were born; he had been targeted by his peers; and he had suppressed his anger and had difficulty expressing it in acceptable ways. Sundberg believed that a combination of those factors led to respondent's sex offenses.

¶ 14 According to Sundberg, respondent continues to look at pornography, but "notably less frequently." Respondent continues to have "power struggles" with his parents and believes that his mother, who has had a difficult time dealing with respondent's sexual abuse of her daughter, is too controlling. Sundberg described respondent as being stubborn when responding to his parents' expectations of him. However, respondent currently tries to work out his differences with his parents, as opposed to sexually abusing his sister as he did in the past. Sundberg acknowledged knowing that respondent had stolen a computer mouse and a hard drive from a classroom at his high school.

¶ 15 Sundberg noted two concerns in his assessment report. One was that respondent wanted more permission to do things than his parents were willing to allow. The other was respondent's mistrust in relationships. As to the latter point, Sundberg believed that respondent recognizes and understands that his mistrust affects his relationships.

¶ 16 Bryan Ott, a local high school teacher, coach, and close family friend, has known respondent since he was adopted at the age of two or three. Ott described respondent as honest, very kind, good-natured, humble, very polite, and respectful. Respondent has a terrific work ethic and is an "upstanding young man."

¶ 17 Dennis McKinney had known respondent on a "close basis" for about four years. As the president of the local youth athletic association, McKinney was responsible for operating Thunder Park, a youth sports facility. In that capacity, he supervised respondent's employment

at the park. McKinney described respondent as very hard-working, courteous, respectful, and honest. In a letter written on respondent's behalf, McKinney stated that the world would be a better place "if more young people would pattern [themselves] after [respondent]."

¶ 18 McKinney was aware of respondent's sex offenses and did not think any less of respondent because of them. Respondent is also very good friends with McKinney's grandchildren.

¶ 19 Officer Dean Lou Williams, the school resource officer at respondent's high school, was familiar with respondent. According to Officer Williams, a computer mouse was stolen from a classroom at the high school, which led him to suspect respondent. When confronted by Officer Williams, respondent was "very upfront and honest" and admitted his theft, of not only the mouse, but also a hard drive. He gave both items to Officer Williams. Although respondent was disciplined at school, Officer Williams did not arrest him, because of the low dollar value of the items, their undamaged condition, and the sufficiency, in his opinion, of the school discipline. According to respondent, he stole the items to "get back at the teacher" for how she had treated him.

¶ 20 Aside from the theft incident, Officer Williams had regular contact with respondent at school. Although he was aware of respondent's sex offenses, he considered him to be very responsible, very honest, and very mature.

¶ 21 Respondent's father testified that he had no fear of respondent being around his victimized daughter. He did not believe that she was afraid of respondent. All three of respondent's sisters, ages 11, 13, and 15, are happy to see him and glad when he comes to the house. None of them fear respondent in any respect. According to his father, respondent's

mother, who was present at the hearing but did not testify, felt the same about respondent being at the house. The family has reconciled regarding the situation.

¶ 22 He described respondent as a "typical 19-year-old trying to find some independence." He expects respondent to do whatever he asks. He believes that there is a right and a wrong and that respondent wants to be independent and is "testing it a bit."

¶ 23 At one point, he informed McKinney of respondent's sex offenses. He did so in the event that someone approached McKinney about respondent's past and because there were children using the park. At that time, respondent's family was careful to make sure that respondent was not alone with any children. At the time of the hearing, however, they were minimizing that approach, out of concern for family unity and healing.

¶ 24 Respondent's 15-year-old sister, Kendra, who was the victim identified in the delinquency petition, testified at the hearing. She had completed counseling related to the sexual abuse. She described her relationship with respondent as good. She trusts, and does not fear, him. She stated that respondent had not done anything inappropriate since his adjudication. She enjoys working with him at the park. She had no objection to his being removed from the sex offender registration list.

¶ 25 Respondent, who was 19 on the date of the hearing, testified that he had graduated from high school and completed several courses at a community college. He identified a letter written on his behalf by a grade school resource officer who detailed his assistance with a "bike rodeo" in 2008.

¶ 26 Respondent described his relationship with his parents as "good and bad" with "ups and downs." He and his parents "butt heads at times," but on other occasions they all get along and have a good time. He loves his parents and sisters and believes that they love him. He has

discussed the situation with Kendra, told her how sorry he is, and believes that she trusts him. A few months before the hearing, respondent moved out of his parents' home, because he had "butted heads pretty bad with [his] parents and left." At the time of the hearing, he was living with McKinney.

¶ 27 According to respondent, he benefitted from counseling with Sundberg, and he is a different person than he was in 2006. He is no longer participating in any counseling.

¶ 28 His status as a registered sex offender makes it difficult for him to have relationships, because on one hand he wants to be honest and on the other he is uncomfortable telling people about his past. Although he believes that knowledge of his sex offender status will hinder his obtaining employment or entering the Air Force, he could not point to any specific lost employment opportunities or identify any exact reason why he would not be able to enter the Air Force.

¶ 29 On July 23, 2012, the trial court denied the petition to terminate. In doing so, it stated that it considered the testimony at the hearing, Sundberg's low-risk assessment, the letters of recommendation, respondent's sex offender history, respondent's statement detailing the offenses, respondent's ages at both the time of the offenses and the hearing, respondent's education and social history, and "any and all other factors that [had] been presented." The court noted respondent's involvement in the theft of the mouse and hard drive and the evidence of his anger-management issues. The court explained that there was evidence of respondent's recent anger and that it was respondent's inability to deal with his anger that contributed to the sexual abuse of his sister. Thus, the court could not find, based on a preponderance of the evidence, that "at [that] time" respondent "pose[d] no risk to the community."

¶ 30 On August 21, 2012, respondent filed a motion to reconsider, which was denied. He then filed this timely appeal.

¶ 31 II. ANALYSIS

¶ 32 On appeal, respondent initially contends that the trial court's interpretation of section 3-5(d) of the Act resulted in an unjust and absurd result in this case. Specifically, he asserts that, if the term "no risk," as used in section 3-5(d), is interpreted to mean that a respondent must show that "he no longer poses any risk of recidivism," then even someone such as himself, who made a "heroic effort" of showing that he did not pose a risk to the community, could never satisfy that standard. He further contends that, because Sundberg's assessment was low risk, the court, having relied on that assessment, must have interpreted section 3-5(d) such that it was impossible for him, or any other respondent, to meet its requirements. According to respondent, such "an absurd and unjust result cannot be permitted to stand." Alternatively, respondent posits that the court's decision was against the manifest weight of the evidence.[2]

¶ 33 Because respondent raises a contention involving statutory interpretation, we apply *de novo* review. See *People v. Marshall*, 242 Ill. 2d 285, 292 (2011). The primary objective of statutory interpretation is to ascertain and effectuate the intent of the legislature. *Marshall*, 242 Ill. 2d at 292. Therefore, a court must consider the statute in its entirety, keeping in mind its subject matter and the legislature's apparent objective in enacting it. *People v. McCarty*, 223 Ill. 2d 109, 124 (2006). The most reliable indicator of legislative intent is the plain and ordinary meaning of the statute's language. *Marshall*, 242 Ill. 2d at 292. When interpreting the plain language of a statute, we presume that the legislature did not intend absurd, inconvenient, or unjust results. *In re Rufus T.*, 409 Ill. App. 3d 969, 975-76 (2011).

[2] Respondent raised this contention for the first time at oral argument.

¶ 34 The provision at issue in our case states, in pertinent part, that a court may terminate the sex offender registration of an adjudicated delinquent if he shows, *by a preponderance of the evidence*, that he "poses no risk to the community." (Emphasis added.) 730 ILCS 150/3-5(d) (West 2010). Section 3-5(d) further provides that that determination is to be based upon the factors listed in section 3-5(e). 730 ILCS 150/3-5(d),(e) (West 2010). Section 3-5(e), in turn, identifies the following relevant factors: (1) a risk assessment performed by an approved evaluator; (2) the sex offender history of the respondent; (3) any evidence of the respondent's rehabilitation; (4) the respondent's age at the time of the offense; (5) any information related to the respondent's mental, physical, educational, and social history; (6) any victim impact statement; and (7) any other factors that the court deems relevant. 730 ILCS 150/3-5(e) (West 2012).

¶ 35 Here, respondent contends that the trial court misinterpreted the term "no risk" (730 ILCS 150/3-5(d) (West 2010)) to mean essentially the complete absence of any risk. Therefore, the threshold question we must decide is whether the term "no risk" was intended to mean the complete absence of any risk.

¶ 36 As noted earlier, we presume that the legislature did not intend an absurd or unjust result. See *In re Rufus T.*, 409 Ill. App. 3d at 975-76. Indeed, where necessary to avoid such a result, we may reject a literal interpretation of a statute. *People v. Smith*, 2013 IL App (2d) 121164, ¶ 9. Here, to interpret section 3-5(d) to require proof of the complete absence of any risk would mean that no one would ever be able to satisfy the statute beyond any doubt. That is so because it is virtually impossible to eliminate all risk of reoffending. There is always a possibility that sex offenders will reoffend. See F. Vars, *Delineating Sexual Dangerousness*, 50 Hous. L. Rev. 855, 870 (2013) (essentially every sex offender has a greater-than-zero risk of recidivism); see also

McKune v. Lile, 536 U.S. 24, 34 (2002) (sex offenders have a "frightening and high risk of recidivism"). If beyond any doubt was the burden of proof, no juvenile sex offender could ever show that he presents a complete absence of any risk of reoffending, and hence he could never satisfy section 3-5(d). That would be absurd and unjust. It would also render the statute meaningless. See *Smith*, 2013 IL App (2d) 121164, ¶ 8. However, the burden of proof is not beyond any doubt, beyond a reasonable doubt, or clear and convincing evidence. Rather, the legislature adopted the preponderance of the evidence as the appropriate burden.

¶ 37 The statutory language and legislative history supports our conclusion. As this court recently discussed, the legislative history shows that section 3-5(d) was intended to protect the rights of juveniles who committed less-serious sex offenses and to prevent them from spending their adult lives as registered sex offenders. *In re Rufus T.*, 409 Ill. App. 3d at 974. The Senate sponsor of the bill stated that it was prompted, in part, by language from a special concurrence in an Illinois Supreme Court decision (see *In re J.W.*, 204 Ill. 2d 50, 84 (2003) (McMorrow, C.J., specially concurring, joined by Freeman, J.)) that invited the legislature to reconsider the wisdom of imposing lifetime registration on juveniles. *In re Rufus T.*, 409 Ill. App. 3d at 974-75. Thus, this court concluded that section 3-5(d) was intended to protect juvenile delinquents, who have a greater likelihood of rehabilitation, by allowing them the opportunity to petition the court to seek their removal from the sex offender registry. *In re Rufus T.*, 409 Ill. App. 3d at 975.

¶ 38 The legislative history demonstrates that the legislature intended to create a safety valve that would apply under certain circumstances. It reflects that the legislature contemplated that some juveniles, albeit under limited circumstances, would be able to obtain relief from the continuing burden of sex offender registration. To accomplish that purpose, the legislature necessarily left the door open when it adopted preponderance of the evidence as the burden of

proof. If it intended that term to mean the complete absence of any risk, it would have adopted a much heavier burden of proof such as "beyond a reasonable doubt." It is clear that the burden of proof adopted by the legislature is not unreasonable or virtually impossible to satisfy.

¶ 39 We turn next to the related question of whether the trial court misinterpreted section 3-5(d) to mean that respondent had to show the complete absence of any risk. There is no indication in the record that it did. It did not expressly state, or otherwise indicate, that it considered section 3-5(d) to require proof of a complete absence of any risk. Although the court referenced the no-risk language in its ruling, that alone does not show that it interpreted the term as respondent suggests.

¶ 40 Respondent argues that, because the trial court relied on Sundberg's assessment that he was "low risk," and yet denied his petition, it must have interpreted the term "no risk" to mean the complete absence of any risk. That contention misses the mark, however, because it erroneously assumes that the trial court considered the assessment as the sole dispositive factor in arriving at its decision. To the contrary, the court's decision was expressly based on its consideration of all of the evidence in the case, including the assessment, and was made in light of all the factors under section 3-5(e). The court found, after hearing evidence relevant to those factors, that respondent presented too significant a risk to qualify for relief under section 3-5(d). The record does not show that the court relied solely on the assessment. That alone defeats respondent's contention that the court misinterpreted section 3-5(d).

¶ 41 Indeed, had the court interpreted section 3-5(d) to require a showing of a complete absence of any risk, it could have relied solely on the low-risk assessment to deny respondent's petition. Instead, the court clearly weighed all of the evidence, including the assessment, in determining respondent's current level of risk. That shows that it recognized that proof of the

complete absence of any risk was not required. Therefore, the court's reliance on the assessment, including its conclusion that respondent was a low risk to reoffend, does not show that the court misinterpreted the term "no risk" to mean the complete absence of any risk.

¶ 42 As noted above, respondent contended for the first time at oral argument that the trial court's decision was against the manifest weight of the evidence. Because respondent did not raise that contention in his opening brief, it is forfeited. See Ill. S. Ct. R. 341(h)(7) (eff. Feb. 6, 2013).

¶ 43 Even had respondent properly raised that contention on appeal, we would reject it. Section 3-5(d) requires a respondent to prove his entitlement to relief by a preponderance of the evidence. A preponderance of the evidence is the amount of evidence that leads a trier of fact to conclude that a fact is more probable than not. *In re Arthur H.*, 212 Ill. 2d 441, 464 (2004). Thus, it was necessary for respondent to submit evidence sufficient for the court to find that it was more probable than not that respondent would not reoffend.

¶ 44 The trial court concluded that respondent failed to meet that burden. In reviewing that conclusion on appeal, we are confined to deciding whether it was against the manifest weight of the evidence. See *Eychaner v. Gross*, 202 Ill. 2d 228, 251 (2002). A judgment is against the manifest weight of the evidence if the findings appear to be unreasonable, arbitrary, or not based on the evidence. *Wildman, Harrold, Allen & Dixon v. Gaylord*, 317 Ill. App. 3d 590, 599 (2000). In making such a review, we must resolve questions of witness credibility in favor of the prevailing party and draw all reasonable evidentiary inferences in support of the court's judgment. *Gaylord*, 317 Ill. App. 3d at 599. If differing conclusions can be drawn from conflicting evidence, we will not reverse the court's judgment unless an opposite conclusion is clearly apparent. *Gaylord*, 317 Ill. App. 3d at 599.

¶ 45 In this case, respondent put forward evidence that demonstrated that he had made significant strides in his rehabilitation, including lowering his risk of reoffending. That evidence included the low-risk assessment by Sundberg, his lack of further inappropriate sexual conduct involving his sisters or anyone else, and the substantial testimony of his general good character. The State, however, submitted evidence that respondent has lingering anger issues, particularly with his family. Although such evidence might be benign in a different context, it was significant here, because of respondent's history of inappropriate responses to his anger, especially as reflected by his sex offenses involving his sister. The court emphasized that evidence, which clearly supported denying respondent's petition. Although we might have weighed the evidence differently, we cannot say that the court's judgment was unreasonable, arbitrary, or not based on the evidence. Nor is an opposite conclusion clearly apparent. That said, we acknowledge respondent's and his family's efforts at reconciliation and note that should respondent continue to progress in his rehabilitative and anger-management efforts, nothing in our order prevents him from seeking such relief in the future.

¶ 45 III. CONCLUSION

¶ 46 For the reasons stated, we affirm the order of the circuit court of Winnebago County denying respondent's petition to terminate his sex offender registration.

¶ 47 Affirmed.