2019 IL App (2d) 170998-U
No. 2-17-0998
Order filed August 1, 2019

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellee, v. MARCI WEBBER, Defendant-Appellant.	))))))))))	Appeal from the Circuit Court of DuPage County. No. 10-CF-2643 Honorable George Bakalis, Judge, Presiding.

JUSTICE HUTCHINSON delivered the judgment of the court.
Justices Zenoff and Hudson concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court's finding that defendant failed to prove by clear and convincing evidence that her petition for conditional release or discharge should have been granted was not against the manifest weight of the evidence.

¶ 2 Defendant, Marci Webber, appeals the trial court's denial of her petition for discharge or conditional release. Defendant argues that the trial court's denial of her petition was against the manifest weight of the evidence as her treatment team's testimony suggested that she does not suffer from a recognized mental illness and she no longer poses a danger to herself or others. For the reasons that follow, we affirm the trial court's findings.

¶ 3 I. BACKGROUND

¶ 4 On November 3, 2010, defendant murdered her four-year old daughter, Magdalene. She thought that Satan was going to kidnap Magdalene for the purpose of sexual gratification. Defendant cut Magdalene's neck in her mother's bathroom and inscribed words on the walls in blood. On November 10, 2010, defendant was indicted on five counts of first degree murder.

¶ 5 On June 7, 2012, defendant was found not guilty by reason of insanity (NGRI). She was remanded to the custody of the Illinois Department of Human Services (DHS) pursuant to 730 ILCS 5/5-2-4 for an evaluation as to whether she was in need of mental health services. On July 13, 2012, the trial court found defendant was in need of mental health services pursuant to 730 ILCS 5/5-2-4(a-1)(B). Defendant was initially receiving treatment at Elgin Mental Health Center but was moved to Chicago-Read to continue treatment.

¶ 6 On August 22, 2017, defendant filed a motion for discharge or conditional release and asked the court to consider her petition under the auspices of 730 ILCS 5/5-2-4(g). The matter proceeded to hearing on September 26, 2017.

¶ 7 Defendant first called Dr. Toby Watson. Watson testified that he evaluated defendant for eight hours in 2015 and one hour in 2017. He had also spoken to defendant on the phone approximately two dozen times but was not her treating psychiatrist. It was Dr. Watson's opinion that defendant does not need inpatient care because he believes that she is not suffering from a mental disorder. Defendant indicated to Dr. Watson that the medication she was taking at the time of the murder played a part in her becoming aggressive, violent, and murderous. Dr. Watson testified that defendant was being kept in an acute treatment unit as opposed to a chronic treatment unit at Chicago-Read. He said that she may be kept in the acute unit so as not to advise other patients not to take psychotropic medications or cause other disruptions. He believed that

defendant's treatment plan should include increasing her freedoms and transitioning her to release followed by six to eight months of monitoring to see how she is able to function.

¶ 8 Dr. Watson spoke with Dr. Radomska, a previous treating psychiatrist of defendant. Dr. Radomska felt that defendant did not meet any criteria for a specific mental illness and should be transitioned into the community. Dr. Radomska was not prescribing any medications to defendant, nor was she recommending any. Dr. Watson acknowledged that Dr. Radomska had since been suspended from practicing psychiatry.

¶ 9 Defendant's social worker at Chicago-Read, Dr. Lucy Menezes, next testified. Dr. Menezes testified that defendant had only earned the privilege of an escort pass within the facility. An escort pass allows defendant to be escorted within the facility. She acknowledged that defendant's treatment team has not made any recommendations that supervised or unsupervised off-site privileges be granted. She stated that defendant sometimes is verbally aggressive and expresses frustration and anger with her hospitalization.

¶ 10 Dr. Craig Jock, defendant's treating psychologist, was then called to testify. Dr. Jock stated that defendant is diagnosed with depressive disorder, severe with psychotic features in remission, although he had not observed defendant exhibiting any symptoms of that affliction. Dr. Jock testified that having a discharge plan in place would allow for defendant's safe discharge from Chicago-Read. However, he has never recommended any privileges or discharge plans for defendant.

¶ 11 Defendant next called Dr. Mir Obaid, a psychiatrist at Chicago-Read. Dr. Obaid saw defendant in one group that meets twice per week. He is not defendant's treating psychiatrist. He believes that if defendant were to be released, she would need a social support network and things to keep her occupied. He stated that defendant had told him that she does not suffer from a

mental illness and the murder of her daughter was caused by medications she was taking at the time. Dr. Obaid acknowledged that he was unfamiliar with defendant's history and could not agree or disagree with defendant's statements.

¶ 12 The trial was continued to October 11, 2017, whereupon defendant testified. She stated that she does appreciate the criminality of her conduct and that she misses her deceased daughter everyday. She quit taking psychotropic medications in September 2013, and feels much better since their discontinuation. She denied having a mental illness but testified that she did suffer from mental illness in the past due to medications. She testified that, if released, she would not take psychotropic medications as they would present a risk to both her and the public. She is hopeful to move to Arizona upon her release to be with her ailing father, cousin, and sister. Although, she stated she would remain in Illinois if the court ordered her to do so.

¶ 13 Following defendant's testimony, the State called Dr. Patrick Corcoran, a member of defendant's treating team and the medical director at Chicago Read. Dr. Corcoran also had contact with defendant during her incarceration in the DuPage County jail before trial on the murder of her daughter. He testified that defendant exhibited symptoms of psychosis following the murder. She had cut her own neck in an attempt to commit suicide. He successfully treated defendant before her trial with Seroquel and Zoloft. In the DuPage County jail, defendant had difficulty dealing with other inmates and guards.

¶ 14 Dr. Corcoran testified further that defendant took medication regularly throughout 2013. In 2014, defendant exhibited aggressive and threatening behavior resulting in a restriction of rights medications. He stated that defendant currently exhibits irritability, argumentativeness, and resistance to working collaboratively with the treatment staff. He believes that defendant would be helped by mood stabilizing medication. He acknowledged that defendant continues to

claim that she suffers from no mental illness and that the episode of psychosis leading to her daughter's murder was brought on by psychotropic medications. However, Dr. Corcoran testified that defendant still suffers from mood instability, a mental illness. He stated that while mood instability is not in the DSM-V, it is a symptom complex, an unspecified personality disorder.

¶ 15 Dr. Corcoran explained that defendant is resistant to collaboration with her treatment team, resistant to treatment planning, and difficult to treat as a patient. He and his team believe that defendant needs to acknowledge her mental illness and work to explore treatment options. He testified that defendant had a history of alcohol abuse, consuming six to eight beers per night. She had two DUI convictions including one with a child in the car. Dr. Corcoran stated that she is currently in institutional remission for her alcohol abuse but has not attended AA meeting in the hospital on a regular basis.

¶ 16 Dr. Corcoran testified that defendant currently continues to have mood instability and that her conduct reflects irritability, and an argumentative nature. She has temper tantrums and reclusiveness. Although acknowledging that her mental illness is now in remission, Dr. Corcoran expressed concern that defendant's behaviors are similar in nature to those exhibited prior to her daughter's murder. He would like to see defendant show that she is able to follow the rules and regulations at Chicago-Read and go through the regular steps before a recommendation for discharge. This includes unsupervised, on-grounds passes followed by supervised off-grounds passes. Defendant could then be prepared for conditional discharge but as of the time of his testimony, Dr. Corcoran stated that defendant only complies with some of her treatment plan.

¶ 17 On October 13, 2017, a 60-day NGRI treatment plan report was filed with the trial court. The report found that defendant was in need of further inpatient mental health services. The

report listed major mental illness with violence, alcohol dependence, aftercare planning, and resistance and/or refusal of treatment as the risk factors leading to the finding.

¶ 18 On November 13, 2017, the trial court issued its memorandum opinion denying defendant's petition. In reaching its decision, the trial court reviewed 1) DHS treatment plan reports from July 2012 through October 2017; 2) the initial findings of Dr. Orest Wasyliw, clinical psychologist, concluding petitioner was insane at the time of the offense; 3) the report of Dr. Roni L. Seltzberg, a board certified psychiatrist appointed by the trial court to evaluate defendant after filing her petition for discharge; 4) the report of Dr. Watson; 5) the testimony elicited at the hearing in connection with defendant's petition; and 6) the statutory factors set forth in 730 ILCS 5/5-2-4(g).

¶ 19 As to the statutory factors set forth in 730 ILCS 5/5-2-4(g), the trial found:

> "1. Petitioner does appreciate the harm she caused in the murder of her child and is burdened by her actions.
>
> 2. The court has some concerns as to whether petitioner truly appreciates the criminality of her conduct in the sense that her criminal actions were in fact caused by her developing mental illness and not merely caused by medication she was taking at the time.
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> 3. Petitioner's mental illness although now in remission has only been shown in a secured environment. This is partially the result of petitioner's unwillingness to comply with the programs and counseling DHS is requiring, but also due, in this court's opinion, to the failure of DHS to even attempt to establish a transition program where petitioner's conduct can be observed outside of the secured environment. As indicated, defendant has been granted no privileges at DHS.

4. Petitioner refuses to take any medication for her mental illness believing such medication caused her mental illness to begin with. That said, petitioner's mental illness is in remission and has been without medication.

5. The adverse effects of medication on the petitioner are unidentifiable as she has refused medications.

6. The question of petitioner's mental health possibly deteriorating without medication cannot be assessed as she refuses medication. Again, however, having been off medication for a significant period of time, her mental illness remains in remission.

7. Petitioner has had a history of alcohol abuse, but it is also in remission while in a secured setting.

8. Petitioner has had a limited criminal history other than the crime for which she was found insane.

9. There is no evidence regarding any specialized physical or medical needs of the petitioner.

10. Petitioner has a mother and sister in the area, but their participation or involvement with petitioner if she was released was not established. Petitioner seeks leave, if discharged, to reside in [Arizona] to be near her father who resides in a nursing home. Evidence was presented that a friend in [Arizona] is willing to employ petitioner as a caregiver in a group home. Given the evidence of petitioner's current mood disorders, the court believes this would not be an appropriate setting. In addition, if the petitioner was to be granted any form of conditional release, the court would require that she remain in Illinois under the jurisdiction of the court.

> 11. If the petitioner is a potential danger to herself or others is somewhat unclear. Although DHS personnel found such dangers were inactive and in remission with treatment, the team of DHS staff all signed off on her need for treatment in a secured environment. As indicated, petitioner continues to show irritability and aggressiveness, but no physical violent behavior has been shown towards staff or other patients. It is not possible to determine the dangerousness to herself or others unless a transition program is established to see how the petitioner conducts herself in unsecured environment situations."

Following its finding that defendant had not met her burden of clear and convincing evidence that she is ready for discharge, the trial court went on to say that "[w]hat is appropriate is for DHS to do what should have been done some time ago – establish a plan for [defendant's] eventual transition into society. [Defendant] and DHS are to be faulted for not working in tandem to achieve this goal." The trial court then ordered Chicago-Read's director to establish a plan towards defendant's eventual conditional release and would reconsider that potential conditional release in six months.

¶ 20 This appeal followed.

¶ 21 II. ANALYSIS

¶ 22 Defendant contends that the trial court erred in denying her petition for conditional release or discharge as its findings where against the manifest weight of the evidence. Defendant argues that she proved by clear and convincing evidence that she does not suffer from a mental illness and is not a threat to herself or others.

¶ 23 Following an acquittal by reason of insanity, a defendant bears the burden of proving by clear and convincing evidence that a petition for conditional release or discharge should be

granted. See 730 ILCS 5/5-2-4(a)(g) (West 2016). The defendant's burden is to show by clear and convincing evidence that, due to his or her mental illness (regardless of whether it was enough to require involuntary admission), defendant is not reasonably expected to inflict serious harm upon defendant's self or another and would not benefit from further inpatient care or be in need of such inpatient care. Under a plain reading of the statute, if defendant proves either element, namely defendant is (1) not reasonably expected to inflict serious physical harm upon defendant's self or another or (2) defendant would not benefit from inpatient care or is not in need of inpatient care, by clear and convincing evidence, the judge must grant the petition for conditional release. See 730 ILCS 5/5-2-4(a-1)(B) (West 2016). In determining whether a defendant should be released, the trial court should consider:

> "(1) whether the defendant appreciates the harm caused by the defendant to others and the community by his or her prior conduct that resulted in the finding of not guilty by reason of insanity;
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> (2) Whether the person appreciates the criminality of conduct similar to the conduct for which he or she was originally charged in this matter;
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> (3) the current state of the defendant's illness;
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> (4) what, if any, medications the defendant is taking to control his or her mental illness;
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> (5) what, if any, adverse physical side effects the medication has on the defendant;
>
> (6) the length of time it would take for the defendant's mental health to deteriorate if the defendant stopped taking prescribed medication;
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> (7) the defendant's history or potential for alcohol and drug abuse;
>
> (8) the defendant's past criminal history;
>
> (9) any specialized physical or medical needs of the defendant;

> (10) any family participation or involvement expected upon release and what is the willingness and ability of the family to participate or be involved;
>
> (11) the defendant's potential to be a danger to himself, herself, or others; and
>
> (12) any other factor or factors the Court deems appropriate." 730 ILCS 5/5-2-4(g) (West 2016).

The trial court's determination as to whether a defendant has carried her burden under section 5-2-4(g) by clear and convincing evidence must be respected unless such determination is against the manifest weight of the evidence. *People v. Wolst*, 347 Ill. App. 3d 782, 790 (2004). A finding is against the manifest weight of the evidence only if the opposite conclusion is clearly evident or if the finding itself is unreasonable, arbitrary, or not based on the evidence presented. *Best v. Best*, 223 Ill. 2d 342, 350 (2006).

¶ 24 Defendant points this court to two cases that wholly support the trial courts in findings in the present case: *People v. Wolst*, 347 Ill. App. 3d 782 (2004), and *People v. Bryson*, 2018 IL App (4th) 170771.

¶ 25 In *Wolst*, the defendant shot and killed a stranger in a health club while under the delusion the victim was a federal agent. *Wolst*, 347 Ill. App. 3d at 784. As the defendant was suffering from paranoid schizophrenia, he was initially found unfit to stand trial. *Id.* After being returned to fitness, he was found NGRI and committed to the Elgin Mental Health Center. *Id.* Later, the facility director recommended transfer to a nonsecure setting, as well as the granting of supervised off-grounds and unsupervised on-grounds passes, which defendant then petitioned the trial court to obtain. *Id.* at 784-85. The trial court denied the transfer and request for supervised off-ground passes but granted the unsupervised on-grounds pass privileges, and defendant appealed. *Id.* at 785. The appellate court was asked to determine whether the court's ruling was

against the manifest weight of the evidence since each of defendant's four witnesses recommended all three privileges. *Id*. A social worker, two staff psychiatrists with the Cook County court's forensic medical services, and one staff psychiatrist for Elgin Mental Health Center testified the defendant was not a threat to himself or anyone else; was no longer suffering delusions; and, due to his medication, his paranoid schizophrenia was in remission and was considered one of the most "stable" and "appropriate" patients on the unit. *Id.* at 785-89. They did not believe the transfer or passes posed a risk or danger to the defendant or others and that they would be beneficial to the defendant's treatment. *Id*. All of the doctors indicated their opinions were contingent on defendant's continued compliance with medication. *Id*.

¶ 26 The court in *Wolst* found the record provided ample support for the court's decision in that "[t]he record makes clear that the trial court's primary concern was that [the] defendant, when placed in a less secure environment and charged with taking his own medication, might fail to do so and relapse." *Id* at 791. The record indicated that the defendant's clinical team felt the need to observe how he did with unsupervised on-grounds passes before advancing to off-grounds and a transfer. *Id*. at 790. The court noted that, although all the witnesses supported defendant's requests, they also acknowledged the possibility of relapse with the concomitant potential for dangerous behavior if the defendant stopped taking his medication. The appellate court also found section 5-2-4(g) gave the trial court broad discretion in determining whether a defendant remains mentally ill and dangerous. Responsibility for considering and weighing the evidence lies with the fact finder and not the defendant's treating physicians. *Id*. at 790.

¶ 27 In *Bryson*, the defendant was found NGRI of attempted kidnapping following a stipulated bench trial and remanded to custody of DHS. *Bryson,* ¶ 1. She had entered a residence and attempted to leave with a two-year-old child, claiming the child was hers. *Id*. Defendant was

diagnosed with bipolar I disorder, current or most recent episode manic with psychotic features, and had a history of engaging in behavior which threatened harm to herself and others when not stabilized with prescribed medication. *Id.* At the hearing on defendant's petition for conditional release, defendant's treatment team expressed encouragement at defendant's progress within the hospital setting but did not support her conditional release as they believed she needed more time with inpatient treatment. *Id*. ¶ 67. Her treatment team believed this was so even though she presented as stable, not dangerous, and likely to continue treatment in the community. *Id*.

¶ 28 The court in *Bryson* found that the denial of the petition for conditional release was proper because the trial court had given proper consideration to the factors listed in 730 ILCS 5/5-2-4(g), weighed the testimony of defendant's treatment team, and properly considered the reports and recommendations of the treatment team. Id. ¶ 76.

¶ 29 Defendant in the present appeal believes *Wolst* and *Bryson* to be distinguishable from the case-at-bar because those courts were concerned with the respective defendants' abilities to continue with prescribed medications upon release. Although it is true that medications were at issue in those cases, the courts' holdings were not limited to that issue only. Those cases support the notion that the trial courts gave proper consideration to the statutory factors, weighed the testimony of experts, and considered the reports and recommendations of the treatment teams before the appellate court ruled that their findings were proper and not against the manifest weight of the evidence. As the trial court in the present case gave the proper considerations, our holding here will be no different.

¶ 30 In its November 13, 2017 (See *supra* ¶ 18-19), the trial court meticulously recited every source of evidence used to come to its thoughtful conclusion. The court went through all the requisite statutory factors in great detail and outlined its concerns for both defendant and DHS

going forward. The trial court specifically set forth the standard under which it was to decide the case, and it stated on the record its finding was by "clear and convincing evidence." Our supreme court has said a reviewing court "presume[s] that the trial judge knows and follows the law unless the record indicates otherwise." *People v. Gaultney*, 174 Ill. 2d 410, 420 (1996). We presume the same, and nothing in the record affirmatively rebuts that presumption.

¶ 31 III. CONCLUSION

¶ 32 Accordingly, the judgment of the circuit court of DuPage County is affirmed.

¶ 33 Affirmed.