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2014 IL App (3d) 130569-U

Order filed July 9, 2014

IN THE

APPELLATE COURT OF ILLINOIS

THIRD DISTRICT

A.D., 2014

IN RE COMMITMENT OF:	)	Appeal from the Circuit Court
DONALD RAY HOOVER	)	of the 12th Judicial Circuit,
	)	Will County, Illinois,
(THE PEOPLE OF THE STATE OF ILLINOIS,	)	
	)	Appeal No. 3-13-0569
Petitioner-Appellee,	)	Circuit No. 01-MR-786
	)	
v.	)	
	)	The Honorable
DONALD RAY HOOVER,	)	Sarah F. Jones,
	)	Judge, Presiding.
Respondent-Appellant).	)	

JUSTICE McDADE delivered the judgment of the court.
Justices Carter and O'Brien concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court did not err in denying the petition because the State proved by clear and convincing evidence the respondent has not made sufficient progress such that it is not substantially probable he will commit acts of sexual violence, making conditional release inappropriate. 725 ILCS 207/60(d) (West 2010). Sufficient progress refers to the respondent's treatment.

¶ 2 Respondent, Donald Ray Hoover, appeals from an order of the circuit court of Will County denying his petition for conditional release. We affirm.

¶ 3 FACTS

¶ 4 In November 2001, the State moved to commit respondent under the Sexually Violent Persons Commitment Act (the Act) (725 ILCS 207/1 *et seq.* (West 2010)). The State alleged respondent had been convicted of two counts of aggravated criminal sexual assault and one count of aggravated criminal sexual abuse. The State also alleged that respondent suffered from the following three mental disorders that predisposed him to commit acts of sexual violence: (1) paraphilia, (2) pedophilia, and (3) antisocial personality disorder. The circuit court found probable cause to believe that respondent was a sexually violent person and ordered him to be detained by the Illinois Department of Human Services (DHS).

¶ 5 In October 2006, the court entered an agreed order finding respondent to be a sexually violent person and continuing the matter for a dispositional hearing to determine whether respondent should be committed to institutional care in a secure setting or placed on conditional release. Ultimately, the court committed the respondent to institutional care.

¶ 6 In March 2011, respondent filed a petition for conditional release. The matter was continued over the next two years. Eventually, a hearing was held on respondent's petition during which both the State and respondent presented expert testimony. Expert reports were admitted and respondent testified on his own behalf.

¶ 7 The State called Dr. Kimberly Weitl, a clinical psychologist, as an expert witness. The parties stipulated that Weitl was an expert in clinical psychology with a specialty in the area of sex offender evaluation and risk assessment. In February 2013, Weitl conducted her sixth evaluation of respondent. Based on the interview and her review of respondent's record, Weitl prepared a report opining that respondent was a sexually violent person and should remain committed to institutional care.

¶ 8 Respondent's pattern of committing sex offenses began in 1983 -- at the age of sixteen -- when he molested two four-year-old boys, one of whom was respondent's cousin. Respondent attempted to make each of the boys perform oral sex on him, and in one case actually placed his penis in the boy's mouth. As a result, respondent was sentenced to sixteen months of juvenile detention for contributing to the delinquency of a minor. A few months after his release in 1984, respondent attempted to rape a nineteen-year-old woman at knife point in her bedroom. He was committed to the Juvenile Department of Corrections for home invasion and attempted rape. Within a week of being paroled, in August 1985, respondent raped and orally sodomized a woman, while wielding a pair of scissors. Respondent was convicted of two counts of aggravated criminal sexual assault and sentenced to twenty-eight years of imprisonment. In 1994, while serving this sentence, respondent was convicted of aggravated criminal sexual abuse after he followed a psychiatric nurse into a supply room, closed the door, and groped at her breasts and groin. Additionally, between June 1987 and July 2000, respondent received ten disciplinary tickets for sexual misconduct. He was also reprimanded twice for making obscene phone calls, masturbated in front of female staff, kissed a female counselor (who began screaming for help), and was reported to prison authorities by his mother for asking her to send him nude pictures of herself.

¶ 9 These offenses formed the basis for Weitl's opinion that respondent suffered from paraphilia and antisocial personality disorder. Paraphilia is a congenital or acquired condition characterized by intense, sexually-arousing thoughts or fantasies that occur over at least a six-month period and interfere with one's ability to function in society. Antisocial personality disorder is a general disregard for the rights of others. While antisocial personality disorder standing alone does not predispose respondent to commit sex crimes, when coupled with

paraphilia, it results in an increased likelihood that respondent will act on his deviant urges and be unable to control them.

¶ 10 Weitl also opined that respondent was more likely than not to engage in future acts of sexual violence. She used two actuarial risk-assessment tools to arrive at that conclusion: (1) the Static-99 and (2) the Minnesota Sex Offender Screening Tool. Respondent scored in the "high risk category" on the Static-99 and the "highest risk" category on the Minnesota Screening.

¶ 11 Weitl could not identify any protective factors, such as advanced age or ill health that would reduce respondent's propensity to reoffend. Respondent did not complete a sex-offender specific treatement. DHS's treatment consisted of five stages. Respondent ceased treatment in 2009 and never progressed beyond the second stage, which required him to accept responsibility for his sexually deviant behavior. Respondent told her that he never completed the treatment because he had been assaulted by a group member. Weitl noted that respondent continued to engage in victim-blaming when recounting his sex offenses.

¶ 12 Following his withdrawl from treatment in 2009, respondent was involved in ancillary treatment groups. However, Weitl opined these groups were not a substitute for the core treatment program. Respondent was no longer involved in any treatment program at the time of Weitl's February 2013 evaluation. Weitl acknowledged that respondent has not received any sanction for sexual misconduct since 2002, however, she does not attribute much significance to this fact inasmuch as respondent has been in DHS custody since 2002. Ultimately, Weitl concluded that respondent had not made sufficient progress to be "safely manage" on conditional release.

¶ 13 Respondent called Dr. Craig Rypma, a clinical psychologist, as an expert witness. Like Weitl, Rypma personally interviewed respondent and reviewed respondent's record. The parties

stipulated that Rypma is an expert in clinical psychology with a specialty in the area of sex offender evaluation and risk assessment.

¶ 14 Rypma diagnosed respondent with antisocial personality disorder. Rypma, however, did not believe that respondent suffered from paraphilia because he did not see any evidence of recurrent fantasies, urges, or behaviors consistent with the disorder. Rypma believed that respondent's sexually violent offenses stemmed from anger at the sexual and physical abuse he suffered as a child, as opposed to sexual arousal. Rypma opined that respondent has since overcome his anger and frustration due to the fact that he had not acted out sexually since 2002. Because Rypma saw no evidence of a qualifying mental disorder, he did not believe respondent was a sexually violent person.

¶ 15 Rypma conducted a risk assessment evaluation. He expressed a preference for the Static 99-R rather than the Static-99, which he believed overestimated risk. Rypma acknowledged that respondent scored in the high risk range for reoffending under the Static-99, but believed that respondent's likelihood of reoffending was below the threshold of substantially probable. Specifically, he opined that respondent was on the lower end of the recidivism estimate, with an 18% risk of reoffending.

¶ 16 Respondent testified that he participated in sex offender treatment in 1996 for eighteen months while incarcerated at the Big Muddy River Correctional Center. When he was transferred to the DHS he initially participated in the core treatment group, but left when another member of the group threatened him with physical violence. He has tried to return to ancillary groups, but no space is available. Respondent testified that he should be granted conditional release because he has not committed a violent sexual act in nineteen years and his therapy at Big Muddy River gave him the tools to re-direct his anger.

¶ 17 The circuit court held that the State sustained its burden of proving by clear and convincing evidence that respondent should not be conditionally released. The court expressly noted that respondent was resistant to treatment and refused to attend core treatment groups. Respondent appeals.

¶ 18 ANALYSIS

¶ 19 On appeal, respondent contends that the circuit court erred in denying his petition for conditional release. Respondent's sole argument with regard to this issue is that the evidence was insufficient to establish that he was suffering from a mental disorder. We disagree.

¶ 20 Under section 60 of the Act, a respondent may petition the court for conditional release. See 725 ILCS 207/60(a) (West 2010). The trial court shall grant the petition unless the State proves by clear and convincing evidence the respondent has not made sufficient progress to the point it is not substantially probable he will commit acts of sexual violence, such that conditional release is appropriate. 725 ILCS 207/60(d) (West 2010). Sufficient progress refers to the respondent's treatment. *In re Commitment of Sandry*, 367 Ill. App. 3d 949, 976 (2006) ("Of course, what a person is 'making sufficient progress' in is treatment."). We will not reverse the trial court's decision unless it is against the manifest weight of the evidence. *Sandry*, 367 Ill. App. 3d at 978.

¶ 21 After reviewing the record, we conclude that the circuit court's holding was not against the manifest weight of the evidence. Dr. Weitl diagnosed respondent with paraphilia and antisocial personaility disorder, which when combined increased the likelihood that respondent will act on his deviant urges and be unable to control them. Weitl opined respondent should remain committed. While Dr. Rypma disagreed with respect to Weitl's paraphilia diagnosis and her commitment recommendation, it is not our function to weigh the credibility of these experts

or resolve their conflicting opinions. In proceedings under the Sexually Violent Persons Commitment Act, the trier of fact, by virtue of its ability to actually observe the conduct and demeanor of the witnesses, is in the best position to assess their credibility. *In re Commitment of Anderson*, 2014 IL App (3d) 121049 ¶ 36, *In re Commitment of Abel C.*, 2013 IL App (2d) 130263 ¶ 19.

¶ 22 In coming to this conclusion, we reject respondent's claim that Weitl simply relied on "her prior conclusions without applying new information." In support of this contention respondent cites to the fact he has not received any sanction for sexual misconduct since 2002. Weitl explained, however, that paraphilia is a chronic condition that does not remit without treatment. Weitl has examined respondent's recent progress, or lack thereof, in treatment. Respondent admitted he did not complete the core treatment program. Rypma conceded that respondent "has not completed any program he has started and summaries of his participation are generally negative."

¶ 23 For the foregoing reasons, we affirm the circuit court's judgment.

¶ 24 Affirmed.