

NOTICE
Decision filed 09/04/19. The text of this decision may be changed or corrected prior to the filing of a Petition for Rehearing or the disposition of the same.

2019 IL App (5th) 160273-U

NO. 5-16-0273

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

NOTICE
This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

<i>In re</i> COMMITMENT OF ERNEST LOGSDON)	Appeal from the
)	Circuit Court of
(The People of the State of Illinois,)	Jefferson County.
)	
Petitioner-Appellee,)	
)	
v.)	No. 15-MR-131
)	
Ernest Logsdon,)	Honorable
)	Jerry E. Crisel,
Respondent-Appellant).)	Judge, presiding.

JUSTICE WELCH delivered the judgment of the court.
Justices Cates and Boie concurred in the judgment.

ORDER

¶ 1 *Held:* The respondent's commitment to a secure facility directly following the entry of judgment finding him to be a sexually violent person is affirmed where the trial court held a hearing prior to disposition as required by section 40 of the Sexually Violent Persons Commitment Act (725 ILCS 207/40(b)(1) (West 2014)).

¶ 2 On September 4, 2015, the State filed an amended petition for commitment of the respondent pursuant to the Sexually Violent Persons Commitment Act (Act) (725 ILCS 207/1 *et seq.* (West 2014)) seeking to have the respondent, Ernest Logsdon, adjudicated a sexually violent person and committed to the care of the Illinois Department of Human

Services. The petition alleged that the respondent pled guilty to predatory criminal sexual assault on December 9, 1998; that the offense constituted a sexually violent offense under the statute; that Dr. Martha Bellew-Smith diagnosed the respondent with other specified paraphilic disorder, nonconsent, sexually attracted to females, and other specified personality disorder with antisocial features; and that the respondent is dangerous to others due to these mental disorders, and it is substantially probable that he would engage in future acts of sexual violence. That same day a hearing was held, and the trial court found probable cause that the respondent is a sexually violent person under the Act.

¶ 3 On April 20, 2016, a jury trial commenced on the petition. Dr. Martha Bellew-Smith testified that, under the Act, there is a three-prong test for determining whether an individual is a sexually violent person. An individual must: (1) be convicted of a qualifying offense, (2) have a mental defect, and (3) be substantially probable to reoffend. After reviewing the case file, master file, and medical file, interviewing the respondent, and drafting an actuarial report, she diagnosed the respondent with other specified paraphilic disorder nonexclusive, nonconsent, attracted to females and other specified personality disorder with antisocial features. She later drafted a second report to include additional information provided by the respondent and the Illinois Department of Children and Family Services and added the additional diagnosis of pedophilic disorder. She concluded that the respondent would more likely than not commit another act of sexual violence and that he met the criteria for a sexually violent person under the Act. This determination was partially based on the fact that the respondent had pled guilty to

three sex crimes, one of which was for intercourse with his nine-year-old stepdaughter. The respondent told her that, at the time of the offense, he was living with his wife, stepdaughter, and biological son. His wife was falsely accusing him of cheating on her. He had also been attending sex offender treatment. As part of the treatment, he was shown the movie *Bastard Out of Carolina*. After watching the film, the respondent decided that because he was already being accused of infidelity by his wife, he was going to mimic a character in the film and have sex at home with his children. Thereafter, for approximately two months, he had daily intercourse with his stepdaughter until he was caught in bed with her by the babysitter, who reported him to the police. He later pled guilty to also having intercourse with his son.

¶ 4 Dr. Joseph Proctor testified that he reviewed the Department of Corrections master file and interviewed the respondent. Based on his evaluation, he diagnosed the respondent with other specified paraphilic disorder, nonconsent, sexually attracted to females, nonexclusive type, and antisocial personality disorder. He concluded that it was substantially probable that the respondent would reoffend.

¶ 5 Donya Adkerson testified for the respondent that she also conducted an evaluation of him. After reviewing the background material and interviewing the respondent, she determined he had a cognitive impairment and diagnosed him with antisocial personality disorder, alcohol use disorder in an uncontrolled environment, and schizoaffective disorder. She ultimately concluded that the respondent meets the criteria for commitment under the Act.

¶ 6 On April 21, 2016, the jury returned a verdict finding the respondent to be a sexually violent person. The trial court then entered judgment on the jury's finding. After entering judgment, the court went off the record to discuss procedure with counsel. The court then went back on the record and stated the following:

"THE COURT: I've discussed procedure with counsel. I'm looking, counsel, at 725 ILCS 207/40 and that statute indicates to me that the Court has the option at this time immediately after trial, if it feels it has sufficient information to make the determination to commit the Respondent to a secure facility as per the statute or it can also, if it doesn't have the belief that it has enough information, the Court can ask for further evaluation and set the matter for a hearing. Actually, a pre-disposition investigation or a supplementary mental examination or both.

So I believe counsel are in agreement that those are the options. [Counsel], what's the State's position.

[THE STATE]: Your Honor, certainly given Mrs. Donya Adkerson's testimony this afternoon regarding the Respondent, Ms. Adkerson being the expert retained by the Respondent, her testimony, I believe, in sum was that [the respondent] was a sexually violent person but also that community based treatment would not be a suitable fit for [him] given his current condition and, thus, the State would argue that the Court has sufficient information pursuant to 725 ILCS 207/40, Paragraph (b)(2) to be—to make a finding that [the respondent] should be committed to institutional care in a secure facility and, thus, the State would respectfully recommend that that track be taken.

THE COURT: [Counsel for the respondent]?

[THE RESPONDENT'S COUNSEL]: Well, of course, I disagree with that.

THE COURT: Okay.

[THE RESPONDENT'S COUNSEL]: In light of the fact that the State's experts didn't even acknowledge any cognitive defects which is a major portion of what Ms. Adkerson's testimony was based on, I would like to see a—additional testing done to see if we can come to some sort of conclusion on that. Because I think that's a significant factor in where he should be placed.

THE COURT: All right. The Court—Court considers the arguments of counsel. They're both well taken. The Court has reviewed the reports of all experts and I believe that a—the Court has sufficient information at this time to commit [the respondent] to a secure facility pursuant to 725 ILCS 207/40(b)(2). And so does the State have an Order to that?

[THE STATE]: Permission to approach, [Y]our Honor?

THE COURT: Sure.

[THE STATE]: State has prepared an Order reflecting that it has sufficient information to order commitment to an institutional—for institutional care and has

allowed [respondent's] counsel to review the same.

THE COURT: All right. And, [counsel], you have seen this Proposed Order?

[THE RESPONDENT'S COUNSEL]: Yes, I have.

THE COURT: All right. All right. Court will enter the following Order that the Jury in this matter has reached a unanimous verdict finding that the Respondent *** is a sexually violent person. I'm—thereby judgment is entered on the Jury's verdict finding him to be a sexually violent person and committing him to the custody of the Department of Human Services for control, care and treatment until such time as he is no longer a sexually violent person.

Court further finds that it has sufficient information pursuant to 725 ILCS 270/40(b)(2) and it has considered the required factor and further orders that the commitment shall be for institutional care in a secure facility ***. Court will enter that Order on this date April 21st, 2016."

¶ 7 On May 19, 2016, the respondent filed a posttrial motion arguing that the State failed to prove beyond a reasonable doubt that he was sexually violent and that the trial court lacked sufficient evidence to determine whether the respondent should be committed to a secure facility as opposed to conditional release without a predisposition investigation or a supplementary mental examination.

¶ 8 On June 22, 2016, the trial court held a hearing on the respondent's posttrial motion, after which it denied the motion. The respondent appeals.

¶ 9 On appeal, the respondent argues that the trial court erred when it committed him to a secure facility directly after entering judgment on the jury verdict without affording him a dispositional hearing as required by section 40(b)(1) of the Act (725 ILCS 207/40(b)(1) (West 2014)).

¶ 10 Section 40(b)(1) of the Act provides as follows:

"The court shall enter an initial commitment order under this Section pursuant to a hearing held as soon as practicable after the judgment is entered that the person who is the subject of a petition under Section 15 is a sexually violent person. If the court lacks sufficient information to make the determination required by

paragraph (b)(2) of this Section immediately after trial, it may adjourn the hearing and order the Department to conduct a predisposition investigation or a supplementary mental examination, or both, to assist the court in framing the commitment order." *Id.*

¶ 11 The plain language of the Act requires that the trial court hold a dispositional hearing before making a determination regarding the appropriate commitment of the sexually violent person. *In re Commitment of Fields*, 2014 IL 115542, ¶ 49. In *Fields*, our supreme court found that because the record did not indicate any request for a continuance of the hearing, nor did the trial judge allow respondent an opportunity to present evidence or argument regarding disposition, there was not a dispositional hearing as required by the Act. *Id.* ¶ 47. In *In re Commitment of Dodge*, the First District found that the trial court's failure to allow any argument prior to disposition did not amount to a hearing as required by the Act. See *In re Commitment of Dodge*, 2013 IL App (1st) 113603, ¶ 40.

¶ 12 Relying on these two cases, the respondent argues that the trial court failed to hold a hearing prior to disposition as required by the Act because it failed to order either a predisposition investigation or a supplementary mental examination. We disagree.

¶ 13 Our review of the record indicates that the respondent was indeed provided a hearing as required by the Act. The record demonstrates that the trial court allowed both the State and the respondent to submit arguments prior to ruling. Furthermore, the respondent did not have any additional evidence to present during the hearing that the court refused to consider. Instead, the respondent argued that additional testing regarding his intelligence quotient was warranted. That decision lies in the discretion of the trial

court as the court is not required by the Act to order additional testing. The court did not err in refusing to order additional testing, and we find that the court held a hearing as required by the Act.

¶ 14 Therefore, the judgment of the circuit court of Jefferson County is affirmed.

¶ 15 Affirmed.