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2026 IL App (3d) 250468-U

Order filed September 10, 2026

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

2026

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the Circuit Court
	)	of the 13th Judicial Circuit,
	)	Bureau County, Illinois,
Petitioner-Appellee,	)	
	)	Appeal No. 3-25-0468
v.	)	Circuit No. 22-MX-70
	)	
KRISTOPHER KOCH,	)	Honorable
	)	James A. Andreoni,
Respondent-Appellant.	)	Judge, Presiding.

JUSTICE BERTANI delivered the judgment of the court.
Justices Brennan and Peterson concurred in the judgment.

ORDER

- ¶ 1 *Held:* The court properly denied respondent’s section 2-1401 petition.
- ¶ 2 Respondent, Kristopher Koch, appeals the Bureau County circuit court’s denial of his section 2-1401 petition for relief from judgment (735 ILCS 5/2-1401 (West 2024)) which asserted a proper defense to the underlying judgment finding him a sexually violent person (SVP). We affirm.

- ¶ 3 I. BACKGROUND

¶ 4 In June 2014, respondent was convicted of three counts of aggravated criminal sexual abuse (720 ILCS 5/12-16(c)(1)(i) (West 2010)) and sentenced to consecutive terms of nine, six, and three years' imprisonment. On September 30, 2022, as respondent was nearing completion of his prison sentence, the State filed a petition alleging respondent was an SVP subject to commitment under the Sexually Violent Persons Act (725 ILCS 207/1 *et seq.* (West 2022)). The matter proceeded to a jury trial.

¶ 5 Dr. Tetyana Kostyshyna, a psychologist, evaluated respondent to determine whether he met the criteria to be considered an SVP. In reaching her opinion, Kostyshyna reviewed respondent's arrest and court records, nonsexual and sexual criminal history, prison records, medical and mental health records, and behavioral history to determine whether a sexually deviant diagnosis existed and whether respondent's sexual risk was substantially probable. Respondent did not consent to an interview with Kostyshyna. Following Kostyshyna's actuarial diagnostics, respondent scored in the average risk category on the Static-99R, above-average risk on the Static-2002R, and high risk on the dynamic factor assessment. Kostyshyna diagnosed respondent with a nonconsent paraphilic disorder, sexually coercive disorder, antisocial personality disorder, fetishistic disorder, and several substance abuse disorders. Kostyshyna concluded that respondent had a sexually deviant diagnosis with a risk that was substantially probable, qualifying him for an SVP commitment.

¶ 6 Relevant to respondent's nonconsent paraphilic disorder and sexually coercive disorder diagnoses, Kostyshyna relied on several sexually motivated instances in respondent's evaluation including respondent's (1) assault on an 18-year-old woman unknown to respondent in 2006 when he was 22 years old; (2) relationship with his wife, Jennifer Koch, from 24 to 29 years old; and (3) 2014 convictions for aggravated criminal sexual abuse. First, in 2006 respondent was accused

of sexual assault, but not charged. Respondent was alleged to have approached a woman from behind while she was walking at night, placed his arm around her neck, and brought her to the ground. Respondent forced her to perform oral sex, digitally penetrated her vagina, then vaginally and anally penetrated her with his penis. When interviewed, respondent described the encounter as consensual. Afterward, respondent kept the victim's underwear, which he stated she gave voluntarily.

¶ 7 Second, Kostyshyna described respondent's five-year sexually violent history against Jennifer. According to Jennifer's interviews, following a 2009 vasectomy, respondent was only able to maintain an erection during violent sexual intercourse. Jennifer reported that respondent made her drive him around and ask women to "join them and have sex with him." Respondent was also physically abusive to Jennifer, choking and hitting her on the head and face, frequently causing injuries. Jennifer disclosed respondent's "panties fetish," and stated that he "would only allow her to buy satin and colorful underwear," which was "[s]exually arousing to him." In interviews, respondent admitted that he was chronically angry and aggressive, reporting that he "was very violent with his wife of five years" and "want[ed] to kill her several times." Respondent also indicated that he beat his father for many years and had urges to kill him.

¶ 8 Third, Kostyshyna considered respondent's 2013 aggravated criminal sexual abuse convictions, in which the abuse occurred over the course of two months. Specifically, the convictions involved three victims aged 9 and 10 years old, comprising of respondent's daughter, M.K., and her friends. The victims were sexually abused by respondent when they slept overnight at M.K.'s house. Respondent played sexualized games with the victims, described as lying on the bed "with their legs up or with their legs underneath their stomach, facing their bed ***. And during that time, they're not supposed to look at [respondent] and they're not supposed to scream

or laugh. They should stay quiet.” Respondent used a pillow to cover their faces. Kostyshyna stated, “depending on the victim, [respondent] *** fondle[d] their buttocks area or vaginal area with his penis.” One victim remained clothed during the abuse, while respondent removed the clothing from the other victims, resulting in skin-to-skin fondling. Kostyshyna described one instance of penetration, where the victim feigned sleeping due to fear and respondent placed his penis in her mouth, then “fondle[d] her from behind with his penis.” M.K. reported that respondent had previously abused her and she “educated” her friends on how to play respondent’s games. In one instance, respondent threatened M.K. with a knife, and she feared respondent, ultimately waiting until he was incarcerated three years later to report the abuse. Respondent denied sexually abusing the children or having any other problematic sexual behaviors.

¶ 9 Related to respondent’s antisocial personality disorder diagnosis, Kostyshyna relied on several reports of respondent’s anger and aggression before the age of 15. Specifically, the godmother to one of respondent’s daughters indicated that when respondent was 12 years old, he sexually abused her two daughters who were 3 and 4 years old. When respondent was 15 years old, he stabbed his brother multiple times and “would stab stuffed animals and *** throw wrenches at his family members, causing injuries.” Kostyshyna described antisocial personality disorder as a “chronic criminal kind of personality disorder,” in that respondent was “displaying really problematic behaviors before age 15.” Since respondent was under the age of 16, this information did not contribute to Kostyshyna’s sexually deviant diagnosis.

¶ 10 To diagnose respondent with a fetishistic disorder, Kostyshyna relied on respondent’s 2006 sexual assault allegations, in which he kept the victim’s underwear, and Jennifer’s reports that respondent was sexually aroused by women’s underwear and controlled what she wore.

¶ 11 On cross-examination, Kostyshyna agreed that the 2006 sexual assault victim showed no indications of trauma following an evaluation. Kostyshyna was unaware as to whether Jennifer’s statements were investigated or corroborated. Counsel asked, “If [Jennifer’s] information is not accurate, and all you have is the incident of 2006, that could change your opinion, correct?” Kostyshyna responded, “Yes, I would not offer the diagnosis of fetishistic disorder, sexual interest in female undergarments.” When questioned whether her opinion would be retracted regarding the remaining diagnoses, Kostyshyna indicated that it would not, stating that the information related to the other diagnoses was different “than fetishistic interest, interest in underwear, because interest in underwear was reported only by two people.” Kostyshyna clarified,

“If we’re talking about sexual coercion, it was actually reported by about six people. So if their testimony—the information by [Jennifer] was not reliable, I would still be relying on sexual coercion pattern because there were so many other reporters of the same type of behaviors, so it would not be the same as fetishistic disorder. That’s why I’m trying to explain that this information would be different because she’s not the only reporter of it.”

Kostyshyna indicated that she also relied on Jennifer’s statements to inform the pattern of respondent’s interpersonal aggression, however it was also corroborated by respondent’s violence to other family members.

¶ 12 On behalf of respondent, Dr. David Suire and Dr. Luis Rosell testified that respondent was not an SVP. Suire considered his interview with respondent, respondent’s unstable family history, difficulty with peers, emotional and behavioral control issues, denial of a history of sexual offenses, convictions for aggravated criminal sexual abuse, drug possession, and other nonsexual criminal history, including his lack of sexual or negative conduct in prison. Suire gave limited

weight to Jennifer's statements and the 2006 sexual assault allegations because the instances were uncharged and uncorroborated. Suire noted that respondent corroborated Jennifer's allegations of physical abuse but not her sexual abuse allegations. Suire found that respondent scored an average risk on the Static-99R and above-average risk on the Static-2002R. Suire diagnosed respondent with alcohol and drug disorders, antisocial personality disorder, borderline personality disorder, and pedophilic disorder. Suire felt that there was insufficient information to diagnose respondent with a paraphilic disorder and find him an SVP.

¶ 13 On cross-examination, Suire testified that during his interview, respondent admitted to previously lying in psychological interviews. Suire advised respondent that the purpose was to determine whether he was an SVP, and to refrain from speaking about anything inadvisable. Suire also noted that an earlier evaluation indicated that respondent tried to answer in a socially desirable way rather than honestly. Suire agreed that respondent's risk of reoffending was significantly higher than a typical sex offender but not "as high as required by the statute."

¶ 14 Rosell testified that he interviewed respondent and reviewed the relevant materials to reach his opinion. Relying on respondent's self-reported statements, Rosell found that the physical damage to respondent's genitals resulting from his vasectomy made it physically painful for respondent to obtain an erection. Rosell concluded that respondent's aggravated criminal sexual abuse convictions involving three victims did not represent a pattern of behavior. Respondent scored an average risk on the Static-99R, and Rosell did not use any other actuarial assessments. Rosell ultimately opined that respondent was not substantially likely to reoffend based on his limited sexual criminal history, three minor victims, and his relatively low score on the Static-99R. Rosell diagnosed respondent with a pedophilic disorder and substance abuse disorder. On cross-

examination, Rosell stated that in his career he had made only one SVP finding out of the several hundred times he testified. The jury found respondent to be an SVP. Respondent did not appeal.

¶ 15 On March 11, 2024, respondent filed a petition for relief from judgment with an attached affidavit from Jennifer, which is the subject of this appeal. The petition alleged Kostyshyna's testimony and SVP finding were flawed in light of Jennifer's affidavit. Respondent reasoned that Kostyshyna's opinion could not be relied on, and the judgment should be reopened. Jennifer's attached affidavit stated that she was "not a victim of" respondent. She never told police that she and respondent drove around "to kidnap women," or went "to bars to make women come home with [them]," and instead stated, that if she and respondent were at a bar and she met a woman she was "interested in," they "sometimes came home with [them]." Jennifer averred that she never stated that respondent "held anyone down," "had a pair of purple satin panties *** from a so called girl he raped," or said that she believed respondent sexually assaulted anyone. Additionally, Jennifer indicated she never said that respondent had a "pantie fetish" because she "hate[s] the word pantie," and instead said that respondent "liked to buy [her] women's lingerie." Jennifer described respondent's vasectomy, resulting in his difficulty obtaining an erection and lack of sexual intercourse in their relationship, and asserted that she never said respondent was only able to maintain an erection if he held her down and forced intercourse. Jennifer indicated that respondent abused her during their relationship and she had an order of protection but it was "no one else is [sic] business what happened behind closed doors." She forgave respondent and stated, "[e]very marriage has there [sic] problems and *** no one has the right to judge us or say I'm a victim of him."

¶ 16 The State moved to dismiss the petition, contending that respondent was not entitled to relief where he failed to exhibit due diligence in obtaining the information and Jennifer's affidavit

merely challenged the credibility of the prior evidence and failed to establish new, material facts that were unknown or unavailable at the time of trial that would have altered the judgment. The court denied the motion to dismiss. The State did not file an answer, and a hearing was held on the petition. The court ultimately found that, while respondent had exercised due diligence in obtaining Jennifer's statement, the evidence did not amount to the existence of a meritorious defense where the new evidence did not undermine Kostyshyna's conclusions or testimony. The court, thus, denied the petition. Respondent appealed.

¶ 17

II. ANALYSIS

¶ 18

On appeal, respondent argues that the court erred in denying his section 2-1401 petition. At the outset, we note that respondent's brief appears to argue the impropriety of the jury's underlying SVP finding. However, respondent failed to appeal from this finding, and it is not properly before us at this time. Instead, the sole question is whether the court properly denied the petition. Where a section 2-1401 petition survives dismissal, and the opposing party does not file an answer, the circuit court "may decide the case on the pleadings, affidavits, exhibits and supporting material before it, including the record of the prior proceedings." *People v. Vincent*, 226 Ill. 2d 1, 9 (2007); *Ostendorf v. International Harvester Co.*, 89 Ill. 2d 273, 285-86 (1982).

¶ 19

To obtain relief under section 2-1401, respondent "must affirmatively set forth specific factual allegations supporting each of the following elements: (1) the existence of a meritorious defense or claim; (2) due diligence in presenting this defense or claim to the circuit court ***; and (3) due diligence in filing the section 2-1401 petition for relief." *Smith v. Airoom, Inc.*, 114 Ill. 2d 209, 220-21 (1986). "The purpose of a section 2-1401 petition for relief from judgment is to bring before the circuit court facts not appearing in the record which, if known to the court at the time

judgment was entered, would have prevented the entry of the judgment.” (Internal quotation marks omitted.) *In re Detention of Morris*, 362 Ill. App. 3d 321, 322 (2005).

¶ 20 When a defendant raises a fact-dependent challenge to a judgment, a reviewing court will reverse a circuit court’s ruling only if it constitutes an abuse of discretion. *Warren County Soil & Water Conservation District v. Walters*, 2015 IL 117783, ¶ 51. “The threshold for finding an abuse of discretion is high and will not be overcome unless it can be said that the trial court’s ruling was arbitrary, fanciful, or unreasonable, or that no reasonable person would have taken the view adopted by the trial court.” *People v. One 2014 GMC Sierra*, 2018 IL App (3d) 170029, ¶ 24.

¶ 21 Here, the court properly denied respondent’s petition where it did not set forth a meritorious defense. At respondent’s SVP trial, the State had the burden of proving, as relevant here, that (1) respondent had a mental disorder; and (2) the mental disorder made it substantially probable that he will engage in acts of sexual violence. See *In re Detention of Welsh*, 393 Ill. App. 3d 431, 454 (2009). Kostyshyna opined that respondent suffers from a mental disorder that makes him substantially probable to sexually reoffend. Kostyshyna specifically testified that, even if Jennifer fully recanted her statements, such would only affect her conclusion that respondent suffered from fetishistic disorder; all her other diagnoses and opinions would stand as they were supported by substantial evidence from other sources. Kostyshyna’s testimony and report detailed the numerous other facts she considered, including respondent’s lengthy history of criminal sexual conduct reported by numerous victims apart from Jennifer. Thus, even if Jennifer had recanted all of the information she previously provided, there was substantial evidence in the record of respondent’s violent and sexually coercive conduct, and Kostyshyna specifically indicated that such information would be enough such that she would still have opined that respondent was an SVP.

