

long as she is both mentally ill and a danger to herself or others. (People v. Hager 253 Ill. App. 3d 37) It is unconstitutional to continue to confine a harmless, mentally ill person. (Foucha v. Louisiana 504 U.S. 71, 1992).

With these factors as guidance, the court will review the evidence presented by petitioner in favor of discharge and the state's evidence in opposition.

Petitioner presented testimony of three professionals: Dr Dathan Paterno, a psychologist; Dr. Toby Watson, a clinical psychologist; Dr. Gail Tasch, a psychiatrist.

Dr. Paterno administered several tests to the petitioner, including, the Beck Depression Inventory 2nd Edition and the Beck Anxiety Inventory, as well as a personality assessment inventory. Dr. Paterno concluded that petitioner clearly is not insane and has no mental illness. He further opined that she is not a danger to herself or others and exhibits no sign of psychosis.

Dr. Watson has examined petitioner several times, last being March of 2018. He concluded petitioner is not now insane and does not suffer from severe mental illness. He was of the opinion that she is not a danger to herself or to others. He acknowledged that petitioner has had a history of depression and post-traumatic stress disorder. He testified that she has not exhibited these traits since her incarceration. Dr. Watson administered numerous tests on petitioner and, based on that testing, he concluded that petitioner did not meet any criteria for any mental disorder and did not suffer from any mental illness at present.

Dr. Gail Tasch has met with petitioner on one occasion and has had numerous phone contacts with her. She has reviewed the reports by Dr. Malis of IDHS, the report of Dr. Kane, the court appointed psychologist, and all of the reports generated by IDHS regarding the petitioner.

Dr. Tasch concluded that petitioner presently suffers from no major mental illness, is not insane or psychotic and presents no ideation of being a danger to herself or to others. She was of the opinion that any anxiety or depression petitioner may suffer from on occasion is due to her environment and treatment in IDHS. She attributed petitioner's November 2017 suicide attempt to feelings of helplessness after this court denied her initial petition for release. She testified to having observed no suicidal indication at the present time. Dr. Tasch was of the opinion that petitioner may have symptoms of post-traumatic stress disorder but that is primarily due to her incarceration and treatment while in the custody of IDHS.

The state presented the opinions of psychologist Dr. Lesley Kane, who the court had appointed to interview the petitioner, and Dr. Richard Malis, a psychiatrist at IDHS.

Dr. Kane concluded that petitioner was diagnosed with:

1. Major depressive disorder, with psychosis, in remission
2. Alcohol use disorder, sustained remission, in a controlled environment
3. Borderline personality disorder
4. Other specified personality disorder, narcissistic traits
5. Rule out bipolar disorder, with psychosis in remission

Dr. Kane concluded that although there are some overlap between these diagnoses, that as of late, the petitioner had exhibited traits largely consistent with borderline personality disorder. She stated that persons with borderline personality disorder often display marked mood swings, are typically emotionally intense, frequently agitated, and are prone to feelings of depression and anxiety. Dr. Kane was of the opinion that such persons can be short tempered and have difficulty controlling their emotions and behavior. She felt that these individuals may display extreme sarcasm, enduring bitterness, and are prone to verbal outbursts.

In her opinion, Dr. Kane concluded that, while Ms. Webber has not demonstrated any psychotic symptoms for an extended period of time, she does have difficulty regulating her emotions and has displayed intermittent depressive symptoms, suspiciousness, and anxiety. She concluded, however, that even though the petitioner has demonstrated these symptoms for a number of years, it has been without the reemergence of a psychotic episode. Dr. Kane believed that because of the presence of these symptoms, she could be at risk for developing more symptomology in a community setting and concluded that Miss Webber is not ready for conditional release; however, Dr. Kane did acknowledge that although petitioner has demonstrated many of these symptoms for a number of years, it has been without the emergence of a psychotic episode. This has been true even though petitioner has refused medications to prevent psychotic relapses.

It is the court's opinion that Dr. Kane's findings basically conclude that petitioner has mental health issues but that the major disorders are now, and have been for some time, in remission. Other characteristics attributed to petitioner, although making her a somewhat

disagreeable and difficult person to deal with, do not, in the court's opinion, require inpatient attention. Many persons with the same attributes are found throughout society. Being a difficult, disagreeable and narcissistic person may make a person unlikeable but does not establish a person to be a danger to herself or others. When specifically asked by the court whether petitioner poses a threat to others, Dr. Kane indicated that she did not. As to a threat to herself, Dr. Kane was concerned with the defendant's suicide attempt in 2017 that occurred immediately after learning of this court's denial of her original petition, as well a purported suicide attempt when she killed her daughter, which occurred when she was insane. In the almost two years since her 2017 suicide attempt, there have been no indications of any further suicidal ideation. Dr. Kane's conclusion was that the petitioner is not delusional but basically suffers from borderline personality disorder. Dr. Kane was further of the opinion that inpatient care in a facility other than IDHS would be adequate for the petitioner.

Dr. Richard Malis is the psychiatrist assigned to the petitioner at Elgin Mental Health Center. He has been responsible for overseeing her treatments since 2018. He testified that petitioner has refused to meet with him over the last six months. He believed petitioner suffers from major mental illness and continues to need inpatient care. He believes petitioner suffers from hallucinations and delusions and schizoaffective bipolar disorder. He acknowledges that even though petitioner has not taken medication in many years, she exhibits no evidence of psychosis. He believes petition continues to be a threat to herself or others.

The court specifically asked Dr. Malis if rapport was necessary between a psychiatrist and a patient in order for treatment to be effective; Dr. Malis acknowledged this was necessary. He further acknowledged that no such rapport exists between himself and the petitioner because of petitioner's distrust of him and his position that she cannot improve without psychiatric medications. When asked by the court whether a different psychiatrist could be assigned to petitioner in light of this lack of rapport, Dr. Malis stated this was not possible.

The court has concerns about the treatment relationship between petitioner and Dr. Malis. Clearly, petitioner is uncooperative with Dr. Malis and Dr. Malis sees no hope for petitioner improving without her taking medications even though petitioner has been in remission of psychosis for a number of years without medication.

The court would also note that most of petitioner's refusals to participate in treatment have occurred at Elgin Mental Health Center. She was transferred from Chicago-Read Mental Health Center after her suicide attempt.

While at Chicago-Read, she did not exhibit as much reluctance to participate in treatment as she has at Elgin. Petitioner, without question, is a difficult person to work with; her narcissistic personality and belief that she is being targeted for mistreatment can be a block to effective treatment. At Chicago-Read, however, petitioner did not, to the present extent, display the type of noncooperation she now does at Elgin.

This court is also concerned regarding the testimony offered by Terry Nicholas. Mr. Nicholas was employed at Elgin Mental Health Center as the head night-shift nurse. He had direct contact with petitioner from November 2017 until June 2018 by working with her on a daily basis and maintaining a progress chart regarding the petitioner.

Mr. Nicholas testified as to an occasion when he indicated in his charting regarding his contact with petitioner, that she was pleasant and cooperative. Upon review by his superiors, Mr. Nicholas was informed that Dr. Malis was not pleased with this charting and did not want pleasant things regarding petitioner reported as it would harm his intent to petition the court to obtain an order for forced medication on the petitioner. Nicholas testified that Dr. Malis himself expressed his displeasure directly to him stating that he could not obtain the court order with those types of comments in the petitioner's chart. This testimony was un rebutted by the state.

Testimony that took place at petitioner's first discharge hearing now tied into Mr. Nicholas' testimony also causes the court concern. At the first hearing for discharge, Lucy Menezer, a social worker at Chicago-Read, testified that she did not feel petitioner suffered from mental illness. She was unable, however, to explain why, if this was her belief, she had continually signed treatment plan letters that indicated petitioner's continued to need confinement in a secured environment.

Similar testimony was elicited from Dr. Craig Jock, a clinical psychologist at Chicago-Read. Dr. Jock was treating petitioner as a patient since October 2016. At the first hearing he testified that petitioner does not meet criteria for mental illness and no longer needed to be confined. He also could not explain why, if these were his beliefs, he continued to sign treatment

plan letters to the court stating petitioner continued to need treatment in a secured environment. This prior testimony and the present testimony of Mr. Nicholas seems to indicate to the court that employees of the Illinois Department of Human Services are directed by their superiors to endorse their superiors' diagnoses even if they disagree with it. Although the testimony at the prior hearing was not while petitioner was under the care of Dr. Malis, it calls into question the manner of which IDHS makes reports and what pressure is placed on employees to conform to what supervising doctors feel should be done even if they disagree. This causes the court pause to consider whether or not the ninety-day reports which have been submitted to the court, are completely accurate regarding the petitioner.

The court, after reviewing all the testimony and reports regarding the petitioner, concludes that it cannot agree with petitioner's experts that she does not suffer from mental illness, clearly, she does. That fact by itself, however, does not automatically require continued confinement. The court also has difficulty with Dr. Malis' testimony as it is evident, he will never acknowledge petitioner is proper for release until she consents to the taking of psychotropic medications even though her psychosis has been in remission for over eight years without medication.

The court finds that the analysis of Dr. Kane is closest to what currently afflicts the petitioner, basically borderline personality disorder. The petitioner clearly needs to have good mental health treatment and therapy. The court, however, for reasons previously discussed, both of the fault of petitioner and the fault of IDHS, will never receive that treatment while in the custody of the IDHS.

The court, in determining what would be proper treatment for petitioner, has again considered all evidence presented and the factors set forth in 730 ILCS 5/5-2-4 (g). As to the statutory factors, the court finds:

1. Petitioner does appreciate the harm she caused in the murder of her child and is burdened by her actions.
2. The court continues to have some concerns as to whether petitioner completely understands that her prior conduct was caused by her developing mental illness and not merely caused by the medications she was taking at the time of the offense.

3. Petitioner's prior psychotic episodes are now in remission and have been so for some time. Obviously, to date this has only been established in a secured environment. Since her confinement to the Elgin Mental Health Facility, petitioner has shown an unwillingness to comply with the programs and counseling that DHS requires but, the problem is also, in part, due 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. Defendant has been granted no privileges at DHS.
4. Petitioner refuses to take any medication for her mental illness and believes such medication caused her mental illness to begin with. That said, petitioner's acute mental illness is in remission and has been for an extended period of time without medication.
5. The adverse effects of medication on the petitioner are unidentifiable as she has refused any medications.
6. The question of petitioner's mental health possibly deteriorating without medication cannot be assessed. As indicated, she has refused medication, however, having been off medication for a significant period of time, her psychotic features have remained in remission.
7. Petitioner has some history of alcohol abuse, but it is also in remission while in a secured setting.
8. Petitioner has 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 a sister in the area, but their participation or involvement with petitioner if she were to be released, was not established.
11. Based on the findings of Dr. Kane, the court believes that the petitioner is not a danger to others. There was testimony that she may be a danger to herself based on the suicide episode in November of 2017 after this court's denial of her request for discharge or conditional release. The court believes this was solely based on the denial of discharge or conditional release at that time. As

previously indicated, petitioner continues to show irritability and aggressiveness, but no physically violent behavior has been shown toward staff or other patients. In fact, the petitioner has been the subject of abuse by other patients without retaliating. It is not possible to determine the dangerousness to herself unless a transition program is established to see how the petitioner conducts herself in unsecured environment situations.

It is the court's opinion that the evidence presented does not establish that petitioner is in need of mental health services on an inpatient basis. At the same time, the evidence does not establish that petitioner is ready for discharge. The court believes that the proper course of action at this time is to formulate a plan for the petitioner's conditional release from the Illinois Department of Human Services. The court believes that what has been discussed herein is that the Illinois Department of Human Services cannot provide for petitioner's mental health treatment. Petitioner needs to be in an environment where she will be able to work in conjunction with treating staff and not in opposition to them. If petitioner cannot demonstrate an ability to do so, then this court would have to reconsider her placement.

The court will therefore consider the petitioner for conditional release if the following conditions can be put into place:

1. The Illinois Department of Human Services is ordered to provide care to the petitioner while on conditional release pursuant to 735/5-2-4(D). IDHS shall contract with any public or private agency to provide services to include outpatient mental health counseling and therapy, alcohol counseling and community adjustment programs.
2. IDHS will attempt to place petitioner in a short-term residential facility for the care outlined above. If IDHS is unable to place the petitioner in such a facility and, as a result, petitioner is to engage in outpatient treatment, petitioner will have to provide the court evidence of housing and the means of paying for such housing. Any such housing obtained by the petitioner must be in DuPage County or the immediate surrounding area.

3. If for any reason IDHS is unable to place the petitioner in a residential or outpatient facility, then petitioner is to engage in treatment and therapy with a private psychiatrist or psychologist. That person must be other than any such person who appeared on behalf of petitioner at the discharge hearing. The court wants her treatment to be by a professional without any personal interest in the petitioner's case.
4. If the petitioner is unable to be provided services by IDHS, then in addition to the housing requirement outlined herein, petitioner must provide evidence either that the petitioner has employment to support herself or that there are persons who will commit to providing financial support to her until she finds employment and is self-supporting.
5. Given the nature of the crime committed by the petitioner, the court finds it advisable that, at present, petitioner have no unsupervised contact with any person under the age of seventeen.
6. During the period of conditional release, petitioner will not use any non-prescribed drugs, cannabis or alcohol. Petitioner will submit to random testing by the DuPage County Probation Department to monitor non-use. This testing requirement will be reviewed in six months after conditional release.
7. The court shall be provided evidence of any outside support systems, such as family or friends, who are willing to assist the petitioner in this transition.
8. The court will continue this matter for a period of sixty days to see what progress has been made on the above conditions.
9. During this interim period, IDHS is ordered to transfer petitioner from the Elgin Mental Health Center to the Chicago-Read Mental Health Center. In order to meet the conditions for her conditional release, petitioner, while at Chicago-Read Mental Health Center, must actively participate in mental health counseling. In addition, petitioner must show by her conduct that he is able to cooperate with staff at Chicago-

Read and able to conduct herself by keeping with the regulations of that institution.

Pursuant to statute, the conditional release period is for five years. During that period, either petitioner or the state may petition the court for modifications of the conditions set forth herein or seek revocation of conditional release if the petitioner fails to comply with required counseling. If petitioner can successfully adhere to these conditions, at the end of the period, she will be fully discharged. If, however, petitioner fails to adhere to these conditions or is uncooperative with mental health counseling, she runs the risk of conditional release being revoked and her being returned to an IDHS facility.

For the information of all the parties, the court has had contact with IDHS regarding services they may be able to provide to petitioner. The court will provide the names and phone numbers for individuals who might be of assistance in establishing a program for the petitioner:

Debbie Dyle *DMH Forensic Community Administrator* (618) 474-3811

Dr. Colman *Deputy Director IDHS* (312) 814-4909

George J. Bakalis
Circuit Judge
September 18, 2019