

IN THE NEBRASKA COURT OF APPEALS

**MEMORANDUM OPINION AND JUDGMENT ON APPEAL
(Memorandum Web Opinion)**

R.B. v. MENTAL HEALTH BOARD

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R.B., APPELLANT,

v.

MENTAL HEALTH BOARD OF THE FOURTH JUDICIAL DISTRICT, APPELLEE.

Filed October 13, 2026. No. A-26-074.

Appeal from the District Court for Douglas County: LEANNE M. SRB, Judge. Affirmed.
Thomas C. Riley, Douglas County Public Defender, and Kristin L. Huber for appellant.
Jameson D. Cantwell, Deputy Douglas County Attorney, for appellee.

RIEDMANN, Chief Judge, and BISHOP and WELCH, Judges.

RIEDMANN, Chief Judge.

INTRODUCTION

Following a determination by the Mental Health Board of the Fourth Judicial District (Board) that R.B. was a dangerous sex offender who required inpatient sex offender treatment, R.B. appealed to the district court for Douglas County. The district court affirmed the order of the Board and R.B. appeals to this court. We affirm.

BACKGROUND

R.B., born in 1952, was convicted in 1991 of attempted sexual assault of a child (age 3). He was sentenced to 3 to 5 years' imprisonment. Following his release from prison, he was convicted in 1995 of lascivious acts with a child, the same girl, then 7 years old, and was again imprisoned. In 2014 he was convicted of attempted sexual assault first degree (10-year-old girl) and tampering with a juror, witness, or informant and was sentenced to 20 years, 20 months to 25

years in prison. He became parole eligible in 2024, and his tentative release date was in August 2025.

In January 2018, while imprisoned, the Clinical Sex Offender Review Team conducted an evaluation of R.B. to determine his sexual recidivism risk and recommended his participation in the Inpatient Healthy Lives Program. Treatment typically begins during the last one-third of a prisoner's sentence. Although R.B. started this treatment on July 7, 2021, he was withdrawn from treatment a week later due to medical needs resulting from a stroke he suffered in 2018.

Dr. Jeff Melvin, a clinical psychologist employed by the Nebraska Department of Correctional Services, evaluated R.B. in June 2022 to determine if R.B. was able to complete the recommended sexual offense treatment. At the time, R.B. was wheelchair bound and had partial paralysis on the left side of his body. Due to R.B.'s medical issues, he was unable to receive the recommended treatment.

As R.B.'s release date neared, in December 2024, Dr. Melvin conducted a dangerous sex offender evaluation as required by Neb. Rev. Stat. § 83-174.02 (Supp. 2025). At the time, R.B. was a patient at the skilled nursing facility at the reception and treatment center. Since his stroke, R.B. had been at a skilled nursing facility at various institutions. At the time of the evaluation, R.B. required assistance with bathing and dressing and was in a wheelchair, although he was working with physical therapy using a walker with the goal of eventually walking on his own.

Dr. Melvin diagnosed R.B. with pedophilic disorder, which correlates with increased sexual recidivism. Based on the evaluation and a review of R.B.'s institutional files, Dr. Melvin determined R.B. met the criteria of a dangerous sex offender and that inpatient treatment was the least restrictive level of treatment available.

On May 20, 2025, the State filed a petition alleging that R.B. was a dangerous sex offender within the meaning of Nebraska's Sex Offender Commitment Act (SOCA), Neb. Rev. Stat. §§ 71-1201 to 71-1226 (Reissue 2016 and Supp. 2025). On August 28, the Board held a hearing at which Dr. Melvin and R.B. testified. The Board also received various records and reports as exhibits.

Dr. Melvin testified consistent with the information stated above. He explained that he utilized two recidivism risk tools, the Static-99, which is an evidence based sexual recidivism risk tool based on a records review, and the STABLE-2007, which utilizes a combination of records and interview information. Because the Static-99 is based upon records, the results were the same in 2018, 2022, and 2024. R.B.'s score was a 2, placing him at an average risk. On the STABLE-2007, R.B. received a score of 13 out of 26, which placed him at an above-average risk for recidivism. Dr. Melvin combined the scores of both tests to find the best predictability for recidivism, which he testified was the acceptable method. The combined scores placed R.B. at a level 4A, which is an above-average risk level compared to other males convicted of a sexual offense. An individual with a 4A score would generally be placed in an inpatient level of treatment.

Despite R.B.'s current medical condition, which at the time of the hearing included the partial paralysis from the stroke, broken ribs and a decompressed vertebrae sustained in a recent fall, a heart condition, and impotency, Dr. Melvin opined that R.B.'s diagnosis of pedophilic disorder, which has caused him marked distress, met the definition of mental illness. He opined that R.B. has a propensity to engage in repeated acts of sexual violence and there was no less

restrictive alternative to inpatient treatment. Dr. Melvin excluded outpatient treatment in part because R.B. lacked community support to assure he could successfully participate in treatment.

On cross-examination, Dr. Melvin agreed that recidivism rates decrease as an individual ages and that the scales he considered use a grouping of “60 and over.” He likewise conceded that the Static-99 result is based on a particular population’s potential recidivism rate as opposed to a particular person. Interpreting R.B.’s score resulted in a 13.6 percent chance that R.B. will sexually reoffend.

R.B. testified that he suffered a stroke in 2018 and was unable to use his left arm or hand or walk. He requested outpatient sex offender treatment, stating that he anticipated living with friends and extended family upon release from prison. Dr. Melvin testified, however, that R.B. reported that he had no contact with these persons since 2017.

The Board found that R.B. has pedophilia, non-exclusive, attracted to females, and has multiple convictions for assaults of prepubescent victims. He has not completed sex offender treatment, psychological assessment suggests that he is at above average risk to reoffend, and he has been judged a danger to others. It found clear and convincing evidence that R.B. is a dangerous sex offender and placed him in the custody of the Nebraska Department of Health and Human Services for sex offender treatment. R.B. filed a petition in error with the district court, which affirmed the Board’s decision. He now appeals to this court.

ASSIGNMENTS OF ERROR

R.B. assigns that the district court erred in finding clear and convincing evidence (1) to support the diagnosis of an Axis I mental illness; (2) that R.B. is a dangerous sex offender, thereby violating his right to due process; and (3) that the least restrictive treatment alternative was inpatient sex offender treatment.

STANDARD OF REVIEW

The district court reviews the determination of a mental health board de novo on the record. *In re Interest of M.S.*, 320 Neb. 451, 28 N.W.3d 1 (2025). In reviewing a district court’s judgment, an appellate court will affirm unless it finds, as a matter of law, that clear and convincing evidence does not support the judgment. *Id.*

Clear and convincing evidence means the amount of evidence which produces in the trier of fact a firm belief or conviction about the existence of a fact to be proved; clear and convincing evidence is more than a preponderance of the evidence, but less than proof beyond a reasonable doubt. *Id.*

ANALYSIS

Section 83-174.02 requires that certain prisoners subject to the Sex Offender Registration Act be evaluated prior to release from prison to determine if they are a dangerous sex offender. A dangerous sex offender is defined in part as “(a) a person who suffers from a mental illness which makes the person likely to engage in repeat acts of sexual violence, who has been convicted of one or more sex offenses, and who is substantially unable to control his or her criminal behavior. . . .” Neb. Rev. Stat. § 83-174.01 (Reissue 2016).

A mental illness is defined as “a psychiatric disorder that involves a severe or substantial impairment of a person’s thought processes, sensory input, mood balance, memory, or ability to reason which substantially interferes with such person’s ability to meet the ordinary demands of living or interferes with the safety or well-being of others.” Neb. Rev. Stat. § 71-907 (Reissue 2016). Section 83-174.02 provides that the term “[l]ikely to engage in repeat acts of sexual violence means the person’s propensity to commit sex offenses resulting in serious harm to others is of such a degree as to pose a menace to the health and safety of the public.”

With these definitions in mind, we turn to R.B.’s assigned errors.

Axis I Mental Illness Evidence.

R.B. assigns that the district court erred in finding that there was clear and convincing evidence to support the diagnosis of an Axis I mental illness. We disagree.

Dr. Melvin diagnosed R.B. with pedophilic disorder, non-exclusive, attracted to females. Using the DSM-5-TR, a diagnostic manual used by mental health providers, he explained that the criterion for a pedophilic diagnosis is an interest or behavior in prepubescent children, for 6 months or longer, that has caused marked distress. He explained that the “non-exclusive” modifier means that R.B. has sexual interest in both children and adults. He further opined that the definition of pedophilic disorder meets the definition of mental illness as contained in Nebraska statute.

The record establishes that R.B. was convicted three times of acts of a sexual nature involving prepubescent children between 1991 and 2014. Although R.B. argues on appeal that Dr. Melvin failed to use other resources that would have allowed him to make a proper diagnosis of R.B.’s condition, he does not identify how or why it was improper to rely upon the diagnostic manual to diagnosis him.

R.B. alludes to the possibility that it is not his pedophilia that makes him substantially unable to control his behavior, but rather his use of alcohol. However, the 2018 Clinical Sex Offender Review Team screening tool references R.B. admitting to authorities that he has sexual urges toward young girls. And although they are “more frequent when drinking,” “his first offense was while sober and offended because he didn’t think he would get caught.”

Our review of the record does not disclose clear and convincing evidence that does not support the district court’s judgment. See *In re Interest of M.S.*, 320 Neb. 451, 471, 28 N.W.3d 1, 15 (2025) (explaining in mental health commitment cases “our review is deferential—we will affirm unless we find, as a matter of law, that clear and convincing evidence does not support the judgment”). This assigned error fails.

Dangerous Sex Offender Evidence.

R.B. assigns that the district court erred in finding that there was clear and convincing evidence that R.B. is a dangerous sex offender within the meaning of SOCA. Specifically, he argues that the evidence was insufficient to prove he was substantially unable to control his criminal behavior. We disagree.

R.B. argues that Dr. Melvin’s diagnosis of pedophilia “is not sufficient to satisfy the ‘substantial impairment’ requirement of the SOCA, nor is it an adequate predictor of R.B.’s likelihood to engage in future criminal behavior.” Brief for appellant at 22. But Dr. Melvin’s opinion that R.B. was a dangerous sex offender was not based solely upon his diagnosis; rather, it

was based also upon R.B.'s combined scores on the Static-99 and STABLE-2007 and Dr. Melvin's interview of R.B. Dr. Melvin explained that the definition of a dangerous sex offender contains three prongs: One is there must be evidence that a person has a serious mental illness that is correlated with risk to sexually re-offend. The second prong is that there must be evidence that the person is substantially unable to manage the sexual behavior. And the third prong looks at the sexual recidivism risk itself.

R.B.'s diagnosis of pedophilia constituted the serious mental illness that is correlated with a risk to sexually reoffend. R.B.'s consecutive sexually related convictions involving children, including a second violation of the same victim within months of being released from prison, evinces that R.B. is substantially unable to manage his sexual behavior. He was recommended for inpatient sexual offense treatment which he never received. R.B.'s test scores on the Static-99 and STABLE-2007 portray the risk level of R.B.'s recidivism which placed him at an above-average risk level compared to other males convicted of sexual offenses. In affirming the Board's decision, the district court found that the State had presented the elements necessary to prove that R.B. meets the definition of a dangerous sex offender, and we cannot say, as a matter of law, that clear and convincing evidence does not support that judgment.

Based upon his partial paralysis and impotency, R.B. argues that he is physically incapable of acting on any desire or impulse he may have. But Dr. Melvin explained that even impotent people can sexually offend. We note that the allegations surrounding R.B.'s second conviction involved claims of attempted digital penetration. And R.B.'s partial paralysis did not change Dr. Melvin's opinion that he was at risk of offending again because R.B. still had use of one side of his body. Dr. Melvin's report indicates that R.B. believed he would be out of his wheelchair by his discharge date in June 2025 and would be able to take care of himself without a wheelchair or assistance of any type. His physical therapy goal was to resume walking.

Tellingly, Dr. Melvin's December 2024 evaluation does not reveal an absence of sexual urges by R.B. or an inability to act upon them. Rather, it states:

[R.B.] stated that there is no chance that he will come back to prison for sexual misconduct again. When asked how he can be sure of this, [R.B.] indicated that he does not plan to "hook up with girls who have kids" and plans to avoid co-dependent relationships where he is trying to help women. He plans to avoid relationships altogether. He indicated that he plans to stick to his hobbies that include collecting postage stamps and playing pool.

Despite whatever good intentions R.B. has, the clear and convincing evidence supports a conclusion that he is a dangerous sex offender as that term is statutorily defined.

Least Restrictive Alternative.

R.B. assigns that the district court erred in finding that there was clear and convincing evidence that the least restrictive treatment alternative for R.B. is inpatient sex offender treatment. In light of R.B.'s risk for recidivism and lack of community support, we disagree.

If voluntary hospitalization or another less restrictive treatment alternative is available, the Board must dismiss the petition and order the unconditional discharge of the individual or suspend further proceedings for up to 90 days to permit the individual to obtain voluntary treatment. See § 71-1209(3). R.B. testified that he wanted to go to sex offender treatment on an outpatient basis.

Dr. Melvin considered less restrictive alternatives, such as an assisted living facility with outpatient sex offender treatment, but determined R.B.'s risk level indicated inpatient treatment. And based on experience with past inmates with medical issues, Dr. Melvin was concerned that most places would not accept R.B. due to the risk involved. Finally, outpatient treatment was not feasible given R.B.'s lack of community support, considering that he had not spoken to the two individuals he identified as supports since 2017.

We cannot say the record contains clear and convincing evidence that inpatient sexual offense treatment was not the least restrictive alternative for R.B.; therefore, we reject this assignment of error.

CONCLUSION

The district court, in its de novo review, found that the State had presented the elements necessary for commitment, and we cannot say, as a matter of law, that clear and convincing evidence does not support that judgment. We therefore affirm the decision of the district court.

AFFIRMED.