Nebraska Supreme Court Online Library
www.nebraska.gov/apps-courts-epub/
11/04/2026 03:57 AM CST

was awarded both postjudgment interest and earnings on her awarded share of the profit-sharing plan. We find this argument to be without merit.

CONCLUSION

The district court properly reopened the case and did not err when it determined that Janet was entitled to postjudgment interest from the date of the divorce decree until June 10, 2010, the date set forth in the QDRO at issue in this appeal. Accordingly, we affirm the orders of the district court.

AFFIRMED.

WRIGHT, J., not participating.

IN RE INTEREST OF CHRISTOPHER T., A CHILD UNDER 18 YEARS OF AGE. STATE OF NEBRASKA, APPELLEE, V. CHRISTOPHER T., APPELLANT.

801 N.W.2d 243

Filed July 29, 2011. No. S-10-1105.

1. **Juvenile Courts: Appeal and Error.** Juvenile cases are reviewed de novo on the record, and an appellate court is required to reach a conclusion independent of the juvenile court's findings.
2. **Statutes.** In the absence of anything indicating to the contrary, statutory language is to be given plain and ordinary meaning; when the words of a statute are plain, direct, and unambiguous, no interpretation is necessary or will be indulged to ascertain their meaning.
3. **Due Process: Proof.** The function of a standard of proof, as that concept is embodied in the Due Process Clause and in the realm of factfinding, is to instruct the fact finder concerning the degree of confidence our society thinks he or she should have in the correctness of factual conclusions for a particular type of adjudication.
4. **Courts: Expert Witnesses.** *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579, 113 S. Ct. 2786, 125 L. Ed. 2d 469 (1993), and *Schafersman v. Agland Coop*, 262 Neb. 215, 631 N.W.2d 862 (2001), require the trial court to act as a gatekeeper to ensure that expert testimony is scientifically valid and can be properly applied to the facts in issue, and therefore helpful to the trier of fact.
5. **Trial: Presumptions: Evidence.** In a bench trial, there is a presumption that the finder of fact disregards inadmissible evidence.
6. **Trial: Expert Witnesses: Pretrial Procedure.** To sufficiently call specialized knowledge into question under *Daubert v. Merrell Dow Pharmaceuticals, Inc.*,

509 U.S. 579, 113 S. Ct. 2786, 125 L. Ed. 2d 469 (1993), and *Schafersman v. Agland Coop*, 262 Neb. 215, 631 N.W.2d 862 (2001), is to object with enough specificity so that the court understands what is being challenged and can accordingly determine the necessity and extent of any pretrial proceeding.

7. **Trial: Expert Witnesses: Pretrial Procedure: Evidence.** Assuming that the opponent to expert testimony has been given timely notice of the proposed testimony, the opponent's challenge to the admissibility of evidence under *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579, 113 S. Ct. 2786, 125 L. Ed. 2d 469 (1993), and *Schafersman v. Agland Coop*, 262 Neb. 215, 631 N.W.2d 862 (2001), should take the form of a concise pretrial motion. It should identify what is believed to be lacking with respect to the validity and reliability of the evidence and any challenge to the relevance of the evidence to the issues of the case. In order to preserve judicial economy and resources, the motion should include or incorporate all other bases for challenging the admissibility, including any challenge to the qualifications of the expert.
8. **Malpractice: Physicians and Surgeons: Expert Witnesses: Words and Phrases.** Although expert medical testimony need not be couched in the magic words "reasonable medical certainty" or "reasonable probability," it must be sufficient as examined in its entirety to establish the crucial causal link between the plaintiff's injuries and the defendant's negligence. Medical expert testimony regarding causation based upon possibility or speculation is insufficient; it must be stated as being at least probable, in other words, more likely than not.
9. **Mental Health.** The nonexistence of an instrument which will perfectly predict future conduct does not preclude the use of rationally based instruments developed and validated by mental health professionals.

Appeal from the County Court for Scotts Bluff County: JAMES M. WORDEN, Judge. Affirmed.

David S. MacDonald, Deputy Scotts Bluff County Public Defender, for appellant.

Tiffany A. Wasserburger, Deputy Scotts Bluff County Attorney, for appellee.

HEAVICAN, C.J., WRIGHT, CONNOLLY, GERRARD, STEPHAN, MCCORMACK, and MILLER-LERMAN, JJ.

HEAVICAN, C.J.

I. INTRODUCTION

Christopher T. appeals from the decision of the Scotts Bluff County Court, sitting as a juvenile court. Christopher was adjudicated under Neb. Rev. Stat. § 43-247(3)(b) (Reissue 2008), in that he deports himself so as to injure or endanger seriously the morals or health of himself or others, and under § 43-247(3)(c),

in that he is a mentally ill and dangerous juvenile as defined by Neb. Rev. Stat. § 71-908 (Reissue 2009). We affirm.

II. BACKGROUND

The State of Nebraska brought a petition before the county court, sitting as a juvenile court, alleging that Christopher was a juvenile within § 43-247(1), in that he committed two law violations. Christopher was 15 years old at the time of the petition. The State alleged that on or about January 1 through November 8, 2009, Christopher unlawfully subjected his stepbrothers, J.P. and R.V., to sexual contact without consent. The State later amended the charges to include an allegation that Christopher was a juvenile within the meaning of § 43-247(3)(b) and (c).

Prior to the adjudication hearing, the State gave notice that Dr. Alan Smith, a psychologist, would be testifying. Christopher then filed a written objection, alleging that a *Daubert*/*Schafersman*[1] hearing ought to be held before Smith's testimony could be admitted. Christopher did not cite any specific reasons for challenging Smith's testimony.

At the adjudication hearing on September 28, 2010, the State called several witnesses, including Smith; Christopher's stepbrother, R.V.; Monica Bartling, a lieutenant with the Nebraska State Patrol; and Christopher's school counselor. The witness testimony is discussed in detail in the analysis section, but is briefly summarized here.

Smith testified regarding his diagnosis of Christopher, including the psychological testing he used and his interviews with staff at the Scotts Bluff County juvenile detention center. Christopher renewed his objection on *Daubert*/*Schafersman* grounds at that time, and the juvenile court overruled the objection, allowing Smith to testify as to the allegations that Christopher was mentally ill and dangerous.

Christopher's school counselor gave testimony regarding Christopher's actions at school, including actions that resulted

---

[1] See, *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579, 113 S. Ct. 2786, 125 L. Ed. 2d 469 (1993); *Schafersman v. Agland Coop*, 262 Neb. 215, 631 N.W.2d 862 (2001).

in his suspension. R.V., one of the alleged victims and 12 years old at the time, testified regarding Christopher's actions within the home. When R.V. stated that he was afraid to testify in front of Christopher and apparently changed his testimony on the stand, the State called Bartling to impeach R.V.'s testimony. Bartling had interviewed R.V. as part of an investigation into the sexual assault charges against Christopher.

Christopher did not offer any evidence, and at the close of the case, the State dismissed the § 43-247(1) law violations. The juvenile court then adjudicated Christopher under § 43-247(3)(b) and (c) and placed Christopher in the care, custody, and control of the Nebraska Department of Health and Human Services.

III. ASSIGNMENTS OF ERROR

Christopher assigns, consolidated and restated, that the juvenile court erred (1) in adjudicating under § 43-247(3)(c) using the clear and convincing standard of evidence to find that Christopher was a mentally ill and dangerous person; (2) in finding that the State had adduced sufficient evidence to adjudicate Christopher under either § 43-247(3)(b) or (c); (3) in overruling the objection to the testimony of Smith on *Daubert/Schafersman* grounds; and (4) in relying on the testimony of Smith, because Smith did not testify as to a reasonable degree of medical or psychological certainty.

IV. STANDARD OF REVIEW

[1] Juvenile cases are reviewed de novo on the record, and an appellate court is required to reach a conclusion independent of the juvenile court's findings.[2]

[2] In the absence of anything indicating to the contrary, statutory language is to be given its plain and ordinary meaning; when the words of a statute are plain, direct, and unambiguous, no interpretation is necessary or will be indulged to ascertain their meaning.[3]

---

[2] *In re Interest of Kevin K.*, 274 Neb. 678, 742 N.W.2d 767 (2007).

[3] *In re Interest of Jeffrey R.*, 251 Neb. 250, 557 N.W.2d 220 (1996).

V. ANALYSIS

The primary issue in this case is the relationship between § 43-247(3)(c) and the Nebraska Mental Health Commitment Act (MHCA), Neb. Rev. Stat. § 71-901 et seq. (Reissue 2009). Section 43-247(3)(c) provides that the juvenile court shall have jurisdiction over any juvenile "who is mentally ill and dangerous as defined in section 71-908." Section 71-908 is part of the MHCA and defines a mentally ill and dangerous person as someone who presents:

> (1) A substantial risk of serious harm to another person or persons within the near future as manifested by evidence of recent violent acts or threats of violence or by placing others in reasonable fear of such harm; or
>
> (2) A substantial risk of serious harm to himself or herself within the near future as manifested by evidence of recent attempts at, or threats of, suicide or serious bodily harm or evidence of inability to provide for his or her basic human needs, including food, clothing, shelter, essential medical care, or personal safety.

Under § 71-925, the State must prove by clear and convincing evidence that the subject of the petition before a mental health board is mentally ill and dangerous. With those statutes in mind, we turn to Christopher's first assignment of error.

1. Standard of Proof

Christopher first argues that because there is no explicit standard of proof in § 43-247(3)(c), the State should be required to prove that Christopher is mentally ill and dangerous beyond a reasonable doubt, rather than by clear and convincing evidence. The juvenile court noted that § 43-247(3)(c) does not explicitly give a standard of proof, but the court determined to apply a clear and convincing evidence standard.

Christopher asserts that the lack of a standard of proof under § 43-247(3)(c) means that the standard would "default" to the "beyond a reasonable doubt" standard,[4] but he offers no support for that assertion. Commitments under the MHCA and the Sex Offender Commitment Act, Neb. Rev. Stat. § 71-1201 et

[4] Brief for appellant at 13.

seq. (Reissue 2009), are made under the clear and convincing evidence standard.[5] We have previously found that a mental health commitment act was not unconstitutional for failing to require proof beyond a reasonable doubt.[6] And, in fact, the U.S. Supreme Court has found that the clear and convincing evidence standard may be used as the burden of proof in a civil commitment, noting that a lesser burden would deny the mentally ill person due process of law.[7]

[3] Although Christopher does not challenge the constitutionality of § 43-247(3)(c), we find the reasoning utilized by the U.S. Supreme Court to be persuasive with respect to our ultimate conclusion that "clear and convincing evidence" is the appropriate standard:

> The function of a standard of proof, as that concept is embodied in the Due Process Clause and in the realm of factfinding, is to "instruct the factfinder concerning the degree of confidence our society thinks he [or she] should have in the correctness of factual conclusions for a particular type of adjudication."[8]

The U.S. Supreme Court recognized that different standards of proof are necessary in civil commitment proceedings as opposed to criminal prosecutions, because civil commitment is not punitive. Furthermore, the central issue in a criminal proceeding is very different from that of a mental health commitment.

> Whether the individual is mentally ill and dangerous to either himself or others and is in need of confined therapy turns on the *meaning* of the facts which must be interpreted by expert psychiatrists and psychologists. Given the lack of certainty and the fallibility of psychiatric

---

[5] *In re Interest of J.R.*, 277 Neb. 362, 762 N.W.2d 305 (2009); *In re Interest of Blythman*, 208 Neb. 51, 302 N.W.2d 666 (1981).

[6] *Kraemer v. Mental Health Board of the State of Nebraska*, 199 Neb. 784, 261 N.W.2d 626 (1978).

[7] *Addington v. Texas*, 441 U.S. 418, 99 S. Ct. 1804, 60 L. Ed. 2d 323 (1979).

[8] *Id.*, 441 U.S. at 423, citing *In re Winship*, 397 U.S. 358, 90 S. Ct. 1068, 25 L. Ed. 2d 368 (1970).

> diagnosis, there is a serious question as to whether a state could ever prove beyond a reasonable doubt that an individual is both mentally ill and likely to be dangerous.[9]

Using a clear and convincing evidence standard appropriately balances the liberty interests of the subject of a commitment order with the safety of both the community and the subject.

In the present case, although the Legislature did not specify a standard of proof under § 43-247(3)(c), the statute does reference the MHCA. Mental health commitments have been made under a clear and convincing evidence standard in Nebraska for approximately the last 30 years, and we find no reason to apply a different standard of proof in a juvenile case. Christopher's first assignment of error is without merit.

2. State Produced Sufficient Evidence to Adjudicate Christopher

We next address whether the State presented sufficient evidence to adjudicate Christopher under § 43-247(3)(b) and (c).

(a) § 43-247(3)(c)

Having established the appropriate standard of proof to be by clear and convincing evidence, and keeping in mind our de novo review obligation, we first examine whether the State met its burden to prove that Christopher was mentally ill and dangerous under §§ 43-247(3)(c) and 71-908. Section 71-908 defines a mentally ill and dangerous person as someone who presents a "substantial risk of serious harm to another person or persons within the near future as manifested by evidence of recent violent acts or threats of violence or by placing others in reasonable fear of such harm" or, in the alternative, presents a substantial risk to himself or herself. Although the juvenile court did not explicitly specify whether Christopher was adjudged mentally ill and dangerous under § 71-908(1) or (2), given the evidence presented, we assume that Christopher was judged to be a danger to others.

The evidence presented at the adjudication hearing consisted of testimony from Smith, the psychologist who evaluated

---

[9] *Id.*, 441 U.S. at 429.

Christopher, as well as testimony from Christopher's stepbrother and school counselor. Smith is a licensed psychologist with specialties in physical aggression and violence, as well as in sexual misbehaviors and sexual assaults. Smith testified that 85 percent of his practice focuses on those types of issues and that he has experience in assessing sex offenders.

Smith administered to Christopher a psychosexual evaluation and stated that he had followed Christopher's progress while Christopher was in detention. Smith also administered the "Minnesota Multiphasic Personality Inventory for Adolescents[,] Millon Inventory for Adolescents[,] Wechsler Abbreviated Scale of Intelligence[,] . . . Abel Assessment for Sexual Interest, . . . Trauma Symptom Checklist, Juvenile Sex Offender Assessment Protocol[,] and the Estimate of Risk of Adolescent Sexual Offense Recidivism."

Smith's evaluation also included the report from Christopher's younger sibling that Christopher had been sexually inappropriate and had touched him in a sexual manner. As part of his evaluation, Smith also interviewed staff at the Scottsbluff youth shelter and the county juvenile detention center. Staff at the shelter reported that Christopher was "'scary'" because he was "verbally aggressive, foul mouthed, and believe[d] that rules [did] not apply to him." Staff reported that Christopher alternated between being quiet and polite and being aggressive, defiant, and sexually inappropriate. Detention center staff also informed Smith that Christopher was generally quiet, compliant, and polite with staff, but bullied younger children.

Smith diagnosed Christopher with disruptive behavior disorder; peer, parent, and sibling relational problems; sexual abuse of a child, perpetrator; and sexual abuse of a child, victim. Smith testified that Christopher was at a moderate to high risk to reoffend sexually. In his report, Smith stated that when Christopher's test scores were considered in light of Christopher's personality and recent actions, his risk of reoffending was very high. Smith stated that even though Christopher knew his behavior was inappropriate, had been confronted about his behavior, and had been placed in the detention center, Christopher refused to cease acting out and refused to take responsibility for his actions.

We agree that Smith's expert testimony, coupled with the testimony of factual witnesses, discussed below, was sufficient to show by clear and convincing evidence that Christopher was a mentally ill and dangerous juvenile.

(b) § 43-247(3)(b)

Under Neb. Rev. Stat. § 43-279 (Reissue 2008), the State is required to prove beyond a reasonable doubt that Christopher is a juvenile as described by § 43-247(3)(b), in that he deports himself so as to injure or endanger seriously the morals or health of himself or others.

The evidence presented at the adjudication hearing included testimony from R.V., one of Christopher's stepbrothers. R.V. stated that he was afraid to testify in front of Christopher and was afraid that Christopher would be mad if R.V. talked about what had happened. R.V. did not respond when the State asked whether R.V. was being honest about what had happened when Christopher lived at home. The State then asked whether R.V. had ever witnessed Christopher "do anything to animals in the house." R.V. stated that on one occasion, he had watched as Christopher anally penetrated the family's bird with a stick.

After R.V. testified, the State called Bartling to impeach R.V.'s testimony by demonstrating that R.V. had changed his testimony while on the stand. As noted above, Bartling is a lieutenant with the Nebraska State Patrol and has specialized training in interviewing victims of child sexual assaults. During the course of her job, Bartling interviewed R.V. regarding allegations that Christopher had sexual contact with R.V. and another sibling. Bartling testified that R.V. reported that Christopher had slapped R.V.'s buttocks and fondled his genitals.

Christopher's school counselor stated that Christopher had been suspended on a number of occasions. Christopher continued to engage in inappropriate behaviors even though Christopher admitted that he was acting inappropriately. On one occasion, Christopher shoved another student into a locker and punched him in the head. And at an earlier detention hearing held on June 29, 2010, Christopher's caseworker testified

that Christopher's parents did not feel that their other children would be safe if Christopher was in the home.

We find that such is sufficient to show that Christopher deports himself so as to injure or endanger seriously the morals or health of himself or others. As such, we agree with the juvenile court that the State proved beyond a reasonable doubt that Christopher is a juvenile described by § 43-247(3)(b). Christopher's second assignment of error is without merit.

3. Trial Court Did Not Err in Overruling Motion for *Daubert*/*Schafersman* Hearing

We next address Christopher's argument that the juvenile court erred by overruling his motion for a *Daubert*/*Schafersman* hearing. Christopher filed a written objection to Smith's testimony and asked for a *Daubert*/*Schafersman* hearing, anticipating that Smith would be relying on actuarial tables and other "'scientific theories' of unknown origin or validity."[10] The district court overruled Christopher's motion and allowed Smith to testify only as to the § 43-247(3)(c) allegations, implicitly determining that no *Daubert*/*Schafersman* hearing was necessary to allow a psychologist to testify as to his diagnosis of Christopher as well as the diagnostic tools used.

[4,5] As a preliminary matter, we note that *Daubert*/*Schafersman* requires the trial court to act as a gatekeeper to ensure that expert testimony is scientifically valid and can be properly applied to the facts in issue, and therefore helpful to the trier of fact.[11] We also recognize that in a bench trial, there is a presumption that the finder of fact disregards inadmissible evidence.[12]

Christopher was given the opportunity to cross-examine Smith as to the psychological measures Smith used in diagnosing Christopher, thus giving the juvenile court an opportunity to review Christopher's claims that the tests were invalid or unreliable. Therefore, we presume that the juvenile court

---

[10] Brief for appellant at 18.

[11] See, *Daubert v. Merrell Dow Pharmaceuticals, Inc., supra* note 1; *Schafersman v. Agland Coop, supra* note 1.

[12] See *State v. Lara*, 258 Neb. 996, 607 N.W.2d 487 (2000).

disregarded any evidence that was inadmissible and that it made a determination as to the validity and relevance of Smith's evaluation and diagnosis of Christopher.

Although we have not previously addressed the requirement of a *Daubert*/*Schafersman* hearing in the context of an adjudication under § 43-247(3)(c), we did recently address what is required in order to request a *Daubert*/*Schafersman* hearing. In *State v. Casillas*,[13] the defendant objected to the introduction of testimony regarding the horizontal gaze nystagmus (HGN) test. The defendant claimed that the HGN test constituted scientific evidence and should have been subjected to a *Daubert*/*Schafersman* hearing. We held that all specialized knowledge generally falls under the rules of *Daubert*/*Schafersman* and that HGN involves scientific knowledge. Thus, we found the trial court erred insofar as it indicated that HGN fell outside of *Daubert*/*Schafersman*. But we noted that even as to specialized evidence, what specific duties *Daubert*/*Schafersman* imposed depended upon the circumstances. A pretrial hearing under *Daubert*/*Schafersman* is not always mandated. Moreover, we concluded that the extensiveness of any such hearing is left to the discretion of the trial court.[14]

[6,7] We then found that to sufficiently call specialized knowledge into question under *Daubert*/*Schafersman* is to object with enough specificity so that the court understands what is being challenged and can accordingly determine the necessity and extent of any pretrial proceeding.[15] Assuming that the opponent has been given timely notice of the proposed testimony, the opponent's challenge to the admissibility of evidence under *Daubert*/*Schafersman* should take the form of a concise pretrial motion. It should identify, in terms of the *Daubert*/*Schafersman* factors, what is believed to be lacking with respect to the validity and reliability of the evidence and any challenge to the relevance of the evidence to the issues of the case. In order to preserve judicial economy and resources,

---

[13] *State v. Casillas*, 279 Neb. 820, 782 N.W.2d 882 (2010).

[14] *Id.*

[15] *Id.*

the motion should include or incorporate all other bases for challenging the admissibility, including any challenge to the qualifications of the expert.[16]

Christopher's motion did not meet these requirements. His written objection did not state any bases for challenging the admissibility of the evidence. Christopher merely stated that he "object[ed] to the expert testimony of Dr. Alan Smith at trial without a Daubert Shatesman's [sic] hearing." In addition, during one of the hearings prior to adjudication, Christopher's attorney objected to the testimony of Smith, saying, "Which, I think the State would be incumbent, if they want him—typically, I'd expect him to testify as to actuarial risk factors and things like that."

Christopher had the opportunity to cross-examine Smith about the accuracy and reliability of the psychological measures and did not object with any kind of specificity to Smith's testimony. As such, we conclude that Christopher did not sufficiently preserve any claim under *Daubert/Schafersman*. Christopher's third assignment of error is without merit.

4. Smith Testified to Reasonable Degree of Medical or Psychological Certainty

Finally, Christopher argues that Smith did not testify to a reasonable degree of medical or psychological certainty. Apparently, Christopher's argument is based on the fact that Smith failed to use the words "to a reasonable degree of medical or psychological certainty" to confirm his diagnosis of Christopher.

[8] As an initial matter, this court has never required those words in order to consider an expert's testimony to be sufficiently accurate. We addressed the sufficiency of an expert's testimony to establish dangerousness in *In re Interest of G.H.*[17]:

> G.H. also argues that [the expert's] opinion of dangerousness, expressed entirely in terms of risk, is insufficient

---

[16] *Id.*

[17] *In re Interest of G.H.*, 279 Neb. 708, 717-18, 781 N.W.2d 438, 444-45 (2010).

> to support a finding that G.H. is a dangerous sex offender. G.H. contends that [the expert's] opinions establish nothing more than an increased risk or possibility that he will reoffend without treatment. According to G.H., this is insufficient under cases holding that in order to support civil commitment in civil mental health proceedings, a medical expert must establish that the subject poses a danger to others to a reasonable degree of medical certainty.
>
> This is the same standard that we require for expert medical opinion to establish causation under tort law. In that context, we have held that although expert medical testimony need not be couched in the magic words "reasonable medical certainty" or "reasonable probability," it must be sufficient as examined in its entirety to establish the crucial causal link between the plaintiff's injuries and the defendant's negligence. Medical expert testimony regarding causation based upon possibility or speculation is insufficient; it must be stated as being at least "probable," in other words, more likely than not.

[9] We also stated that "the nonexistence of an instrument which will perfectly predict future conduct does not preclude the use of rationally based instruments developed and validated by mental health professionals."[18] As in *In re Interest of G.H.*, the testifying psychologist—in this case, Smith—used various peer-reviewed risk assessments in conjunction with information from other parties and clinical interviews.[19] Smith testified that Christopher's risk of reoffending was moderate to high, and that Christopher had about an 80-percent chance of repeating sexual behaviors. Smith's testimony established that it is more likely than not that Christopher will repeat his behaviors. Viewed in its entirety, Smith's testimony established that Christopher is significantly likely to reoffend. Christopher's final assignment of error is without merit.

---

[18] *Id.* at 717, 781 N.W.2d at 444.

[19] See *In re Interest of G.H., supra* note 17.

VI. CONCLUSION

We find that the State is required to show by clear and convincing evidence, rather than "beyond a reasonable doubt," that a juvenile is mentally ill and dangerous under § 43-247(3)(c). The State presented sufficient evidence to adjudicate Christopher under both § 43-247(3)(b) and (c). The juvenile court did not err in admitting psychological testimony without a *Daubert/Schafersman* hearing. And finally, the expert psychological testimony given in this case satisfied the "reasonable degree of medical certainty" standard even though that specific phrase was not used by the testifying expert.

AFFIRMED.