

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

**IN THE MATTER OF THE CARE
AND TREATMENT OF LARRY BEMBOOM,
A/K/A LARRY J. BEMBOOM, JR.,
A/K/A LARRY JOSEPH BEMBOOM,
A/K/A LARRY J. BEMBOON,
A/K/A LARRY J. BEMBOOM**

APPELLANT,

**v.
STATE OF MISSOURI**

RESPONDENT.

DOCKET NUMBER WD71619

DATE: December 14, 2010

Appeal From:

Boone County Circuit Court
The Honorable Deborah Daniels, Judge

Appellate Judges:

Division Three: Alok Ahuja, Presiding Judge, Victor C. Howard and Cynthia L. Martin, Judges

Attorneys:

Emmett D. Queener, Columbia, MO, for appellant.

Jayne T. Woods and James S. Atkins, Jefferson City, MO, for respondent.

MISSOURI APPELLATE COURT OPINION SUMMARY

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RESPONDENT.

No. WD71619

Boone County

Before Division Three Judges: Alok Ahuja, Presiding Judge, Victor C. Howard and Cynthia L. Martin, Judges

Larry Bemboom appeals from a judgment entered by the Boone County probate court committing Bemboom to the custody of the Director of the Department of Mental Health as a sexually violent predator following a jury trial. Bemboom argues that the probate court erred because Dr. Kent Franks's testimony failed to clearly and convincingly establish the presence of a mental abnormality causing Bemboom serious difficulty controlling his behavior.

AFFIRMED.

Division Three holds:

(1) A mental abnormality is defined at section 632.480(2) as "a congenital or acquired condition affecting the emotional or volitional capacity which predisposes the person to commit sexually violent offenses in a degree constituting such person a menace to the health and safety of others."

(2) The State must prove by clear and convincing evidence that an offender suffers from a mental abnormality that causes the individual "serious difficulty in controlling his behavior."

(3) Dr. Franks testified that Bemboom has a mental abnormality which causes him serious difficulty controlling his behavior, such that, if not confined Bemboom would more likely than not engage in future acts of predatory sexual violence.

(4) Expert witness testimony is admissible on the issue of whether an offender has "serious difficulty controlling his behavior."

(5) Dr. Franks's testimony was based on substantial, relevant evidence, including an extensive history of sexually deviant activity suggesting an unwillingness or inability to act within the confines of the law notwithstanding known negative ramifications.

(6) Dr. Franks's testimony provided clear and convincing evidence that Bemboom suffered from a mental abnormality, which causes him to have serious difficulty controlling his behavior and that Bemboom is a sexually violent predator.

Opinion by: Cynthia L. Martin, Judge

December 14, 2010

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