

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

IN RE: MICHAEL FOGLE, APPELLANT-RESPONDENT,

v.

STATE OF MISSOURI, RESPONDENT-APPELLANT.

DOCKET NUMBER WD69618
(consolidated with WD69619)

DATE: July 7, 2009

Appeal From:
JACKSON COUNTY CIRCUIT COURT
THE HONORABLE KATHLEEN A. FORSYTH, JUDGE

Appellate Judges:
Division Three: James M. Smart, Jr., P.J., Joseph M. Ellis and James E. Welsh, JJ.

Attorneys:
Emmett D. Queener, Columbia, MO, **for appellant.**

Shaun J. Mackelprang and
Alana M. Barragan-Scott, Jefferson City, MO, **for respondent.**

**MISSOURI APPELLATE COURT OPINION SUMMARY
MISSOURI COURT OF APPEALS, WESTERN DISTRICT**

IN RE: MICHAEL FOGLE, APPELLANT-RESPONDENT

v.

STATE OF MISSOURI, RESPONDENT-APPELLANT

WD69618 (consolidated with WD69619)

JACKSON COUNTY CIRCUIT COURT

Before Division Three Judges: James M. Smart, Jr., P.J., Joseph M. Ellis and James E. Welsh, JJ.

The probate court committed Michael Fogle to the custody of the Department of Mental Health for care, control, and treatment as a sexually violent predator. The court also purported to impose special instructions on the Department concerning Fogle’s treatment and privileges. The State appeals, arguing that the court was without authority to impose the special instructions or “special conditions” on Fogle’s confinement. Fogle also appeals, arguing that the State’s petition should have been dismissed.

AFFIRMED IN PART; VACATED IN PART; REMANDED.

Division Three holds:

- (1) Pursuant to *State ex rel. State v. Parkinson*, 280 S.W.3d 70 (Mo. banc 2009), preparation of an end of confinement report by a psychologist licensed outside the State of Missouri was not prejudicial error because there was no suggestion that the psychologist was otherwise unqualified to render an opinion, the end of confinement report was supplanted by subsequent evaluations, and Fogle stipulated that he had a mental abnormality making it more likely than not that he would engage in predatory acts if not confined.
- (2) Section 632.495, as revised, is permissive and the right to appeal from proceedings pursuant to that statute is not limited solely to the sexually violent predator determination.
- (3) Although the Department of Mental Health was not permitted by statute to be joined as a party to the sexually violent predator proceeding, the Director of the Department should be able to participate as a party as to any ruling purporting to impose special conditions of treatment or custody on the Department.

Opinion by: James M. Smart, Jr., Judge

July 7, 2009

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