

IN THE SUPREME COURT OF IOWA

No. 06–1960

Filed November 7, 2008

JOHN CARMODY,

Plaintiff,

vs.

IOWA DISTRICT COURT FOR HENRY COUNTY,

Defendant.

Certiorari to the Iowa District Court for Henry County, R. David Fahey, Judge.

Plaintiff challenges the district court's denial of his request for a final hearing at his annual review. **WRIT SUSTAINED, AND CASE REMANDED.**

Mark C. Smith, State Appellate Defender, and Steven L. Addington, Assistant Public Defender, for plaintiff.

Thomas J. Miller, Attorney General and Linda J. Hines and Becky Goettsch, Assistant Attorneys General, for defendant.

PER CURIAM.

By petition for writ of certiorari, John Carmody, a civilly committed sexual predator, challenges a district court judgment denying his request for a final hearing to determine whether he is eligible for release. He claims the district court exceeded its jurisdiction and acted illegally when it weighed conflicting expert opinions at his annual review to determine he was not entitled to a final hearing. We conclude the controlling statute does not require the committed person prove at the annual review a likelihood of winning at his final hearing. The statute governing annual reviews requires the committed person show there is admissible evidence that could lead a fact finder to find reasonable doubt on the issue of whether his mental abnormality has changed. We therefore sustain the writ.

I. Background Facts and Prior Proceedings.

John Carmody was civilly committed as a sexually violent predator under the Commitment of Sexually Violent Predators Act, Iowa Code chapter 229A in 2002 and recommitted in 2004. According to the stipulated facts, Carmody was convicted of two counts of sexual abuse in the third degree in 1990 and two counts of rape in 1976. Prior to commitment, Carmody was diagnosed with antisocial and narcissistic personality disorders, which predispose him to commit future sexually violent offenses. Since his 2002 commitment, Carmody has had four annual reviews, and in each one, the court has denied Carmody's request for a final hearing. At his September 2006 annual review, the State submitted evidence from a licensed psychologist who had worked with Carmody stating he had refused to participate in all aspects of the sex offender treatment and thus was not suitable for placement in the

transitional release program. Carmody submitted a report by Dr. Richard Wollert that concluded Carmody's mental abnormality had changed such that he is not likely to commit sexually violent offenses if released. Wollert's conclusion was based primarily on actuarial data indicating the risk of recidivism declines with age, and Carmody's risk of reoffending, given his age of sixty-seven, was below ten percent. The district court weighed the evidence presented by both parties and determined Carmody had not shown by a preponderance of the evidence he was entitled to a final hearing. Carmody filed an application for writ of certiorari with this court, claiming the district court exceeded its jurisdiction when it weighed evidence to determine he was not entitled to a final hearing.

II. Scope of Review.

In a certiorari case, we review the district court's action for correction of errors at law. *Weissenburger v. Iowa Dist. Ct.*, 740 N.W.2d 431, 434 (Iowa 2007). We may examine "only the jurisdiction of the district court and the legality of its actions." *Christensen v. Iowa Dist. Ct.*, 578 N.W.2d 675, 678 (Iowa 1998). An "illegality exists when the court's factual findings lack substantial evidentiary support, or when the court has not properly applied the law." *Id.* We accept as true the district court's factual findings, if well supported. *State Pub. Defender v. Iowa Dist. Ct.*, 644 N.W.2d 354, 356 (Iowa 2002).

III. Merits.

In *Johnson v. Iowa District Court*, ___ N.W.2d ___ (Iowa 2008), we interpreted Iowa Code section 229A.8 to require the committed person show there is admissible evidence that could lead a fact finder to find reasonable doubt on the issue of whether his mental abnormality has

changed. *Johnson*, ___ N.W.2d at ___. If the committed person meets this standard at the annual review, he is entitled to a final hearing. *Id.*

Iowa Code chapter 229A allows for the commitment of sexually violent predators in order “to protect the public, to respect the needs of the victims of sexually violent offenses, and to encourage full, meaningful participation of sexually violent predators in treatment programs.” Iowa Code § 229A.1 (2007). Under section 229A.8, the committed person is entitled to an annual review in which he may request a final hearing to determine whether he is eligible for release or transitional release. At an annual review, the *committed person* bears the burden of proof to show by a “preponderance of the evidence” there is “competent evidence which would lead a reasonable person to believe a final hearing should be held.” *Id.* § 229A.8(5). If the committed person meets this burden, he is entitled to a final hearing. At the final hearing, the *state* bears the burden of proof to show “beyond a reasonable doubt” the committed person’s mental abnormality has not changed.¹ *Id.* § 229A.8(6). The committed person has no burden to prove anything at the final hearing. *Id.* If, at the final hearing, the fact finder determines there is a reasonable doubt as to whether the committed person still suffers from a mental abnormality, the commitment ends. *Id.*

In determining whether the committed person is entitled to a final hearing, the district court should apply the following standard: if the

¹The final hearing on whether the committed person is eligible for transitional release is different. Iowa Code § 229A.8A. The prerequisites for the transitional release program include, among other things, that the committed person’s “mental abnormality is no longer such that the person is a high risk to reoffend.” *Id.* § 229A.8A(2)(a).

committed person presents competent² evidence that could lead a fact finder to find reasonable doubt on the issue of whether his mental abnormality has changed, such that he is unlikely to engage in sexually violent offenses, then the committed person should be granted a final hearing. *Johnson*, ___ N.W.2d at ___. Carmody has met this standard by submitting the report of Dr. Wollert. We sustain the writ of certiorari and remand the case to determine whether Carmody is entitled to a final hearing under the standard set forth in *Johnson*. See *Johnson*, ___ N.W.2d at ___.

IV. Conclusion.

We interpret the statute governing annual reviews to require the committed person show there is admissible evidence that could lead a fact finder to find reasonable doubt on the issue of whether his mental abnormality has changed. The writ of certiorari to this court is sustained. The district court acted illegally when it denied Carmody's request for a final hearing.

WRIT SUSTAINED, AND CASE REMANDED.

This opinion shall not be published.

²Competent evidence means admissible evidence, not credible evidence. See *Black's Law Dictionary* 596 (8th ed. 2004); see also *State v. Decker*, 744 N.W.2d 346, 356 (Iowa 2008).