STATE OF MINNESOTA
IN COURT OF APPEALS
A11-1415

In the Matter of the Civil Commitment of: Bryce J. Suchan

Filed March 5, 2012
Affirmed
Worke, Judge

Hennepin County District Court
File No. 27-MH-PR-10-1018

Joel A. Fisher, Richfield, Minnesota (for appellant Bryce J. Suchan)

Michael O. Freeman, Hennepin County Attorney, John L. Kirwin, Assistant County Attorney, Minneapolis, Minnesota (for respondent county)

Considered and decided by Worke, Presiding Judge; Halbrooks, Judge; and Stoneburner, Judge.

U N P U B L I S H E D O P I N I O N

WORKE, Judge

Appellant challenges his indeterminate commitment as mentally ill and dangerous, arguing that the district court used an incorrect definition of mental illness, failed to specify a mental illness from which appellant suffers, and that the evidence fails to connect his personality disorder to his dangerousness. We affirm.

D E C I S I O N

The county filed a petition for the civil commitment of appellant Bryce J. Suchan as mentally ill and dangerous, indicating that appellant was diagnosed with

"Schizoaffective Disorder, bipolar type; Pedophilia, Alcohol dependence, [and] Impulse control disorder (pathological gambling)." Following a hearing, the district court ordered appellant's indeterminate commitment as someone mentally ill and dangerous.

We review a district court's civil-commitment decision to determine whether the district court complied with the statute and whether the evidence in the record supports the findings of fact. *In re Knops*, 536 N.W.2d 616, 620 (Minn. 1995). In doing so, we view the record in the light most favorable to the district court's decision. *Id.* We will not set aside a finding of fact unless it is clearly erroneous. Minn. R. Civ. P. 52.01. We review de novo whether there is clear and convincing evidence to support the district court's legal conclusion as to whether a person meets the standard for civil commitment as mentally ill and dangerous. *Knops*, 536 N.W.2d at 620; *see also In re Thulin*, 660 N.W.2d 140, 144 (Minn. App. 2003).

Mentally ill person

Appellant first argues that the district court failed to use the correct definition of a mentally ill person in ordering his commitment. A district court may order the commitment of a person as mentally ill and dangerous if it finds by clear and convincing evidence that the person satisfies the statutory criteria. Minn. Stat. § 253B.18, subds. 1, 3 (2010). The parties agree that "person who is mentally ill"

> means any person who has an organic disorder of the brain or a substantial psychiatric disorder of thought, mood, perception, orientation, or memory which grossly impairs judgment, behavior, capacity to recognize reality, or to reason or understand, which is manifested by instances of grossly disturbed behavior or faulty perceptions and poses a substantial likelihood of physical harm to self or others.

Minn. Stat. § 253B.02, subd. 13 (2010). The district court found that appellant

> suffers from a substantial psychiatric disorder of thought and mood, which grossly impairs his judgment and behavior. Given his inability to control his impulses and his extreme mood instability, the disorder limits [appellant's] ability to function in daily living, repeatedly resulting in assaults against others.

This finding meets the statutory requirement.

But appellant argues that the district court relied on Minn. Stat. § 245.462, subd. 20 (2010), which defines "mental illness" in finding that appellant is a "mentally ill person." While appellant is correct in asserting that this is not the appropriate definition in a commitment proceeding, his assertion that the district court used this definition in ordering his commitment is a misreading of the district court's order.

Appellant presented as a very complex case to examiners. Although all examiners agreed that appellant is dangerous, one examiner opined that appellant's overt acts were not because he is a "mentally ill person." When the matter initially came before the district court, the court received a report from Dr. Katheryn Cranbrook indicating that appellant has had several diagnoses, including "Schizoaffective Disorder; Schizophrenia-Undifferentiated Type; Bipolar Disorder; Mood Disorder, NOS with psychotic features; Rule out: Erotomanic Delusional Disorder; Obsessive Compulsive Disorder; Impulse Control Disorder, Pedophilia, and Personality Disorder, NOS with antisocial, borderline and schizotypal traits." She noted that appellant has been treated with "a variety of psychotropic medications." Dr. Cranbrook diagnosed appellant with schizoaffective

disorder, bipolar type; pedophilia; alcohol dependence; impulse control disorder; and personality disorder.

Following appellant's initial commitment, Adam A. Milz, Ph.D. prepared a 60-day report. Dr. Milz diagnosed appellant with depressive disorder, not otherwise specified; polysubstance dependence; pedophilia, sexually attracted to males, nonexclusive type. Axis II diagnoses included antisocial personality disorder and borderline personality disorder. But unlike Dr. Cranbrook who determined that appellant met the criteria for commitment as mentally ill and dangerous, Dr. Milz opined that appellant did not meet the criteria for designation as a mentally ill person, because although appellant has been diagnosed with a substantial psychiatric disorder of mood, his depressive symptoms do not grossly impair his judgment and behavior. Dr. Milz opined that appellant's long history of impaired judgment and behavior is directly related to his antisocial- and borderline-personality-disorder diagnoses, but are not the result of mental illness.

Dr. Paul Reitman diagnosed appellant with "schizoaffective disorder, bipolar type, by history; mood disorder, NOS; ADHD, by history; pedophilia, sexually attracted to males; alcohol dependence; polysubstance abuse; and impulse control disorder (pathological gambling)." He also diagnosed appellant with personality disorder, NOS with antisocial features, and opined that appellant "overwhelmingly meets the criteria as mentally ill and dangerous . . . because he currently suffers from schizoaffective disorder-bipolar type which is a substantial psychiatric disorder which affects his thought, mood and perception, which in turn grossly impairs his judgment and behavior."

Dr. Andrea Lovett diagnosed appellant with "pervasive developmental disorder, NOS; pedophilia, non-exclusive type, attracted to males; depressive disorder, NOS; and polysubstance dependence, in a controlled environment." She also diagnosed him with "personality disorder, NOS, with antisocial and borderline traits." Dr. Lovett stated that "[t]hese are substantial psychiatric disorders of thought and mood, which grossly impair [appellant's] judgment, behavior, and capacity to reason and understand." Dr. Lovett stated in her report: "Calling this a complex case is an understatement. [Appellant] has received numerous psychiatric diagnoses during the past decade. It is not surprising that evaluators . . . have different opinions about his diagnoses." While Dr. Milz stated that appellant's personality disorders do not qualify as substantial psychiatric disorders that grossly impair his judgment or behavior, Dr. Lovett disagreed, stating that borderline personality disorder qualifies as a substantial psychiatric disorder for commitment.

At the indeterminate-commitment hearing, Dr. Reitman updated his diagnoses of appellant, diagnosing appellant with:

> Rule out Schizoaffective Disorder, Bipolar Type. . . . Bipolar Affective Disorder with Manic and Psychotic Features, history of Attention Deficit Hyperactivity Disorder . . . . Pedophilia, Sexually Attracted to Males; Alcohol Dependence; Polysubstance Abuse; Impulse Control Disorder; Mood Disorder Not Otherwise Specified, Axis II Personality Disorder, [NOS] with Antisocial Features and Borderline Features.

Dr. Reitman testified:

> [T]hese diagnos[es] typically are interchangeable and you see them in Bipolar Affective Disorder, Schizophrenia, Schizoaffective Disorder, Major Depression with Psychotic Features. What was compelling to me was the fact that when

> I read the report from security [Dr. Milz] and they did not diagnose any substantial psychiatric disorder, it really caused me a great deal of consternation given the fact that [appellant is] also being treated with major mood stabilizers and neuroleptic medications. So, that's why, in my opinion, well there may seem to be some controversy I really don't think there is. I have no doubt in my mind clinically that [appellant] has a substantial psychiatric disorder that is being treated, as having an aggressive pharmacological treatment to stabilize him.

Dr. Reitman further noted that the borderline-personality-disorder diagnosis has been used as a basis for commitments; thus, Dr. Milz, by diagnosing appellant with borderline personality disorder, implicitly indicated that appellant suffers from a psychotic disorder.

The district court found:

> [W]hile the Court cannot say specifically which Axis I disorder or disorders [appellant] currently suffers from, it finds that such an illness is clearly present. Whatever that disorder is, there is ample evidence that [appellant] suffers from a substantial psychiatric disorder of thought and mood, which grossly impairs his judgment and behavior.

The district court found that the examiners agreed that appellant has significant Axis II personality disorders. And it found that even if it relied on Dr. Milz's diagnoses and testimony, appellant would meet the statutory criteria as a mentally ill person. The district court found:

> Dr. Milz specifically testified that [appellant's] Axis II disorders grossly impair his thought and mood. Dr. Milz further stated that these disorders impact [appellant's] ability to go about the tasks of daily living, due to his extreme difficulty with impulse control. Dr. Milz both testified and wrote in his report, that in his opinion, [appellant's] dangerousness stems from his Axis II diagnoses. Given this testimony and the requirements of Minnesota law, it is clear that [appellant] continues to meet the criteria for commitment

> as mentally ill and dangerous, even if this commitment were to be based solely on his Axis II conditions.

Minn. Stat. § 245.462, subd. 20 defines "mental illness." When the district court referred to this statute, it was discussing whether there is a distinction between an Axis I diagnosis and an Axis II diagnosis, and whether the court could rely on an Axis II diagnosis as the grounds for commitment. But when the district court found that appellant is a "mentally ill person," it used the language found in Minn. Stat. § 253B.02, subd. 13, specifically finding that appellant "suffers from a substantial psychiatric disorder of thought and mood, which grossly impairs his judgment and behavior." This language parallels the statutory definition of a mentally ill person. *See* Minn. Stat. § 253B.02, subd. 13. The district court used the correct definition to conclude that appellant is a mentally ill person.

Clear and convincing evidence

Appellant next argues that because the examiners presented conflicting evidence in support of appellant's diagnoses, and because the district court failed to specify a diagnosis, the evidence is not clear and convincing that appellant is mentally ill and dangerous. We review de novo whether there is clear and convincing evidence to support the district court's legal conclusion as to whether a person meets the standard for civil commitment as mentally ill and dangerous. *Knops*, 536 N.W.2d at 620; *see also Thulin*, 660 N.W.2d at 144.

Appellant does not dispute that he is dangerous. He argues that the district court failed to specify a diagnosis; therefore, there is no clear and convincing evidence of his

mental illness. But the statute does not require the district court to specify a diagnosis. The district court must find that the individual

> has an organic disorder of the brain or a substantial psychiatric disorder of thought, mood, perception, orientation, or memory which grossly impairs judgment, behavior, capacity to recognize reality, or to reason or understand, which is manifested by instances of grossly disturbed behavior or faulty perceptions and poses a substantial likelihood of physical harm to self or others.

Minn. Stat. § 253B.02, subd. 13. In this case, it would have been nearly impossible for the district court to take on the task of specifying a diagnosis. The district court stated:

> There is no uniform agreement between the experts . . . as to what Axis I disorder [appellant] currently suffers from, or what affect any such disorder has on his violent behavior. [The court] . . . cannot now find that there is clear and convincing evidence that [appellant] suffers *only* and specifically from schizoaffective disorder, as stated in its initial order. The Court recognizes that it is not unheard of for experts to disagree on diagnoses, particularly in the field of psychology, even when there is agreement that the person suffers from some type of Axis I illness.
>
> Thus, while the Court cannot say specifically which Axis I disorder or disorders [appellant] currently suffers from, it finds that such an illness is clearly present. Whatever that disorder is, there is ample evidence that [appellant] suffers from a substantial psychiatric disorder of thought and mood, which grossly impairs his judgment and behavior. Given his inability to control his impulses and his extreme mood instability, the disorder limits [appellant's] ability to function in daily living, repeatedly resulting in assaults against others.

As the county points out, it would make little sense if a person who is clearly mentally ill could not be committed because he has such a complicated presentation that experts could not agree on a diagnosis. Further, it would put a district court in a precarious situation to have to assign a diagnosis to an individual when medical professionals cannot

agree on a particular diagnosis. It would contravene common sense and the commitment act if complicated cases avoid commitment because of their complexity.

Appellant also argues that the district court failed to connect the mental illness to the dangerousness. But that is not true.

> A 'person who is mentally ill and dangerous to the public' is a person:
>
> (1) who is mentally ill; and
> (2) who as a result of that mental illness presents a clear danger to the safety of others as demonstrated by the facts that (i) the person has engaged in an overt act causing or attempting to cause serious physical harm to another and (ii) there is a substantial likelihood that the person will engage in acts capable of inflicting serious physical harm on another.

Id., subd. 17 (2010). The district court found that appellant "suffers from a substantial psychiatric disorder" that "repeatedly result[s] in assaults against others." A finding that appellant's mental illness causes him to assault others fits this definition because repeated assaults cause serious physical harm.

Due Process

Appellant also presents a due-process argument, claiming that because the basis of the petition was that he suffered from schizophrenia, when he was committed on a different basis, he was denied due process. Appellant failed to raise this argument in district court; thus, it is deemed waived. *See Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988) (stating that this court will not consider matters not argued and considered in the court below).

Affirmed.