STATE OF MINNESOTA
IN COURT OF APPEALS
A11-1534

In the Matter of the Civil Commitment of: Brent D. Kimball

Filed January 23, 2012
Affirmed
Stauber, Judge

Clay County District Court
File No. 14PR111716

Johnathan R. Judd, The Law Offices of Johnathan R. Judd, P.L.L.C., Moorhead, Minnesota (for appellant)

Gregg S. Jensen, Clay County Attorney, Moorhead, Minnesota (for respondent)

Considered and decided by Stauber, Presiding Judge; Klaphake, Judge; and Larkin, Judge.

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

STAUBER, Judge

On appeal from the order civilly committing him as mentally ill, appellant argues that (1) the district court erroneously concluded that he meets the legal definition of mentally ill and that he warrants commitment when the evidence did not establish that he poses a substantial likelihood of physical harm to himself or to others and (2) the district court's findings that there are no adequate alternatives to commitment are insufficient. We affirm.

FACTS

Appellant Brent D. Kimball has a history of mental-health issues, including 12 inpatient psychiatric hospitalizations and two prior civil commitments. Appellant exhibited aggressive and paranoid behavior and medication noncompliance leading up to, and during, both prior commitments.

Appellant challenges his most recent civil commitment as mentally ill. He is currently diagnosed with schizoaffective disorder, bipolar type. In April 2011 appellant was hospitalized. His treating psychiatrist, LaWana Burtnett, M.D., completed an examiner's statement in support of a petition for commitment and stated the following about appellant: "He is psychotic. Aggressive, curses at staff. Believes staff are aliens. Talks about war, politics and aliens." Dr. Burtnett observed that appellant was noncompliant with his medication and had "frequent outbursts." She recommended that appellant receive inpatient treatment.

Scott Sternhagen, Ph.D., a licensed psychologist, similarly completed an examiner's statement in support of a petition for commitment and recommended "continued inpatient hospitalization with likely residential treatment following adequate symptom control which has not been achieved." Dr. Sternhagen described some of appellant's behavior during his hospitalization, including incidents of physical and verbal aggression toward other patients and staff, making paranoid statements, threatening staff, yelling, and swearing. In one incident, appellant punched another patient in the jaw and punched a phone cubicle. In another incident, he hit a patient and was physically

aggressive and threatened staff. On May 17, Clay County petitioned the district court to civilly commit appellant as mentally ill.

On June 7, Dr. Nancy Hein-Kolo filed a civil-commitment evaluation recommending that appellant be committed as mentally ill. She observed that appellant had received numerous mental-health and psychiatric services and had a history of not complying with his medication. Dr. Hein-Kolo stated that hospital staff reported to her that appellant had recently improved, but they were still concerned about appellant discontinuing his medication. She concluded that "history suggests that when [appellant] is noncompliant with his medications he experiences increased difficulties including paranoia, psychosis, and delusions" and that he "appears to have limited insight regarding his mental illness and how his illness impacts his functioning." Dr. Hein-Kolo warned that if appellant did not take his prescribed medication, he would likely "decompensate, leading to increased paranoia and delusions, as well as potential harm to self and others." Dr. Hein-Kolo considered the less-restrictive alternatives of dismissal and a stay of commitment, but she determined that those alternatives would not be in appellant's best interest.

On June 14, Dr. Rick Ascano filed a civil-commitment evaluation regarding appellant. Dr. Ascano recommended that appellant remain in inpatient treatment but he observed that appellant was currently medication-compliant and his behavior had stabilized. He recommended that the district court consider a stay of commitment.

At the civil-commitment hearing, Dr. Ascano testified that he spoke to appellant that morning and appellant was "more cooperative, polite" and was "making

improvement." Dr. Ascano again recommended a stay of commitment. The county called no witnesses and rested on Dr. Ascano and Dr. Hein-Kolo's written reports. The district court found that appellant is mentally ill and in need of commitment and committed appellant for an initial period of six months. This appeal follows.[1]

D E C I S I O N

I.

Appellant argues that the district court erred by finding that he meets the definition of mentally ill and that he warrants commitment. An appellate court's review of an involuntary civil commitment is limited to an examination of whether the district court complied with the requirements of the commitment statute and whether the commitment is "justified by findings based upon evidence at the hearing." *In re Knops*, 536 N.W.2d 616, 620 (Minn. 1995). Appellate courts accord great deference to the district court's factual findings and will not set them aside unless they are clearly erroneous. *Id*. But whether clear and convincing evidence supports the district court's conclusion that a person meets the standards for commitment is a question of law that is reviewed de novo. *In re Thulin*, 660 N.W.2d 140, 144 (Minn. App. 2003).

Minnesota law provides that if a district court finds by clear and convincing evidence that a person is "mentally ill, developmentally disabled, or chemically dependent" and there are no alternatives to commitment, the district court shall commit the person to the least-restrictive treatment program that can meet the person's treatment

[1] The county has not submitted a brief. Pursuant to Minn. R. Civ. App. P. 142.03, if the respondent fails to file a brief, the appellate court will decide the case on the merits.

needs. Minn. Stat. § 253B.09, subd. 1(a) (2010). A "person who is mentally ill" is defined as:

> [A]ny 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 as demonstrated by:
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> (1) a failure to obtain necessary food, clothing, shelter, or medical care as a result of the impairment;
>
> (2) an inability for reasons other than indigence to obtain necessary food, clothing, shelter, or medical care as a result of the impairment and it is more probable than not that the person will suffer substantial harm, significant psychiatric deterioration or debilitation, or serious illness, unless appropriate treatment and services are provided;
>
> (3) a recent attempt or threat to physically harm self or others; or
>
> (4) recent and volitional conduct involving significant damage to substantial property.

Minn. Stat. § 253B.02, subd. 13(a) (2010). Speculation about a person's future behavior does not justify that person's commitment as mentally ill. *In re McGaughey*, 536 N.W.2d 621, 623 (Minn. 1995).

Appellant does not dispute that he has "an organic disorder of the brain or a substantial psychiatric disorder" because of his diagnosis of schizoaffective disorder, bipolar type. But appellant argues that the district court erred by finding that he warrants commitment as mentally ill because he poses a substantial likelihood of physical harm to himself or others. Appellant argues that the district court based its finding on speculation about what appellant might do in the future. But, in civil commitment cases there is

generally some speculation. The district court found that even though appellant showed signs of improvement, he poses a danger to himself or others because of his history of assaultive behavior and "[w]hen not under commitment he is unable to make decisions or exercise appropriate insight into his mental health in order to follow through with his medication and services to decrease the risk of his behavior[]s escalating and his posing a danger to others."

The record also demonstrates that during his recent hospitalization, appellant verbally threatened and attempted to physically harm other patients and staff. The district court's finding is based on specific, documented recent incidents, and is not speculation.

The record provides clear and convincing evidence that appellant would suffer substantial harm, significant psychiatric deterioration or debilitation, or serious illness unless he is provided with appropriate treatment and services. Appellant also has a history of failing to be medication-compliant. During appellant's most recent hospitalization, his psychiatrist reported that he is psychotic and not medication-compliant. While Dr. Hein-Kolo acknowledged that appellant had recently improved and Dr. Ascano testified that appellant had recently been medication-compliant, hospital staff remained skeptical about appellant's ability to remain medication-compliant and stable. In addition, Dr. Ascano and Dr. Hein-Kolo disagreed about appellant's ability to remain compliant with his medication but they both agreed that appellant is in need of inpatient treatment. It was not speculation for the district court to conclude that, given appellant's history of noncompliance with his prescribed medication, and his recent noncompliance, it is likely that he would not remain medication-compliant without treatment.

We conclude that the district court did not err by finding that appellant meets the definition of "a person who is mentally ill" because two of the four factors set forth in the statute are satisfied. *See* Minn. Stat. § 235B.02, subd. 13(a)(2), (3) (defining person who is mentally ill).

II.

Appellant next argues that the district court's findings that there are no adequate alternatives to commitment are insufficient. If, as here, the district court finds by clear and convincing evidence that a person is mentally ill, it must consider "reasonable alternative dispositions, including but not limited to, dismissal of the petition, voluntary outpatient care, voluntary admission to a treatment facility, appointment of a guardian or conservator, or release before commitment." Minn. Stat. § 253B.09, subd. 1(a). If the district court finds that there is no alternative to commitment, then the district court "shall commit the patient to the least-restrictive treatment program or alternative programs which can meet the patient's treatment needs." *Id.*

In choosing the least-restrictive treatment program, the district court must consider "a range of treatment alternatives including, but not limited to, community-based nonresidential treatment, community residential treatment, partial hospitalization, acute hospital care, and regional treatment center services." *Id.*, subd. 1(b) (2010). The district court may rely on expert opinions to determine which commitment facility provides the least-restrictive alternative. *In re Miner*, 424 N.W.2d 810, 815 (Minn. App. 1988), *review denied* (Minn. July 28, 1988). When the district court orders commitment, its findings of fact and conclusions of law must specifically describe the patient's conduct

that satisfies each of the requirements for commitment. Minn. Stat. § 253B.09, subd. 2 (2010). Legally insufficient findings require a remand. *In re Danielson*, 398 N.W.2d 32, 37 (Minn. App. 1986). "In reviewing whether the least restrictive treatment program that can meet the patient's needs has been chosen, an appellate court will not reverse a district court's finding unless clearly erroneous." *In re Thulin*, 660 N.W.2d at 144.

Appellant cites *Danielson* in support of his argument that the district court did not make sufficient findings of the alternatives to commitment. In *Danielson*, the district court issued written findings of fact and conclusions of law committing Danielson as mentally ill using a form order and stated that there were no less-restrictive alternatives, but did not discuss the alternatives. 398 N.W.2d at 35. This court remanded, concluding that the district court's findings were inadequate. *Id.* at 37.

Danielson is distinguishable from this case. Here, the district court considered a stay of commitment, dismissal of the commitment proceedings, and community services as alternatives to commitment before it concluded that there is no sufficient, less-restrictive alternative to commitment. The district court made specific findings explaining why each alternative is not appropriate.

The district court found that a stay of commitment is not appropriate because it would likely be revoked after only a short time. The district court based this finding on appellant's history of noncompliance with his medication and on Dr. Hein-Kolo and Dr. Ascano's reports and Dr. Ascano's testimony. Dr. Hein-Kolo opined in her report that appellant's history of non-cooperation with services and medication suggested that he would not be successful with the less-restrictive alternatives of dismissal or a stay of

commitment. In contrast, Dr. Ascano opined in his report and his testimony that appellant has recently been doing better and he could be successful with a stay of commitment as long as he remains medication-compliant. The district court specifically explained in its order why it would not follow Dr. Ascano's recommendation.

The district court considered dismissal of the commitment proceedings but concluded that dismissal was not appropriate because both Dr. Hein-Kolo and Dr. Ascano agreed that appellant currently needs inpatient treatment. The district court also considered the alternative of community services but found that appellant has previously received community services through adult foster care and those services provided only a temporary fix.

We conclude that the district court's findings are sufficient to support its decision that committing appellant as mentally ill is the least-restrictive alternative that can meet appellant's needs.

Affirmed.