STATE OF MINNESOTA
IN COURT OF APPEALS
A11-1870

In the Matter of the Civil Commitment of:
Ricky Chilson, a Mentally Ill and Dangerous Person.

Filed March 26, 2012
Affirmed
Kalitowski, Judge

Becker County District Court
File No. 03-PR-11-159

Stuart J. Kitzmann, Kitzmann Law Office, Detroit Lakes, Minnesota (for appellant)

Michael Fritz, Becker County Attorney, Kevin M. Miller, Assistant County Attorney, Detroit Lakes, Minnesota (for respondent)

Considered and decided by Kalitowski, Presiding Judge; Schellhas, Judge; and Bjorkman, Judge.

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

KALITOWSKI, Judge

Appellant Ricky Chilson challenges his indeterminate commitment to the Minnesota Security Hospital (MSH) as a person who is mentally ill and dangerous (MID) on the grounds that the evidence is insufficient to support the district court's findings that: (1) he committed an overt dangerous act; (2) he is not substantially likely to engage in acts capable of inflicting serious physical harm on another; and (3) a less-restrictive

treatment program is consistent with his treatment needs and the requirements of public safety. We affirm.

D E C I S I O N

I.

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). The record is viewed in the light most favorable to the district court's decision and findings of fact shall not be set aside unless clearly erroneous. *Id.* But we "review de novo whether there is clear and convincing evidence in the record to support the district court's conclusion that appellant meets the standards for commitment." *In re Thulin*, 660 N.W.2d 140, 144 (Minn. App. 2003).

A district court must order the commitment of a person as MID if it finds by clear and convincing evidence that the person satisfies the statutory criteria. Minn. Stat. § 253B.18, subd. 1(a) (2010). Minn. Stat. § 253B.02, subd. 17(a) (2010), defines a "person who is mentally ill and dangerous to the public" as 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.

After an initial MID commitment, the district court must conduct a second hearing to review a written treatment report, and if the district court finds that the patient "continues to be . . . mentally ill and dangerous," it must order commitment "for an indeterminate period of time." Minn. Stat. § 253B.18, subds. 2(a), 3 (2010).

Appellant concedes he is mentally ill, but contests the district court's determination that he presents a clear danger to the safety of others.

Overt act requirement

The district court found that appellant engaged in an overt act attempting to cause serious physical harm to another when "he pulled a knife on his roommate in late December 2010 or early January 2011." Appellant argues that evidence demonstrates that the act was not sufficiently serious to satisfy the overt-act requirement. We disagree.

When evaluating the overt act requirement, we focus "on the seriousness of the act and whether it did occur." *Knops*, 536 N.W.2d at 620. The word "serious" is given its common understanding. *In re Kottke*, 433 N.W.2d 881, 884 (Minn. 1988). "It is not necessary that mayhem or murder occur," and less violent conduct may satisfy the statutory requirement. *Id.* Additionally, the "person's intent or the outcome of the action is not relevant to the determination of whether the conduct meets the overt-act requirement." *In re Carroll*, 706 N.W.2d 527, 530 (Minn. App. 2005).

Here, appellant's treating psychiatrist Dr. Thanal testified that appellant told him that he threatened his roommate with a knife in order to convince his roommate to seek medical treatment. In addition, an employee at appellant's residence testified that, in late December or early January 2011, she heard appellant and his roommate arguing in their

room. She further testified that the roommate called her and stated that appellant had pulled a knife on him earlier that day and he was afraid. The employee stated that she did not notify the police of the incident.

Appellant does not dispute that he admitted to Dr. Thanal that he threatened his roommate with a knife. A person's admission of a violent episode may be persuasive evidence that the episode occurred. *See In re Beard*, 391 N.W.2d 29, 30-31 (Minn. App. 1986) (concluding that sufficient evidence supported district court's finding that individual was dangerous because he "personally admitted" stabbing police officers to court-appointed examiner), *review denied* (Minn. Sept. 24, 1986). And the employee's testimony corroborates appellant's admission.

Appellant argues that he was not charged with or convicted of a crime arising out of the knife incident. But a criminal conviction is not a prerequisite to commitment. *In re Jasmer*, 447 N.W.2d 192, 195 (Minn. 1989). And evidence need not satisfy the burden of proof necessary for a criminal conviction to satisfy the clear-and-convincing evidence standard under Minn. Stat. § 253B.18, subd. 1(a). *See In re Winship*, 397 U.S. 358, 364, 90 S. Ct. 1068, 1073 (1970) (holding that state must prove beyond a reasonable doubt every fact necessary to constitute charged crime). Accordingly, the fact that appellant was not charged with a crime is not dispositive.

Appellant also argues that his intention—to convince his roommate to seek medical treatment—indicates that the act was not sufficiently serious to meet the statutory requirement. But appellant's intent is not relevant to the court's determination that he engaged in an overt dangerous act. *Carroll*, 706 N.W.2d at 530; *see Jasmer*, 447

N.W.2d at 195-96 (concluding that evidence supported finding that person had engaged in overt dangerous act when, without justification, he aimed and fired shotgun at neighbor without caring whether he hit neighbor). Moreover, an overt violent act need only have the *potential* to cause serious physical harm. *See* Minn. Stat. § 253B.02, subd. 17(a)(2)(i) (stating an attempt to cause serious physical harm satisfies statutory requirement); *Carroll*, 706 N.W.2d at 530 (quoting statutory language); *In re Lufsky*, 388 N.W.2d 763, 764, 766 (Minn. App. 1986) (affirming commitment of person as MID when person's overt acts included "outbursts and threats to kill his parents, the assault [of repeatedly slapping a 15-year-old,] threats to burn and strangle elderly residents, and invitations to 'shoot it out' with police"). Appellant's act of brandishing a knife is an act that has the potential to cause serious bodily harm, regardless of appellant's intent.

Finally, appellant argues that the employee's testimony does not support the conclusion that the knife incident was serious because she did not notify the police after receiving the roommate's call. But the significance of the employee's actions is outweighed by appellant's admission of the incident to Dr. Thanal, the employee's testimony about both appellant's argument with his roommate, and the roommate's call to the employee reporting the knife incident.

We conclude that the district court's finding that appellant committed an overt act is not clearly erroneous.

Substantial likelihood requirement

Appellant also argues that the evidence is insufficient to support the district court's finding that there is a substantial likelihood that appellant will engage in acts capable of inflicting serious physical harm on another. We disagree.

"The question of dangerousness is a factual determination for the [district] court, which should not be disturbed on appeal unless it is clearly erroneous." *In re Hofmaster*, 434 N.W.2d 279, 282 (Minn. App. 1989). The district court may consider the person's "entire history" when determining whether "he remains a clear danger to others." *Id.* at 281.

At the initial commitment hearing, Dr. Ascano, a court-appointed psychologist, testified that appellant's current diagnosis is schizoaffective disorder and opined that appellant is "obviously irritable, angry, [and] hostile." Dr. Ascano testified that he used an actuarial testing instrument to evaluate appellant's likelihood of future violent behavior, and concluded that appellant presents a high risk for violent behavior within 22 months. At the indeterminate commitment hearing, Dr. Delain-Adderly, appellant's treating psychiatrist, and Dr. Wernsing, a court-appointed examiner, testified that appellant presents a substantial likelihood of engaging in acts capable of inflicting serious physical harm on another. Dr. Delain-Adderly stated that appellant "demonstrates some insight" into his condition and need for medication and, when he takes medication, the likelihood that he will commit a violent act is reduced. But she also opined that appellant's "significant history" of mental illness, noncompliance with treatment, and

assaultive behavior in the community lead her to conclude that the substantial likelihood requirement is satisfied.

Appellant argues that the expert testimony demonstrates that his behavior has improved since his initial commitment. While committed to MSH, he argues, he has willingly taken medications and has not physically threatened or assaulted staff or other patients. But nonviolent behavior in a confined hospital setting is not conclusive on the issue of dangerousness. *Beard*, 391 N.W.2d at 31; *see State v. Ward*, 369 N.W.2d 293, 296-97 (Minn. 1985) (holding that patient's good behavior while in treatment is not determinative of dangerousness when experts testified that patient posed danger to public).

Moreover, Drs. Delain-Adderly and Wernsing considered appellant's progress in treatment and willingness to take medications when determining whether he is dangerous. Dr. Delain-Adderly testified that, although appellant responded well to medications and the secure setting at MSH, he "has a lengthy history of placements with lesser restrictive settings in which he's done well within those settings, but either elopes or shortly following discharge . . . he discontinues medications, often leaves the area or leaves the state and comes back following arrest for another charge." She concluded that appellant has a significant history of aggressive and violent behavior and a high number of psychopathic traits, which indicate that his risk of committing future offenses is high. Dr. Wernsing indicated that appellant was not violent towards staff or other patients at MSH, and exhibited insight into his illness and need for medication. Nonetheless, he opined

that appellant presents an above-average risk for assaultive behavior and concluded that appellant is dangerous to the public.

The district court credited the expert's reports and testimony, and "[w]here the findings of fact rest almost entirely on expert testimony, the [district] court's evaluation of credibility is of particular significance." *Knops*, 536 N.W.2d at 620. The district court appropriately considered evidence of appellant's pattern of failing to take medications when evaluating whether he is dangerous. *See, e.g., In re Dirks*, 530 N.W.2d 207, 211 (Minn. App. 1995) (affirming commitment as MID where expert testimony predicted that patient would stop taking his medication and return to dangerous behavior if released). Furthermore, the district court appropriately considered appellant's significant criminal history, which includes convictions of criminal sexual conduct, terroristic threats, and assault over a more-than-20-year period. *See Carroll*, 706 N.W.2d at 531 (considering patient's records, which were "replete with documentation of violent outbursts and physical assaults"); *Hofmaster*, 434 N.W.2d at 280-81 (considering patient's entire history of dangerous acts, including a stabbing assault on his wife).

Based on the experts' testimony and appellant's criminal history, the district court's finding that appellant presents a substantial likelihood of inflicting serious physical harm in the future is not clearly erroneous. Therefore, we conclude that there is clear and convincing evidence in the record to support the district court's conclusion that appellant is MID.

II.

The district court is required to commit a patient who is MID "to a secure treatment facility unless the patient establishes by clear and convincing evidence that a less-restrictive treatment program is available and is consistent with the patient's treatment needs and the requirements of public safety." Minn. Stat. § 253B.18, subd. 1(a).

Appellant argues that the district court erred by committing him to MSH because he established by clear and convincing evidence that a less-restrictive treatment program is available. Appellant references Dr. Wernsing's statement that a less-restrictive commitment with outpatient supervision "may allow for adequate protection to society and be an option to consider." And appellant relies on Dr. Wernsing's suggestion that appellant could possibly be monitored, rather than hospitalized, and receive regular medication injections. But Dr. Wernsing also testified that, because he is not appellant's treating psychiatrist, he did not know whether appellant would respond to outpatient treatment. Also, Dr. Wernsing admitted that if appellant left the state, as he has done in the past, a court order for medication would be ineffective. Accordingly, Dr. Wernsing's testimony fails to establish that a less-restrictive treatment program is consistent with appellant's needs or the requirements of public safety. Moreover, Dr. Delain-Adderly testified to appellant's repeated failure to comply with treatment in less-restrictive settings and opined that appellant's placement at MSH is the least-restrictive option.

On this record, we conclude that the district court did not err by determining that appellant failed to meet his burden to establish by clear and convincing evidence that a

less-restrictive treatment program is available and is consistent with his treatment needs and the requirements of public safety.

Affirmed.