STATE OF MINNESOTA
IN COURT OF APPEALS
A11-1952

In the Matter of the Civil Commitment of:
Steven Joe Bollin.

Filed March 5, 2012
Affirmed
Worke, Judge

Anoka County District Court
File No. 02-PR-10-347

James S. Dahlquist, Minneapolis, Minnesota (for appellant Steven Joe Bollin)

Anthony C. Palumbo, Anoka County Attorney, Francine P. Mocchi, Assistant County Attorney, Anoka, Minnesota (for respondent Anoka County)

Considered and decided by Worke, Presiding Judge; Connolly, Judge; and Randall, 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 civil commitment, arguing that the evidence is not clear and convincing that he is a sexually dangerous person (SDP). We affirm.

* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

D E C I S I O N

Appellant Steven Joe Bollin argues that the evidence is insufficient to support the district court's conclusion that he satisfies the requirements for commitment as an SDP. The facts necessary for commitment must be supported by clear and convincing evidence. Minn. Stat. §§ 253B.18, subd. 1(a), .185, subd. 1 (2010). This court defers to the district court's findings of fact and will not reverse those findings unless they are clearly erroneous. *In re Commitment of Ramey*, 648 N.W.2d 260, 269 (Minn. App. 2002), *review denied* (Minn. Sept. 17, 2002). But this court reviews 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).

An SDP is one who: (1) "has engaged in a course of harmful sexual conduct"; (2) "has manifested a sexual, personality, or other mental disorder or dysfunction"; and (3) "is likely to engage in acts of harmful sexual conduct." Minn. Stat. § 253B.02, subd. 18c(a) (2010). It is not necessary to prove that the person to be committed has an inability to control his sexual impulses. *Id.*, subd. 18c(b) (2010). The statute requires a showing that the person's disorder "does not allow [him] to adequately control [his] sexual impulses." *In re Linehan*, 594 N.W.2d 867, 876 (Minn. 1999) (*Linehan IV*). Appellant "disputes that he satisfies any" of the criteria for commitment.

Course of harmful sexual conduct

The district court must first find that appellant "has engaged in a course of harmful sexual conduct." Minn. Stat. § 253B.02, subd. 18c(a)(1). A "course" of conduct is

defined by its ordinary meaning, which is "a systematic or orderly succession; a sequence." *Ramey*, 648 N.W.2d at 268 (quotation omitted). "Harmful sexual conduct" is "sexual conduct that creates a substantial likelihood of serious physical or emotional harm to another." Minn. Stat. § 253B.02, subd. 7a(a) (2010). Convictions are not required; rather, the statute has been consistently interpreted as allowing consideration of all harmful sexual conduct or behavior. *See Ramey*, 648 N.W.2d at 268 (stating "that the course of conduct need not consist solely of convictions, but may also include conduct amounting to harmful sexual conduct [for] which the offender was not convicted").

There is clear and convincing evidence supporting the district court's finding that appellant engaged in a course of harmful sexual conduct. Dr. James Gilbertson served as the first court-appointed examiner. Dr. Gilbertson testified that appellant has two sexual-offense convictions that meet the statutory criteria for harmful sexual conduct. Appellant was convicted in 2001 of first-degree criminal-sexual conduct. The underlying conduct involved then-17-year-old appellant performing oral sex on a five-year-old boy in the presence of the boy's three-year-old brother. Appellant was convicted in 2002 of fourth-degree criminal-sexual conduct. The underlying conduct involved then-18-year-old appellant engaging in sexual contact with a 13-year-old boy when they were residents at an adolescent sex-offender treatment program.

Dr. Gilbertson testified that appellant also engaged in uncharged conduct. Appellant self-reported during treatment that he had 14 or 15 victims. Appellant admitted to: sexually assaulting a boy approximately six years old when appellant was roughly 14 years old, sexually assaulting a male neighbor approximately 12 years old

when appellant was roughly 14 years old, sexually assaulting his stepsister when she was approximately five years old and appellant was 16 years old, sexually assaulting his stepbrother when he was approximately seven years old and appellant was 16 years old, sexually assaulting a 15-year-old male neighbor when appellant was 17 years old, and exchanging money in order to engage in sexual activity with another boy.

While appellant concedes that the first-degree criminal-sexual-conduct conviction constitutes harmful sexual conduct, he contends that the underlying conduct resulting in the second conviction was consensual and, therefore, not harmful. Dr. Thomas Alberg served as the second examiner and testified that he did not believe that the 13-year-old resident was harmed because the contact was mutual. But Dr. Alberg stated that "there is always some possibility of harm[ing]" during sexual contact even if it is not "necessarily a traumatic experience." Appellant also contends that he has not engaged in a course of harmful sexual conduct because examiners have not been able to agree on an exact number of victims. The record shows that appellant has between two and 15 victims. Appellant is 26 years old and has been sexually assaulting his victims since adolescence. The record supports the district court's finding that appellant engaged in a course of harmful sexual conduct.

Adequate control

The district court must next find that appellant suffers from a mental abnormality or personality disorder that does not allow him to adequately control his sexual impulses. *Linehan IV*, 594 N.W.2d at 876. Appellant argues that the record fails to show any such disorder that prevents him from adequately controlling his sexual impulses.

The district court found that appellant is diagnosed with an antisocial personality disorder that does not allow him to adequately control his sexual impulses. The district court based this finding on Dr. Gilbertson's testimony. Dr. Gilbertson diagnosed appellant with an antisocial personality disorder. Dr. Gilbertson stated that a person with an antisocial personality disorder is generally impulsive and has problems dealing with authority. Dr. Gilbertson testified that appellant is not able to control his sexual impulses. While Dr. Alberg did not diagnose appellant with a personality disorder, stating that much of appellant's troublesome behavior occurred when he was young and was expected to engage in the behavior due to his familial situation, the district court found Dr. Gilbertson to be credible. *See Ramey*, 648 N.W.2d at 269 (stating that appellate courts defer to the district court's evaluation of witness credibility). And the district court further noted that previous examiners similarly diagnosed appellant with a personality disorder. The statute's second prong is supported by clear and convincing evidence.

Likelihood of reoffense

Finally, the district court must determine whether, as a result of appellant's course of misconduct and mental disorders or dysfunctions, he "is likely to engage in acts of harmful sexual conduct." Minn. Stat. § 253B.02, subd. 18c(a)(3). The phrase "likely to engage in acts of harmful sexual conduct" has been construed to require a showing that the offender is "highly likely" to engage in future harmful sexual conduct. *In re Linehan*, 557 N.W.2d 171, 180 (Minn. 1996) (*Linehan III*), *vacated on other grounds sub nom. Linehan v. Minn.*, 522 U.S. 1011, 118 S. Ct. 596 (1997), *aff'd on remand sub nom.*

Linehan IV, 594 N.W.2d 867. Six factors must be considered in examining the likelihood of reoffense: (1) the offender's demographic characteristics; (2) the offender's history of violent behavior; (3) the base-rate statistics for violent behavior among individuals with the offender's background; (4) the sources of stress in the offender's environment; (5) the similarity of the present or future context to those contexts in which the offender used violence in the past; and (6) the offender's record of participation in sex-therapy programs. *In re Linehan*, 518 N.W.2d 609, 614 (Minn. 1994) (*Linehan I*).

The district court considered these six factors in concluding that appellant is highly likely to reoffend. Appellant, however, provides no analysis of these factors in his brief. Therefore, we could conclude that this issue is waived because of appellant's failure to brief or argue the issue on appeal. *See McKenzie v. State*, 583 N.W.2d 744, 746 n.1 (Minn. 1998) (indicating that although appellant "allude[d]" to issues, failure to "address them in the argument portion of his brief" constituted waiver); *State v. Grecinger*, 569 N.W.2d 189, 193 n.8 (Minn. 1997) (stating that issues not argued in briefs are deemed waived on appeal). But even after analysis, we conclude that there is clear and convincing evidence supporting the district court's determination that appellant is highly likely to reoffend.

Regarding his demographic characteristics, appellant is 26 years old, which correlates with a high likelihood of reoffense. He also has a diagnosis that creates impulse-control issues. Although appellant has not used physical violence in all of his past situations, he has a history of violence dating back to his adolescence. And there is evidence that he sexually assaulted his step-siblings. Dr. Gilbertson testified that, based

on appellant's scores on assessment tools, he is extremely likely to reoffend. Dr. Gilbertson stated that appellant has a difficult time dealing with his emotional disorders, his sexual orientation, and his financial situation. These stressors will exist if appellant is permitted to reenter the community and increase his likelihood of reoffending. The fifth *Linehan* factor is the similarity of the present or future context to those contexts in which appellant used violence in the past. Dr. Gilbertson opined that this factor indicates a high likelihood of reoffense based on appellant's history of reoffending even when supervised, demonstrating an impulsive nature to his offending. Finally, appellant has participated in treatment two or three times, but he has never completed treatment. Each factor indicates that appellant's risk of reoffending is high. The district court did not err in concluding that appellant satisfies the requirements for commitment as an SDP.

For the first time on appeal, appellant presents a constitutional challenge to the civil-commitment statute. Because he failed to raise any constitutional challenge before the district court, the district court did not conduct any legal analysis of the issue. Appellant's failure to raise the issue in the district court constitutes a waiver of this issue on appeal. *Thiele v. Stich*, 425 N.W.2d 580, 582-83 (Minn. 1988).

Affirmed.