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**STATE OF MINNESOTA  
IN COURT OF APPEALS  
A12-1677**

In the Matter of the Civil Commitment of:  
John Gerald Iverson

**Filed February 4, 2013  
Affirmed  
Chutich, Judge**

Washington County District Court  
File No. 82-PR-09-5139

Gregory J. Schmidt, Bayport, Minnesota (for appellant)

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Attorney, Stillwater, Minnesota (for respondent)

Considered and decided by Chutich, Presiding Judge; Hudson, Judge; and  
Klaphake, Judge.\*

**UNPUBLISHED OPINION**

**CHUTICH**, Judge

On appeal from his indeterminate civil commitment as a sexually dangerous person, appellant John Gerald Iverson argues that (1) the state's experts applied an incorrect legal standard in determining his likelihood of sexual reoffense and (2) the evidence was insufficient to establish a high likelihood of sexual reoffense. Because

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

clear and convincing evidence supports Iverson's commitment as a sexually dangerous person, we affirm.

## **FACTS**

Iverson was born on September 17, 1960, and was 49 years old during the initial commitment proceedings. In 2000 and 2001, Iverson sexually assaulted his two step-daughters, ages 9 and 11, and his biological son, age 10. Washington County charged him with six counts of first-degree criminal sexual conduct and three counts of second-degree criminal sexual conduct. In June 2001, Iverson pleaded guilty to one count of first-degree criminal sexual conduct and one count of attempted first-degree criminal sexual conduct. The district court sentenced him to 162 months in prison with an anticipated supervised-release date of February 22, 2010.

In 2009, Washington County petitioned the district court to civilly commit Iverson as a sexually dangerous person and as a sexual psychopathic personality. In February 2010, Iverson waived his right to a contested hearing on the state's petition for commitment as a sexually dangerous person. Iverson stipulated that he was a sexually dangerous person as defined in Minn. Stat. § 253B.02, subd. 18c (2008), and the district court committed him to a secure treatment facility. In exchange for Iverson's waiver and stipulation, the state dismissed its petition seeking Iverson's commitment as a sexual psychopathic personality under Minn. Stat. § 253B.02, subd. 18b (2008).

The parties further agreed that Iverson's review hearing, as required by Minn. Stat. § 253B.18, subd. 2 (2008), would be continued for approximately 18 months. The parties stipulated that the scope of the review hearing would be limited to "(1) whether [the

county] established by clear and convincing evidence that . . . Iverson continued to meet the statutory criteria for judicial commitment as a [sexually dangerous person] . . . ; and (2) whether . . . Iverson established by clear and convincing evidence that there is a less restrictive treatment program available, as opposed to indeterminate commitment to a secure treatment facility.” During Iverson’s initial commitment, the district court ordered the treatment facility to file a written report to the district court every six months addressing Iverson’s treatment progress and whether his condition changed.

Iverson began general treatment but because he had not yet been indeterminately committed, he was unable to begin the sex-offender portion of the treatment program. Dr. Gary Hertog and Dr. Angela van der Walt interviewed and assessed Iverson and submitted semi-annual reports as ordered by the district court. In their reports, both doctors opined that Iverson continued to satisfy the statutory requirements for commitment. While Iverson had a fair prognosis to be successful in treatment, Dr. Hertog opined that he “continues to require long-term and comprehensive sex offender specific treatment.” Dr. van der Walt opined that Iverson’s “risk for future dangerous behaviors directed at others remains a significant concern” and recommended Iverson’s continued commitment.

The district court held a two-day review hearing in April 2012. Four psychologists testified at the hearing: Dr. Hertog, Dr. Harry Hoberman, Dr. Thomas Alberg, and Dr. Scott Guldseth. The district court also received reports from the four psychologists into evidence. Iverson testified, as well as two other witnesses: Jason

Terwey, a corrections agent with the Minnesota Department of Corrections, and Tracy Jenson, a supervisor for Washington County Community Corrections.

At the hearing, Dr. Hertog testified consistently with his reports that Iverson continued to meet the statutory criteria for commitment. Dr. Hertog specifically opined that Iverson had a high risk of sexually reoffending, one of the necessary requirements for commitment as a sexually dangerous person.

Dr. Hoberman, the court's first appointed examiner, opined that Iverson had a high likelihood of future harm based on the factors developed in *In re Linehan*, 518 N.W.2d 609, 614 (Minn. 1994). He further opined that, according to one actuarial assessment, Iverson had an 80% recidivism rate over ten years. Based on his assessment, Dr. Hoberman concluded that nothing significant had changed since Iverson's initial commitment and that he met all of the criteria for commitment as a sexually dangerous person.

Dr. Alberg, Iverson's requested examiner, also testified at the hearing. Dr. Alberg opined that Iverson engaged in a harmful course of sexual conduct and that he manifested a sexual or personality disorder. But Dr. Alberg testified that Iverson did not satisfy the third criterion for commitment because he was not highly likely to commit future sexual harm. Dr. Alberg further opined that he did not believe that Iverson's risk of sexually reoffending had diminished since his initial commitment, but explained that he would not have recommended committing Iverson in 2010.

Dr. Guldseth, a psychologist with Project Pathfinders, Inc., also testified at trial. Dr. Guldseth examined Iverson to determine whether he could participate in Project

Pathfinder's outpatient sex offender treatment program. Dr. Guldseth opined that Iverson could be a potential candidate for the program, but only if he was not committed.

Following the review hearing, the district court issued a written order concluding that the state established by clear and convincing evidence that Iverson continued to meet the statutory criteria for commitment as a sexually dangerous person. The district court further concluded that Iverson failed to demonstrate that a less-restrictive treatment alternative existed. Accordingly, the district court indeterminately committed Iverson as a sexually dangerous person. This appeal followed.

## D E C I S I O N

We review the district court's findings made at a review hearing for clear error and determine de novo if the findings support the district court's conclusion as to the need for indeterminate commitment. *See In re Thulin*, 660 N.W.2d 140, 144 (Minn. App. 2003) (discussing review-hearing standards in a mental-health-commitment case). At the review hearing, the district court is limited to considering "(1) the statutorily required treatment report; (2) evidence of changes in the patient's condition since the initial commitment hearing; and (3) such other evidence as in the district court's discretion enhances its assessment of whether the patient continues to meet statutory criteria for commitment." *In re Linehan*, 557 N.W.2d 167, 171 (Minn. 1996), *vacated and remanded on other grounds*, 522 U.S. 1011, 118 S. Ct. 596 (1997). On appeal, we give deference to the district court's credibility determinations, and we review the record "in a light most favorable to the district court's findings." *In re Commitment of Ramey*, 648 N.W.2d 260, 269 (Minn. App. 2002), *review denied* (Minn. Sept. 17, 2002).

On appeal, Iverson contends that the district court erred by finding that clear and convincing evidence supports his commitment as a sexually dangerous person. To commit someone as a sexually dangerous person, the state must show by clear and convincing evidence that the person: “(1) has engaged in a course of harmful sexual conduct . . . ; (2) has manifested a sexual, personality, or other mental disorder or dysfunction; and (3) as a result, is likely to engage in acts of harmful sexual conduct . . . .” Minn. Stat. § 253B.02, subd. 18c(a). Specifically, Iverson makes two challenges to the sufficiency of the evidence on the third statutory criterion: (1) Dr. Hertog and Dr. Hoberman used an incorrect standard when determining whether Iverson was highly likely to reoffend, and (2) the evidence is insufficient to establish that he is highly likely to reoffend.

*Expert Testimony*

First, Iverson contends that Dr. Hertog and Dr. Hoberman “applied the wrong legal standard in determining risk of future harm.” Minnesota law defines a sexually dangerous person as one who is “likely” to engage in harmful sexual conduct as a result of a disorder or dysfunction. Minn. Stat. § 253B.02, subd. 18c(a).

Whether someone is likely to reoffend is a complex inquiry. *See In re Linehan*, 557 N.W.2d 171, 189 (Minn. 1996), *vacated and remanded on other grounds*, 522 U.S. 1011, 118 S. Ct. 596 (1997) (stating that “dangerousness prediction methodology is complex and contested”). The Minnesota Supreme Court has interpreted the third factor to mean that it must be “highly likely” that the person will engage in future harmful sexual conduct. *Id.* at 189–90. Dr. Hertog and Dr. Hoberman concluded that Iverson was

highly likely to reoffend based on numerous psychological and actuarial test results. Dr. Hertog described his understanding of this criterion as “[b]asically a better than even chance.” Dr. Hoberman testified that “highly likely” meant “that it’s higher than more likely than not but there’s no specific number attached to it.” The doctors’ articulations of the standard are in line with the supreme court’s interpretation of the third factor, especially when considered with their testimony and the results of the actuarial measures.

Ultimately, however, whether someone is highly likely to reoffend is a question for the district court, not the experts, and is based on the district court’s “assessment of expert testimony.” *Id.* at 190. “The district court acts within its discretion in determining the credibility of expert testimony, and we defer to those assessments.” *In re Commitment of Stone*, 711 N.W.2d 831, 839 (Minn. App. 2006), *review denied* (Minn. June 20, 2006).

Here, the district court found that Iverson continues to be a sexually dangerous person and is highly likely to engage in harmful sexual conduct. In so finding, the district court credited the testimony of Dr. Hoberman because his “testimony and reports evidence a clear understanding by [Dr. Hoberman] of the current legal requirements for commitment in a [sexually dangerous person] case and a proper application of that standard to the evidence here.” Given the district court’s broad discretion in evaluating expert testimony, it was entitled to rely solely upon the testimony of Dr. Hoberman if it found him to be most credible. In addition, although the district court did not explicitly find Dr. Hertog credible, it did so implicitly by following the recommendations of his

report and testimony. Accordingly, we find Iverson's argument regarding the credibility of Dr. Hoberman and Dr. Hertog unavailing.

*Sufficiency of the Evidence*

Iverson next argues that the evidence is insufficient to demonstrate that he satisfies the third criterion for commitment because a majority of experts determined that he was not highly likely to reoffend. Again, because we must defer to the district court's credibility determinations and its opportunity to weigh the evidence, we find this contention to be without merit. *In re Commitment of Navratil*, 799 N.W.2d 643, 648 (Minn. App. 2011), *review denied* (Minn. Aug. 24, 2011); *Ramey*, 648 N.W.2d at 269.

Iverson relies on reports by three psychologists, one dated 2001 and two from 2009, which all found Iverson to be a low to moderate risk for sexually reoffending. Because these reports were completed before Iverson's initial commitment, the district court found them irrelevant to the issue of whether Iverson continued to meet the sexually dangerous person criteria. *See Linehan*, 557 N.W.2d at 171 (stating that evidence at a review hearing is limited and includes "evidence of changes in the patient's condition since the initial commitment hearing").

Iverson also notes that Dr. Guldseth and Dr. Alberg testified at the review hearing that Iverson had only a moderate risk of reoffending. Dr. Guldseth opined that Iverson had a reduced risk of reoffending, but did not give an opinion as to whether this risk had diminished since Iverson's commitment in 2010. Dr. Alberg also testified that Iverson was at "moderate risk to reoffend." The district court specifically did not credit Dr. Alberg's testimony, however, because Dr. Alberg's recommendation was not based

on any change in Iverson, but rather was based on his disagreement with Iverson's initial commitment.

While several of the experts thought that Iverson was not highly likely to reoffend, other experts opined that Iverson met all of the criteria for commitment as a sexually dangerous person. Dr. Hoberman testified about several actuarial measures that he administered and also discussed the *Linehan* factors identified by the supreme court. *See Linehan*, 518 N.W.2d at 614 (identifying six factors to consider in determining whether the "highly likely" standard is met). Based on these assessments, Dr. Hoberman opined that Iverson was highly likely to reoffend. Dr. Hertog and Dr. Van der Walt both opined in their reports to the court that Iverson was highly likely to sexually reoffend and recommended Iverson's continued commitment. Dr. Hertog also testified at the review hearing consistently with his reports. Specifically, Dr. Hertog opined that, based on actuarial instruments, Iverson was a high risk for sexual offense.

Because we must defer to the district court's decision to credit the opinions of Dr. Hoberman and Dr. Hertog and because evidence in the record supports the district court's factual findings, they are not clearly erroneous. These findings amply support the district court's determination that Iverson's condition has not changed since his initial commitment and that he presently meets the criteria for indefinite commitment.

**Affirmed.**