STATE OF MINNESOTA
IN COURT OF APPEALS
A12-0837

In the Matter of the Civil Commitment of:
Chad Allen Bleess.

Filed November 13, 2012
Affirmed
Johnson, Chief Judge

Faribault County District Court
File No. 22-PR-11-748

Ryan B. Magnus, Jennifer L. Thon, Susan K. Gliszinski, Jones and Magnus, Mankato, Minnesota (for appellant Chad Allen Bleess)

Troy Timmerman, Faribault County Attorney, Blue Earth, Minnesota (for respondent Faribault County)

Considered and decided by Johnson, Chief Judge; Larkin, Judge; and Muehlberg, Judge.*

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

JOHNSON, Chief Judge

In March 2012, the Faribault County District Court committed Chad Allen Bleess for an indeterminate period of time as a mentally ill and dangerous person. On appeal, he

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

challenges the sufficiency of the evidence supporting the district court's finding of danger and the district court's conclusion that he continues to be dangerous. We affirm.

FACTS

Bleess was born in 1967 and was 44 at the time of his commitment. He graduated from high school and earned a two-year degree from a technical college. At approximately age 26, Bleess began experiencing mental-health issues and was diagnosed with bipolar disorder. He has since experienced a wide range of delusions and hallucinations, which often have manifested themselves in aggressive altercations, especially with his father. He also has a history of abusing alcohol and controlled substances, including marijuana, methamphetamines, and cocaine. Bleess has been involuntarily committed as mentally ill on at least three prior occasions, in 2005, 2007, and 2010.

The present commitment is based on two incidents that occurred in 2011. First, in May 2011, a shop-owner in Blue Earth reported to the Faribault County Sheriff's Department that Bleess drove by his shop, displayed his middle finger, and said to the shop owner that he was "f***ing dead" or that he would be "f***ing killed." Second, in October 2011, Faribault County sheriff's deputies responded to a complaint that Bleess tried to run another driver off the road. As a result of these incidents, Bleess was charged with one count of felony terroristic threats, a violation of Minn. Stat. § 609.713, subd. 1 (2010), and one count of possession of a weapon after having previously been civilly committed, a violation of Minn. Stat. § 624.713, subd. 1(3) (2010). These charges were

suspended after a rule 20 evaluation in which Dr. Linda Marshall, a psychologist, determined that Bleess was incompetent to stand trial. *See* Minn. R. Crim. P. 20.01.

As a result of the rule 20 evaluation, Faribault County petitioned to have Bleess committed as mentally ill and dangerous (MID). Dr. Marshall prepared a psychological report in which she described Bleess's history and background and his present mental health. She diagnosed Bleess with psychotic disorder, bipolar disorder, and polysubstance dependence. She also determined that Bleess posed a "moderately high" risk for violence.

The district court held a commitment hearing in December 2011. The state called Dr. Marshall as its only witness. She recommended that Bleess be committed as MID. Bleess did not present any evidence or argument in opposition to the petition for commitment. The district court determined that Bleess met the standards for commitment as MID.

A final commitment hearing was held in February 2012, after which the district court found that Bleess continued to meet the criteria of being MID. Therefore, the court committed Bleess as MID for an indeterminate period. Bleess appeals.

D E C I S I O N

I. Initial Commitment

Bleess argues that the district court erred in committing him as MID. Specifically, he contends that the state failed to prove that he is "dangerous," as that term is used in the commitment statute.

"Where commitment is ordered, the [district court's] findings of fact and conclusions of law shall specifically state the proposed patient's conduct which is a basis for determining that each of the requisites for commitment is met." Minn. Stat. § 253B.09, subd. 2 (2010). A petitioner must prove the elements of commitment by clear-and-convincing evidence. Minn. Stat. § 253B.18, subd. 1(a) (2010); *In re Jasmer*, 447 N.W.2d 192, 195-96 (Minn. 1989). On appellate review, this court applies a clearly erroneous standard of review and defers to a district court's findings of fact. *In re Knops*, 536 N.W.2d 616, 620 (Minn. 1995). But we apply a *de novo* standard of review to the question "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 "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.

Minn. Stat. § 253B.02, subd. 17(a) (2010).

Bleess concedes that he is mentally ill. He challenges only the district court's conclusion that he is dangerous. This determination has two elements. The first element is "past harm": the state must prove that Bleess committed an overt act capable of causing serious physical harm to another. *Id.*, subd. 17(a)(2)(i). The second element is

"future harm": the state must prove that there is a substantial likelihood that Bleess again will engage in acts capable of causing serious physical harm to another. *Id.*, subd. 17(a)(2)(ii).

A. Past Harm

To satisfy the first element, a petitioner must prove by clear-and-convincing evidence that a respondent "engaged in an overt act causing or attempting to cause serious physical harm to another." Minn. Stat. §§ 253B.02, subd. 17(a)(2)(i), .18, subd. 1(a). The issue in this case is whether such an act occurred and whether the act was capable of causing serious injury. *See Jasmer*, 447 N.W.2d at 195-96. The district court determined that Bleess committed an overt act when he attempted to run another driver off the road in October 2011. The district court's determination that the act occurred is a factual finding subject to clear-error review, but the district court's determination that the act was capable of causing serious physical harm to another is a question of law subject to *de novo* review. *See Knops*, 536 N.W.2d at 620; *Thulin*, 660 N.W.2d at 144.

1. Whether Overt Act Occurred

Bleess contends that the evidence is insufficient to support the district court's finding that he actually engaged in the October 2011 overt act.

At the initial commitment hearing, Dr. Marshall testified as to Bleess's past history of mental illness, including the October 2011 incident in which he attempted to run another driver off the road. On cross-examination, she testified that she had no personal knowledge of this incident and learned of it only by reading police reports. The

district court did not hear any other testimony regarding this incident; although the police report from the October 2011 incident is in the district court record, there is no indication that it was introduced into evidence at the hearing.

Bleess contends that Dr. Marshall's testimony is insufficient to prove that the October 2011 incident occurred because that testimony is based entirely on hearsay. But the testimony was admitted without objection. If testimony is admitted without objection, the fact-finder is entitled to weigh that evidence as appropriate. *See Erickson v. Paulson*, 251 Minn. 183, 187, 87 N.W.2d 585, 587 (1957). We defer to the district court's weighing of the evidence that supported its factual findings. Minn. R. Civ. P. 52.01; *Knops*, 536 N.W.2d at 620. Because the district court's finding of fact is supported by testimonial evidence, the district court did not clearly err in its determination that Bleess "engaged in an overt act." *See* Minn. Stat. § 253B.02, subd. 17(a)(i).

2. Whether Overt Act was Capable of Causing Serious Physical Harm

Bleess also contends that the overt act was not serious enough to be able to cause serious physical harm to another.

An overt act must be capable of causing serious physical harm to another. Minn. Stat. § 253B.02, subd. 17(a)(i). The legislature has not defined the term "serious physical harm." *In re Kottke*, 433 N.W.2d 881, 884 (Minn. 1988). We therefore apply the common understanding of the word "serious." *Id.* "It is not necessary that mayhem or murder occur." *Id.* Also, it is not necessary that serious physical harm actually result from the overt act. Minn. Stat. § 253B.02, subd. 17(a)(i).

We conclude that the act of attempting to run another driver off the road is an act capable of causing "serious physical harm" to another, as that phrase is used in the commitment statute. *See Jasmer*, 447 N.W.2d at 195 (noting that person who drives automobile at high rate of speed into crowd has engaged in "overt act causing or attempting to cause serious physical harm to another"). This is true even if Bleess did not intend for any harm to occur. *Id.* Thus, the district court did not err in concluding that Bleess engaged in an overt act "causing or attempting to cause serious physical harm to another." *See* Minn. Stat. § 253B.02, subd. 17(a)(i).

B. Future harm

To satisfy the second element, a petitioner must prove that "there is a substantial likelihood that the person will engage in acts capable of inflicting serious physical harm on another." Minn. Stat. § 253B.02, subd. 17(a)(ii). Bleess contends that the evidence is insufficient to support the district court's conclusion regarding this element.

It is appropriate for a district court to consider past conduct in determining the likelihood of future danger. *See In re Civil Commitment of Carroll*, 706 N.W.2d 527, 531 (Minn. App. 2005) (considering patient's records, which were "replete with documentation of violent outbursts and physical assaults"); *In re Welfare of Hofmaster*, 434 N.W.2d 279, 281 (Minn. App. 1989) (considering patient's entire history of dangerous acts, including a stabbing assault on his wife). In this case, the district court record contains substantial evidence supporting the district court's determination of future danger. At the initial commitment hearing, Dr. Marshall testified, without objection, as to Bleess's history of aggression. That history included the May 2011

incident in which Bleess threatened to kill someone, the October 2011 incident in which Bleess attempted to run another driver off the road, an August 2010 incident in which Bleess punched his father, and a September 2005 incident in which Bleess thought he was a sniper and pointed a rifle down the middle of a street. Dr. Marshall also administrated the "HCR-20" assessment tool to determine Bleess's risk for violent behavior. She testified that, based on the HCR-20 assessment, Bleess has a "moderately high" risk level for violence.

Also significant is the district court's reliance on Bleess's history of substance abuse. According to Dr. Marshall's report, which was admitted into evidence without objection, Bleess has a history of abusing controlled substances, including marijuana, methamphetamines, and cocaine. Her report further indicates that all of the incidents of aggressive conduct committed by Bleess followed his use of alcohol, controlled substances, or synthetic marijuana.

Lastly, Dr. Marshall's report expressed concern regarding Bleess's aggressive history with his father. Not only did Bleess punch his father in 2010 but he also had other aggressive altercations with his father. At the hospital, he admitted to having homicidal thoughts towards his father. This history is significant because Dr. Marshall's research indicates that people with mental disorders may have a higher risk of committing homicide against family members.

Thus, the district court's conclusion that there is a substantial likelihood that Bleess will again engage in acts capable of causing serious physical harm to others is supported by the evidence and is not clearly erroneous.

II. Indeterminate Commitment

Bleess also argues that the evidence is insufficient to support the district court's determination, following the 90-day review hearing, that he continues to meet the statutory criteria for being MID. Thus, he contends that the district court erred in committing him for an indeterminate period.

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

We are unable to adequately review this claim because Bleess did not order a transcript of the February 2012 commitment hearing. As a result, we do not know what evidence was presented at the hearing or what testimony the district court heard. Bleess's failure to order a transcript is fatal to this issue. *See State v. Heithecker*, 395 N.W.2d 382, 383 (Minn. App. 1986) ("a reviewing court cannot consider a sufficiency-of-evidence issue unless provided with a trial transcript" (quotation omitted)); Minn. R. Civ. App. P. 110.02, subd. 1 (requiring appellants to order transcript of necessary parts of hearing not already included in record).

In any event, the district court's conclusion is supported by the contents of a written report prepared by Dr. Emily Wakeman. Her report includes results from the HCR-20 assessment tool she administrated in preparation for the 90-day review hearing. Based on this assessment, she concluded that Bleess is "at an elevated risk for future violence." The district court placed great reliance on this assessment tool, which indicates that Bleess continues to remain at a high risk for committing acts of violence. Moreover, Dr. Wakeman's report indicated that Bleess was non-compliant in taking his medications. This is significant because, as the district court observed, Dr. Wakeman believed that if Bleess did not take his medications, his symptoms likely would intensify, leaving him at a greater risk for violence. The district court also noted that, according to Dr. Wakeman, Bleess's substance abuse history is a "destabilizing factor," which is an important conclusion considering that Bleess had told Dr. Wakeman of his intent to start drinking alcohol immediately upon release from commitment. Based on the foregoing, the district court's conclusion that Bleess continues to be dangerous is supported by the evidence and is not clearly erroneous.

It is true, as Bleess points out in his appellate brief, that Dr. Wakeman did not recommend that he be committed as MID. But it is also true that she did not recommend that he be committed as mentally ill. Rather, she reserved that decision to the district court as the finder of fact. Dr. Wakeman expressed strong concerns, however, about the possibility that the district court might commit Bleess as mentally ill, noting that it is "critical for the safety of the community" that Bleess be placed in a setting that provides structure, monitoring, and long-term support. The district court considered the less-

restrictive alternative but concluded that "[a]ny less restrictive placement will not provide [Bleess] with the supervision, treatment, medication compliance requirements and structured setting necessary to treat his mental illness." The district court's order of commitment is supported by Dr. Wakeman's report.

Accordingly, the district court did not clearly err in committing Bleess as a mentally ill and dangerous person for an indeterminate period.

Affirmed.