STATE OF MINNESOTA
IN COURT OF APPEALS
A12-0973

In the Matter of the Civil Commitment of: Carmichael Deangelo Bedford.

Filed November 5, 2012
Affirmed
Stauber, Judge

Wright County District Court
File No. 86PR111479

Deborah M. Gilman, St. Paul, Minnesota (for appellant Bedford)

Lori Swanson, Attorney General, Angela Helseth Kiese, Assistant Attorney General, St. Paul, Minnesota; and

Thomas Kelly, Wright County Attorney, Buffalo, Minnesota (for respondent state)

Considered and decided by Johnson, Chief Judge; Stauber, Judge; and Chutich, Judge.

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

STAUBER, Judge

Appellant challenges his commitment as a sexual psychopathic personality and sexually dangerous person, arguing that (1) the evidence of a mental disorder is inconsistent and therefore insufficient to sustain his commitment and (2) the commitment statutes are unconstitutional as applied because less-restrictive alternatives are either unattainable or nonexistent. We affirm.

FACTS

Respondent Wright County petitioned for the civil commitment of appellant Carmichael Deangelo Bedford as a sexual psychopathic personality (SPP) and sexually dangerous person (SDP). The district court appointed Dr. Paul Reitman as an examiner, and Dr. Mary Kenning was appointed as a second examiner at appellant's request. In November 2011, the district court ordered appellant's interim commitment as an SPP and SDP.

The matter came for a review hearing in February 2012. At the review hearing, appellant argued that the civil-commitment statutes are unconstitutional as applied because there was insufficient proof that he suffers from a disorder, and that the civil-commitment statutes violate double jeopardy, prohibition of ex post facto laws, and substantive due process. The district court rejected appellant's arguments and ordered appellant's indeterminate commitment as an SPP and SDP. This appeal follows.

D E C I S I O N

I.

Appellant argues that because (1) there are inconsistencies in the actuarial scores; (2) one of the experts recalculated his evaluation score on the witness stand; and (3) the actuarial tests do not address what type of offense he may commit in the future, the evidence is insufficient to support his commitment as an SPP and SDP.

In order to commit an individual as an SDP or an SPP, the petitioner must establish the commitment criteria by clear-and-convincing evidence. Minn. Stat. §§ 253B.18, subd. 1, .185, subd. 1 (2010). On review, we defer 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). "Where the findings of fact rest almost entirely on expert testimony, the [district] court's evaluation of credibility is of particular significance." *In re Knops*, 536 N.W.2d 616, 620 (Minn. 1995). But the question of "whether there is clear and convincing evidence in the record to support the district court's conclusion that appellant meets the standards for commitment" is reviewed de novo. *In re Thulin*, 660 N.W.2d 140, 144 (Minn. App. 2003).

A. The district court did not err by finding that appellant meets the criteria for commitment as an SPP.

Minnesota statutes provide for the civil commitment of persons deemed sexual psychopathic personalities. Minn. Stat. § 253B.185, subd. 1. The statute defines an SPP as

> the existence in any person of such conditions of emotional instability, or impulsiveness of behavior, or lack of customary standards of good judgment, or failure to appreciate the consequences of personal acts, or a combination of any of these conditions, which render the person irresponsible for personal conduct with respect to sexual matters, if the person has evidenced, by a habitual course of misconduct in sexual matters, an utter lack of power to control the person's sexual impulses and, as a result, is dangerous to other persons.

Minn. Stat. § 253B.02, subd. 18b (2010). In order to commit an individual as an SPP, the district court thus must find: (1) a habitual course of misconduct involving sexual matters; (2) an utter lack of power to control sexual impulses; and (3) dangerousness to others. *In re Linehan*, 518 N.W.2d 609, 613 (Minn. 1994) (*Linehan I*).

Appellant's only challenge to his commitment under the SPP statute is that the science behind the experts' use of various actuarial tools results is too inconsistent to establish beyond a reasonable doubt that he is dangerous. When considering whether an offender presents a serious danger to the public, the district court considers: (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. *Linehan I*, 518 N.W.2d at 614.

Dr. Reitman noted that appellant began offending before adulthood, and that this fact lowered his probability of success in the community. He also noted that appellant displayed poor institutional adjustment and that while there was a historical argument that risk of recidivism reduces with age, such is not the case with appellant. Dr. Kenning opined that appellant's age, gender, education level, and socioeconomic status all increase his risk to reoffend.

Appellant also has a history of violent behavior. Both court-appointed experts noted that appellant has used force or the threat of force to achieve compliance in his sexual offenses and has been sexually aggressive with at least four of his victims.

Base-rate statistics further establish that appellant is dangerous to others. Both court-appointed examiners opined that base-rate statistics indicate appellant has a high risk to reoffend, based on their consideration of a variety of risk factors and actuarial

tools. The district court found that appellant's scores on the actuarial tools placed him in the high or very-high risk categories. Appellant challenges the credibility of the scores, pointing to the fact that one of the experts admitted during his testimony that scores had been miscalculated. But the district court acknowledged these recalculations in its order and found that the experts' scores—including the amended scores, where applicable—were credible. An appellate court will not reweigh the evidence and must defer to the district court's opportunity to judge the credibility of the witnesses. *Knops*, 536 N.W.2d at 620.

With regard to the sources of stress in appellant's environment, Dr. Reitman noted that appellant appears to have little to no social support and he does not get along with others in treatment. Dr. Kenning's report opined that stress did not appear to have played a role in appellant's pattern of offending, with appellant believing that he could act out sexually without being caught. The court found that if appellant is released into the community as a Level III sex offender, such status would create stress in appellant's life and "make him more vulnerable to getting his sexual and emotional needs met by adolescent girls." The court also found that appellant would be returning to a similar situation in which he lived before his most recent incarceration and did not have a sufficient support system.

The final *Linehan* factor, appellant's record of participation in sex-offender treatment, also supports a finding of dangerousness. Because appellant continues to have problems with blaming his victims, denying, justifying, and otherwise excusing his behavior, he has been unable to successfully complete a treatment program. Dr. Reitman

opined that while appellant may be amenable to treatment, he is "not even partially treated." Even after undergoing some treatment, appellant has continued to offend.

Clear-and-convincing evidence therefore supports the district court's determination that appellant meets the criteria to be committed as an SPP.

B. The district court did not err by finding that appellant meets the criteria for commitment as an SDP.

The statutes also provide for commitment of sexually dangerous persons. Minn. Stat. § 253B.18, subd. 1; *see also* Minn. Stat. § 253B.02, subd. 17(b) (2010) (defining "person who is mentally ill and dangerous" to include "[a] person committed as a . . . sexually dangerous person"). A person is considered sexually dangerous if the person: (1) has engaged in a course of harmful sexual conduct, as that term is used in Minn. Stat. § 253B.02, subd. 7a (2010); (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 as defined by the aforementioned statute. Minn. Stat. § 253B.02, subd. 18c (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). But 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*). The supreme court has construed the statutory phrase "likely to engage in acts of harmful sexual conduct" to require a showing that the offender is "highly likely" to engage in harmful sexual

conduct. *In re Linehan*, 557 N.W.2d 171, 190 (Minn. 1996) (*Linehan III*), *vacated on other grounds*, 522 U.S. 1011, 118 S. Ct. 596 (1997), *aff'd on remand*, 594 N.W.2d 867.

Appellant does not challenge the finding that he has engaged in a course of harmful sexual conduct. He focuses his argument on whether the evidence is sufficient to establish by clear-and-convincing evidence that he has a sexual, personality, or mental disorder and is likely to engage in future acts of harmful sexual conduct.

Here, the court-appointed examiners diagnosed appellant with various sexual, personality, or other mental disorders. Specifically, Dr. Reitman diagnosed appellant with narcissistic personality disorder, and Dr. Kenning diagnosed appellant with paraphilia (not otherwise specified) and antisocial personality disorder with narcissistic features. Dr. Reitman also testified that he did not disagree with the antisocial personality disorder diagnosis.

Appellant argues that because the conclusions are inconsistent with each other and with the opinions of the court-appointed examiners in a 2004 commitment proceeding, the record is insufficient to establish by clear-and-convincing evidence that he suffers from a mental disorder. But this argument is without merit. Both of the examiners in the current commitment proceeding found that appellant manifests disorders and that as a result of the disorders, he lacks the ability to adequately control his sexually harmful behavior. Furthermore, the mere fact that Dr. Reitman did not diagnose appellant with paraphilia does not preclude a finding that appellant has exhibited paraphilia based on Dr. Kenning's opinion. On this record, clear-and-convincing evidence supports the district

court's finding that appellant manifests personality and sexual disorders sufficient to satisfy the second element of the SDP statute.

When examining whether an offender is highly likely to engage in acts of harmful sexual conduct, the district court considers the same six factors that are used to determine dangerousness under the SPP statute. *Linehan III*, 557 N.W.2d at 189 ("We conclude that the guidelines for dangerousness prediction in *Linehan I* apply to the SDP Act . . . ."). As discussed above, the court-appointed examiners' analysis of the six *Linehan* factors provides clear-and-convincing evidence that appellant is dangerous to others. Under this same analysis, there is clear-and-convincing evidence that appellant is highly likely to engage in acts of harmful sexual conduct, and this element of the SDP commitment statute is met.

Because clear and convincing evidence establishes that appellant engaged in a course of harmful sexual conduct and has personality and sexual disorders that make him highly likely to engage in harmful sexual conduct in the future, the district court did not err by concluding that appellant meets the elements for commitment as an SDP.

II.

Appellant also argues that the commitment statutes are unconstitutional as applied to him because less-restrictive alternatives to civil commitment are either unattainable or nonexistent. An appellate court reviews the question of whether a statute is constitutional de novo. *State v. Martin*, 773 N.W.2d 89, 97 (Minn. 2009). "Minnesota statutes are presumed constitutional, and [the] power to declare a statute unconstitutional should be exercised with extreme caution and only when absolutely necessary." *In re Haggerty*,

448 N.W.2d 363, 364 (Minn. 1989). In order to be successful, appellant must show beyond a reasonable doubt that the commitment statutes are unconstitutional.

Appellant's constitutionality argument is unavailing. Under the commitment statutes, the district court is required to commit an offender to a secure treatment facility "unless the patient establishes by clear and convincing evidence that a less restrictive treatment program is available that is consistent with the patient's treatment needs and the requirements of public safety." Minn. Stat. §§ 253B.18, subd. 1(a); .185, subd. 1(d). Appellant cites two cases for the proposition that Minnesota courts have "systematically deprived" offenders of any less-restrictive treatment options to civil commitment. In the first case, *In re Senty-Haugen*, the supreme court held that "there is no requirement for commitment to the least restrictive alternative for persons determined to be sexually psychopathic personalities or sexually dangerous persons." 583 N.W.2d 266, 269 (Minn. 1998). And in the second case this court noted that under section 253B.185, "patients have the *opportunity* to prove that a less-restrictive treatment program is available, but they do not have the *right* to be assigned to it." *In re Kindschy*, 634 N.W.2d 723, 731 (Minn. App. 2001), *review denied* (Minn. Dec. 19, 2001).

The legislature amended the statute in response to *Senty-Haugen*, specifically providing the patient an opportunity to establish that a less-restrictive treatment option is available. *See In re Robb*, 622 N.W.2d 564, 574 (Minn. App. 2001) (explaining legislative amendment), *review denied* (Minn. April 17, 2001). And we affirmed the constitutionality of the statute placing the burden of proof on whether a less-restrictive treatment option is available on the patient. *Kindschy*, 634 N.W.2d at 731. *Kindschy*

remains precedential, and appellant offers no argument to deviate from its holding that the statute is constitutional.

Appellant does not persuasively identify any provision of the federal or Minnesota constitutions that is violated by the civil-commitment statutes, nor does he show how application of the statutes by Minnesota courts has been unconstitutional. Instead, he relies on various newspaper articles and that the legislative auditor's report found that MSOP failed to accomplish its objectives. Without a better record, appellant has failed to establish that the statute is unconstitutional, and his argument is therefore unavailing.

Appellant also challenges the constitutionality of the civil-commitment statutes on the grounds of the adequacy of treatment he receives at MSOP. But we have consistently held that a right-to-treatment argument is premature in appeals from civil-commitment orders. *In re Commitment of Travis*, 767 N.W.2d 52, 58 (Minn. App. 2009) (citing numerous cases). Appellant's argument on this ground is therefore similarly unavailing.

Affirmed.