STATE OF MINNESOTA
IN COURT OF APPEALS
A13-0649

In the Matter of the Civil Commitment of: Marcus Mable

Filed August 5, 2013
Affirmed
Peterson, Judge

McLeod County District Court
File No. 43-PR-11-2016

Jennifer Lynn Thon, Jones and Magnus, Mankato, Minnesota (for appellant)

Amy Elizabeth Olson, Glencoe, Minnesota (for respondent McLeod County)

Considered and decided by Peterson, Presiding Judge; Stoneburner, Judge; and Bjorkman, Judge.

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

PETERSON, Judge

In this appeal from a district court order that commits appellant as a person who is mentally ill and dangerous (MID), appellant argues that (1) his aggravated-robbery offenses cannot constitute overt acts for purposes of his commitment because the robberies did not result from his mental illness, and (2) verbal threats without corresponding physical action are insufficient to constitute an overt act. We affirm.

FACTS

Appellant Marcus Mable was born in 1979 and at the time of his commitment was 32 years old. Appellant has an extensive criminal history. In addition to juvenile adjudications in Wisconsin, appellant was convicted of first-degree aggravated robbery in 1998 and was ordered to serve 36 months in prison. Appellant did not complete high school because he went to prison. In 2000, appellant was convicted of felony aiding and abetting simple robbery and misdemeanor fifth-degree assault. In 2001, appellant was again convicted of first-degree aggravated robbery. The 1998 and 2001 aggravated-robbery convictions both involved home invasions during which appellant threatened the home occupants with a firearm.

While in prison, appellant was civilly committed as mentally ill in 2007, 2008, 2009, and 2010. Appellant spent the majority of his prison time in either segregation or the prison mental-health unit. Appellant's conduct while incarcerated included many incidents of assaultive and threatening behavior, including threatening to kill a mental-health therapist who had worked with appellant, and the therapist's children, because appellant believed that the therapist raped appellant.

In December 2011, just before appellant completed serving his sentence for the 2001 first-degree aggravated-robbery conviction, respondent McLeod County petitioned to have appellant committed as MID. Appellant agreed to be hospitalized at the Anoka Regional Metro Treatment Center pending the commitment trial. In March 2012, the county sought a *Jarvis* order to administer neuroleptic medication. In April 2012, the district court held a commitment hearing and considered the *Jarvis* petition.

At the hearing, appellant did not dispute that he is mentally ill but argued that he is not dangerous and that civil commitment as a person who is mentally ill is an acceptable less-restrictive alternative to an MID commitment. Appellant is currently diagnosed with schizoaffective disorder, bipolar type, and antisocial personality disorder. Two court-appointed examiners who testified at the hearing agreed that appellant is mentally ill and needs further treatment under civil commitment, but they disagreed about whether commitment as a person who is mentally ill is an acceptable less-restrictive alternative to an MID commitment.

The district court determined that appellant met the standards for commitment as MID. The court found that appellant's 1998 and 2001 first-degree aggravated-robbery offenses constitute overt acts causing or attempting to cause serious physical harm to another. The court incorporated by reference and attached to its order the addendum to one of the examiner's report, which details appellant's assaultive and threatening behavior while in prison. In a separate order, the court approved the *Jarvis* petition authorizing involuntary use of neuroleptic medications.

Following a final commitment hearing, the district court found that appellant continued to meet the statutory criteria for an MID commitment and committed appellant as MID for an indeterminate period. This appeal follows.

D E C I S I O N

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.* 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).

The commitment statute provides that "[i]f the [district] court finds by clear and convincing evidence that the proposed patient is a person who is mentally ill and dangerous to the public, it shall commit the person to a secure treatment facility or to a treatment facility willing to accept the patient under commitment." Minn. Stat. § 253B.18, subd. 1(a) (2012).

Under the commitment statute,

> [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) (2012).

Appellant does not dispute that he is mentally ill nor that his 1998 and 2001 aggravated-robbery offenses were overt acts causing or attempting to cause serious physical harm to another. Instead, appellant argues that the robberies cannot constitute overt acts for purposes of his commitment because the robberies did not result from his

mental illness. Appellant acknowledges that in *In re Hofmaster*, 434 N.W.2d 279, 281 (Minn. App. 1989), this court held that "an overt act demonstrating dangerousness need not be the result of mental illness" but now asks this court to overrule *Hofmaster*.

Under principles of stare decisis, a court is extremely reluctant to overrule its precedent. *State v. Martin*, 773 N.W.2d 89, 98 (Minn. 2009). The principle of stare decisis requires that we follow our former decisions in order that there might be stability in the law. *Oanes v. Allstate Ins. Co.*, 617 N.W.2d 401, 406 (Minn. 2000). When overruling precedent, the supreme court has required that there be a compelling reason to do so. *Cargill, Inc. v. Ace Am. Ins. Co.*, 784 N.W.2d 341, 352 (Minn. 2010).

Appellant contends that Minn. Stat. § 253B.02, subd. 17(a), should be interpreted to require that a person engaged in an overt act as a result of the person's mental illness because, if the statute is not interpreted this way, "any person who commits an assaultive act sometime in their life and then subsequently suffers from a mental illness is subject to indeterminate commitment as mentally ill and dangerous." Appellant argues that requiring a nexus between the overt act and the mental illness is essential to prevent the statute from causing this absurd result. But appellant's argument overlooks the additional statutory requirement for commitment that there must be "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). Because satisfying this requirement involves an evaluation of the person's current mental condition, a person is not subject to commitment simply because the person committed an assault at some time and later became mentally ill. We,

therefore, conclude that appellant has not presented a compelling reason for us to overrule this court's decision in *Hofmaster*, and we decline to do so.

Because the commitment statute does not require that an overt act be the result of appellant's mental illness, appellant has not shown that the district court erred when it based appellant's commitment on the aggravated robberies. And because the aggravated robberies are a sufficient basis for the district court's commitment order, we need not consider whether appellant's verbal threats without corresponding physical action constitute overt acts for commitment purposes.

Affirmed.