STATE OF MINNESOTA
IN COURT OF APPEALS
A09-993

In the Matter of the Civil Commitment of:
Jeffrey John Jelinski.

Filed December 29, 2009
Affirmed
Johnson, Judge

Morrison County District Court
File No. 49-PR-09-514

Jeffrey Jelinski, Anoka, MN (pro se appellant)

Brian J. Middendorf, Morrison County Attorney, Todd E. Chantry, Assistant County Attorney, Morrison County Government Center, 213 Southeast First Avenue, Little Falls, MN 56345 (for respondent county)

Considered and decided by Stoneburner, Presiding Judge; Johnson, Judge; and Stauber, Judge.

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

JOHNSON, Judge

The Morrison County District Court granted a petition to have Jeffrey John Jelinski civilly committed as a mentally ill person. Jelinski appeals and raises three issues. His primary argument is that the evidence does not support the district court's findings. We affirm.

FACTS

This civil commitment case arises out of a criminal case. The state charged Jelinski with burglary in the third degree and financial transaction card fraud. A rule 20 evaluation was conducted to determine whether Jelinski was competent to stand trial. On March 18, 2009, the district court found that Jelinski was not competent to stand trial. The district court suspended the criminal proceeding pursuant to rule 20.01, subdivisions 4(2) and 6, of the Minnesota Rules of Criminal Procedure.

In its March 18, 2009, order, the district court also initiated this civil commitment proceeding pursuant to rule 20.01, subdivision 4(2), of the Minnesota Rules of Criminal Procedure. The district court ordered Morrison County Social Services to prepare a screening report and to submit it to the court within seven days. The district court's order also provided for the appointment of a court examiner and a commitment hearing.

On May 14, 2008, the district court held an evidentiary hearing at which it received testimony from Jelinski; Carol Schwarzkopf, Ph.D., the court-appointed examiner; and Kelly Wilson, Psy.D., a second examiner appointed by the court at Jelinski's request. On May 18, 2008, the district court issued its findings of fact, conclusions of law, and order for judgment. The district court ordered Jelinski to be civilly committed to the commissioner of human services for a period not to exceed six months. Jelinski appeals.

D E C I S I O N

In his *pro se* brief, Jelinski identifies five issues for consideration by this court. Those five issues may be restated and grouped into three arguments for reversal: (1) that

the evidence presented at the commitment hearing does not support the district court's findings, (2) that Jelinski's attorney in the district court provided him with ineffective assistance of counsel, and (3) that the district court should have stayed proceedings pending a decision in Jelinski's appeal from the rule 20 determination in the criminal case.

I. Sufficiency of the Evidence

Jelinski first argues that the district court erred in its findings of fact because the findings are not supported by the evidence received during the commitment hearing. A district court's "[f]indings of fact, whether based on oral or documentary evidence, shall not be set aside unless clearly erroneous, and due regard shall be given to the opportunity of the [district] court to judge the credibility of witnesses." *In re Knops*, 536 N.W.2d 616, 620 (Minn. 1995) (citing Minn. R. Civ. P. 52.01). We apply a *de novo* standard of review when determining whether the evidence is sufficient to satisfy the statutory criteria for civil commitment. *In re Thulin*, 660 N.W.2d 140, 144 (Minn. App. 2003).

A district court may order a person committed as mentally ill if the district court finds that the person

> [1] has an organic disorder of the brain or a substantial psychiatric disorder of thought, mood, perception, orientation, or memory which grossly impairs judgment, behavior, capacity to recognize reality, or to reason or understand, which is manifested by instances of grossly disturbed behavior or faulty perceptions and [2] poses a substantial likelihood of physical harm to self or others as demonstrated by . . . a recent attempt or threat to physically harm self or others.

Minn. Stat. § 253B.02, subd. 13(a)(3) (2008). A district court must apply a clear-and-convincing evidentiary standard. Minn. Stat. § 253B.09, subd. 1(a) (2008). If a district court orders commitment, the "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 (2008).

Jelinski challenges the evidence on two factual issues: first, whether he was mentally ill and, second, whether there is a substantial likelihood that he will do physical harm to himself or others.

A. Mental Illness

The district court found that, at the time of the commitment hearing, Jelinski was mentally ill. More specifically, the district court found that Jelinski suffers from paranoid schizophrenia, which was "exhibited by: odd and disjointed speech and writing, bizarre statements, preoccupation with perceived threats and conspiracies, lack of insight into his mental health problems, fixation on numbers and the meaning of certain digits, and misrepresentation of the actions and motives of others."

Jelinski contends that the district court's finding has "no foundation." The district court's finding, however, is supported by the testimony and reports of Dr. Schwarzkopf and Dr. Wilson. Both Dr. Schwarzkopf and Dr. Wilson testified that Jelinski suffers from paranoid schizophrenia. Both witnesses testified that this disorder impairs Jelinski's thinking, behavior, and capacity to recognize reality. Dr. Wilson testified that Jelinski has demonstrated a "clear and profound lack of judgment" related to his paranoid

preoccupations. This evidence is sufficient to support the district court's finding that Jelinski was mentally ill.

Jelinski contends that the district court's finding is erroneous because it is contradicted by his treatment plan at the Anoka Metro Regional Treatment Center, which was introduced as an exhibit at the commitment hearing. Jelinski asserts that the Anoka treatment plan shows that staff members at that facility do not believe that he is suffering from a psychotic disorder. But the evidence supplied by Dr. Wilson was based on information that was not available to the Anoka staff. Dr. Wilson's report states that Jelinski's medical chart from the Anoka facility did not contain any notes about the letters Jelinski had written since residing there and that an Anoka social worker was unaware of the letters. The district court was entitled to place greater weight on the evidence received from Dr. Wilson. *See In re Joelson*, 385 N.W.2d 810, 811 (Minn. 1986) (stating that district court's "evaluation of credibility is of particular significance" if findings "rest almost entirely on expert opinion testimony").

Thus, the evidence in the record supports the district court's finding that Jelinski was mentally ill.

B. Likelihood of Physical Harm

The district court found that Jelinski "possesses a substantial likelihood of physical harm to others." The district court described the evidence supporting this finding as follows:

> Credible evidence of recent threatening statements concerning the safety and welfare of others, particularly family members which included statements that he would

> haunt them, cause them accidents, and meet them soon in the afterlife[.]
>
> Repeated allegations of criminal behavior including arson, burglary, and harassment; although these crimes have not been proven because criminal proceedings have been stayed pending his return to competency, the court notes that courts have found probable cause to support the charges.
>
> Recent threats combined with the allegations of criminal behavior constitute a substantial likelihood of physical harm to others.

Jelinski's primary contention with respect to this issue is that the district court's finding is based substantially on a letter to his mother that he denied writing and that was not admitted into evidence. Jelinski is correct that the letter itself was not admitted into evidence, but the substance of the letter became part of the record through Dr. Wilson's report and testimony. Dr. Wilson's report quoted the letter as stating that Jelinski "may die at the hands in some way of his family members, and that he will come back and haunt them and cause accidents against them and have them join him in eternity very soon."

The district court was free to consider Dr. Wilson's evidence about the letter, despite possible hearsay concerns, because of the permissive evidentiary standards applicable to commitment hearings. In this context, a district court must "admit all relevant evidence." Minn. Stat. § 253B.08, subd. 7 (2008). This court has held that this statute "requires the district court to determine relevancy in accordance with the rules of evidence" but "does not require application of other rules of evidence." *In re Commitment of Williams*, 735 N.W.2d 727, 731 (Minn. App. 2007), *review denied* (Minn.

Sept. 26, 2007). The rules of evidence define "relevant evidence" as "evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." Minn. R. Evid. 401. Because rule 401 applies but other, exclusionary rules do not, there is a "presumption of admissibility" in commitment proceedings. *Williams*, 735 N.W.2d at 731. Furthermore, the admissibility of evidence in a commitment case is "within the district court's discretion and will be reversed only if the court has clearly abused its discretion." *In re Commitment of Ramey*, 648 N.W.2d 260, 270 (Minn. App. 2002), *review denied* (Minn. Sept. 17, 2002).

As it happened, Jelinski stipulated to the admission of Dr. Wilson's report, and he took no exception to any part of the report. In addition, Jelinski did not object to any part of Dr. Wilson's testimony. Thus, he has essentially forfeited his argument that the district court improperly considered Dr. Wilson's evidence about the letter. In any event, Jelinski's argument is foreclosed by *In re Martin*, 458 N.W.2d 700 (Minn. App. 1990), in which the appellant argued that there was insufficient evidence for the finding that he was mentally ill because the district court relied "heavily upon information contained exclusively within the medical records," which were inadmissible. *Id.* at 704. This court noted that "a close examination of the transcript shows that most of the findings are based upon testimony by the witnesses [and] appellant did not make objections below to the portion of Dr. Schwartz'[s] testimony that was based upon his review of the medical records, nor does he raise this issue on appeal." *Id*. As a result, we concluded that the

evidence supported the finding that the appellant was mentally ill. *Id*. at 705. The same conclusion is appropriate in this case.

Furthermore, the evidentiary record contains additional evidence that supports the district court's finding of a substantial likelihood of physical harm. The record includes evidence about arson charges that were brought against Jelinski because he intentionally burned buildings. The record also indicates that Jelinski killed a sheep belonging to the family in a menacing manner by slashing its throat and leaving it in a place where it would be found by his relatives. Most importantly, Dr. Wilson testified that Jelinski's mother stated that she is "fearful" of Jelinski.

Thus, the district court did not err by considering Dr. Wilson's report and testimony concerning Jelinski's letter to his mother, and the evidence in the record supports the district court's finding that Jelinski's mental illness poses a substantial likelihood of physical harm to others.

II. Ineffective Assistance of Counsel

Jelinski next argues that his attorney in district court proceedings provided him with ineffective assistance of counsel. In civil commitment cases, this court analyzes a claim of ineffective assistance of counsel by applying the standards that are used in criminal cases. *In re Dibley*, 400 N.W.2d 186, 190 (Minn. App. 1987), *review denied* (Minn. Mar. 25, 1987). To prevail on a claim of ineffective assistance of counsel, a claimant "must affirmatively prove that his counsel's representation 'fell below an objective standard of reasonableness' and 'that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been

different.'" *Gates v. State*, 398 N.W.2d 558, 561 (Minn. 1987) (quoting *Strickland v. Washington*, 466 U.S. 668, 688, 694, 104 S. Ct. 2052, 2064, 2068 (1984)).

Jelinski does not provide details about his allegation that his attorney was ineffective. He argues that his attorney did not "have [his] best interest in mind" and that two persons with helpful information were not called as witnesses. The first of those two contentions is too vague and conclusory to allow appellate review. The second contention refers to his mother and a member of the staff of the Anoka treatment center. At the commitment hearing, Jelinski stated that he should have been able to call a staff member from the Anoka facility. In response, Jelinski's attorney stated that he had made a tactical decision not to call an Anoka staff member as a witness. The record also contains reasons why an attorney would choose not to call Jelinski's mother as a witness. "Decisions about which witnesses to call at trial and what information to present to the jury are questions of trial strategy that lie within the discretion of trial counsel," and those decisions "will not be second-guessed by appellate courts." *Leake v. State*, 737 N.W.2d 531, 536, 539 (Minn. 2007).

Thus, the record does not reflect that Jelinski's attorney provided him with ineffective assistance of counsel.

III. Stay of the Commitment Proceedings

Jelinski last argues that the district court erred by not staying commitment proceedings until after this court issues a decision in Jelinski's appeal from the rule 20 determination. Jelinski does not cite any legal authority in support of his argument, and

we are not aware of any such authority. In the absence of such authority, we cannot conclude that the district court erred by not staying commitment proceedings.

In sum, the district court did not err by ordering that Jelinski be civilly committed.

Affirmed.