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**STATE OF MINNESOTA
IN COURT OF APPEALS
A09-1291**

In the Matter of the Civil Commitment of: Terry Lee Hammill.

**Filed November 17, 2009
Affirmed
Stoneburner, Judge**

Olmsted County District Court
File No. PR078467

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

UNPUBLISHED OPINION

STONEBURNER, Judge

Appellant challenges his indeterminate commitment as a sexually dangerous
person (SDP), arguing that there is not clear and convincing evidence in the record to
support the district court's conclusion that he is highly likely to engage in future acts of
harmful sexual conduct and that the finding that he has an inability to adequately control
his sexual impulses is clearly erroneous. Because evidence in the record supports the

findings and because the findings constitute clear and convincing evidence supporting the conclusion that appellant meets the criteria for SDP commitment, we affirm.

D E C I S I O N

Review of a civil-commitment order is limited to examining whether the district court complied with the commitment statutes and whether the commitment is “justified by findings based upon evidence at the hearing.” *In re Knops*, 536 N.W.2d 616, 620 (Minn. 1995). “The record is viewed in the light most favorable to the trial court’s decision.” *Id.* “Findings 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 trial court to judge the credibility of the witness.” *Id.* (citing Minn. R. Civ. P. 52.01). “Where the findings of fact rest almost entirely on expert testimony, the trial court’s evaluation of credibility is of particular significance.” *Id.* But whether the evidence is sufficient to meet the statutory requirements for civil commitment is a question of law subject to de novo review. *In re Linehan*, 518 N.W.2d 609, 613 (Minn. 1994) (*Linehan I*); *In re Thulin*, 660 N.W.2d 140, 144 (Minn. App. 2003).

An SDP is a person who: (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) (2006). The supreme court has interpreted the third factor as requiring proof that the person’s disorder or dysfunction does not allow adequate control over sexual impulses and makes it highly likely that the person will reoffend. *In re Linehan*, 594 N.W.2d 867, 876 (Minn. 1999) (*Linehan IV*). If a court finds by clear and convincing

evidence that a proposed patient is an SDP, the court shall commit the person for treatment. Minn. Stat. §§ 253B.18, subd. 1(a), .02, subd. 17 (2006).

Appellant Terry Lee Hammill does not dispute that he is a person who has engaged in a course of harmful sexual conduct and has manifested a sexual, personality, or other disorder or dysfunction. Hammill's course of harmful sexual conduct includes two 1989 convictions of criminal sexual conduct in the second degree for sexually touching both a 7-year-old boy and 4-year-old girl (Hammill's niece), and a 1995 conviction of criminal sexual conduct in the fourth degree for repeated sexual contacts, including intercourse, with a vulnerable adult woman whose mental age was approximately that of a six-year-old.

The district court found that Hammill's admitted sexual contact with approximately seventeen other vulnerable-adult women from 1978 through 1995 are part of his course of harmful sexual conduct because Minn. Stat. § 253B.02, subd. 7a(b) (2006) creates a presumption that victims of such conduct¹ will suffer serious physical or emotional harm, and Hammill did not rebut the presumption. Dr. Rosemary Linderman, the court-appointed independent examiner, also opined that Hammill's sexual assaults of the vulnerable-adult victims are acts of harmful conduct as defined in Minn. Stat. § 253B.02, subd. 7a(a) (2006). Hammill essentially argues that lack of evidence of harm to any of these women prevents this conduct from being considered harmful. But

¹The district court found that the conduct described by Hammill is conduct proscribed by Minn. Stat. §§ 609.344, subd. 1(d), .345, subd. 1(d) (2006) (criminalizing penetration of or sexual contact with persons whom the actor knows or has reason to know are mentally impaired).

Hammill does not challenge the finding that he meets the first commitment criterion (engaging in a “course of harmful conduct”), and Hammill does not dispute the district court’s finding that he is an “opportunistic sex offender,” whose “victims have included...vulnerable adults ...”

Dr. Linderman and Dr. Paul Reitman, the independent examiner appointed at Hammill’s request, both testified that Hammill also meets the second commitment criterion of manifesting a sexual, personality, or other disorder or dysfunction. In Dr. Linderman’s professional opinion, Hammill has manifested the disorders of pedophilia (limited to incest); intermittent explosive disorder; personality disorder NOS with passive-aggressive and avoidant traits; moderate psychopathy; and formally-assessed low-average intellectual skills. In Dr. Reitman’s opinion, Hammill has manifested the disorders of sexual disorder NOS; personality disorder NOS; and borderline intellectual functioning vs. mild mental retardation.

Hammill challenges only the district court’s conclusion that he meets the third commitment criterion based on its findings that Hammill is unable to adequately control his sexual impulses and is likely to engage in acts of harmful sexual conduct. He argues that the more than thirteen years since his last offense, including his offense-free presence in the community from June 22, 1998, until April 10, 2007, makes the findings clearly erroneous.

Hammill was released from prison for his 1995 offense in 1997. His supervised release was restructured four times, and he was returned to prison for one month in 1998 as a result of his behavioral issues. Hammill entered sex-offender treatment in December

2003, but was terminated from treatment in September 2004 for failing to follow treatment recommendations and conditions. Hammill reentered treatment in October 2004. He made intermittent progress, but was again terminated from treatment in April 2007 due to his aggressive and threatening behavior in the community and in the treatment program. Hammill's supervised release was revoked, and he returned to prison to serve the remainder of his sentence. In September 2007, the Olmsted County Attorney's Office petitioned for his commitment as a SDP.

Both Dr. Reitman and Dr. Linderman expressed concern, based on their evaluations of Hammill, about his ability to control his sexual impulses and his risk of reoffending. But Dr. Reitman opined that Hammill's lack of reoffending for more than thirteen years, a significant portion of which Hammill spent in the community, precluded a finding that Hammill is highly likely to reoffend in the future. Because Hammill was either in prison or on supervised release from prison during the entire offense-free period, Dr. Linderman concluded that Hammill was living in an "artificial environment" such that lack of reoffending did not overcome significant evidence of his continued deviant behavior and other predictors of his inability to adequately control his sexual impulses.

The district court found that the record supports Dr. Linderman's conclusions. It noted that during Hammill's eighteen months in prison, Hammill did not have access to children or vulnerable adults and that, during his time in the community, Hammill was on intensive supervised release, or probation, and was closely monitored and supervised. The district court also noted that Hammill's behavior in the community resulted in reassessment of his risk level from two to three when he was reincarcerated in 2007.

Case law supports the district court's finding that a period of non-offending is not necessarily indicative of control or good behavior when a person is in an environment that does not present an opportunity to reoffend. *See In re Bobo*, 376 N.W.2d 429, 432 (Minn. App. 1985) (stating that good behavior in an artificial environment is not determinative on the issue of dangerousness to the public where medical experts testify that a person remains dangerous and their testimony is based on their own observations).² Hammill argues that labeling supervised release and probation as artificial environments "is a finding without precedence in Minnesota commitment case law." While we agree that supervised release and probation are not the equivalent of incarceration or hospitalization, the record in this case supports the district court's finding that supervision in the community was a significant factor in Hammill's lack of recidivism despite the risk of recidivism he presents.

The record contains evidence of several incidents when Hammill's triggering behavior (such as "ogling" children, contacting his vulnerable ex-wife, going to places where he could come into contact with young people and vulnerable adults, and engaging in threatening behavior) was, due to his supervised status, interrupted before it escalated into harmful sexual conduct.

² *In re Bobo* involved commitment as mentally ill and dangerous and referred to a hospital as an artificial environment. *Id.* at 432. *See also In re Pirkl*, 531 N.W.2d 902, 909 (Minn. App. 1995) (citing *Bobo*, and concluding, in a sexual-psychopathic-personality commitment case, that lack of recency of sexual assaults was not indicative of Pirkl's lack of risk of reoffending where he had been incarcerated for the past nine years).

Dr. Reitman testified about two recent studies showing that, in men, recidivism is significantly reduced by intensive supervision. Dr. Reitman opined that Hammill demonstrated this by living supervised in the community for years without reoffending. And Dr. Reitman was not advocating that Hammill be allowed to live unsupervised in the community: he opined that the district court should find a way to stay commitment and keep Hammill under supervision.³

The district court made detailed findings, required by case law,⁴ about Hammill's circumstances and behaviors, including his lack of any family or community support, his homelessness, his discharge from sex-offender treatment for continually failing to follow treatment recommendations and conditions, his failure to demonstrate skills learned in treatment in his daily life outside of treatment, disturbing journal entries about raping women if they would not consent to sex, and his inability to control his anger and aggressive threats including sexual threats, that ultimately led to violation of his probation.

The district court found that Hammill's psychopathy is "a strong predictor of general and violent recidivism." The district court also found that Hammill regularly displayed his sexual impulsiveness during his last sex-offender-treatment program by his

³ In its order, the district court stated that it "appreciates the testimony and opinion of Dr. Reitman, which essentially are critical of the current treatment options for patients similar [to Hammill], in that it would be preferable that [Hammill] receive treatment in a program of shorter duration . . . followed by long-term intensive supervision in the community." The district noted that "[w]hile such options may have merit, currently no such alternative programming and supervision structure is available."

⁴ See *In re Blodgett*, 510 N.W.2d 910, 915 (Minn. 1994) (setting out significant factors for the district court to consider in analyzing ability to adequately control sexual impulsiveness or behavior).

inability to stop making sexualized comments to his therapist and in his journal, including his desire to randomly rape a woman. And tests conducted by Dr. Linderman support the district court's finding that Hammill is unable to adequately control his sexual impulses.

The court stated that

Hammill's static risk scores support that he has a high risk for sexual reconviction absent mitigating factors of changed dynamic risk factors. His MCMI profile is that of a person who remains angry and unpredictable. Hammill's history includes reoffending after incarceration for previous sex offenses, a broad victim pool, and a fixated history of poor impulse control and a verbally reported intent to reoffend.

Hammill argues that the record lacks the requisite *clear and convincing* evidence that he meets the third criterion for commitment as a SDP. We disagree.

"Clear and convincing proof" means exactly what is suggested by the ordinary meanings of the terms making up the phrase. Satisfaction of this standard requires more than a preponderance of the evidence but less than proof beyond a reasonable doubt. Clear and convincing proof will be shown whether the truth of the facts asserted is "highly probable."

Weber v. Anderson, 269 N.W.2d 892, 895 (Minn. 1978). In this case Hammill's history, including his history of sexual offenses, behavior, sociological circumstances, and psychological evaluations, including actuarial tests, constitute more than a preponderance of the evidence that Hammill, unsupervised, is highly likely to engage in sexually harmful conduct if released. The district court's conclusion that Hammill meets all criteria for commitment as a SDP is supported by clear and convincing evidence.

Affirmed.