STATE OF MINNESOTA
IN COURT OF APPEALS
A14-0118

In the Matter of the Civil Commitment of:
Hugh Charles Rogers

Filed June 30, 2014
Affirmed
Halbrooks, Judge

Itasca County District Court
File No. 31-PR-13-2950

Corey G. Bakken, Grand Rapids, Minnesota (for appellant)

John J. Muhar, Itasca County Attorney, Mary J. Evenhouse, Assistant County Attorney, Grand Rapids, Minnesota (for respondent)

Considered and decided by Halbrooks, Presiding Judge; Hudson, Judge; and Smith, Judge.

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

HALBROOKS, Judge

Appellant seeks reversal of the district court's order finding him mentally ill and committing him to the custody of the Commissioner of Human Services on the grounds that (1) the evidence is insufficient to support the district court's finding that he is mentally ill, (2) the district court's factual findings do not satisfy the prerequisites for civil commitment, (3) the evidence is insufficient to show that no less-restrictive

treatment option would meet his needs, and (4) procedural defects deprived him of a fair hearing. We affirm.

FACTS

Appellant Hugh Rogers, a resident of Keewatin, has a history of writing and distributing letters expressing his spiritual and existential beliefs. He has distributed his communications by mail, by depositing them in drop boxes at city offices and the Keewatin Public Library, and by placing them on people's doors and vehicles. In 2013, Rogers's activities led to misdemeanor charges of public nuisance, disorderly conduct, unlawful deposit of garbage, and stalking. Based on a mental-health assessment conducted by Jay Lucas, Ph.D., under Minn. R. Crim. P. 20, the district court found that Rogers was not competent to stand trial, suspended the charges, and directed the prosecutor to take the first step toward initiation of civil-commitment proceedings. Rogers was released pending those proceedings.

Itasca County petitioned for civil commitment. The district court appointed Charles Chmielewski, Ph.D., to evaluate Rogers for the purpose of the commitment proceedings and scheduled a commitment hearing for Friday, November 22, 2013.[1] The hearing was subsequently rescheduled for Monday, December 2, 2013. The district court also appointed a second examiner, Jacqueline MacPherson, Ph.D., at Rogers's request. Dr. MacPherson met with Rogers and submitted her report on Wednesday, November 27,

[1] In Dr. Chmielewski's initial report, he opined that Rogers did not meet the statutory criteria for commitment. After the county subsequently provided him with Rogers's written material that resulted in his criminal charges, Dr. Chmielewski provided the district court with an amended report in which he stated that he believed that Rogers meets the criteria for commitment as mentally ill.

2013, the day before the Thanksgiving holiday. Dr. MacPherson's opinion is that Rogers meets the statutory criteria for commitment.

Dr. MacPherson testified by telephone at the commitment hearing, and the district court admitted her report into evidence. Two witnesses testified on Rogers's behalf. The district court ordered a six-month commitment to the Minnesota Department of Human Services with placement at the Bemidji Community Behavioral Health Hospital. Rogers's motion for new trial was denied. This appeal follows.

D E C I S I O N

Our review of a district court's decision to commit an individual as mentally ill is limited to considering whether the district court complied with the requirements of the Minnesota Commitment and Treatment Act. *In re Civil Commitment of Janckila*, 657 N.W.2d 899, 902 (Minn. App. 2003). We will not reverse the district court's factual findings unless they are clearly erroneous, giving due regard to the district court's credibility assessments. *In re Thulin*, 660 N.W.2d 140, 144 (Minn. App. 2003). We review de novo the district court's conclusions of law. *Id*.

I.

Rogers argues that the evidence is insufficient to support the district court's conclusion that he is mentally ill as that term is defined by the statute. Under the statute, a district court "shall commit" if it "finds by clear and convincing evidence that the proposed patient is a person who is mentally ill." Minn. Stat. § 253B.09, subd. 1(a) (2012). The statute defines a person who is mentally ill as

> any person who has . . . 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 poses a substantial likelihood of physical harm to self or others as demonstrated by:
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> (1) a failure to obtain necessary food, clothing, shelter, or medical care as a result of the impairment;
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> (2) an inability for reasons other than indigence to obtain necessary food, clothing, shelter, or medical care as a result of the impairment and it is more probable than not that the person will suffer substantial harm, significant psychiatric deterioration or debilitation, or serious illness, unless appropriate treatment and services are provided;
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> (3) a recent attempt or threat to physically harm self or others; or
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> (4) recent and volitional conduct involving significant damage to substantial property.

Minn. Stat. § 253B.02, subd. 13(a) (2012).

Rogers contends that the county "has not demonstrated [that he has made] a recent attempt or threat to physically harm self or others" because the record is "devoid of any suggestion that [he] has engaged in physically dangerous activities or has threatened the safety of others." He characterizes Dr. MacPherson's report as mere speculation that he may threaten himself or others in the future, which the supreme court has deemed inadequate to support a commitment order. *See In re McGaughey*, 536 N.W.2d 621, 623 (Minn. 1995) (holding that speculation that a proposed patient may fall within the statutory definition of mentally ill at some point in the future is not sufficient to support a commitment decision). But the statute does not require actual instances of physically dangerous behavior or direct, specific threats. Instead, the statute's baseline

dangerousness requirement is that the proposed patient "poses a substantial likelihood of physical harm to self or others." Minn. Stat. § 253B.02, subd. 13(a).

Dr. MacPherson's evaluation was based on her review of the other doctors' reports, the letters attributed to Rogers, and her interview with him. She noted Rogers's acknowledgment that he had composed approximately 400 letters and postings in the previous year and described their discussion of his conduct and beliefs. Dr. MacPherson concluded that Rogers "has a major psychiatric disturbance," which she diagnosed as undifferentiated schizophrenia. She further stated that Rogers's

> thinking, judgment, mood and behavior are grossly impaired as a result of his psychiatric disturbance and that he subsequently has been unable to appropriately manage his daily behavior, maintain lawful behavior, interact appropriately with others, and realistically appraise situations, his behavior, and its impact on others and consequences. It is the opinion of the undersigned that due to his psychiatric disturbance [Rogers's] functioning is grossly impaired to the extent that there is a substantial risk of harm to himself and others (e.g., [Rogers] has repeatedly demonstrated extremely poor impulse control and poor judgment as well as an inability to appropriately manage his behavior and realistically appraise his situation and behavior, as well as its impact on himself and others, all of which put him at risk for continuing to engage in behaviors that have strong potential for harm to himself and others; [Rogers's] reported history of suicidal statements and statement at the time of interview regarding "what can do is disembody yourself" and distorted perception regarding being put into another body is particularly concerning given his reported anger, focus on perceived mistreatment, frustration with the biblical entities, and clearly demonstrated poor impulse control; without intervention [Rogers] is highly likely to continue to decompensate psychiatrically . . . .

Based on Dr. MacPherson's opinions, the district court concluded that the county had shown by clear and convincing evidence that Rogers is mentally ill as defined by the statute. In support of its conclusion, the district court stated:

> [Rogers] has a substantial psychiatric disorder of thought, mood, behavior, capacity to recognize reality, or to reason or understand, which is manifested by instances of grossly disturbed behavior or faulty perceptions and 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, to wit: [Rogers's] demonstration of an extreme preoccupation with pervasive delusional beliefs; his reported frustration, anger and focus on perceived mistreatment; the tone and threatening/concerning content of volumes of writings through the past several months; his targeting of specific people; his disorganized/distorted thinking and lack of reality-based appreciation for his surroundings and situation; his poor judgment and lack of insight into his functioning; his demonstrated lack of responsiveness to clear directives of authorities; and his poor impulse control.

Based on our review of the record, we conclude that the district court's determination that Rogers is a person who is mentally ill is supported by clear and convincing evidence.

II.

Rogers contends that the evidence is not sufficient to show that his treatment needs can only be satisfied by involuntary, inpatient hospitalization and that the district court's findings regarding alternatives to commitment fall short of the specificity required by the statute.

Before committing a respondent, the district court must consider alternatives less restrictive than commitment, and if it decides to commit, the district court must choose the least-restrictive alternative that will meet the respondent's needs. Minn. Stat.

§ 253B.09, subd. 1(a) (2012). In addition, the district court must "identify less restrictive alternatives considered and rejected by the court and the reasons for rejecting each alternative." Minn. Stat. § 253B.09, subd. 2 (2012). "In reviewing whether the least restrictive treatment program that can meet the patient's needs has been chosen, an appellate court will not reverse a district court's finding unless clearly erroneous." *Thulin*, 660 N.W.2d at 144.

Closely tracking the language of Dr. MacPherson's report, the district court stated the alternatives that it had considered and rejected: "Alternatives less restrictive than [commitment] have been considered and rejected as follows: dismissal of petition; voluntary outpatient care; voluntary admission to a treatment facility; appointment of a guardian or conservator; or release before commitment." The district court rejected the alternatives because they "would not meet [Rogers's] treatment needs." It did not explain why the rejected alternatives would not meet Rogers's needs, but incorporated Dr. MacPherson's report by reference. Dr. MacPherson opined that "commitment is the least restrictive option at this point to adequately address [Rogers's] mental illness and treatment needs" because he "demonstrates extremely poor insight into his functioning and treatment needs" and "does not have the capacity at this time to make effective treatment decisions or participate in services needed on a voluntary basis."

We have upheld commitments when the findings on less-restrictive alternatives were brief, but legally sufficient. *In re King*, 476 N.W.2d 190, 193-94 (Minn. App. 1991) (holding that a district court's findings on less-restrictive alternatives were minimally sufficient when the district court "[e]xplain[ed] only that appellant 'requires

continued hospitalization in a highly structured setting' [and that] '[o]ther placements' were considered but rejected"). We have also remanded matters for additional findings when we found the initial findings to be insufficient. *In re Danielson*, 398 N.W.2d 32, 37 (Minn. App. 1986) (remanding for additional findings when district court "summarily stat[ed] 'there is no less[] restrictive alternative than commitment,' and list[ed] neither the alternatives considered nor the reasons for rejecting them").

Here, the district court's findings are similar to the findings in *King*, which we held were sufficient. They are augmented by the district court's acceptance and incorporation of Dr. MacPherson's report. We note that incorporation of an expert's report is not an ideal practice. Specific factual findings—stated by the district court and supported by a statement of the evidence relied upon to reach them—facilitate appellate review by providing details of the district court's reasoning and demonstrating consideration of all relevant factors. *Watland*, 448 N.W.2d at 73. But we conclude that the district court's findings regarding less-restrictive alternatives are sufficient to meet the statutory requirements.

III.

Rogers contends that the district court denied him a fair hearing by admitting Dr. MacPherson's report into evidence and by permitting her to testify by telephone. To prevail on a claim that evidence was admitted in error, a party must demonstrate error, and prejudice resulting from the error. Minn. R. Civ. P. 61; *Midway Ctr. Assocs. v. Midway Ctr. Inc.*, 306 Minn. 352, 356, 237 N.W.2d 76, 78 (1975). We apply the same rule in commitment proceedings. *See In re Robb*, 622 N.W.2d 564, 574 (Minn. App.

2001) (stating, in a civil-commitment case, that "[e]ntitlement to a new trial on the grounds of improper evidentiary rulings rests upon the complaining party's ability to demonstrate prejudicial error" (quotation omitted)), *review denied* (Minn. Apr. 17, 2001).

Admission of the report

Generally, "the admission of evidence rests within the broad discretion of the [district] court and its ruling will not be disturbed unless it is based on an erroneous view of the law or constitutes an abuse of discretion." *Kroning v. State Farm Auto. Ins. Co.*, 567 N.W.2d 42, 45-46 (Minn. 1997) (quotation omitted). In commitment proceedings, the district court's discretion is even broader: The district court "may admit all relevant, reliable evidence . . . without requiring foundation witnesses." Minn. Spec. R. Commit & Treat. Act. 15. Evidence presented in commitment proceedings is presumed admissible, subject to the district court's discretion. *In re Civil Commitment of Williams*, 735 N.W.2d 727, 731 (Minn. App. 2007), *review denied* (Minn. Sept. 26, 2007). The statute provides that the district court "shall admit all relevant evidence at the hearing" and must base its relevancy determination on the Minnesota Rules of Evidence. Minn. Stat. § 253B.08, subd. 7 (2012); *Williams*, 735 N.W.2d at 730-31. Under Minn. R. Evid. 401, evidence is relevant if it has "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."

Rogers argues that the district court should have barred Dr. MacPherson's report because it was untimely filed. In computing time periods, the day of the filing, weekends and holidays are excluded. Minn. R. Civ. P. 6.01. "Unless otherwise agreed by the

parties, a court-appointed examiner shall file [her] report not less than 48 hours prior to the commitment hearing." Minn. Stat. § 253B.07, subd. 5 (2012). The statute does not provide a remedy for untimely filing of reports and does not bar their admission. *See id.* The burden is on Rogers, as the party asserting error, to show that the error was prejudicial. *Robb*, 622 N.W.2d at 574.

Rogers's request for a second examiner was made at the originally scheduled commitment hearing on Friday, November 22, 2013. In response, the district court appointed Dr. MacPherson and granted Rogers's motion for a continuance. The hearing was rescheduled for December 2, 2013, the Monday after Thanksgiving. Given the short time frame, the parties discussed and were well aware of the timing issue. Dr. MacPherson conducted a clinical interview of Rogers on Monday, November 25, 2013, reviewed the records gathered by the county, and expedited the preparation of her report, which was filed with the district court and provided to the parties two days later, on Wednesday, November 27, 2013.

The county concedes that the filing was technically untimely in view of the Thanksgiving holiday and intervening weekend, but argues that if the district court erred by admitting it, the error was harmless. We agree.

Rogers's counsel was well aware of the circumstances, having requested the appointment of a second examiner and a continuance of the hearing. He received the report on the day that it was filed, five calendar days before the hearing. Despite the intervening holiday, Rogers's counsel rigorously questioned Dr. MacPherson, probing the details of her methods and findings, demonstrating that he was familiar with the report's

details. Rogers does not indicate how he was prejudiced by the timing of the report. The thrust of his argument is that the report should have been suppressed. Because the statute does not require that remedy, we conclude that whether to suppress an untimely report falls within the discretion of the district court. Here, the district court acted well within its discretion by admitting Dr. MacPherson's report into evidence.

Testimony by telephone

Witnesses may testify at a commitment hearing by telephone with 24 hours' advance notice and district court approval, Minn. Spec. R. Commit. & Treat. Act 14, but "[o]pinions of court-appointed examiners may not be admitted into evidence unless the examiner is present to testify, except by agreement of the parties." Minn. Stat. § 253B.08, subd. 5a (2012).

Before the district court, the parties debated whether Rogers had consented to Dr. MacPherson's appearance by telephone. The county asserts that before the report was filed, Rogers's counsel contacted the county to confirm that the county would not object to Dr. MacPherson's appearance by telephone and sought to make a written record of the county's assent. But when the report was filed, Rogers's counsel reversed course and moved in limine to exclude the report and bar Dr. MacPherson's appearance by telephone. Rogers's counsel contends that he contacted the county as a courtesy to Dr. MacPherson, who was concerned that she might spend time preparing the report on short notice only to have it barred from evidence because she could not appear in person at the hearing. The district court ruled that Rogers's counsel agreed to have Dr. MacPherson appear by telephone.

In view of the conflicting assertions on this issue, the decision essentially rests on the district court's assessment of the credibility of the opposing arguments. We do not second-guess a district court's credibility assessments, and we presume that commitment-hearing evidence is admissible absent a showing to the contrary. *See* Minn. R. Civ. P. 52.01 (providing that our review of a district court's findings of fact shall give due regard to the district court's opportunity to make first-hand credibility determinations); *Williams*, 735 N.W.2d at 731 (stating the presumption of admissibility in commitment proceedings).

Affirmed.