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Minn. Stat. § 480A.08, subd. 3 (2016).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A16-1910**

In the Matter of the Civil Commitment of:
Michelle R. Fogarty.

**Filed July 17, 2017
Affirmed; motion denied
Bjorkman, Judge**

Ramsey County District Court
File No. 62-MH-PR-16-416

Richard J. Cohen, St. Paul, Minnesota (for appellant Michelle R. Fogarty)

John J. Choi, Ramsey County Attorney, Anne E. Jolliffe, Assistant County Attorney,
St. Paul, Minnesota (for respondent Ramsey County)

Considered and decided by Bjorkman, Presiding Judge; Schellhas, Judge; and
Reyes, Judge.

UNPUBLISHED OPINION

BJORKMAN, Judge

Appellant challenges her civil commitment as a mentally ill person, arguing police reports introduced at the commitment hearing should have been provided to her at the time the commitment petition was filed. We affirm.

FACTS

On August 11, 2016, members of the Ramsey County Sheriff's Department brought appellant Michelle R. Fogarty to Regions Hospital. Fogarty had been arrested for stalking, and mental-health personnel at the jail felt a risk assessment was needed because Fogarty was exhibiting delusional beliefs. Fogarty presented at the hospital as "delusional and paranoid with rambling, rapid and tangential speech" and was "marginally uncooperative, agitated, angry and hostile." Hospital personnel ultimately diagnosed Fogarty with schizophrenia. On August 12, Regions submitted petitions seeking Fogarty's civil commitment as a mentally ill person and for authority to impose treatment with neuroleptic medication to the Ramsey County Attorney's Office. On August 15, respondent Ramsey County filed the petitions with the district court. The district court appointed Fogarty's counsel the same day. Counsel received copies of the petitions, the examiner's statement in support of the petitions, and the prepetition screening report, and was given full access to Fogarty's medical records.

The prepetition screening report reveals Fogarty has struggled with mental-health issues for 30 years. She was civilly committed in 2000 and 2003, and was admitted to Regions for a behavioral-health analysis on six other occasions. The screening report indicates Fogarty was assigned to the Ramsey County Probation's Intake Office following a domestic-assault charge, and had several pending charges in St. Paul. And Fogarty's medical records reference her legal problems, listing the names and contact information for the St. Paul City Attorney and an officer with the St. Paul Police Department.

Following a preliminary hearing, the district court ordered Fogarty be held until the commitment hearing.

During the August 30 commitment hearing, the district court admitted various documents into evidence, including incident reports from the St. Paul Police Department. Fogarty's counsel objected on the grounds that he had not seen the police reports and that they are irrelevant. Following a brief recess during which counsel reviewed the reports, Fogarty's counsel objected because the reports were hearsay, irrelevant, and unfairly prejudicial. The district court overruled the objection. Joel Hrabe, Psy.D., L.P., the court-appointed examiner, was the county's only witness. Dr. Hrabe testified that he examined Fogarty and reviewed her medical records and the police incident reports. He indicated that her police contacts demonstrated that she was exhibiting "paranoid ideation and delusional thought content." Ultimately, Dr. Hrabe agreed with Regions personnel that Fogarty suffers from schizophrenia and recommended that Fogarty be civilly committed as a mentally ill person. The district court granted the petition at the conclusion of the hearing, and subsequently issued a formal commitment order. Fogarty appeals.¹

D E C I S I O N

In an appeal from a civil-commitment order, we review de novo whether there is clear and convincing evidence to support the district court's determination that an

¹ After Fogarty filed her brief, this court issued an order requiring her to file a one-page supplement addressing compliance with Minn. R. Civ. App. P. 128.02, subd. 1(b), given the fact that the commitment order does not address the sole issue she raises on appeal—whether copies of police reports must be filed with a commitment petition. Fogarty's supplemental filing lists the same legal issue but provides additional citations to the record and apposite authority.

individual meets the standards for commitment. *In re Thulin*, 660 N.W.2d 140, 144 (Minn. App. 2003). We will not reverse a district court's findings unless they are clearly erroneous. *In re McGaughey*, 536 N.W.2d 621, 623 (Minn. 1995).

Fogarty's sole argument on appeal is that she is entitled to a new commitment hearing because a county seeking to commit a person should be required to provide copies of relevant police reports at the time a commitment petition is filed. We generally consider only issues that "were presented and considered by the [district] court in deciding the matter before it." *Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988) (quotation omitted). But we have recognized a narrow exception to this rule that applies when the issue "is plainly decisive of the entire controversy on its merits, and where, as in [a case] involving undisputed facts, there is no possible advantage or disadvantage to either party in not having had a prior ruling by the [district] court on the question." *Watson v. United Servs. Auto. Ass'n*, 566 N.W.2d 683, 687 (Minn. 1997) (quotation omitted). Fogarty acknowledges that the issue she raises on appeal "was not asked in so many words during the course of the [commitment hearing]," but she asserts that "the record is complete for the purposes of this appeal." We are not persuaded.

First, the record confirms that Fogarty did not argue in the district court that police reports related to a person whose commitment is sought must be made available to the person at the time the commitment petition is filed. At the commitment hearing, Fogarty's counsel initially objected because he had not seen the incident reports and believed they were irrelevant. After reviewing the reports, he renewed his objection based solely on relevance, prejudice, and hearsay. He did not renew his challenge to the late disclosure.

And counsel did not argue that he should have been provided with the reports at the time the petition was filed. The district court therefore did not consider the issue.

Second, we are not persuaded that the issue Fogarty presents falls within the narrow exception to *Thiele*. The issue does not turn on undisputed facts. At oral argument in this court, the county expressed concern about the feasibility of such a requirement and indicated it would have presented opposing evidence if given the opportunity to do so. Fogarty's failure to present the issue to the district court disadvantaged the county and prevents us from conducting a meaningful review of the issue. "Because we are not a fact-finding court, issues brought to us on review must have been identified, argued fully, and entered into the record at the district court level." *Michaels v. First USA Title, LLC*, 844 N.W.2d 528, 532 (Minn. App. 2014). Because we decline to consider Fogarty's sole appellate argument, the order for commitment is affirmed.²

Affirmed; motion denied.

² The county moved this court to dismiss the appeal on the ground that Fogarty did not raise the challenged legal issue in the district court. Because we affirm the commitment order, we deny the motion as moot.