STATE OF MINNESOTA
IN COURT OF APPEALS
A17-0457

In the Matter of the Civil Commitment of:
Kutiey W. Thuok.

Filed August 28, 2017
Affirmed
Kirk, Judge

Steele County District Court
File No. 74-PR-15-1726

B. Steven Messick, J. Scott Braden, P.A., Faribault, Minnesota (for appellant)

Daniel A. McIntosh, Steele County Attorney, Christy M. Hormann, Sasha J. Zekoff, Assistant County Attorneys, Owatonna, Minnesota (for respondent Minnesota Prairie County Alliance)

Considered and decided by Kirk, Presiding Judge; Worke, Judge; and Smith, John, Judge.*

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

KIRK, Judge

Appellant challenges the district court's order finding him mentally ill and dangerous to the public and ordering his indeterminate commitment. Because any error in addressing both issues at one hearing and in a joint order was harmless, we affirm.

* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

FACTS

On August 20, 2015, following a rule 20.01 order finding appellant Kutiey Thuok not competent to proceed to trial, a petition for judicial commitment was filed to commit him as mentally ill and dangerous to the public (MI&D). Appellant suffers from schizophrenia and had been charged with multiple felonies. A prepetition screening report was also filed recommending his commitment as MI&D to the Minnesota Security Hospital (MSH) for an indeterminate period of time. The petition alleged that appellant was refusing psychotropic medications, had the potential to behave in an aggressive fashion, particularly during episodes of mental instability, had voices telling him to commit suicide, and had thoughts of harming others.

On August 21, the district court ordered appellant's confinement at MSH pending the preliminary hearing on August 24. Following the preliminary hearing, the district court issued an order finding that there was a risk of "imminent serious physical harm" to appellant or others if appellant was not immediately confined. The district court ordered that the commitment hearing required under Minn. Stat. § 253B.18, subd. 1(a) (2016), be held within 30 days of the original petition, and it was scheduled for September 18.

On September 3, respondent Minnesota Prairie County Alliance on behalf of Steele County requested a continuance of the commitment hearing because the examiner was unavailable. The district court continued the hearing to September 23. The court-ordered psychological examination was filed on September 21, and the examiner concluded that appellant's risk level for violence was high and that there appeared to be sufficient criteria to support commitment for mental illness.

Following the September 23 commitment hearing, the district court filed an order for commitment. Appellant admitted he was mentally ill and agreed to his continued placement at MSH. Appellant also agreed to defer the determination of whether he was "dangerous." The district court found that appellant was mentally ill and that he met the statutory criteria for civil commitment. Appellant retained his right to have a full hearing on the merits of the commitment petition at a review hearing, pursuant to Minn. Stat. § 253B.18, subd. 2(a) (2016). The court ordered MSH to file a report on appellant's status within 60 days, and that the review hearing be held within 14 days of receipt of the report.

MSH filed its treatment report on November 18, concluding that appellant was mentally ill and that he presented "a substantial likelihood of engaging in acts capable of inflicting serious physical harm on another." The report recommended that appellant be committed to MSH for an indeterminate period of time. A treatment report, filed on December 16, also concluded that appellant satisfied the requirements for continued commitment as a mentally ill person. A review hearing was scheduled for December 23.

On December 22, appellant filed a consent to continue his scheduled review hearing "pursuant to Minn. Stat. § 253B.18, [s]ubd. 2[(a)]," for up to one year. This option is available under subdivision 2(b)(2) (2016) for the subdivision 2(a) review hearing, but not for the subdivision 1(a) hearing on the commitment petition. Appellant wished to have his review hearing held after the conclusion of his pending criminal matters so that his right not to incriminate himself was protected, and he agreed to remain at MSH until that time. Following a December 22 hearing, the district court issued an order finding that appellant continued to meet the criteria for commitment as mentally ill and that he consented in

writing, and orally on the record, to continue his review hearing and to continue his placement at MSH. The court ordered that the review hearing be continued up to one year, but that it be held no later than September 23, 2016.

On February 10, 2016, MSH filed an updated report noting that appellant continued to satisfy the requirements for commitment as mentally ill and that he posed "a substantial likelihood of physical harm to self or others." Another review hearing was scheduled for September 16, but on September 13, the district court ordered, by agreement of the parties, that appellant's review hearing be continued to October 12 to allow MSH to file an updated report. The stipulated order for continuance contained similar conditions and agreements as the previous review hearing continuance.

On September 30, appellant's attorney requested another continuance, with respondent's consent, asking that the review hearing be held after appellant was sentenced on his criminal matters. On October 4, MSH filed an updated report with the same conclusions and recommendations. Following an October 12 hearing, the district court issued another stipulated order continuing appellant's review hearing to November 21.

The contested review hearing was finally held on November 21 and 22. At the outset, the district court noted that the hearing was to determine whether appellant was dangerous. Respondent clarified that the hearing was also to determine whether appellant should be committed for an indeterminate period of time under Minn. Stat. § 253B.18, subd. 3 (2016). Appellant did not object to this characterization of the hearing. At the close of the hearing, appellant requested that he be committed as mentally ill, but not as MI&D.

In its final order, filed on January 23, 2017, the district court concluded that appellant is MI&D. The court noted that the review hearing was held pursuant to Minn. Stat. § 253B.18, subd. 2(a), "after initially continuing the hearing for one year by agreement of all parties, . . . wherein the [c]ourt was to determine if [appellant] is mentally ill, as admitted by [appellant], or [MI&D]." The court concluded that, as a result of his mental illness, appellant "presents a clear danger to the safety of others as demonstrated by the fact that [he] has engaged in overt acts causing or attempting to cause serious physical harm to other persons." The court found that "it is likely [appellant] will continue to lose even more control over his behavior due to the mental illness, and it is reasonable to anticipate an increase in violent behavior." The court noted that appellant's risk of engaging in acts of violence would increase if appellant is untreated.

The district court committed appellant to MSH for an indeterminate period of time. The court acknowledged that appellant's mental health and behaviors had improved since his admission to MSH, but noted that his improvement did not lead the court to believe that he would continue to take his medications, remain sober, or cooperate with mental health treatment if he were committed as mentally ill but not dangerous. The court concluded that appellant needed treatment in a structured and consistent program with intense supervision, oversight, and access to multidisciplinary support, and that appellant would not be successful in a facility less restrictive than MSH.

On appeal appellant challenges the district court's order committing him to MSH for an indeterminate period of time because he believes the court erred by holding one

hearing and issuing one order to address both whether he was MI&D and whether he should be committed for an indeterminate period of time.

D E C I S I O N

First, this court generally declines to address issues not properly raised before the district court. *Beaulieu v. Minnesota Dep't of Human Servs.*, 825 N.W.2d 716, 724 (Minn. 2013) (citing *Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988)); *In re Ivey*, 687 N.W.2d 666, 671 (Minn. App. 2004), *review denied* (Minn. Dec. 22, 2004). Here, appellant failed to preserve this issue for appeal. At the outset of the November 2016 hearing, appellant did not object to the characterization that the hearing was being held to address both whether appellant was dangerous and whether he should be committed for an indeterminate period of time. Appellant had the opportunity to question witnesses and present evidence on both issues at the hearing. Although this issue was not preserved for appeal, we elect to exercise our discretion to address appellant's claim on the merits. *See* Minn. R. Civ. App. P. 103.04 (allowing appellate courts to take any action or review any matter in the interest of justice); *In re Civil Commitment of Martin*, 661 N.W.2d 632, 640 n.3 (Minn. App. 2003) (invoking this aspect of rule 103.04 to address a question in the interests of justice), *review denied* (Minn. Aug. 5, 2003).

Minn. Stat. § 253B.18 (2016) sets forth the procedure for committing a person as MI&D. Minn. Stat. § 253B.18, subd. 1(a), requires that, after a petition for commitment alleging a person is MI&D is filed, the district court "shall hear the petition as provided in sections 253B.07 and 253B.08." Minn. Stat. § 253B.08, subd. 1(a), requires that the court hold its hearing within 14-44 days from the date the petition was filed. At the initial

commitment hearing under subdivision 1(a), "[i]f the court finds by clear and convincing evidence that the proposed patient is [MI&D], it shall commit the person to a secure treatment facility . . . unless the patient establishes by clear and convincing evidence that a less restrictive treatment program is available that is consistent with the patient's treatment needs and the requirements of public safety." Minn. Stat. § 253B.18, subd. 1(a).

Minn. Stat. § 253B.18, subd. 2(a), requires that a review hearing be held after the initial commitment of a person as MI&D. The secure treatment facility is required to file a written treatment report within 60 days after commitment. *Id.* Then, "[t]he court shall hold a [review] hearing . . . within the earlier of 14 days of the court's receipt of the written treatment report, or within 90 days of the date of initial commitment or admission, unless otherwise agreed by the parties." *Id.* The review hearing is required to "make a final determination as to whether the person should remain committed as [MI&D]" for an indeterminate period of time. *Id.* Under Minn. Stat. § 253B.18, subd. 2(b)(2), the review hearing may be continued for up to one year by agreement of the parties, which is what occurred in this case. Regarding indeterminate commitment, the statute provides that it shall be ordered if "at the final determination hearing held pursuant to subd[.] 2," the court finds that the patient continues to be MI&D. *Id.*, subd. 3.

"In reviewing a commitment, we are limited to an examination of whether the district court complied with the requirements of the commitment act." *In re Civil Commitment of Janckila*, 657 N.W.2d 899, 902 (Minn. App. 2003). Whether or not the district court erred when it determined that appellant was MI&D and committed him for an indeterminate period of time in the same order following a hearing on both issues is a

question of law subject to de novo review. *See In re Civil Commitment of Spicer*, 853 N.W.2d 803, 807 (Minn. App. 2014) (citing *In re Linehan*, 518 N.W.2d 609, 613 (Minn. 1994)).

Appellant argues that the district court erred as a matter of law when it issued its written order finding him MI&D and committing him for an indeterminate period of time and in addressing both issues at one hearing. By doing so, appellant argues that the district court failed to comply with the requirements of Minn. Stat. § 253B.18, subd. 2. Appellant asserts that after the court determined that he was MI&D at the November 2016 hearing, he was entitled to another review hearing under subdivision 2 to determine whether he continued to be MI&D before he could be committed for an indeterminate period of time.

Appellant relies on *In re Welfare of Alexander*, 410 N.W.2d 85 (Minn. App. 1987), to support his argument for another hearing under subdivision 2. After being found to be MI&D at a preliminary hearing and committed, the patient in *Alexander* agreed to be committed as a mentally ill person, but not dangerous, without a contested review hearing. *Id.* at 86. The district court in *Alexander* denied the county the opportunity to present evidence of dangerousness and committed the patient as mentally ill. *Id.* Appellant asserts that because this court found reversible error in *Alexander*, this court must also find reversible error here.

Appellant also argues that he was prejudiced by the procedure followed by the district court. Appellant claims that he was not able to present evidence at the November 2016 hearing regarding his success in treatment and factors that would mitigate or direct

the district court to find that he is no longer a danger to the public. Appellant asks this court to reverse and remand for a final review hearing.

Respondent argues that the district court did not err because the November 2016 hearing met the requirements of Minn. Stat. § 253B.18, subds. 2 and 3, and appellant was not denied a final determination hearing as he claims. Respondent contends that appellant was afforded the opportunity to present evidence on his behalf and that the district court considered both issues at the November 2016 hearing, as required under subdivision 2. Respondent acknowledges that the procedure followed in appellant's case was "unconventional," but argues that through his waivers and by agreeing to this procedure, appellant inherently agreed to combine the determination of his dangerousness with the determination of whether he should be committed indeterminately at the review hearing. Respondent asks this court to uphold the district court's order for indeterminate commitment, arguing that any error in combining portions of the required hearings was harmless and that appellant was not prejudiced.

Minn. R. Civ. P. 61 applies to commitment proceedings under chapter 253B and provides that "no error or defect in any ruling or order or in anything done or omitted by the court or by any of the parties is ground for . . . vacating, modifying, or otherwise disturbing a judgment or order, unless refusal to take such action appears to the court inconsistent with substantial justice." *See* Minn. R. Civ. P. App. A (noting that, absent inconsistencies or conflicts with the procedures described in chap. 253B, the rules of civil procedure apply to civil commitment proceedings). This court "must disregard any error

or defect in [a] proceeding which does not affect the substantial rights of the parties." Minn. R. Civ. P. 61.

Here, this court need not determine whether the district court erred by deferring its determination on the issue of dangerousness to the review hearing because, at least on this record, any error was harmless. After admitting he was mentally ill at the commitment hearing and being committed to a secure treatment facility for over a year, appellant was afforded a contested hearing as required under subdivision 2(a). At that hearing, the court addressed both whether appellant remained dangerous as alleged in the petition and whether he should be committed indeterminately. Unlike in *Alexander*, and contrary to his claim, appellant was provided the opportunity to present evidence regarding whether he was MI&D and regarding his success in treatment at his review hearing. Not only was appellant's relative stability in treatment considered by the district court, the court noted his progress and nonetheless determined that indeterminate commitment at a secure facility was appropriate.

Because appellant was afforded the opportunity to fully litigate both the MI&D determination and his need for indeterminate commitment, and because these issues were considered by the district court with the benefit of multiple treatment reports over the course of the preceding year, as well as the testimony of experts at the hearing, this appellant was not prejudiced by what he asserts was a procedural error. Even if the district court did err, the error was harmless where this "unconventional" procedure was followed at appellant's request and to his benefit. This court declines to reverse for a technical error because there is no indication that appellant has been prejudiced through the impairment

of substantial rights essential to a fair hearing. *See In re Gonzalez*, 456 N.W.2d 724, 728 (Minn. App. 1990) (declining to reverse a commitment for a finding which, if erroneous, was "harmless"); *In re Alleged Mental Illness of Picataci*, 367 N.W.2d 609, 613 (Minn. App. 1985) (same).

Affirmed.