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STATE OF MINNESOTA
IN COURT OF APPEALS
A17-0603

In the Matter of the Civil Commitment of:
Ely Ovis Emmanuel Sabahot

Filed September 5, 2017
Affirmed in part and remanded
Smith, Tracy M., Judge

Crow Wing County District Court
File No. 18-PR-16-4403

Ryan Blair Magnus, Mankato, Minnesota (for appellant Ely Ovis Emmanuel Sabahot)

Donald F. Ryan, Crow Wing County Attorney, Brainerd, Minnesota; and

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Considered and decided by Peterson, Presiding Judge; Halbrooks, Judge; and Smith, Tracy M., Judge.

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

SMITH, TRACY M., Judge

Appellant Ely Sabahot was civilly committed as mentally ill and dangerous. Sabahot appeals both the district court's initial-commitment order and its final-determination order, arguing that (1) the district court violated his due-process rights, (2) the district court did not support either the initial-commitment order or the final-determination order with adequate factual findings, and (3) the district court's finding that Sabahot is mentally ill and dangerous is not supported by sufficient evidence. We conclude

that Sabahot's due-process rights were not violated, but we remand both the initial-commitment order and the final-determination order for further findings.

FACTS

In May 2016, Sabahot was charged with second-degree assault. The district court ordered Sabahot to undergo a rule 20 evaluation to determine whether he was competent to stand trial and whether he should be civilly committed. *See* Minn. R. Crim. P. 20.01-.04. The first evaluator, Dr. Edmund Nadolny, concluded that Sabahot is not competent to stand trial but did not recommend civil commitment. The second evaluator, Dr. Ryan Goldenstein, concluded that Sabahot is not competent to stand trial and should be civilly committed. The criminal matter was stayed.

Crow Wing County Social Services (the county) filed a petition for judicial commitment on October 14, alleging that Sabahot is (1) mentally ill and dangerous and (2) chemically dependent. An initial-commitment hearing was held on October 20. Sabahot conceded that he is mentally ill and chemically dependent but argued that he is not dangerous. The district court stated that it would not make a finding on dangerousness and would schedule a hearing on dangerousness for a later date.

The district court filed an initial-commitment order on October 20 finding that Sabahot is mentally ill and chemically dependent and committing him for a period not to exceed six months. The district court amended its order on October 21 to include findings that Sabahot is a "mentally ill" person and a "dangerous" person and a conclusion that he is mentally ill and dangerous. Sabahot objected to the district court's October 21 order because the finding of dangerousness was made without any evidence in the record.

Recognizing that "Sabahot didn't have due process in terms of a hearing" and that the court needed to restart commitment proceedings, the district court scheduled an initial-commitment hearing for November 3. Because Sabahot failed to request the appearance of Dr. Nadolny, however, the district court rescheduled the initial-commitment hearing for November 7. The district court filed an interim order permitting the October 21 order to remain in effect until the November 7 hearing.

Dr. Nadolny, Dr. Goldenstein, and Sabahot testified at the November 7 hearing. Sabahot stipulated that he was mentally ill and in need of commitment but objected to the finding of dangerousness. Dr. Nadolny testified that Sabahot has a high likelihood of committing a violent act but that he does not believe Sabahot requires commitment and that, if Sabahot's mental condition is controlled, his dangerousness "is greatly diminished." Dr. Goldenstein testified that Sabahot is dangerous. After Dr. Goldenstein testified, Dr. Nadolny testified, "I think our point of disagreement is that I believe that with an appropriate containment and treatment, risk of harm to others can be attenuated." Sabahot's attorney agreed that the November 3 interim order should remain in effect until the district court filed a new order.

The district court filed an initial-commitment order on November 10.[1] The district court found that Sabahot admitted that he is mentally ill and chemically dependent. The district court also found that Dr. Nadolny and Dr. Goldenstein diagnosed Sabahot with "psychopathy-persecutory type, delusional disorders." The district court found the

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[1] The district court filed an order on November 7, but amended its order after the Minnesota Department of Human Services sent a letter explaining that the November 7 order did not comply with the statutory requirements.

testimony of Dr. Nadolny and Dr. Goldenstein credible. The district court concluded that Sabahot is mentally ill and dangerous and chemically dependent and committed him to the Minnesota Commissioner of Human Services. Sabahot was placed in the Minnesota Security Hospital (MSH).

MSH provided the district court with a report on January 4, 2017, concluding that Sabahot is mentally ill, has an elevated risk of future violence, and needs inpatient treatment. Sabahot requested that a second evaluation be conducted by Dr. Mary Kenning.

A review hearing was held on February 10. Sabahot moved to dismiss the petition without prejudice because of the procedural irregularities from the October 20 hearing. The district court denied Sabahot's motion. The preparers of the MSH report—Dr. Jennifer Lewey and Dr. Adam Milz—testified that Sabahot is mentally ill, has an elevated risk of future violence, and should be committed to MSH. Dr. Kenning testified that Sabahot is mentally ill, is likely to engage in acts capable of causing physical harm, and should be committed to MSH. Dr. Kenning's report, which was also admitted into evidence, concluded that Sabahot is mentally ill and presents a danger to the safety of others.

The district court filed its final-determination order on February 13. The district court found the testimony of Dr. Lewey, Dr. Milz, and Dr. Kenning credible. The district court concluded that Sabahot is mentally ill and dangerous and chemically dependent. The district court committed Sabahot for an indeterminate period of time.

Sabahot appeals.

D E C I S I O N

A proposed patient may be civilly committed if the district court finds that the proposed patient is mentally ill, mentally ill and dangerous, developmentally disabled, or chemically dependent. Minn. Stat. §§ 253B.09, subd. 1, .18 (2016). A proposed patient is mentally ill and dangerous if the proposed patient (1) is mentally ill and (2), as a result of that mental illness, presents a "clear danger to the safety of others" as demonstrated by the facts that the proposed patient has engaged in an overt act causing or attempting to cause serious physical harm to another and there is a substantial likelihood that the proposed patient will engage in acts capable of inflicting serious physical harm. Minn. Stat. § 253B.02, subd. 17 (2016).

The district court must conduct an initial-commitment hearing within 14 days from the commitment petition but may extend the date of the hearing up to an additional 30 days. Minn. Stat. § 253B.08, subd. 1 (2016). At the initial-commitment hearing, the proposed patient and the county may present witnesses and evidence. *Id.*, subds. 5a, 7 (2016). If the district court finds by clear and convincing evidence that the proposed patient is mentally ill and dangerous, it shall commit the proposed patient to a secure treatment facility. Minn. Stat. § 253B.18, subd. 1(a). The district court must make specific findings and conclusions of law and determine whether there are less-restrictive alternatives available. Minn. Stat. § 253B.09, subd. 2 (2016).

After the initial-commitment order, the treatment facility must file a report with the district court within 60 days. Minn. Stat. § 253B.18, subd. 2(a). The district court must

then conduct a review hearing to determine whether the patient should remain committed. *Id.*

I. Sabahot was not deprived of his right to procedural due process.

Sabahot argues that the district court deprived him of his constitutional right to procedural due process by failing to comply with the procedures in the Minnesota Civil Commitment Act. Sabahot identifies a number of procedural irregularities related to the October 20 hearing and the October 20 and 21 orders. First, Sabahot cites a number of erroneous findings of the district court. Second, Sabahot argues that the district court did not receive any evidence during the October 20 hearing on which to base its finding of dangerousness. Third, Sabahot argues that he was committed in the October 21 order as a "dangerous person" but there is no category of "dangerous people" for purposes of civil commitment. The state concedes that there were "initial misunderstandings" about the proper procedures but argues that there were no procedural due-process violations.

Civil commitment is a deprivation of liberty requiring procedural due process. *Lidberg v. Steffen*, 514 N.W.2d 779, 783 (Minn. 1994). In determining the sufficiency of procedural protections, we balance (1) the private interest that will be affected by the governmental action, (2) the risk of erroneous deprivation of this interest through the procedures used and the probable value of additional or substitute procedural safeguards, and (3) the government's interest. *Mathews v. Eldridge*, 424 U.S. 319, 335, 96 S. Ct. 893, 903 (1976); *see Bendorf v. Comm'r of Pub. Safety*, 727 N.W.2d 410, 415-16 (Minn. 2007) (applying *Mathews* to determine prejudice). We review whether a person's due-process

rights have been violated de novo. *Zellman ex rel. M.Z. v. Indep. Sch. Dist. No. 2758*, 594 N.W.2d 216, 220 (Minn. App. 1999), *review denied* (Minn. July 28, 1999).

First, we consider the private interest of Sabahot. *See Mathews*, 424 U.S. at 335, 96 S. Ct. at 903. While Sabahot has a liberty interest in the commitment proceedings, additional facts limit his private interest. *See Bendorf*, 727 N.W.2d at 416. Because Sabahot concedes that he is mentally ill, chemically dependent, and in need of commitment, and because a finding of mental illness or chemical dependency is sufficient to commit Sabahot, *see* Minn. Stat. § 253B.09, subd. 1, Sabahot could have been committed even if the district court had not concluded that he is mentally ill and dangerous. While Sabahot has an interest in avoiding being declared mentally ill and dangerous, his interest is less than that of a proposed patient who is not facing assured commitment.

Second, we consider the risk of erroneous deprivation of Sabahot's interest. *See Mathews*, 424 U.S. at 335, 96 S. Ct. at 903. The risk of erroneous deprivation was alleviated when the district court restarted proceedings, conducted an evidentiary hearing on November 7, and vacated the orders arising from the October 20 hearing. From the November 7 hearing onward, the district court adhered to the statutory requirements. Sabahot was represented throughout the proceedings. Minn. Stat. § 253B.07, subd. 2c (2016). Sabahot was afforded an opportunity to present evidence and witnesses at the November 7 hearing. Minn. Stat. § 253B.08, subds. 5a, 7. MSH filed a treatment report for the review hearing. Minn. Stat. § 253B.18, subd. 2(a). The district court permitted Sabahot to obtain a second examination. Minn. Stat. § 253B.07, subd. 3 (2016). Finally, the district court conducted a review hearing on February 10 before filing its final-

determination order on February 13. Minn. Stat. § 253B.18, subd. 2(a). There was little risk of erroneous deprivation of Sabahot's interest following the October 20 hearing because, after that date, the district court restarted the proceedings and followed the procedures outlined in the relevant statutes.

Finally, we consider the government's interest. *See Mathews*, 424 U.S. at 335, 96 S. Ct. at 903. The county has a strong interest both in protecting the public from mentally ill and dangerous persons and in ensuring that mentally ill and dangerous persons receive mental-health treatment.

Balancing these factors, we conclude that Sabahot's right to due process was not violated.

II. The district court's factual findings are inadequate.

Sabahot argues that the district court's November 10 initial-commitment order and February 13 final-determination order are not supported by adequate factual findings.

Minn. Stat. § 253B.09, subd. 2, requires the district court to make specific findings of fact. "Where commitment is ordered, 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. The district court must make written findings that properly reflect its consideration of the relevant statutory factors. *In re Civil Commitment of Spicer*, 853 N.W.2d 803, 809 (Minn. App. 2014). "[R]ecitation of what others have observed is not a finding of fact that those observations are true." *Id.* at 810 (quotation omitted). Remand for further findings is

appropriate when a district court fails to make adequate findings. *In re Alleged Mental Illness of Stewart*, 352 N.W.2d 811, 813 (Minn. App. 1984).

In *Spicer*, this court considered the particularity of a district court's factual findings following the commitment of a sexually dangerous person. 853 N.W.2d at 806. The district court issued a 79-page order with 317 paragraphs of findings of fact, reflecting "a considerable degree of effort and care on the part of the district court judge." *Id.* at 810. Nevertheless, this court reversed for three reasons. First, the majority of the findings were recitations of the evidence presented at trial. *Id.* Second, the district court stated its true findings in a conclusory manner, simply concluding that one expert was more persuasive than another. *Id.* This court noted, "A district court cannot satisfy its obligation to find facts with particularity by simply adopting *in toto* the opinions of a particular expert. The problem with such an approach is illustrated by the fact that the experts' opinions in this case are varied and sometimes inconsistent." *Id.* at 810 (citation omitted). Finally, the district court's findings of fact were not meaningfully tied to its conclusions of law because, while the order recited the relevant factors, it did not explain what evidence the district court found more persuasive or less persuasive. *Id.* at 811. This court reversed and remanded to the district court for further findings. *Id.* at 812.

A. The November 10 Order

The November 10 order is a five-page form order. The order begins by noting that Sabahot admitted to "findings of mental illness and chemical dependency." Two boxes labelled "mentally ill and dangerous" and "chemically dependent" are checked, and next to these boxes are summaries of the statutory language. Beneath the finding of "mentally

ill and dangerous" is a line that states, "a recent attempt or threat to physically harm self or others: overt act of dangerousness—second degree assault." With respect to the testimony of Dr. Nadolny and Dr. Goldenstein, the order states:

> The Court also heard testimony from Dr. Nadolny and Dr. Goldenstein, the Court-appointed examining physicians. They both opined that Respondent's disorder would seem consistent with psychopathy-persecutory type, delusional disorders, in addition to chemical dependency. Both doctors also considered lesser alternatives to an inpatient facility and did not find them to be acceptable. The Court finds the testimony of Dr. Nadolny and Dr. Goldenstein to be credible.

We conclude that the November 10 order is not supported by adequate findings for four reasons.

First, the findings are conclusory and do not explain what evidence supported the district court's legal conclusions. *See id.* at 811. In particular, the finding that Sabahot is mentally ill and dangerous simply paraphrases the statutory language without applying the statutory language to the facts of this case. As written, these are legal conclusions and not factual findings. *See Graphic Arts Educ. Found., Inc. v. State*, 240 Minn. 143, 146, 59 N.W.2d 841, 844 (1953) ("[T]he labeling of a conclusion of law as a 'finding of fact' is not determinative of its true nature . . . ."). While the district court recites the elements of both definitions, it does not explain what evidence led to its conclusion that Sabahot met the requirements for "mentally ill and dangerous." The district court must meaningfully tie its conclusions of law to its findings by explaining what evidence it found most persuasive and least persuasive. *See Spicer*, 853 N.W.2d at 811.

Second, the district court does not adequately explain what overt act Sabahot engaged in for purposes of its conclusion that Sabahot is mentally ill and dangerous. *See*

Minn. Stat. § 253B.02, subd. 17. The order states, "a recent attempt or threat to physically harm self or others: overt act of dangerousness—second degree assault." The order contains no factual findings about where, when, or against whom the alleged second-degree assault occurred. Even if we were to look at the elements of second-degree assault, the order does not contain sufficient findings to assess whether Sabahot's overt act constitutes second-degree assault.

Third, the district court failed to adequately weigh the expert testimony of Dr. Nadolny and Dr. Goldenstein. Dr. Nadolny and Dr. Goldenstein disagreed about whether Sabahot should be committed as mentally ill and dangerous. The November 10 order finds that both Dr. Nadolny and Dr. Goldenstein diagnosed Sabahot with "psychopathy-persecutory type, delusional disorders" and that the testimony of Dr. Nadolny and Dr. Goldenstein is credible. As in *Spicer*, the district court cannot satisfy its obligation to find facts with particularity by simply adopting the opinions of both Dr. Nadolny and Dr. Goldenstein because their opinions are varied and sometimes inconsistent. *Spicer*, 853 N.W.2d at 810.

Finally, the district court failed to find that Sabahot is dangerous as a result of his mental illness. *See* Minn. Stat. § 253B.02, subd. 17(a)(2). Whether Sabahot was dangerous as a result of his mental illness was the subject of debate between Dr. Nadolny and Dr. Goldenstein. The order's summary of the statutory definition of "mentally ill and dangerous" even excludes the requirement that the person be dangerous "as a result of that mental illness." *Id.*

For these reasons, we conclude that the district court failed to make adequate findings in its November 10 order, and we remand the November 10 order to the district court to make adequate findings. *Spicer*, 853 N.W.2d at 809; *Stewart*, 352 N.W.2d at 813.

B. The February 13 Order

The February 13 final-determination order is more thorough than the November 10 order. At the February 10 reviewing hearing, Dr. Lewey, Dr. Milz, and Dr. Kenning testified consistently regarding the facts surrounding their conclusions that Sabahot is mentally ill and dangerous. The district court found the testimony of Dr. Lewey, Dr. Milz, and Dr. Kenning credible and adopted their testimony in its findings in the February 13 order. Nevertheless, we conclude that the February 13 order is not supported by adequate findings.

Like the November 10 order, the February 13 order does not make adequate findings about the overt act that led to the finding that Sabahot is mentally ill and dangerous. In describing the contents of the MSH report, the February 13 order finds that the report noted "a prior overt act." The order makes no further findings about the overt act, which is a necessary element to conclude that Sabahot is mentally ill and dangerous.

For this reason, we conclude that the district court failed to make adequate findings in its February 13 order, and we remand the February 13 order to the district court to make adequate findings. *Spicer*, 853 N.W.2d at 809; *Stewart*, 352 N.W.2d at 813.

Affirmed in part and remanded.