STATE OF MINNESOTA
IN COURT OF APPEALS
A21-0652

In the Matter of the Civil Commitment of: Jestin Erickson Ledlum.

Filed September 20, 2021
Affirmed
Reyes, Judge

Hennepin County District Court
File No. 27-MH-PR-20-1036

Roderick N. Hale, Minneapolis, Minnesota (for appellant Jestin Erickson Ledlum)

Michael O. Freeman, Hennepin County Attorney, Annsara Lovejoy Elasky, Assistant County Attorney, Minneapolis, Minnesota (for respondent Hennepin County)

Considered and decided by Reyes, Presiding Judge; Connolly, Judge; and Florey, Judge.

NONPRECEDENTIAL OPINION

REYES, Judge

Appellant argues on appeal that the district court erred by committing him as a person who has a mental illness and is dangerous to the public when it determined that (1) he engaged in overt acts causing or attempting to cause serious physical harm to another and (2) he continues to have a mental illness.[1] We affirm.

[1] The Minnesota legislature changed the statutory terminology so that persons formerly committed as "mentally ill and dangerous" are now referred to as persons who have a mental illness and are dangerous to the public. 2020 Minn. Laws 1st Spec. Sess. ch. 2, art. 6, § 9.

FACTS

On June 17, 2020, appellant Jestin Erickson Ledlum pointed a loaded handgun at a female acquaintance and verbally threatened her. The State of Minnesota charged appellant with possession of ammunition and second-degree assault. At that time, appellant had several other pending charges. A district court issued an order under Minn. R. Crim. P. 20.01 to have appellant's competency to stand trial assessed. Dr. Myles Antonioli, the court-appointed examiner, diagnosed appellant with schizophrenia and cannabis-use disorder. He opined that appellant could not rationally consult with counsel, understand the proceedings, and participate in the defense. The district court found appellant incompetent to stand trial.

Respondent Hennepin County (the county) petitioned for appellant's commitment as a person who has a mental illness and is dangerous to the public. Dr. John Anderson, another court-appointed examiner, evaluated appellant and diagnosed him with delusional disorder, alcohol use disorder, and cannabis use disorder. The district court held a hearing at which Dr. Anderson and appellant testified. The district court determined that the county established by clear and convincing evidence that appellant is a person who has a mental illness and is dangerous to the public. It therefore ordered that appellant be committed to the Minnesota Security Hospital, and he was admitted at the Anoka Metro Regional Treatment Center (AMRTC), which often serves as an overflow for the security hospital.

Appellant's treatment providers placed him on a neuroleptic medication, but as his condition improved, they discontinued it. Dr. Brie Pileggi-Valleen, a psychiatrist with the Department of Human Services, evaluated appellant and submitted the statutory 60-day

report to the district court. Minn. Stat. § 253B.18, subd. 2 (2020). The district court held a review hearing on March 24, 2021, at which Dr. Anderson, Dr. Pileggi-Valleen, and appellant testified. The following day, the district court issued an order indeterminately committing appellant as a person who has a mental illness and is dangerous to the public. This appeal follows.

DECISION

In reviewing a district court's civil-commitment order, we view the record in the light most favorable to the district court's decision. *In re Knops*, 536 N.W.2d 616, 620 (Minn. 1995). The petitioner seeking a commitment has the burden of proving by clear and convincing evidence that the statutory criteria for commitment are met. Minn. Spec. R. Commit. & Treat. Act 23(e). The clear-and-convincing-evidence standard requires more than a preponderance of evidence but less than proof beyond a reasonable doubt, and "is met when the truth of the facts asserted is highly probable." *In re Civil Commitment of Kropp*, 895 N.W.2d 647, 654 (Minn. App. 2017) (quotation and citations omitted), *review denied* (Minn. June 20, 2017). We review the district court's findings of facts and credibility determinations for clear error. *Id.* But whether the record supports by clear and convincing evidence the district court's determination that a person meets the statutory criteria is a question of law that we review de novo. *In re Linehan*, 518 N.W.2d 609, 613 (Minn. 1994).

I. The district court did not err by determining that appellant engaged in overt acts causing or attempting to cause serious physical harm to another.

Appellant argues that the four acts relied upon by the district court do not constitute "overt act[s] causing or attempting to cause serious physical harm." We disagree.

Before the district court may commit a person as having a mental illness and dangerous to the public, it must determine that the person "engaged in an overt act causing or attempting to cause serious physical harm to another." Minn. Stat. § 253B.02, subd. 17(2)(i). The overt act need not result from the mental illness. *In re Welfare of Hofmaster*, 434 N.W.2d 279, 281 (Minn. App. 1989). Only one overt act is necessary to support commitment. *See id.* (noting only one overt act). And although the overt act must cause or attempt to cause serious physical harm, it is not necessary that "murder or mayhem" occur. *In re Civil Commitment of Carroll*, 706 N.W.2d 527, 531 (Minn. App. 2005). Neither the person's intent nor the outcome of the conduct is relevant to whether the act meets the overt-act requirement. *Id.* at 530-31; *see also In re Jasmer*, 447 N.W.2d 192, 195 (Minn. 1989) (noting that overt-act requirement is satisfied if act is "capable of causing physical harm"). Indeed, a person's conduct may constitute an overt act even if serious physical harm did not result. *Carroll*, 706 N.W.2d at 531.

Here, the district court found that appellant engaged in four qualifying overt acts: (1) on June 19, 2017, appellant brandished a knife while threatening a woman and knocking her phone out of her hand twice; (2) on March 5, 2018, appellant punched a man in the face while holding a knife in his other hand; (3) on July 4, 2019, appellant struck an acquaintance with a glass and kicked him down the stairs so that the victim required

medical assistance; and (4) on June 17, 2020, appellant pointed a loaded gun at a female acquaintance and made verbal threats. These incidents are well-documented in the record. Appellant physically injured the victim of the 2019 incident, and even if appellant did not intend to cause serious physical harm, his conduct of kicking the victim down the stairs attempted to cause serious physical harm. Because this conduct constitutes an overt act and only one overt act is necessary to support commitment, we need not address whether appellant's other actions constitute overt acts.

Appellant likens his case to *In re Kottke*, 433 N.W.2d 881 (Minn. 1988). There, Kottke struck a security guard with his fist, leaving red marks on his face, and struck another man on the back, causing him to fall and sprain his thumb. *Id.* at 882. The Minnesota Supreme Court concluded that this conduct, though intolerable, did not rise to the level of an overt act causing or intending to cause serious harm. *Id.* at 884. It specifically noted that Kottke struck out "ineffectual[ly]" and had no history of such behavior. *Id.* at 883. Here, in contrast, appellant's conduct of striking a victim with a glass and kicking him down the stairs caused the victim to require medical attention. Further, appellant has a history of increasingly violent behavior. Appellant's comparison to *Kottke* is not persuasive. In sum, the district court did not err by determining that appellant engaged in overt acts causing or attempting to cause serious bodily harm.

II. The district court did not err by determining that appellant continues to have a mental illness.

Appellant argues that he no longer has a mental illness, that clinicians who evaluated him expressed uncertainty about his diagnosis, and that he merely has symptoms caused by substance use. We are not persuaded.

Before committing a person as having a mental illness and being dangerous to the public, the district court must find that the person has "a substantial psychiatric disorder of thought, mood, perception, orientation, or memory that grossly impairs judgment, behavior, capacity to recognize reality, or to reason or understand, and is manifested by instances of grossly disturbed behavior or faulty perceptions." Minn. Stat. § 253B.02, subd. 17(1). Section 253B.02, subdivision 17(1), does not require a precise diagnosis so long as the person meets the statutory requirements. *See generally id.*; *In re Civil Commitment of Opiacha*, 943 N.W.2d 220, 228 (Minn. App. 2020) (stating this principle in context of commitment-as-sexually-dangerous-person statute). That a person's symptoms are in remission in a controlled, supervised setting does not mean the person no longer has a mental illness. *In re Dibley*, 400 N.W.2d 186, 192 (Minn. App. 1987), *review denied* (Minn. Mar. 25, 1987); *see also In re Dirks*, 530 N.W.2d 207, 211 (Minn. App. 1995) (stating that, because committed person unlikely to obtain necessary treatment on his own, fact that his symptoms were in remission did not preclude commitment).

Here, the district court found that appellant's current diagnosis is unspecified schizophrenia spectrum and other psychotic disorder. It therefore determined that appellant continues to be a person who has a mental illness.

The district court's determination is supported in the record. Dr. Anderson and Dr. Pileggi-Valleen were the only experts to testify and comment on the statutory requirements. Dr. Anderson diagnosed appellant with delusional disorder, alcohol use disorder, and cannabis use disorder. He testified that appellant's delusional disorder affects his thought and perception and impairs his judgment, behavior, and capacity to recognize reality. Dr. Anderson testified at the review hearing that he continued to believe appellant had a mental illness. Dr. Pileggi-Valleen diagnosed appellant with unspecified schizophrenia spectrum and other psychotic disorder, alcohol use disorder, and cannabis use disorder. She likewise opined in her report that this diagnosis and appellant's presentation of it constitutes a qualifying mental illness. Additionally, the record shows that appellant had delusions as well as paranoid, grandiose, and disorganized thinking from June 2020 through his commitment at AMRTC, showing that his symptoms have persisted.

Appellant argues that his symptoms result from substance abuse rather than mental illness. Appellant's psychiatric provider at AMRTC opined that his symptoms may be substance-induced. And although both Dr. Anderson and Dr. Pileggi-Valleen acknowledged substance-induced psychosis as a possible explanation for appellant's symptoms, they ultimately dismissed this hypothesis. Instead, they both testified that appellant's mental illness may wax and wane, explaining his current stability as a waning of his symptoms. Further, appellant has been in custody since June 2020 and thus lacked access to controlled substances. Appellant reported that he did not use substances in 2020. His urinalyses have all been clean in 2020. And appellant's symptoms persisted even without drug use throughout his incarceration and commitment to AMRTC. Dr. Anderson

and Dr. Pileggi-Valleen noted that these facts made substance-induced psychosis an unlikely explanation. The district court implicitly credited this testimony. *Pechovnik v. Pechovnik*, 765 N.W.2d 94, 99 (Minn. App. 2009) (noting that district court's findings "implicitly indicate[d]" that it found certain evidence credible).

Appellant argues that his treatment providers concluded he no longer needed hospital-level care, showing that he no longer has a mental illness. The fact that appellant does well without medication at this time does not mean he no longer suffers from a mental illness. *Dibley*, 400 N.W.2d at 192. Indeed, the district court credited Dr. Anderson's testimony that appellant is intelligent and *can present as* nondelusional, as he did at both hearings in this matter. Both Dr. Anderson and Dr. Pileggi-Valleen testified that appellant's success may be largely because of the stability, consistency, and structure of inpatient care. *See Dirks*, 530 N.W.2d at 211 (noting testimony that patient's behavior improved because of structure and medication within controlled environment and that, absent structure, patient's symptoms and dangerous behavior would return). The district court implicitly credited this testimony. *Pechovnik*, 765 N.W.2d at 99. Further, both doctors stated in their reports that appellant should remain in inpatient care.

In light of Dr. Anderson's and Dr. Pileggi-Valleen's testimony, it is "highly probable" that appellant's symptoms result from mental illness. *Kropp*, 895 N.W.2d at 654. Because clear and convincing evidence supports the district court's determination that appellant continues to have a mental illness, we discern no error.

Affirmed.