This opinion is nonprecedential except as provided by Minn. R. Civ. App. P. 136.01, subd. 1(c).

STATE OF MINNESOTA
IN COURT OF APPEALS
A21-0785

In the Matter of the Civil Commitment of:
Nicholas Scott Thompson.

Filed December 6, 2021
Affirmed
Klaphake, Judge*

Jackson County District Court
File No. 32-PR-20-17

Jennifer L. Thon, Warren J. Maas, Jones Law Office, Mankato, Minnesota (for appellant Nicholas Scott Thompson)

Thomas J. Prochazka, Jackson County Attorney, Jackson, Minnesota; and

Kenneth R. White, Special Assistant County Attorney, Law Office of Kenneth R. White P.C., Mankato, Minnesota; and

James Malters, Special Assistant County Attorney, Malters Shepherd & Van Holtum, Worthington, Minnesota (for respondent county)

Considered and decided by Frisch, Presiding Judge; Johnson, Judge; and Klaphake, Judge.

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

NONPRECEDENTIAL OPINION

KLAPHAKE, Judge

Appellant Nicholas Scott Thompson was indefinitely committed as mentally ill and dangerous. On appeal, he challenges the district court's determinations supporting his commitment. Because we conclude that the record establishes clear and convincing evidence that he is mentally ill and dangerous to the public, we affirm.

DECISION

A district court may commit an individual as a person who has a mental illness and is dangerous to the public. *See* Minn. Stat. § 253B.18, subd. 1 (2020).[1] There are three requirements under the statute to indeterminately commit an individual: (1) a determination of mental illness; (2) a determination that the individual committed "an overt act causing or attempting to cause serious physical harm"; and (3) a determination that there is a substantial likelihood the individual "will engage in acts capable of inflicting serious physical harm on another." Minn. Stat. § 253B.02, subd. 17(1), (2) (2020).

In reviewing a district court's order of indeterminate commitment, this court reviews the district court's findings of fact for clear error and "[t]he record is viewed in the

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[1] In 2020, the legislature substituted the terms "[p]erson who poses a risk of harm due to a mental illness" and "[p]erson who has a mental illness and is dangerous to the public" for the existing terms "[p]erson who is mentally ill" and "[p]erson who is mentally ill and dangerous to the public." The amendments replaced those terms respectively but left the former definitions substantially in place. *See* 2020 Minn. Laws 1st Spec. Sess. ch. 2, art. 6, §§ 7, at 145 ("[p]erson who poses a risk of harm due to a mental illness"); 9, at 145-46 ("[p]erson who has a mental illness and is dangerous to the public"); *see also* 2020 Minn. Laws 1st Spec. Sess. ch. 2, art. 6, § 123, at 197 (requiring revisor to put new definitions in alphabetical order). Those amendments became effective on August 1, 2020. Minn. Stat. § 645.02 (2020).

light most favorable to the district court's decision." *In re Knops*, 536 N.W.2d 616, 620 (Minn. 1995). The supreme court recently addressed the clear-error standard that appellate courts use to review a district court's findings of fact: "In applying the clear-error standard, [appellate courts] view the evidence in a light favorable to the findings. [Appellate courts] will not conclude that a fact[-]finder clearly erred unless, on the entire evidence, we are left with a definite and firm conviction that a mistake has been committed." *In re Civil Commitment of Kenney*, 963 N.W.2d 214, 221 (Minn. 2021) (quotations and citations omitted). Additionally,

> [The] clear-error review does not permit an appellate court to weigh the evidence as if trying the matter *de novo*. Neither does it permit an appellate court to engage in fact-finding anew, even if the court would find the facts to be different if it determined them in the first instance. Nor should an appellate court reconcile conflicting evidence. Consequently, an appellate court need not go into an extended discussion of the evidence to prove or demonstrate the correctness of the findings of the [district] court.

Id. at 221-22 (quotations and citations omitted); *see also Engquist v. Wirtjes*, 68 N.W.2d 412, 414 (Minn. 1955) ("The function of an appellate court is that of review. It does not exist for the purpose of demonstrating to the litigants through a detailed statement of the evidence that its decision is right. If the length of judicial opinions is to be kept within reasonable bounds, appellate courts must more closely adhere to the purpose for which they exist."); *Wilson v. Moline*, 47 N.W.2d 865, 870 (Minn. 1951) (stating that the function of an appellate court "does not require [it] to discuss and review in detail the evidence for the purpose of demonstrating that it supports the [district] court's findings," and that an appellate court's "duty is performed when [it] consider[s] all the evidence . . . and

determine[s] that it reasonably supports the findings"); *Cook v. Arimitsu*, 907 N.W.2d 233, 240 n.3 (Minn. App. 2018) (applying this aspect of *Wilson* in a family law appeal), *rev. denied* (Minn. Apr. 17, 2018); *Peterka v. Peterka*, 675 N.W.2d 353, 357-58 (Minn. App. 2004) (same).

> Rather, because the fact[-]finder has the primary responsibility of determining the fact issues and the advantage of observing the witnesses in view of all the circumstances surrounding the entire proceeding, an appellate court's duty is fully performed after it has fairly considered all the evidence and has determined that the evidence reasonably supports the decision.

Kenney, 963 N.W.2d at 222 (quotation omitted). As a result, an appellate court must "fully and fairly consider the evidence, but so far only as is necessary to determine [whether that evidence] reasonably tends to support the findings of the fact[-]finder." *Id.* at 223 (quotation omitted). And "[w]hen the record reasonably supports the findings at issue on appeal, it is immaterial that the record might also provide a reasonable basis for inferences and findings to the contrary." *Id.* (quotation omitted).

Mentally Ill

First, the district court must find clear and convincing evidence 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.18, subd. 1, .02, subd. 17(1).

Appellant does not challenge a finding of a mental illness but challenges the district court's acceptance of different diagnoses from the forensic psychologists. "Where a district

court is presented with conflicting expert testimony as to the patient's treatment, the discretion accorded to the district court takes on special significance, and will not be reversed unless clearly erroneous." *In re Dirks*, 530 N.W.2d 207, 211 (Minn. App. 1995).

Further, section 253B.01, 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 petition for discharge from civil commitment).

Since 2018, appellant has undergone 15 forensic evaluations. The record shows appellant has consistently maintained persecutory delusions, disorganization, pressured and rambling speech, and possible auditory hallucinations. Appellant's diagnoses have included substance-induced psychotic disorder, delusional disorder—persecutory type, cannabis use disorder, and alcohol use disorder. Because clear and convincing evidence supports the district court's determination that appellant continues to have a mental illness, we discern no error.

Overt Act

Second, the district court must determine there is clear and convincing evidence the individual "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 mental illness and only one overt act is necessary to support commitment. *In re Welfare of Hofmaster*, 434 N.W.2d 279, 281 (Minn. App. 1989).

Here, the record establishes clear and convincing evidence of four qualifying overt acts: (1) domestic violence and strangulation of his ex-girlfriend between 2010 and 2012;

(2) strangulation of his father in 2017; (3) assaulting his sleeping cellmate in 2015; and (4) the strangulation and murder of his mother in 2018. The district court specifically cited the murder of his mother as the overt act satisfying the statutory requirement.

Appellant challenges the district court's credibility determinations used to support a finding that he murdered his mother. "Findings of fact, whether based on oral or documentary evidence, shall not be set aside unless clearly erroneous, and due regard shall be given to the opportunity of the [district] court to judge the credibility of the witness." *Knops*, 536 N.W.2d at 620 (citing Minn. R. Civ. P. 52.01). The district court supported its overt act determination with these facts: (1) appellant and his grandmother were the only other people home; (2) it required a significant use of force to strangle the victim and break the hyoid bone; (3) the grandmother "had no reason to hurt her daughter and it is highly improbable that she would have had the strength to strangle a person and break the hyoid bone"; (4) appellant "had made statements in the past about being told to hurt his mother"; and (5) appellant had been on his phone during the afternoon, but was not active on his phone during the time his mother was strangled. Because the record supports these findings, the district court did not err by determining that appellant engaged in overt acts causing or attempting to cause serious bodily harm.

Appellant also challenges the use of an alleged murder as an overt act to support his commitment. The clear-and-convincing standard requires "more than a preponderance of the 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 omitted), *rev. denied* (Minn. June 20, 2017). There is clear and convincing evidence that appellant murdered his mother by strangulation.

Substantial Likelihood of Future Serious Physical Harm to Another Person

Lastly, the district court must determine "there is a substantial likelihood that the person will engage in acts capable of inflicting serious physical harm on another." Minn. Stat. § 253B.02, subd. 17(2)(ii). Appellant denies that he is violent and references his most recent commitments and the lack of any recent violent incidents. That a person's symptoms are in remission in a controlled, supervised setting does not mean that the person no longer has a mental illness. *In re Dibley*, 400 N.W.2d 186, 192 (Minn. App. 1987), *rev. denied* (Minn. Mar. 25, 1987); *see also Dirks*, 530 N.W.2d at 211 (stating that because committed person was unlikely to obtain necessary treatment on his own, the fact that his symptoms were in remission did not preclude commitment).

The district court relied on the psychological examinations and medical records evidencing appellant's history of violence, his lack of insight into this mental illness, a lack of response to treatment intervention, and the possibility that his delusions will remain even with treatment, to determine that appellant presents a future risk to the public. Because clear and convincing evidence supports the district court's determination that appellant has a substantial likelihood to engage in acts capable of inflicting serious harm on another, we discern no error.

Affirmed.