STATE OF MINNESOTA
IN COURT OF APPEALS
A21-1155

In the Matter of the Civil Commitment of:
Anthony John Dentz.

Filed February 14, 2022
Reversed and remanded
Gaïtas, Judge

Dakota County District Court
File No. 19HA-PR-19-877

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Considered and decided by Gaïtas, Presiding Judge; Smith, Tracy M., Judge; and Slieter, Judge.

NONPRECEDENTIAL OPINION

GAÏTAS, Judge

Appellant Anthony John Dentz challenges the district court's order committing him to the Minnesota Commissioner of Human Services as a Sexually Dangerous Person (SDP) following this court's reversal and remand of the district court's prior commitment order. Dentz argues that the district court again misapplied the law on remand and that respondent Dakota County Social Services (the county) failed to present clear and convincing evidence that he would engage in future harmful sexual conduct. We reverse and remand.

FACTS

In December 2019, the county petitioned the district court to indeterminately commit Dentz as an SDP. *See* Minn. Stat. § 253D.07, subd. 2 (2020) (describing the petition stage of civil commitment proceedings). Minnesota law defines an SDP as an individual who "(1) has engaged in a course of harmful sexual conduct . . . ; (2) has manifested a sexual, personality, or other mental disorder or dysfunction; and (3) as a result, is likely to engage in acts of harmful sexual conduct." Minn. Stat. § 253D.02, subd. 16 (2020). According to the county's petition, Dentz is an SDP because (1) he had engaged in a course of harmful sexual conduct that led to convictions for fifth-degree criminal sexual conduct, solicitation of minors, and possession of child pornography; (2) he was diagnosed with several disorders, including sexual disorders; (3) he had violated the conditions of his supervised release and had been discharged from sex-offender treatment; and (4) he is highly likely to engage in harmful sexual conduct in the future.

The district court held a hearing on the county's petition. In support of its petition, the county submitted documentary exhibits detailing Dentz's prior offenses, including the criminal complaints, police reports, and presentence investigations. It also submitted several psychosexual evaluations that had been performed in connection with Dentz's convictions. And it submitted documents addressing Dentz's performance in sex-offender treatment and on supervised release.

Those exhibits established that in January 2015, when Dentz was 18 years old, he was convicted of fifth-degree criminal sexual conduct for orally and vaginally penetrating a 14-year-old girl. *See* Minn. Stat. § 609.3451, subd. 1(1) (2012). In June 2016, Dentz

pleaded guilty to one count of electronic solicitation of a child to engage in sexual conduct. *See* Minn. Stat. § 609.352, subd. 2a(2) (2014). Finally, in April 2017, Dentz pleaded guilty to three additional counts of electronic solicitation of a child to engage in sexual conduct, *id.*, and three counts of possession of child pornography, Minn. Stat. § 617.247, subd. 4(a) (2014). For these offenses, the district court sentenced Dentz to a cumulative total of 54 months in prison and a five-year conditional-release period.[1]

The county's exhibits also established that Dentz was released from prison in February 2019 and was placed on supervised release. In October 2019, Dentz's supervised-release agent alleged that he violated the conditions of release by (1) accessing pornography; (2) having contact with minors, including a sexually explicit discussion with a girl online during which he asked her to send him a photograph; (3) accessing the internet via an unidentified cell phone and a friend's cell phone; and (4) being terminated from sex-offender programming.

In addition to documents detailing Dentz's history, the district court received the report and testimony of Dr. Mary Kenning, who was appointed by the court to assess Dentz's risk of reoffending. Based on several standardized assessment tools, Dr. Kenning determined that Dentz had a higher-than-average risk of committing additional noncontact offenses. But she concluded that Dentz did not "appear to be among the group of offenders whose risk level warrants the extraordinary intervention of civil commitment as [an SDP]."

[1] The record also shows that Dentz was charged in 2016 with another offense involving communicating with a minor about sexual conduct. That charge was ultimately dismissed, but, in 2019, Dentz admitted to the conduct underlying the charge.

Dr. Kenning observed that Dentz's young age increased his "risk of sexual and violent re-offense" and that his recidivism risk was higher than that of the average sex offender. However, she also noted that he did not have a history of violent behavior, he would receive "greater community scrutiny" and more supervision as a result of his supervised-release violation, he did not commit a new offense, and he "was not ordered to complete sex offense specific treatment in the community prior to 2017 and was unable to do so in prison." Dr. Kenning testified that the sex-offender treatment program that had discharged Dentz was willing to work with him again.

Following the hearing, the district court issued an order determining that Dentz is an SDP and that confinement in a secure facility is necessary. The district court committed Dentz to the Minnesota Commissioner of Human Services.

Dentz appealed his commitment, arguing that the district court misapplied the law and made clearly erroneous factual findings. We reversed and remanded. *See In re Civ. Commitment of Dentz*, No. A20-1230, 2021 WL 164521 (Minn. App. Jan. 19, 2021) (*Dentz I*). First, we concluded that the district court had erroneously relied on a presumption that Dentz's prior offenses were "harmful sexual conduct" even though Minnesota law does not identify any of these offenses as presumptively harmful.[2] *Id.* at *4. Second, we determined that the district court erroneously found that Dentz had viewed child

[2] "Harmful sexual conduct" is "sexual conduct that creates a substantial likelihood of serious physical or emotional harm to another." Minn. Stat. § 253D.02, subd. 8(a) (Supp. 2021). Some conduct—conduct that is described in several specific criminal statutes—is presumed to be harmful sexual conduct, although the presumption can be rebutted. Minn. Stat. § 253D.02, subd. 8(b) (Supp. 2021).

pornography while on supervised release although the record showed that it was adult pornography. *Id.* at *6. And third, we concluded that the district court's determination on the third factor—the likelihood of reoffense—was impacted by its erroneous decision on the first factor. *Id.*

On remand, the district court relied on the record from the earlier hearing and prepared a new order. The district court again concluded that Dentz is an SDP and that confinement is necessary.

In the district court's second order—the order now on appeal—it found that Dentz had viewed adult pornography while on supervised release, correcting the error in its previous order. The district court also reconsidered whether Dentz satisfied the statutory criteria for an SDP. It again determined that Dentz's prior conduct—"soliciting children for sex, engaging in sex with a minor, viewing both adult and child pornography and soliciting photos from minors"—was "the type of conduct that creates a substantial likelihood of serious emotional or physical harm to the victims." Although the district court noted that "there is no legislatively created rebuttable presumption," it determined that Dentz's "course of conduct . . . created . . . a substantial likelihood of harm." Additionally, the district court again concluded that Dentz is highly likely to commit future acts of harmful sexual conduct.

Dentz appeals.

DECISION

To commit a person as an SDP, the county must prove by clear and convincing evidence that the person: "(1) has engaged in a course of harmful sexual conduct; (2) has

manifested a sexual, personality, or other mental disorder or dysfunction; and (3) as a result, is likely to engage in acts of harmful sexual conduct." *In re Civ. Commitment of Ince*, 847 N.W.2d 13, 20 (Minn. 2014); *In re Civ. Commitment of Spicer*, 853 N.W.2d 803, 807 (Minn. App. 2014); *see also* Minn. Stat. § 253D.02, subd. 16(a)(1)-(3).[3] Dentz challenges the district court's determination that he satisfies the first prong of this test, arguing that the district court failed to make sufficient findings of fact to support its conclusion that his conduct was harmful sexual conduct and relied on improper presumptions in ruling that he had engaged in a course of harmful sexual conduct.

In commitment cases, the district court must "find the facts specifically, and separately state its conclusions of law." Minn. Stat. § 253B.09, subd. 2(a) (2020). "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." *Id.*

"[T]he commitment determination . . . is a difficult task often requiring consideration of a voluminous and complex record followed by a careful balancing of all the relevant facts," and "the district court is in the best position to weigh the evidence and assess credibility." *Ince*, 847 N.W.2d at 23-24 (quotation omitted). We therefore afford the district court "due deference" in assessing the credibility of witnesses. *In re Civ.*

[3] If the district court finds that a person is an SDP, it must commit the person to a secure treatment facility "unless the person establishes by clear and convincing evidence that a less restrictive treatment program is available, is willing to accept the [person] under commitment, and is consistent with the person's treatment needs and the requirements of public safety." Minn. Stat. § 253D.07, subd. 3 (2020).

Commitment of Crosby, 824 N.W.2d 351, 356 (Minn. App. 2013), *rev. denied* (Minn. Mar. 27, 2013). And a reviewing court should not reweigh the evidence in such cases. *In re Civ. Commitment of Kropp*, 895 N.W.2d 647, 650 (Minn. App. 2017) (citations omitted), *rev. denied* (Minn. June 20, 2017); *see In re Civ. Commitment of Fugelseth*, 907 N.W.2d 248, 253 (Minn. App. 2018), *rev. denied* (Minn. Apr. 17, 2018).

An appellate court applies a clear-error standard in reviewing the district court's factual findings. *Ince*, 847 N.W.2d at 22. This standard requires the reviewing court to view the evidence "in a light favorable to the findings" and to determine whether that evidence "reasonably tends to support" the district court's findings of fact. *In re Civ. Commitment of Kenney*, 963 N.W.2d 214, 221, 223 (Minn. 2021) (quotation omitted). Then, applying de novo review, we consider whether the district court's factual findings satisfy the statutory criteria for commitment as an SDP, which is a question of law. *Spicer*, 853 N.W.2d at 807.

1. Course of Harmful Sexual Conduct

The first statutory requirement for committing a person as an SDP is clear and convincing evidence that the individual "has engaged in a course of harmful sexual conduct." Minn. Stat. § 253D.02, subd. 16(a)(1). This requirement has two components: "harmful sexual conduct" and a "course" of such conduct. Thus, to conclude that Dentz is an SDP, the district court had to find by clear and convincing evidence both that he engaged in "harmful sexual conduct" and that his conduct constituted a "course" of that type of conduct.

Harmful sexual conduct

"'Harmful sexual conduct' means sexual conduct that creates a substantial likelihood of serious physical or emotional harm to another." Minn. Stat. § 253D.02, subd. 8(a). Certain conduct—conduct that violates specific criminal laws—creates a rebuttable presumption of serious physical or emotional harm. That conduct includes conduct that constitutes first-, second-, third-, and fourth-degree criminal sexual conduct, among other delineated offenses. *Id.*, subd. 8(b).

Here, however, none of Dentz's past conduct is presumed to be harmful sexual conduct.[4] *See* Minn. Stat. § 253D.02, subd. 8(b). Thus, the district court was required to determine whether the county presented clear and convincing evidence that Dentz's conduct was harmful sexual conduct under the statute—whether Dentz engaged in "sexual conduct that create[d] a substantial likelihood of serious physical or emotional harm to another." Minn. Stat. § 253D.02, subd. 8(a).

When making findings of fact, the district court must "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(a). It is not sufficient in such a proceeding for a district court to make determinations on factors "in a conclusory fashion." *In re Linehan*, 518 N.W.2d 609, 614 (Minn. 1994). Because an appellate court reviews a

[4] At oral argument, counsel for the county argued that, although Dentz was ultimately convicted of fifth-degree criminal sexual conduct, his conduct technically amounted to third-degree criminal sexual conduct, which is presumptively harmful under the statute. *See* Minn. Stat. § 253D.02, subd. 8(b). But because the district court did not make factual findings to this effect or rely on such a presumption, we do not consider this argument.

district court's decision in such matters with deference, it is critically important for the district court to articulate its findings with particularity. *See Spicer*, 853 N.W.2d at 809 (analogizing civil-commitment cases to custody cases and observing that specific factual findings are necessary for meaningful appellate review in such cases). And *Spicer* makes clear that, in addition to facilitating appellate review, specific findings are crucial for ensuring that all statutory factors are addressed and assuring the parties that the decision was considered carefully and fairly. *Id.* *Spicer* notes that "a district court's findings of fact must 'provide insight into which facts or opinions were most persuasive of the ultimate decision.'" *Id.* (quoting *In re Welfare of M.M.*, 452 N.W.2d 236, 239 (Minn. 1990)). Thus, for a district court's findings of fact to be adequate, appellate courts must be able to discern both *what* decision the district court made, and *why* it made that decision. *Hagen v. Schirmers*, 783 N.W.2d 212, 217-18 (Minn. App. 2010) (citing cases).

Here, regarding Dentz's conduct, the district court found:

> 1/14/15 – Convicted of Criminal Sexual Conduct in the Fifth Degree. (Anoka County). In this offense [Dentz] contacted a fifteen-year-old girl on a social networking website, and ended up having oral sex and vaginal intercourse with her at her house. [Dentz] knew her age. The child sent lewd pictures of herself to [Dentz].
>
> 9/28/16 – Convicted of Electronic Solicitation of a Minor. (Dakota County).
>
> 7/13/17 – Convicted of three counts of Electronic Solicitation of a Minor. (Dakota County).
>
> 7/13/17 – Convicted of three counts of Possession of Child Pornography. (Dakota County).

> 09/16[5] – Charged with one count of Engaging in electronic communication relating to or describing sexual conduct with a child. (Dodge County). Charge dismissed, but [Dentz] admitted sexual contact with this victim during a 2019 interview with Dr. Kenning.[6]

The district court did not discuss the facts underlying Dentz's prior convictions or charges. In addition to listing Dentz's prior offenses, the district court noted that Dentz violated the terms of his treatment program and supervised release "by viewing pornography on multiple unauthorized devices, smoking a CBD cigarette, chatting with minor females, and 'sexting.'" It also observed that Dentz "was not truthful to his agent."

As to the harmful-sexual-conduct criterion, the district court found:

> 55. While there was no direct testimony from victims of [Dentz], this Court believes it is an undeniable truth that children who are forced into posing for or participating in child pornography suffer serious emotional and likely serious physical harm.
>
> 56. This Court also agrees with the Minnesota Court of Appeals' decision in the Matter of the Civil Commitment of David Josef Lovejoy 2017 WL 562624. Therein, the Minnesota Court of Appeals affirmed the decision of the trial court finding that "children depicted in images of child pornography suffer significant emotional and physical harm" and that those who view it create a market that results in the sexual exploitation of children. This Court does not need to hear direct testimony from the children depicted to know that they suffered harm.

[5] This date in the district court's order appears to refer to the month and year that the charge was dismissed.

[6] We clarify that the record shows that the "sexual contact" Dentz acknowledged was sexual communication and not physical contact.

> 57. To conclude that the State must locate a child or children who are depicted in the sexual images that are being distributed nationally, and perhaps around the globe, and force that child or children to testify about the harm they experienced, would be an absurd requirement that would subject the victims to yet more emotional harm or distress.
>
> 58. [Dentz]'s conduct, between soliciting children for sex, engaging in sex with a minor, viewing both adult and child pornography and soliciting photos from minors was the type of conduct that creates a substantial likelihood of serious emotional or physical harm to the victims.
>
> 59. While there is no legislatively created rebuttable presumption, [Dentz]'s course of conduct nonetheless created, at the very least, a substantial likelihood of harm.

We conclude for three reasons that the district court's findings that Dentz engaged in harmful sexual conduct do not satisfy the specificity requirements discussed in *Linehan* and *Spicer*. First, it is unclear from the district court's findings exactly what facts the district court considered when it concluded that Dentz's conduct created "a substantial likelihood of serious physical or emotional harm to another." Minn. Stat. § 253D.02, subd. 8(a).

Second, some of the district court's factual findings and conclusions of law suggest that the district court presumed that Dentz's conduct was harmful sexual conduct rather than relying on the facts in the record to reach that conclusion. Although the district court's order notes that "there is no legislatively created rebuttable presumption," it also states that "it is an undeniable truth that children who are forced into posing for or participating in child pornography suffer serious emotional and likely serious physical harm." And the district court concluded that Dentz engaged in harmful sexual conduct because he engaged

in "the type of conduct that creates a substantial likelihood of serious emotional or physical harm to the victims." The order makes no findings of fact to support these conclusions—such as a finding that the images in Dentz's child pornography case depicted children being sexually abused or findings about the facts underlying the solicitation offenses. Therefore, the district court's conclusions on these matters appear to be presumptions that the relevant sexual conduct was harmful sexual conduct (despite the lack of a legislative authorization for that presumption), rather than determinations based on the record presented to the court.

To be clear, we agree with the district court that it would be absurd to require victims of child pornography to testify about the actual harm suffered. We are aware of no such requirement, and we adopt no such requirement here. But the legislature has authorized a presumption that sexual conduct is harmful sexual conduct for only certain types of sexual conduct. *See* Minn. Stat. § 253D.02, subd. 8(a). The sexual conduct at issue here is not among those types of sexual conduct. Therefore, any determination that it is harmful sexual conduct under the statute must be based on findings of fact specifically addressing the conduct at issue in this case and cannot be based merely on the "type" of conduct that occurred.

Third, the district court suggested that an unpublished (or nonprecedential) opinion of this court decided *as a matter of law* that "children depicted in images of child pornography suffer significant emotional and physical harm." The district court misread this court's opinion. In the cited case, we merely concluded that the record supported the district court's factual finding to that effect. *See In re Civ. Commitment of Lovejoy*, No. A16-1442, 2017 WL 562624 at *6 (Minn. App. Feb. 13, 2017). And in any event, we are

not bound by our unpublished decisions. Minn. R. Civ. App. P. 136.01, subd. 1(c) ("Nonprecedential opinions and order opinions are not binding authority except as law of the case, res judicata, or collateral estoppel, but nonprecedential opinions may be cited as persuasive authority."). To the extent that the district court applied our unpublished decision for the proposition that possession of child pornography is harmful sexual conduct as a matter of law, it erred.

Course of conduct

To determine that Dentz is an SDP, the district court was also required to find that Dentz engaged in a "course" of harmful sexual conduct. A "course" is a "systemic or orderly succession; a sequence." *In re Civ. Commitment of Ramey*, 648 N.W.2d 260, 268 (Minn. App. 2002) (quotation omitted), *rev. denied* (Minn. Sept. 17, 2002). Thus, to find that Dentz engaged in the required "course" of harmful sexual conduct, the district court had to determine Dentz engaged in a succession or sequence of individual acts, each of which was an act of harmful sexual conduct.

We reject the district court's determination that Dentz engaged in a "course" of harmful sexual conduct for two reasons. First, the district court found that "[Dentz's] course of conduct . . . created, at the very least, a substantial likelihood of harm." The district court's statement suggests that, instead of finding that Dentz had engaged in a sequence of events, each of which was an act of harmful sexual conduct, it considered his conduct cumulatively, and concluded that it was a harmful course of sexual conduct. This latter approach is erroneous because each independent event that comprises the course of harmful sexual conduct must be, in and of itself, harmful sexual conduct.

Second, and more fundamentally, the district court's findings are unclear about exactly what conduct the district court found to be part of the "course" of harmful sexual conduct. Specifically, it appears that the district court included viewing adult pornography as part of the course of harmful sexual conduct without explaining how or why that would be the case here.

We recognize that sex-offender commitment decisions are difficult. *See Spicer*, 853 N.W.2d at 811. Often, as here, the parties supply the district court with a voluminous paper record with the expectation that the district court will hunt for the salient facts. *See id.* at 811-12. The underlying facts in these cases can be uncomfortable to write about in detail. But the law requires specificity. Minn. Stat. § 253B.09, subd. 2(a); *Ince*, 847 N.W.2d at 26.

"An order does not permit meaningful appellate review if it does not identify the facts that the district court has determined to be true and the facts on which the district court's decision is based." *Spicer*, 853 N.W.2d at 811; *see also Ince*, 847 N.W.2d at 26; *Linehan*, 518 N.W.2d at 614. Because the district court's factual findings are not sufficient for meaningful appellate review, we reverse and remand for further findings and further consideration of the issue of whether Dentz engaged in a course of harmful sexual conduct.

2. Likelihood of Reoffense

Dentz also challenges the sufficiency of the evidence underlying the district court's finding on the third statutory factor—that he is highly likely to reoffend. According to Dentz, he cannot be committed because the only expert witness who testified opined that he was *not* likely to engage in future harmful sexual conduct.

We addressed this argument in *Dentz I*. *See Dentz I*, 2021 WL 164521 at *5. There, we determined that there was "no error in the rejection of the evaluator's ultimate conclusion by the district court." *Id.* Because we are bound by our previous decision on this issue, we cannot reconsider it. *See Sigurdson v. Isanti County*, 448 N.W.2d 62, 66 (Minn. 1989) (stating that appellate rulings on legal issues may not be reconsidered in a second appeal).

But the district court's decision regarding the third factor may be based on its determinations regarding the first factor, which we now reverse. Accordingly, in its discretion, the district court may reconsider its findings and conclusions on the third factor.

Reversed and remanded.