STATE OF MINNESOTA
IN COURT OF APPEALS
A10-1947

In the Matter of the Civil Commitment of: Thomas Hurl Bolter.

Filed May 3, 2011
Affirmed
Kalitowski, Judge

Pennington County District Court
File No. 57-PR-09-1313

Richard N. Sather, Sather Law Office Ltd., Thief River Falls, Minnesota (for appellant Thomas Hurl Bolter)

Lori Swanson, Attorney General, Noah A. Cashman, Assistant Attorney General, St. Paul, Minnesota (for respondent)

Considered and decided by Worke, Presiding Judge; Kalitowski, Judge; and Stauber, Judge.

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

KALITOWSKI, Judge

Appellant Thomas Hurl Bolter challenges his indeterminate civil commitment as a sexually dangerous person, arguing (1) that the district court abused its discretion by denying his motion to withdraw his stipulation to commitment and (2) that the matter should be remanded for a hearing on unspecified findings of fact to which appellant assigns error. We affirm.

D E C I S I O N

In a proceeding to commit an individual under the Minnesota Commitment and Treatment Act, Minn. Stat. §§ 253B.01-.24 (2010),

> a stipulation cannot ordinarily be repudiated or withdrawn from by one party without the consent of the other, except by leave of the court for cause shown. The decision to vacate a stipulation rests largely in the discretion of the district court, and its action will not be reversed absent a showing that the court acted so arbitrarily as to constitute an abuse of that discretion. A stipulation may be vacated when it was made improvidently and in good conscience and equity should not stand. When there is fraud or duress that prejudices a party making the stipulation, the stipulation was improvidently made.

See In re Commitment of Rannow, 749 N.W.2d 393, 396-97 (Minn. App. 2008) (quotations and citations omitted) (reviewing stipulation to indeterminate civil commitment as mentally ill and dangerous to the public), *review denied* (Minn. Aug. 5, 2008). These principles apply to commitments of individuals as sexually dangerous persons. Minn. Stat. § 253B.185, subd. 1(a) (stating that the provisions of the Minnesota Commitment and Treatment Act that pertain to persons who are mentally ill and dangerous to the public apply "with like force and effect to persons who are alleged or found to be sexually dangerous persons").

Here, Pennington County petitioned to commit appellant as a sexually dangerous person and as a sexual psychopathic personality. At a hearing on July 16, 2010, the parties submitted to the district court a written stipulation, in which appellant agreed to indeterminate commitment as a sexually dangerous person. In the written stipulation, appellant agreed that he had read the commitment petition and discussed it with his

attorney; that he had received sufficient time to confer with his attorney and was satisfied with his attorney's performance; that he had no mental disorder and was taking no medications that interfered with his ability to enter into the stipulation; and that he understood the nature of the petition.

Further, in the stipulation appellant acknowledged that by entering into the stipulation, he was waiving his rights related to the commitment process—including his right to call and cross-examine witnesses, to have hearings before the district court, and to testify on his own behalf. Appellant also acknowledged that he would not be discharged unless the Special Review Board were to determine that discharge was appropriate. Appellant averred that he was not claiming innocence of the crimes of which he was convicted or claiming that he did not commit the acts of sexual misconduct alleged in the petition. Appellant agreed that, based on the exhibits that would be submitted, the district court would likely find him to be a sexually dangerous person. In exchange for appellant's stipulation to commitment as a sexually dangerous person, the state agreed to dismiss the sexual-psychopathic-personality parts of the petition.

At the hearing, one of the court-appointed examiners testified via telephone that appellant met the statutory criteria for commitment as a sexually dangerous person and was competent to enter into the stipulation. And appellant was questioned extensively about his decision to stipulate to commitment and his understanding of the stipulation and its consequences. Appellant denied that he was in a "funky mood," denied that lack of sleep was influencing his decision, stated that he understood he could not change his mind about the stipulation once it was accepted, and stated that he was not claiming to be

innocent of any of the crimes of which he had been convicted or that he had not committed the acts of sexual misconduct alleged in the petition. Appellant also acknowledged that no person committed to the Minnesota Sex Offender Program "has actually successfully been released yet."

The district court indeterminately committed appellant as a sexually dangerous person and dismissed the sexual-psychopathic-personality parts of the petition. In its July 16, 2010 order for commitment, the district court stated that findings of fact supporting the commitment would be issued after the district court had reviewed the exhibits. In August 2010, appellant moved to withdraw his stipulation. After a hearing, the district court took the matter under advisement. In October 2010, the district court issued an order for commitment that reiterated its conclusions of law and included factual findings to support the conclusions. In December 2010, the district court denied appellant's motion to withdraw his stipulation.

On appeal, appellant contends that the district court abused its discretion by not granting his motion to withdraw his stipulation to commitment because of appellant's "personality and the circumstances surrounding his admission to being a Sexually Dangerous Person, lack of sleep, and overwhelming desire to be out of the Pennington County Jail." But appellant's contentions are not supported by the record.

Appellant's mental health—including his mood swings and medication—and his competency to enter into the stipulation were addressed in the written stipulation itself and at the July 16, 2010 hearing. Also at the hearing, appellant specifically denied that lack of sleep influenced his decision to stipulate to commitment. And the district court

order placing appellant, at his request, in the Pennington County jail pending the commitment proceedings allowed appellant to revoke this decision and be transferred to a secure treatment facility by filing a revocation notice and serving it on the county.

The written stipulation and the transcript of the hearing show that appellant understood the consequences of stipulating to indeterminate commitment as a sexually dangerous person and that a rational basis—the dismissal of the sexual-psychopathic-personality portions of the petition and the likelihood of commitment based on the evidence—supported his decision. And there is no evidence of fraud or duress. We therefore conclude that the district court did not abuse its discretion by denying appellant's motion to withdraw his stipulation. *See Rannow*, 749 N.W.2d at 397-99 (upholding stipulation to indeterminate commitment as mentally ill and dangerous to the public where appellant was clearly informed of the consequences of commitment, appellant made his understanding evident in the record, and the record lacked any evidence of fraud or duress).

Appellant asserts that unspecified findings in the commitment order were clearly erroneous. But his failure to identify the challenged findings and explain how they are unsupported by the record precludes our review of this issue. *See State, Dep't of Labor & Indus. v. Wintz Parcel Drivers, Inc.*, 558 N.W.2d 480, 480 (Minn. 1997) (declining to reach issue in absence of adequate briefing); *State by Humphrey v. Modern Recycling, Inc.*, 558 N.W.2d 770, 772 (Minn. App. 1997) (stating that assignment of error in brief based on mere assertion and not supported by argument or authority is waived unless prejudicial error is obvious on mere inspection). We also note that appellant admitted to

the allegations in the petition but does not explain how the allegations in the petition are in conflict with the findings in the commitment order.

Finally, appellant appears to argue that a district court cannot accept a stipulation to indeterminate commitment as a sexually dangerous person because fairness requires a hearing before a person can be placed in "a lifelong treatment program in a locked facility." But stipulations to indeterminate civil commitment are permitted. *See Rannow*, 749 N.W.2d at 399 (upholding district court's denial of appellant's motion to rescind his stipulation to indeterminate civil commitment as mentally ill and dangerous to the public); *see also* Minn. Stat. § 253B.185, subd. 1(a) (stating that the provisions of the Minnesota Commitment and Treatment Act pertaining to persons who are mentally ill and dangerous to the public generally apply to persons who are alleged or found to be sexually dangerous persons). Appellant's argument is essentially a challenge to existing law, which "[t]his court . . . is without authority to change." *Lake George Park, L.L.C. v. IBM Mid-Am. Emps. Fed. Credit Union*, 576 N.W.2d 463, 466 (Minn. App. 1998), *review denied* (Minn. June 17, 1998).

Affirmed.