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**STATE OF MINNESOTA
IN COURT OF APPEALS
A10-2197**

In the Matter of the Civil Commitment of: Steven Charles Kaelble

**Filed May 3, 2011
Affirmed
Larkin, Judge**

Ramsey County District Court
File No. 62-MH-PR-09-220

Mary Margaret Huot, St. Paul, Minnesota (for appellant)

John J. Choi, Ramsey County Attorney, Stephen P. McLaughlin, St. Paul, Minnesota (for respondent)

Considered and decided by Larkin, Presiding Judge; Klaphake, Judge; and Minge, Judge.

UNPUBLISHED OPINION

LARKIN, Judge

Appellant challenges his commitment as a sexual psychopathic personality (SPP) and sexually dangerous person (SDP), arguing that the evidence does not support the district court's findings that he meets the statutory criteria for commitment and that no less restrictive alternative exists. Because appellant's commitment as an SPP and SDP is supported by clear and convincing evidence and because appellant failed to establish the availability of a less restrictive alternative, we affirm.

FACTS

Appellant Steven Charles Kaelble was first convicted of a criminal-sexual-conduct offense in 1989. At the trial on that offense, the victim, P.L., testified that she was unloading groceries from her car when another vehicle approached. She assumed the driver, later identified as Kaelble, was going to ask her for directions. Instead, Kaelble grabbed her from behind, told her he had a gun, and made her get into his car. Next, Kaelble told her that the dog in his car, Bear, was part wolf and part German Shepherd and was trained to kill. Kaelble ordered P.L. to perform oral sex on him while he drove. P.L. testified that she did what Kaelble told her to do because she was frightened and because Kaelble threatened to hurt her if she did not comply.

P.L. testified that Kaelble took her to an ice-fishing house on Lake Jane, where he cut off her bra with a pocket knife, blind-folded her with it, tied her up, injected her with methamphetamine, and engaged in oral sex and vaginal intercourse with her. She testified that after she was injected with the drugs, she felt like everything that was happening was all right. The effects of the methamphetamine lasted for more than a day. She testified that she did not use illicit drugs and had given up drinking nine years earlier. After the assault at the ice-fishing house, Kaelble drove P.L. to her apartment and sexually assaulted her at her apartment. P.L. testified that Kaelble told her that he had been thinking about doing something like this for a long time and that she happened to be the woman he chose.

Kaelble was convicted of two counts of first-degree criminal sexual conduct, one count of using drugs to facilitate the commission of a crime, one count of kidnapping,

and one count of distribution of a controlled substance for his sexual assault of P.L. The district court sentenced Kaelble to 129 months in prison, which was a triple upward durational departure. This court reduced his sentence to 86 months. *State v. Kaelble*, No. C7-89-1464 (Minn. App. May 15, 1990), *review denied* (Minn. July 13, 1990).

In November 1993, Kaelble was released from prison and placed on intensive supervised release (ISR). He initially resided in a halfway house. In January 1994, he moved to his own apartment. Kaelble was required to meet twice a month with his ISR officer and to provide urinalysis samples for drug and alcohol screening. While on ISR, Kaelble attended eight psychoeducational classes at Alpha Human Services, which covered the topics of sex, sexuality, intimacy, love, shame, guilt, stress management, the impact of sexual abuse on victims, boundaries, touch, sexual fantasy, masturbation, pornography, anger management, and relapse prevention. On the final assessment, Kaelble scored a 93% and stated that the program gave him “good insights on some problems I’ve had, that family members have, and confirmed my prior thoughts about these.” Kaelble’s ISR officer testified that Kaelble seemed to do everything right. But appearances were deceiving. Despite his successful performance in the psychoeducational program and on ISR, Kaelble was using pain killers, alcohol, and methamphetamine. He was also sexually reoffending. This time, the victim was his own biological daughter, K.K.

At the commitment trial, K.K. testified that Kaelble began abusing her shortly after he was released from prison for his offense against P.L. K.K. was 11 years old at the time. K.K. reported that the abuse would occur when she visited Kaelble at his

apartment on weekends. The first time Kaelble sexually assaulted K.K., she was asleep in his bed; Kaelble inserted his fingers into her vagina. K.K. told police that the next time she visited Kaelble, he inserted his penis into her vagina. Kaelble did this every weekend that K.K. went to his apartment. K.K. testified that Kaelble eventually began giving her drugs before he sexually assaulted her. Kaelble told K.K. he was giving her ecstasy, but it was actually methamphetamine. K.K. testified that the drugs “made everything seem ok for a little bit.” She further testified that Kaelble extinguished a cigarette on her right breast, leaving a permanent scar. She stated that she was so high on methamphetamine that she did not care. K.K. testified that on another occasion she had given herself a “party dot,” a small dot tattooed on her hand. She stated that Kaelble was furious about the tattoo and hit her in the face. He then took a pencil, pulled out the eraser, and used the metal edge to dig out the tattoo with bleach and salt. She showed the district court the scar that remained on her hand.

K.K. eventually reported the abuse. Kaelble was charged and pleaded guilty to first-degree criminal sexual conduct. He was sentenced to a 244-month prison term, a double upward durational departure, with a ten-year conditional release period. This court reduced his sentence to 240 months. *State v. Kaelble*, No. C9-02-684, (Minn. App. Nov. 26, 2002), *review denied* (Minn. Jan. 29, 2003). During his incarceration, Kaelble was actively involved in Alcoholics Anonymous and completed a number of psychoeducational classes which provided “information and the opportunity for participants to develop and demonstrate new skills related to the treatment issues identified on their individual treatment plans.” Kaelble completed classes regarding

cognitive restructuring, sexual-assault dynamics, emotions management, morals and values, reoffense prevention, transitions, victim empathy, personal victimization, sexual behavior, and alcohol and drug education.

Kaelble also participated in the Minnesota Department of Corrections (DOC) Sex Offender Treatment Program (SOTP) at Lino Lakes. There are four tracks in the SOTP. The first track is the assessment phase, which includes psychological testing, interviews, review of the offender's records, and evaluation of the individual offender's needs. Roberta Singerhouse, a corrections-program therapist at Lino Lakes, identified a number of areas Kaelble needed to address in treatment, including chemical dependency issues; admission of his offense behavior; acceptance of responsibility for his behavior; sexual interests, attitudes and behaviors; offense dynamics; reoffense prevention; criminal behavior and attitudes; and sexual attitudes. Kaelble completed the assessment phase and advanced to Track 2.

Track 2 is intensive chemical-dependency treatment. Kaelble completed his Track 2 treatment goals. He also developed and implemented an emotional-management plan, participated in an additional emotional-management class, and aligned a network of support people. Kaelble began Track 3, the long-term sex-offender-therapy component of the SOTP, in January 2008 and completed it in March 2009. Kaelble then advanced to Track 4, which is the transitional-programming component of the program. He was unable to complete this component due to his July release date, but he continued to participate in the track until that time.

Prior to Kaelble's release from prison, the state petitioned for his commitment as an SPP and SDP. The district court held a trial on the petition on August 4 through August 7, 2009, at which it heard the testimony of 19 witnesses and received 31 exhibits. A summary of the evidence follows.

Harry M. Hoberman, Ph.D., L.P., is a duly qualified forensic psychologist. Dr. Hoberman conducted an independent forensic psychological examination and prepared an initial report regarding Kaelble. Dr. Hoberman reviewed Kaelble's records from his DOC file, including the records of various Minnesota correctional facilities and SOTP. Dr. Hoberman also reviewed reports from the Washington County Sheriff's Department and district court, the St. Paul Police Department, and the Ramsey County district court. Dr. Hoberman did not meet with Kaelble in person. Dr. Hoberman testified that Kaelble meets the statutory requirements for commitment as an SPP and SDP.

Peter Meyers, Psy.D., L.P., is a duly qualified forensic psychologist. Dr. Meyers testified that he has reviewed approximately 150 SPP/SDP cases in approximately 24 Minnesota counties. Dr. Meyers reviewed Kaelble's records and interviewed him. Dr. Meyers testified that Kaelble meets the statutory requirements for commitment as an SPP and SDP.

Paul Reitman, Ph.D., L.P., is also a duly qualified forensic psychologist, who was appointed as the second examiner by the district court at Kaelble's request. Dr. Reitman reviewed Kaelble's records and interviewed him. Dr. Reitman testified that Kaelble meets the statutory requirements for commitment as an SDP but not as an SPP.

Roberta Singerhouse, Kaelble's therapist at SOTP, testified that she is familiar with Kaelble's treatment history and that she had observed changes in Kaelble during his time in treatment. She testified that Kaelble became a peer mentor, challenged himself, and was open to feedback. Singerhouse also testified that while Kaelble needs further treatment, she disagrees with Drs. Hoberman, Reitman, and Meyers that he should be committed as an SPP or an SDP. Katherine Wheeler, the Lino Lakes Corrections Program Director, testified that Kaelble needs continued sex-offender treatment, but that an out-patient treatment program such as Alpha House would be appropriate.

The district court also received evidence of Kaelble's scores on actuarial measures and assessments used to predict recidivism. The Hare Psychopathy Checklist Revised-II (Hare) is an actuarial tool used to assess psychopathy in male forensic and prison populations. The Hare total score is a strong predictor of general, sexual, and violent recidivism in prison and forensic psychiatric populations. Psychopathic offenders have been found to be three to four times more likely to violently reoffend following release from custody than non-psychopathic offenders. A score of 30 or above denotes categorical psychopathy. Drs. Meyers and Hoberman scored Kaelble at 30, thus placing him in the clinical psychopath range. Dr. Reitman scored Kaelble at 22 to 23, but he testified that he tended to give Kaelble the benefit of the doubt when scoring him.

The Sexual Violence Risk-20 (SVR-20) is an assessment tool used to provide information that distinguishes the relative risk of sex offenders for sexual recidivism from more general forms of recidivism. This instrument is not used as an actuarial instrument

but has been shown to provide valid predictions of sexual recidivism. Dr. Meyers scored Kaelble at 15, which places him in the “high risk” category for further sexual violence.

The Static-99 is an actuarial instrument designed to estimate the probability of sexual and violent recidivism among adult males who have already been convicted of at least one sexual offense against a child or non-consenting adult. Dr. Hoberman scored Kaelble at a seven, which places him within the “high risk” category for sexual recidivism, and yields a reoffending rate of 45% over ten years and 52% over fifteen years. Dr. Meyers scored Kaelble at a five on the Static-99, which places him within the “medium-high risk” category for sexual recidivism and yields a reoffending rate of 33% over five years, 38% over ten years, and 40% over fifteen years. Dr. Reitman also scored Kaelble at five.

In its Findings of Fact, Conclusions of Law, and Order for Commitment, the district court concluded that Kaelble meets the statutory criteria for commitment as an SPP and SDP. The district court committed Kaelble to the custody of the Commissioner of Human Services at the Minnesota Sex Offender Program (MSOP) for an evaluation, pending a final review hearing. The district court held the review hearing and issued its order indeterminately committing Kaelble to MSOP at St. Peter and Moose Lake as an SPP and SDP. This appeal follows.

DECISION

Kaelble argues that the evidence does not establish that he meets the standards for commitment as an SPP and SDP. A petitioner must prove the elements of commitment by clear and convincing evidence. Minn. Stat. § 253B.18, subd. 1(a) (2010). On review,

we defer to the district court's findings of fact and will not reverse those findings unless they are clearly erroneous. *In re Commitment of Ramey*, 648 N.W.2d 260, 269 (Minn. App. 2002), *review denied* (Minn. Sept. 17, 2002). "Where the findings of fact rest almost entirely on expert testimony, the [district] court's evaluation of credibility is of particular significance." *In re Knops*, 536 N.W.2d 616, 620 (Minn. 1995). But we review de novo "whether there is clear and convincing evidence in the record to support the district court's conclusion that appellant meets the standards for commitment." *In re Thulin*, 660 N.W.2d 140, 144 (Minn. App. 2003).

I.

The Minnesota Commitment and Treatment Act defines an SPP as

the existence in any person of such conditions of emotional instability, or impulsiveness of behavior, or lack of customary standards of good judgment, or failure to appreciate the consequences of personal acts, or a combination of any of these conditions, which render the person irresponsible for personal conduct with respect to sexual matters, if the person has evidenced, by a habitual course of misconduct in sexual matters, an utter lack of power to control the person's sexual impulses and, as a result, is dangerous to other persons.

Minn. Stat. § 253B.02, subd. 18b (2010).

Kaelble has a history of irresponsible behavior that shows a lack of customary standards of good judgment. He forged his birth certificate and his mother's signature on his Air National Guard enlistment papers at age 16; he burned down his family's trailer home in Alaska; and he overdosed on heroin in prison in 2004. He also had multiple disciplinary infractions in prison for conduct such as violating an order to cease communication with his ex-wife, interfering with a security procedure, possessing

contraband, disobeying a direct order, using an intoxicant, disorderly conduct, being in an unauthorized area, threatening others, unauthorized control, and theft. And Kaelble admits that he lied under oath at his trial on the offense against P.L. But in order to commit an individual as an SPP, the district court must also find (1) a habitual course of misconduct involving sexual matters, (2) an utter lack of power to control sexual impulses, and (3) dangerousness to others. *In re Linehan*, 518 N.W.2d 609, 613 (Minn. 1994) (*Linehan I*).

A. *Habitual Course of Misconduct Involving Sexual Matters*

A habitual course of misconduct “has been defined to require evidence of a pattern of similar conduct.” *In re Commitment of Stone*, 711 N.W.2d 831, 837 (Minn. App. 2006), *review denied* (Minn. June 20, 2006). In 1989, Kaelble kidnapped and sexually assaulted P.L. Although Kaelble initially denied sexually assaulting P.L. and provided several different versions—including that the sex was consensual and that P.L. injected herself with methamphetamine—he now admits that he injected P.L., tied her up, and sexually assaulted her on two different days and at two different locations. Shortly after he was released from prison for sexually assaulting P.L., and while on ISR, Kaelble began sexually assaulting his daughter K.K. on a regular basis. The assaults continued for approximately two years before K.K. reported Kaelble’s conduct. Kaelble admits that he repeatedly sexually assaulted his daughter. There is clear and convincing evidence that Kaelble has engaged in a habitual course of misconduct involving sexual matters.

B. Utter Lack of Power to Control Sexual Impulses

When determining whether an individual has an utter lack of power to control his or her sexual impulses, the district court must weigh several factors: (1) the nature and frequency of the sexual assaults; (2) the degree of violence involved; (3) the relationship, or lack thereof, between the offender and the victims; (4) the offender's attitude and mood; (5) the offender's medical and family history; (6) the results of psychological and psychiatric testing and evaluation; and (7) any factors that bear on the predatory sexual impulse and the lack of power to control that impulse. *In re Blodgett*, 510 N.W.2d 910, 915 (Minn. 1994).

Kaelble frequently committed sexual assaults. He kidnapped P.L. and sexually assaulted her several times at two different locations. And while Kaelble was on ISR, he repeatedly sexually assaulted his preteen daughter. And the assaults were violent. Kaelble's offense against P.L. involved kidnapping, restraints, and forced methamphetamine injection. Kaelble burned his daughter's breast with a cigarette and cut a tattoo from her hand with the edge of a pencil, using bleach and salt.

As stated succinctly by the district court: "[Kaelble's] victims were drawn from a 'broad victim pool,' meaning that his first victim was an adult stranger; his second victim was his daughter, who was approximately 11 years old when the abuse began." With respect to Kaelble's attitude and mood, Dr. Hoberman noted that Kaelble acted with a sense of entitlement in committing the assaults. Additionally, Kaelble has been chemically dependent for the majority of his life, and his use of methamphetamine, in particular, has fueled his sexual desires. The district court found that Kaelble has a

history of manufacturing and using methamphetamine dating back to the 1970s. He uses methamphetamine to enhance his sexual experiences. Furthermore, Kaelble has a history of injecting women with methamphetamine against their will, including his ex-wife, P.L., and K.K. Kaelble also has a history of alcohol and painkiller addiction: he began using alcohol when he was six years old. Kaelble participated in an inpatient chemical dependency program at Regions Hospital in 1973. However, he did not take treatment seriously and did not follow through with the aftercare recommendations. In 1984, Kaelble participated in an inpatient drug program at St. Joseph's Hospital. At that time, Kaelble's longest period of sobriety had been for one month in 1983. He remained sober for three months after completing treatment in 1984, but in 1985, he began using and manufacturing methamphetamine again.

The results of psychological testing and evaluation suggest a high likelihood that Kaelble will reoffend. The SVR-20 and the Static-99 results both indicate that Kaelble is at a "medium-high risk" or "high risk" to reoffend. The district court relied on the expert opinions of Drs. Hoberman and Meyers, who testified that Kaelble qualifies as an SPP and SDP, and Dr. Reitman, who testified that Kaelble qualifies as an SDP, rather than Singerhouse, who opined that Kaelble should not be committed as either an SPP or SDP. This court defers to the district court's resolution of this conflicting expert opinion testimony. *See In re Martenies*, 350 N.W.2d 470, 472 (Minn. App. 1984) (stating that where expert testimony provides conflicting evidence as to the existence of a psychopathic personality, the district court must resolve the question of fact), *review*

denied (Minn. Sept. 12, 1984). In sum, there is clear and convincing evidence that Kaelble has an utter lack of power to control his sexual impulses.

C. Dangerousness to Others

Six factors are considered when determining whether an offender presents a serious danger to the public: (1) the offender's demographic characteristics; (2) the offender's history of violent behavior; (3) the base-rate statistics for violent behavior among individuals with the offender's background; (4) the sources of stress in the offender's environment; (5) the similarity of the present or future context to those contexts in which the offender used violence in the past; and (6) the offender's record of participation in sex-therapy programs. *Linehan I*, 518 N.W.2d at 614.

Dr. Hoberman noted that Kaelble has a history of offending over a long period of time against a broad victim pool. Additionally, Kaelble used alcohol and drugs, such as methamphetamine, to perpetrate the offenses. Dr. Meyers testified that "methamphetamine use results in increased sexual appetite in some users." And Kaelble has a history of violent sexual behavior. Kaelble's first conviction involved kidnapping, restraints, forced methamphetamine injection, and the sexual assault of a stranger. And as discussed above, Kaelble physically assaulted and burned his daughter. Finally, Kaelble's testing indicates that he is likely to reoffend. The SVR-20 and the Static-99 rank Kaelble as presenting a "medium-high risk" or "high risk" for sexual reoffense.

With regard to the sources of stress in Kaelble's environment, Kaelble has been incarcerated for the better part of 20 years and has a significant history of chemical-dependency. When released, he will be expected to support himself, remain law abiding,

and refrain from drug and alcohol use. By Kaelble's own admission, drugs and alcohol have played a substantial part in his sexual-assault history, and despite his involvement in treatment over the past 20 years, Kaelble has relapsed in every circumstance, including while in prison. Although he would have the support of family, friends, and ISR, ISR had little, if any, influence on his criminal proclivity in the past. Moreover, Kaelble's release would result in circumstances similar to those present when he was released in 1993. Kaelble was on ISR at that time, and, despite the accompanying restrictions and his participation in a psychoeducational program, he repeatedly sexually assaulted his daughter.

The factor that weighs most heavily in Kaelble's favor is his engagement in sex-offender treatment, although he was unable to complete the program due to his release date. His therapists agree that he did well in the program. Kaelble testified that he now has the tools that he needs to remain law abiding in the community. The district court acknowledged the good faith belief and optimism of the program's therapists and that Kaelble has made good progress during his treatment. But the district court noted that Kaelble's treatment is not complete. The district court was also mindful that Kaelble had completed both chemical-dependency and sex-offender treatment prior to his relapse and sexual assault of K.K.

Although Kaelble's participation in sex-offender treatment weighs in his favor, it does not foreclose a conclusion that Kaelble meets the statutory criteria for commitment. Like the district court, we commend Kaelble for his recent success in sex-offender treatment. But we also recognize that he has not completed the treatment program and

that all of the experts agree that he needs to continue treatment. Moreover, Kaelble's participation in sex-offender treatment is only one of several factors that must be considered. On balance, there is clear and convincing evidence that Kaelble is a danger to others.

Because the statutory criteria for commitment as an SPP have been proved by clear and convincing evidence, we affirm Kaelble's commitment as an SPP.

II.

A person is considered an SDP if that person: (1) has engaged in a course of harmful sexual conduct as defined in section 253B.02, subdivision 7a; (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 as defined in section 253B.02, subdivision 7a. Minn. Stat. § 253B.02, subd. 18c (2010). "Harmful sexual conduct" is defined as "sexual conduct that creates a substantial likelihood of serious physical or emotional harm to another." *Id.*, subd. 7a(a) (2010). It is not necessary to prove that the person to be committed has an inability to control his sexual impulses. *Id.*, subd. 18c(b). But the statute requires a showing that the person's disorder "does not allow [him] to adequately control [his] sexual impulses." *In re Linehan*, 594 N.W.2d 867, 876 (Minn. 1999) (*Linehan IV*). The supreme court has construed the statutory phrase "likely to engage in acts of harmful sexual conduct" to require a showing that the offender is "highly likely" to engage in harmful sexual conduct. *In re Linehan*, 557 N.W.2d 171, 190 (Minn. 1996) (*Linehan III*), *vacated on other grounds*, 522 U.S. 1011, 118 S. Ct. 596 (1997), *aff'd on remand*, 594 N.W.2d 867 (Minn. 1999).

Kaelble concedes that he has engaged in a course of harmful sexual conduct. And there is clear and convincing evidence that Kaelble has manifested a mental disorder or dysfunction. Dr. Hoberman diagnosed Kaelble with Paraphilia, Pedophilia, Alcohol Dependence and Polysubstance Abuse and/or Dependence and Sexual Sadism, as well as Antisocial Personality Disorder with Narcissist Traits. Dr. Meyers diagnosed Kaelble with Paraphilia NOS, non consent; Paraphilia NOS, sexual attraction to adolescent girls, non-exclusive type; Polysubstance Dependence in a controlled environment; and Antisocial Personality Disorder. Dr. Reitman diagnosed Kaelble with Sexual Abuse of a Child; Polysubstance Dependence in a Controlled Environment; Paraphilia NOS; Rule Out Sexual Sadism; Rule Out Pedophilia; and Antisocial Personality, Narcissistic Traits. Kaelble does not dispute his diagnosis as chemically dependent and antisocial.

When examining whether an offender is highly likely to engage in acts of harmful sexual conduct, the district court considers the same six factors that are used to determine dangerousness under the SPP statute. *Linehan III*, 557 N.W.2d at 189 (“We conclude that the guidelines for dangerousness prediction in *Linehan I* apply to the SDP Act . . .”). As discussed above, the six *Linehan I* factors indicate that there is clear and convincing evidence that Kaelble is a danger to others. Under this same analysis, there is clear and convincing evidence that Kaelble is highly likely to engage in acts of harmful sexual conduct.

Because the statutory criteria for commitment as an SDP have been proved by clear and convincing evidence, we affirm Kaelble’s commitment as an SDP.

III.

Upon a finding that an individual is an SPP or an SDP, “[t]he court shall commit the patient to a secure treatment facility unless the patient establishes by clear and convincing evidence that a less restrictive treatment program is available that is consistent with the patient’s treatment needs and the requirements of public safety.” Minn. Stat. § 253B.18, subd. 1. “Secure treatment facility means the Minnesota Security Hospital and the Minnesota sex offender program facility in Moose Lake and any portion of the Minnesota sex offender program operated by the Minnesota sex offender program at the Minnesota Security Hospital.” Minn. Stat. § 253B.02, subd. 18a (2010). The definition of secure treatment facility “does not include services or programs administered by the secure treatment facility outside a secure environment.” *Id.*

Kaelble argues that the district court erred in concluding that a less-restrictive treatment program is unavailable. This court reviews a district court’s determination of the least restrictive alternative under the clearly-erroneous standard. *Thulin*, 660 N.W.2d at 144. “Under the current statute, patients have the opportunity to prove that a less-restrictive treatment program is available, but they do not have the right to be assigned to it.” *In re Kindschy*, 634 N.W.2d 723, 731 (Minn. App. 2001) (emphasis omitted), *review denied* (Minn. Dec. 19, 2001).

Drs. Hoberman, Meyers, and Reitman all opined that the least-restrictive alternative for treating Kaelble consistent with the needs of public safety is commitment to MSOP. Katherine Wheeler, the Lino Lakes Corrections Program Director, testified that Kaelble needs continued sex-offender treatment, but that an out-patient treatment

program such as Alpha House would be sufficient. Where expert testimony is conflicting, the district court must resolve the question of fact, and this court defers to that resolution. *Martenies*, 350 N.W.2d at 472.

We note that there is no evidence in the record that Kaelble has been accepted at Alpha House or that he has the resources to fund treatment at Alpha House. Moreover, the proposed alternative must be consistent with the requirements of public safety. Kaelble has been designated a Level 2 Sex Offender. Upon his release from prison, Kaelble would spend one year on ISR, but he would not be subject to GPS monitoring or community notification. For the first two months, Kaelble would be required to reside in a halfway house in St. Paul. After that, Kaelble would be required to find his own housing and gainful employment, subject to the ISR officer's approval. In the two months following Kaelble's move out of the halfway house, he would be required to meet with his ISR officer four times per week. After another two months, Kaelble would be required to meet with his ISR officer twice per week for four months, and then once per week for the next two months, and bi-monthly for the remainder of his ISR. Although Kaelble has family and community support, his history of offending while on ISR suggests that these resources are inadequate to ensure that he will not reoffend.

We recognize that this is a close case, but the district court's findings and conclusions demonstrate that the court thoroughly considered whether the commitment standards have been proved and whether a less-restrictive treatment program is available. In the end, we cannot say that the district court clearly erred in determining that Kaelble

failed to establish the availability of a less-restrictive treatment program that is consistent with his treatment needs and public safety.

IV.

In arguing that there is insufficient evidence in the record for commitment, Kaelble relies heavily on the report and testimony of Dr. John Austin. Dr. Austin testified that Kaelble only has an 8 to 27% chance of reoffending within 10 years. He also disputed Kaelble's diagnoses of pedophilia and sexual sadism and noted that intrafamilial child sexual assault consistently has the lowest reoffense levels of any sexually deviant behavior. But Dr. Austin did not testify at Kaelble's initial commitment trial. Rather, his report and testimony were received at the subsequent review hearing. The district court summarized Dr. Austin's conclusions:

Dr. Austin reported that [Kaelble's] thinking and actions, as well as his ability to recognize and control his sexual impulses have significantly improved since his last sexual offense. Combining this improvement with [Kaelble's] age, research regarding intrafamilial offenses and the more recent normative data for actuarial predictions, Dr. Austin opined that [Kaelble's] likelihood of future sexual offenses is relatively low. Dr. Austin testified that [Kaelble] could continue treatment on an outpatient basis, structured in such a manner that would continue to protect the public.

Prior to a review hearing, "the head of the treatment facility" must submit a written report that "address[es] the criteria for commitment and whether there has been any change in the respondent's condition since the commitment hearing." Minn. Spec. R. Commit. & Treat. Act 23(d).

At the hearing, the court shall consider all competent evidence relevant to the respondent's present need for

continued commitment. The burden of proof at the hearing is upon the proponent of indeterminate commitment to establish by clear and convincing evidence that the statutory requirements for commitment . . . continue to be met.”

Id. (e). The purpose of the review hearing is “to make a final determination as to whether the person should remain committed as a person who is mentally ill and dangerous to the public.” Minn. Stat. § 253B.18, subd. 2(a). In sum, the district court determines whether the patient continues to meet the commitment criteria and not whether the original evidence was sufficient to sustain the commitment.

Because the evidence regarding Dr. Austin’s opinion was not offered or received at the commitment trial, we do not consider it in determining whether the statutory criteria for commitment was proved by clear and convincing evidence at the commitment trial. Instead, we consider the evidence only as it relates to the determination that the district court was required to make at the review hearing: whether there had been any change in Kaelble’s condition and whether the statutory requirements for commitment *continued* to be met.

At the review hearing, Dr. Anita Schlank submitted the statutorily-required written report to the district court, opining that Kaelble’s condition was essentially unchanged and that he continued to meet the statutory criteria for commitment as an SPP and SDP. Dr. Meyers and Dr. Hoberman testified at the review hearing. Dr. Meyers testified that he found no change in Kaelble’s condition that would modify the district court’s initial commitment order. Dr. Hoberman testified that Kaelble continued to meet the criteria for commitment as an SPP and SDP. To the extent that Dr. Austin’s testimony suggested a

change in Kaelble’s condition after the commitment trial, such that he did not continue to meet the statutory requirements for commitment, we defer to the district court’s resolution of the conflicting expert testimony on this issue. *See Knops*, 536 N.W.2d at 620 (“Where the findings of fact rest almost entirely on expert testimony, the [district] court’s evaluation of credibility is of particular significance.”). We conclude that the evidence clearly and convincingly shows that Kaelble continued to meet the statutory criteria for commitment as an SPP and SDP at the review hearing.

Affirmed.

Dated:

Judge Michelle A. Larkin