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STATE OF MINNESOTA
IN COURT OF APPEALS
A11-1563

In the Matter of the Civil Commitment of: Tanya Margaret Sanchez

Filed January 30, 2012
Affirmed
Connolly, Judge

Ramsey County District Court
File No. 62-MH-PR-10-477

Kathleen K. Rauenhorst, Rauenhorst & Associates, P.A., Roseville, Minnesota (for appellant)

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

Considered and decided by Connolly, Presiding Judge; Peterson, Judge; and Hudson, Judge.

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

CONNOLLY, Judge

Appellant challenges her indeterminate commitment to the Minnesota Security Hospital as a person who is mentally ill and dangerous. Because we conclude that there is sufficient evidence to support the commitment, we affirm.

FACTS

Appellant Tanya Margaret Sanchez is a 40-year-old woman with a history of mental illness, chemical dependency, and brain damage. Her problems began at the age of 15 when she was hospitalized for substance abuse and mental health issues. She has been diagnosed by various medical professionals as having either schizoaffective disorder, bipolar type, or a bipolar disorder with psychotic features. Appellant also has a history of using drugs, including methamphetamine, marijuana, LSD, cocaine, and Percocet. In 1996, appellant was assaulted during a robbery and suffered brain damage. Appellant also has a criminal history—specifically, she has committed the felony act of fleeing a police officer in a motor vehicle three times, in 2001, 2005, and in 2009. For each charge, she was found not competent to proceed to trial or was found not guilty by reason of mental illness.

On December 29, 2001, appellant was observed by police driving 100 miles per hour and running a stoplight on Highway 36. After a police chase that lasted for several miles, appellant drove her car into a residential yard and stopped. She refused to exit the car and it was necessary for the police to break the car window and for a police dog to subdue her. As a result of this incident, a psychiatrist conducted a Rule 20.01 examination and appellant was found incompetent to stand trial. On February 8, 2001, appellant was committed as mentally ill for the first time. In April 2002, she was committed as chemically dependent and she spent most of the next year in various chemical dependency treatment programs. She was not always compliant with her

treatment, refusing medications, relapsing, and failing to attend the recommended outpatient program. Her commitment expired in February 2003.

Appellant was again committed as mentally ill and chemically dependent on December 23, 2003. Her commitment was extended in June 2004, and expired in December 2004. On December 5, 2005, appellant was behaving bizarrely at a credit-union drive-through. A teller notified police, but when they arrived, appellant fled from the police in a motor vehicle and had to be subdued with a Taser. She was charged with felony fleeing a police officer in a motor vehicle, and again found incompetent to stand trial. Appellant was committed as mentally ill and chemically dependent in February 2006. In October 2006, appellant was found not guilty by reason of mental illness for the December 5, 2005 charge of fleeing a police officer in a motor vehicle. Her commitment expired in January 2007.

On October 19, 2007, appellant sprayed lighter fluid in the dumpster at Community Foundations, a residential treatment services program, and tried to light it on fire. She had not been taking her medication and she was acting hostile and paranoid. She was taken to the hospital, and was diagnosed as suffering from bipolar affective disorder, manic, with psychosis and polysubstance abuse. In his assessment, her doctor stated that appellant was a danger to herself based on her lack of insight and poor judgment, and that she was a danger to others based on her bizarre behavior and failure to take her prescribed medications. On October 30, 2007, appellant was committed as mentally ill and chemically dependent. She was recommitted in April 2008 and again in

October 2008. Appellant twice left treatment without permission, once for nearly three weeks, and once for three days. In April 2009, her commitment expired.

On September 19, 2009, a police officer observed appellant run a red light and speed at 60 miles per hour in a 30 mile-per-hour zone. She also drove through several stop signs. When the police squad car attempted to pull her over, appellant increased her speed to 70 miles per hour. She then drove in the oncoming lane of traffic until she came to a dead end and drove off the road into the woods before coming to a stop, narrowly missing a large tree. Police had to physically remove her from the car, and she was acting in a bizarre manner.

On October 6, 2009, appellant was again committed as mentally ill, and was later found incompetent to stand trial on the fleeing a police officer charges. On May 3, 2010, a Rule 20 evaluation was ordered. The psychologist found that appellant was currently competent to stand trial but had been mentally ill at the time of the offense. Appellant was tried for fleeing a police officer in a motor vehicle but found not guilty by reason of mental illness.

On October 5, 2010, Ramsey County filed a petition in the district court to commit appellant as a mentally ill and dangerous (MID) person. On November 5, 2010, the district court held a trial and the court heard testimony from several doctors who had examined appellant. Dr. Thomas Alberg testified that appellant has a major mental illness and that, in his opinion, the disorder was in remission but that appellant had poor insight and displayed signs of paranoia. In his opinion, it was debatable whether appellant demonstrated an overt act likely to inflict harm upon others because he did not

believe that appellant demonstrated the requisite intent. He therefore did not believe that she met the criteria to be committed as MID. Dr. Peter Meyers also testified, and he believed that appellant's three acts of fleeing police were sufficient "overt acts" and did not believe that the acts needed to be intentional. He also believed that appellant's act in attempting to set fire to a dumpster was a sufficient overt act. Dr. Meyers testified that appellant's lack of insight into her mental illness, her use of street drugs that exacerbate her mental illness, and her lack of judgment place the public at risk. In his opinion, an indeterminate MID commitment would be beneficial to appellant because she could be more closely supervised and there are no adequate less-restrictive alternatives. Dr. Barclay Jones testified that when appellant is not committed and under supervision, she goes off her medication and decompensates. He testified that appellant's current treatment team recommended that appellant be placed in an intensive residential treatment services group home setting where she could be supervised and prevented from driving a car.

On December 3, 2010, the district court filed its order finding appellant to be MID and civilly committing her to the custody of the Commissioner of Human Services. The district court determined that appellant "has an organic disorder of the brain or a substantial psychiatric disorder . . . which grossly impairs judgment . . . which is manifested by instances of grossly disturbed behavior or faulty perceptions and poses a substantial likelihood of physical harm to herself or others." The court found that appellant had "committed overt acts that are dangerous to others, specifically, the [appellant's] 2001, 2005 and 2009 incidents of fleeing police in a motor vehicle together

with her 2007 attempt to light a dumpster on fire." Accordingly, the court concluded that appellant "presents a clear danger to the safety of others and there is a substantial likelihood that she will engage in acts capable of inflicting serious physical harm to others."

After a review hearing, the district court issued its order civilly committing appellant to the Minnesota Security Hospital (MSH) for an indeterminate period. In the order, the district court reviewed the 60-day report submitted by Dr. Lauren Miller, of the MSH. In her report, Dr. Miller noted that appellant likely still met the statutory requirements for commitment, and that if appellant were released, her "risk for violence will likely increase if she were to experience an increase in active psychotic symptomatology (as a result of discontinuing her medication) . . . ." With regard to a less-restrictive setting than the MSH, Dr. Miller reported that a less-restrictive setting "could potentially meet [appellant's] treatment needs and the needs of public safety," but noted that because appellant was committed as MID, there were no programs that would accept appellant until she had completed the MSH treatment program. The district court concluded that appellant continued to be MID and committed her for an indeterminate period, and that there was no evidence of a less-restrictive alternative available to meet appellant's treatment needs and the needs of public safety. This appeal follows.

D E C I S I O N

Appellant challenges her commitment as an MID person for an indeterminate period, arguing that her act of fleeing a police officer did not constitute an overt act causing or attempting to cause serious physical harm to another or demonstrate that she

posed a risk of inflicting serious physical harm on another in the future. Appellant does not dispute the district court's determination that she has a mental illness. Rather, she challenges the determination that she presents a clear danger to public safety and that there is not a less-restrictive alternative that would meet her treatment needs and the needs of public safety.

We review a district court's civil-commitment decision to determine whether the district court complied with the statute and whether the evidence in the record supports the findings of fact. *In re Knops*, 536 N.W.2d 616, 620 (Minn. 1995). In doing so, we view the record in the light most favorable to the district court's decision. *Id.* We will not set aside a finding of fact unless it is clearly erroneous. Minn. R. Civ. P. 52.01. We review de novo whether there is clear and convincing evidence to support the district court's legal conclusion as to whether a person meets the standard for civil commitment as MID. *Knops*, 536 N.W.2d at 620; *see also In re Thulin*, 660 N.W.2d 140, 144 (Minn. App. 2003).

After the initial commitment of a person as MID, the district court must conduct a second hearing to review the written treatment report of the treatment facility. Minn. Stat. § 253B.18, subd. 2(a) (2010). If the district court finds that the patient "continues to be . . . mentally ill and dangerous," it must order commitment for an indeterminate period of time. *Id.*, subd. 3 (2010).

"The supreme court has cautioned that courts must pay due respect to the difference between the less-serious conduct required for commitment as mentally ill and the more-serious conduct required for indeterminate commitment as mentally ill and

dangerous." *In re Carroll*, 706 N.W.2d 527, 530 (Minn. App. 2005). Commitment as mentally ill requires a showing only of "a substantial likelihood of physical harm to self or others," as demonstrated by a failure to obtain necessities or "a recent attempt or threat to physically harm self or others." Minn. Stat. § 253B.02, subd. 13(a), (1), (3) (2010). In contrast, commitment as MID requires a showing of "a clear danger to the safety of others," as demonstrated by a showing that "the person has engaged in an overt act causing or attempting to cause serious physical harm to another," and is substantially likely to do so in the future. *Id.*, subd. 17(a)(2) (2010).

A district court may order the commitment of a person as MID if it finds by clear and convincing evidence that the person satisfies the statutory criteria. Minn. Stat. § 253B.18, subd. 1(a) (2010). Minn. Stat. § 253B.02, subd. 17 (2010), defines a person who is "mentally ill and dangerous to the public" as a person:

> (1) who is mentally ill; and
>
> (2) who as a result of that mental illness presents a clear danger to the safety of others as demonstrated by the facts that (i) the person has engaged in an overt act causing or attempting to cause serious physical harm to another and (ii) there is a substantial likelihood that the person will engage in acts capable of inflicting serious physical harm on another.

Appellant concedes that she is mentally ill, so the first prong of the statute is met. To find appellant dangerous, there must be clear and convincing evidence to satisfy both requirements of prong two, (1) that she engaged in an overt act causing or attempting to cause serious physical harm to another; and (2) there is a substantial likelihood that she will engage in acts capable of inflicting serious physical harm on another.

Serious Physical Harm

To show that appellant is dangerous, there must be clear and convincing evidence that she engaged in an overt act causing or attempting to cause serious physical harm to another. Here, appellant did not cause any *actual harm* to another, so we must decide whether her acts of fleeing from the police and attempting to light a dumpster on fire were acts *attempting* to cause serious physical harm to another. The legislature has not defined the term "serious physical harm." *In re Kottke*, 433 N.W.2d 881, 884 (Minn. 1988). Courts apply the common understanding of the word serious, and reference to criminal statutes defining "great bodily harm" and "substantial bodily harm" is unnecessary. *In re Lufsky*, 388 N.W.2d 763, 765-66 (Minn. App. 1986). It is not necessary that "mayhem or murder" occur, and less violent conduct may meet the statutory requirement. *Kottke*, 433 N.W.2d at 884. A person can attempt to cause serious harm regardless of his or her intent or the actual outcome of the action. *In re Jasmer*, 447 N.W.2d 192, 195 (Minn. 1989). Thus, the issue becomes whether the act occurred and whether the act is capable of causing serious injury. As examples, the court in *Jasmer* noted that a mentally ill person who fires a gun at another person or drives an automobile at a high rate of speed into a crowd has engaged in an overt act causing or attempting to cause serious physical harm to another regardless of his or her intent or the outcome of the action. *Id.*

As a result of her mental illness, appellant has engaged in conduct that led to her being charged with fleeing a police officer in a motor vehicle on three separate occasions. On two of the three occasions, the police attempted to pull her over because she was

driving at high speeds and ran a red light and/or multiple stop signs. In 2001, she was driving 100 miles per hour and ran a stoplight on a highway. In the most recent incident, in 2009, appellant was driving over 60 miles per hour in a 30-mile-per-hour zone, ran a stoplight, and drove through multiple stop signs. She continued to drive despite attempts to pull her over; accelerating, driving the wrong way down the road, and coming to a stop after nearly colliding with a large tree. Appellant operated her vehicle in a manner capable of causing serious physical harm to others. Speeding, particularly speeding the wrong way down a street and running stoplights and stop signs, is an act capable of causing serious harm. While appellant argues that in speeding and fleeing from a police officer she did not intend to cause serious physical harm, intent is irrelevant in determining whether she attempted to cause serious physical harm. *See id.* Appellant was also involved in an incident where she attempted to light a fire in the dumpster of a residential facility where she was living. Dr. Meyers testified that this action was very dangerous because the people living in the facility were particularly vulnerable to fire. Therefore, appellant has engaged in overt acts attempting to cause serious physical harm to others.

Substantial Likelihood of Future Harm

Additionally, to show that appellant is dangerous, there must be clear and convincing evidence that there is a substantial likelihood that she will engage in acts capable of inflicting serious physical harm to another. Minn. Stat. § 253B.02, subd. 17(2)(ii) (2010). At the initial hearing, both Dr. Alberg and Dr. Meyers testified that they believe appellant's past history is the best predictor of her future behavior. Dr. Meyers

testified that appellant's lack of insight into her mental illness, her history of street drug use that exacerbates her illness, and her tendency to discontinue her medication when left unsupervised demonstrate that ordinary treatment for mental illness and chemical dependency are insufficient for her. He testified that, in his opinion, it was "just plain luck" that no one had yet been severely injured by appellant's conduct. While Dr. Jones did not believe that appellant should be committed as MID, he admitted that he could foresee appellant getting into a car and potentially running a red light if she is not appropriately supervised.

In the report provided by the MSH for the final determination hearing, Dr. Miller stated that appellant's "risk for violence will likely increase if she were to experience an increase in active psychotic symptomatology (as a result of discontinuing her medication) and/or experience a drug relapse." Additionally, Dr. Miller reported that, due to appellant's "history of failed attempts at maintaining psychiatric stability and sobriety while in the community, and subsequent dangerous behaviors, it is our opinion that she could benefit from the structure, support, and oversight associated with an indeterminate commitment as MI & D." Dr. Meyers also testified at the hearing, and opined that appellant "remains 'high risk' for future dangerousness and hence, remains a danger to the public." Appellant's history shows that, despite several commitments and the intervention of law enforcement and mental health professionals, she has engaged in four acts within the last ten years that have jeopardized the safety of the public. Thus, the district court's determination that appellant is substantially likely to engage in acts

capable of inflicting serious physical harm to another is supported by clear and convincing evidence in the record.

Less-Restrictive Alternative

Appellant also argues that the district court erred in indeterminately committing her to the MSH. She contends that an ordinary commitment as mentally ill under Minn. Stat. § 253B.02, subd. 13 (2010), would be an adequate, less-restrictive alternative and that the court "could establish conditions to prevent [her] access to a car and thereby extinguish her ability to commit the acts upon which this commitment is predicated." However, we are not re-evaluating the legal conclusion that appellant is MID; we are evaluating whether indeterminate commitment to the MSH was the least-restrictive treatment available.

When a person is found to be mentally ill under the Minnesota Commitment and Treatment Act, the district court must "commit the patient to the least restrictive treatment program . . . which can meet the patient's treatment needs" and must consider a range of treatment alternatives. Minn. Stat. § 253B.09, subd. 1 (2010). However, when the court finds that a person is MID, "it *shall* commit the person to a secure treatment facility or to a treatment facility willing to accept the patient under commitment." Minn. Stat. § 253B.18, subd. 1(a) (emphasis added). The MID patient has the burden to establish by clear and convincing evidence that a less-restrictive alternative is available. *Id.* This court will not reverse a district court's findings on the propriety of a treatment program unless its findings are clearly erroneous. *In re Thulin*, 660 N.W.2d at 144.

After determining that appellant was MID, the district court committed her to the MSH, finding the facility "the least restrictive treatment facility that will meet [appellant's] needs." The district court also noted that it had considered less-restrictive alternatives, but that "none are available at this time." Other than making a generalized statement that a less-restrictive alternative could be found, appellant has failed to demonstrate that a sufficient less-restrictive alternative exists. In fact, the record shows that, during appellant's previous commitments, she has failed to take her medication, has left treatment without permission, and has continued to use illegal drugs. Furthermore, at the final determination hearing, the district court considered a report by MSH's Dr. Miller that included a discussion on less-restrictive alternatives. In Dr. Miller's opinion, "placement in a setting that offers structure and consistency in programming and provides access to support services is necessary." Committed as MID, appellant would be able to receive the level of services she needs at the MSH. While Dr. Miller reported that a less-restrictive setting "could potentially meet [appellant's] treatment needs and the needs of public safety," she noted that because appellant was committed as MID, there were no programs that would accept appellant until she had completed the MSH treatment program. The district court concluded that appellant continued to be MID and that there was no evidence of a less-restrictive alternative available to meet appellant's treatment needs and the needs of public safety.

Because there is clear and convincing evidence in the record to show that appellant is dangerous and because appellant has not met her burden of establishing by clear and convincing evidence that a less-restrictive alternative is available, we affirm

appellant's indeterminate commitment as mentally ill and dangerous to the Minnesota Security Hospital.

Affirmed.