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Minn. Stat. § 480A.08, subd. 3 (2010).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A11-22**

In the Matter of the Civil Commitment of:
Anthony Ray Harris.

**Filed July 5, 2011
Affirmed
Willis, Judge***

Stearns County District Court
File No. 73-PR-10-8630

Andrew R. Pearson, Bradshaw & Bryant, PLLC, Waite Park, Minnesota (for appellant
Anthony Ray Harris)

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Considered and decided by Stoneburner, Presiding Judge; Minge, Judge; and
Willis, Judge.

UNPUBLISHED OPINION

WILLIS, Judge

Appellant argues that the record and the district court's findings fail to support by
clear and convincing evidence the conclusion that he meets the criteria for indeterminate
civil commitment as a mentally ill and dangerous person. Because we conclude that the

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

evidence was sufficient to support the district court's conclusion that the statutory grounds for indeterminate civil commitment have been met, we affirm.

FACTS

In 2003, appellant Anthony Ray Harris was sentenced to prison for three third-degree controlled-substance convictions. Harris also had been incarcerated at various times between 1999 and 2002. Harris has spent most of his time in prison since 2003 in segregation or in the prison mental-health unit because of his mental illness and assaults that he committed. Harris assaulted corrections officers and other inmates while in prison, and in 1999, Harris was convicted of fourth-degree criminal sexual conduct for sexually assaulting another inmate. He has two third-degree assault convictions, one for attacking a corrections officer in March 2007 and the other for attacking an inmate in April 2009. In both attacks he hit the victims in the head and face and continued to hit them after they fell to the floor; both attacks caused serious injuries. Assaults by Harris against other corrections officers are documented from 2004, 2005, 2006, 2007, and 2010, and assaults against other inmates are documented from 2000, 2001, 2002, 2005, and 2010.

In September 2010, Stearns County Human Services filed a petition for Harris's commitment as a mentally ill and dangerous person. After a hearing, and based on two psychological evaluations, the district court found that there was clear and convincing evidence that Harris is mentally ill. Specifically, the medical experts diagnosed Harris with schizoaffective disorder, cannabis dependency, attention-deficit-hyperactivity

disorder, and antisocial personality disorder. The medical experts also believed that Harris has experienced auditory hallucinations since he was a teenager.

The district court found that there is clear and convincing evidence that as a result of Harris's mental illness, he presents a clear danger to the safety of others, demonstrated by recent overt acts that caused physical harm to a correctional officer and another inmate. The district court found that Harris's schizoaffective disorder and failure to take medication to control the disorder is the primary cause of his pattern of assaultive behavior. Based on this evidence, the district court concluded that Harris is dangerous to the public and committed him as mentally ill and dangerous to the Minnesota Security Hospital at St. Peter.

The district court held a final-determination hearing on the issue of Harris's indeterminate commitment in January 2011.¹ The district court considered psychological evaluations by Phil Godding, Ph.D; John Pucel, Ph.D; and Thomas Kuhlman, Ph.D; all court-appointed examiners. It also considered a report by Michael Harlow, M.D., of the Minnesota Security Hospital at St. Peter. Based on the experts' testimony and opinions, the district court found that there continues to be clear and convincing evidence that Harris has a mental illness, has displayed profound incidents of severe psychosis, presents a danger to the safety of others as a result of his mental illness, and there is a substantial likelihood that Harris will engage in acts capable of causing serious physical harm to another. The district court therefore ordered Harris's indeterminate commitment. Harris appeals.

¹ Harris did not provide a transcript of this hearing.

DECISION

A district court may order the commitment of a person as mentally ill and dangerous if the court finds by clear and convincing evidence that the person satisfies the statutory criteria. Minn. Stat. § 253B.18, subd. 1(a) (2010). A person is “mentally ill and dangerous” under the Minnesota Commitment and Treatment Act if the person is “mentally ill” and

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.

Minn. Stat. § 253B.02, subd. 17(a) (2010). After the initial commitment of a person as mentally ill and dangerous, 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).

We review a commitment under section 253B.18 to determine whether the commitment is justified by the evidence produced at the hearing. *In re Knops*, 536 N.W.2d 616, 620 (Minn. 1995). We view the record in the light most favorable to the district court’s decision and will not set aside a finding of fact unless it is clearly erroneous. *Id.* We review de novo the legal question of whether clear and convincing evidence supports the conclusion that the statutory requirements are met. *See id.*

Harris argues that the district court erred by finding that he is mentally ill as a result of his antisocial personality disorder. This argument is unavailing. The district court found instead that Harris's schizoaffective disorder is the mental illness that causes his assaultive behavior. Harris does not dispute that schizoaffective disorder is a "mental illness" and that such a diagnosis is supported by clear and convincing expert testimony. Thus, the district court did not err in determining that Harris is mentally ill.

Harris also challenges the sufficiency of the evidence to show a causal connection between his mental illness and his assaultive behavior. At the hearing on the petition for commitment, Dr. Godding agreed that "the dangerousness by Mr. Harris" was the "result of mental illness such that he meets the mentally ill and dangerous criteria." In addition, Dr. Godding testified that Harris's schizoaffective disorder alone was enough to predict future violence and that his "mental illness very much has a possibility of causing danger in the future." He also agreed that Harris's "assaultive behavior is as a result of his mental illness." And although Dr. Pucel testified that it is difficult to say whether Harris's assaultive behavior was a result of his schizoaffective disorder, he did agree that "there is a connection between [Harris's] schizoaffective disorder" and his failure to take medication, "and [his] assaultive behaviors." Dr. Pucel also testified that the schizoaffective disorder "was a factor" in the assaultive behavior. The evidence is sufficient to support the district court's conclusion that there is a causal connection between Harris's mental illness and his assaultive behavior.

Finally, Harris argues that the district court erred by finding him both mentally ill and dangerous rather than committing him less restrictively only as 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). Harris had the burden to establish by clear and convincing evidence that a less-restrictive alternative is available. *See* Minn. Stat. § 253B.18, subd. 1(a).

The district court found that Harris presents a clear danger to the safety of others. At the hearing on the petition for Harris’s commitment, Dr. Godding testified that there is a substantial likelihood that Harris will engage in acts inflicting serious physical harm on another in the future and recommended that Harris be committed as mentally ill and dangerous. Dr. Godding testified that he considered less-restrictive alternatives, but he thought that Harris is not competent to consent to medications; that Harris is too dangerous for out-patient treatment; and, ultimately, that the high likelihood of aggression precludes commitment as only mentally ill and not dangerous. And although Dr. Pucel recommended commitment only as mentally ill, he agreed that there is a substantial likelihood that Harris will engage in acts inflicting serious physical harm on another.

The district court explicitly found Dr. Godding’s testimony more persuasive than Dr. Pucel’s and determined that the least-restrictive alternative to address Harris’s treatment needs is commitment as mentally ill and dangerous. This court defers to the district court’s role as fact-finder and its opportunity to assess witness credibility. *In re Commitment of Ramey*, 648 N.W.2d 260, 269 (Minn. App. 2002), *review denied* (Minn.

Sept. 17, 2002). The district court's findings satisfy the statutory requirements for concluding that Harris is mentally ill and dangerous, and the findings are supported by the record. Because Harris failed to establish by clear and convincing evidence that a less-restrictive treatment program is feasible, the district court did not err by determining that Harris meets the criteria for indeterminate commitment as mentally ill and dangerous.

Affirmed.