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**STATE OF MINNESOTA
IN COURT OF APPEALS
A11-255**

In the Matter of the Civil Commitment of:
Bruce Nolan Neumann

**Filed August 8, 2011
Reversed and remanded
Wright, Judge**

Cass County District Court
File No. 11-PR-10-329

Christopher J. Strandie, Cass County Attorney, Barbara J. Harrington, Assistant Cass County Attorney, Walker, Minnesota (for appellant Cass County)

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Considered and decided by Wright, Presiding Judge; Kalitowski, Judge; and Larkin, Judge.

UNPUBLISHED OPINION

WRIGHT, Judge

Appellant Cass County challenges the district court's determination that respondent does not meet the statutory criteria for civil commitment as a person who is mentally ill and dangerous. We reverse and remand.

FACTS

Respondent Bruce Nolan Neumann has a history of mental illness. He first received mental-health treatment in 1991, after he exhibited erratic behavior and pulled

an emergency-room physician into his car. In 1995, Neumann was diagnosed with bipolar disorder and hospitalized for several days after an incident in which he became combative in public. From 1995 to 2009, Neumann received outpatient treatment and, although he experienced occasional symptoms of paranoia and anxiety, he was generally compliant with his mental-health treatment and did not require hospitalization.

On the morning of January 31, 2010, Neumann's wife, E.C.N., observed Neumann exhibiting behaviors that were out of character. Neumann, who appeared to be nervous but rational, agreed to seek treatment that afternoon. But at midday, Neumann's demeanor abruptly changed. He removed his elderly mother, A.E.N., from her wheelchair and carried her to the basement, striking her head against the walls as he carried her. E.C.N. telephoned 911 and followed Neumann into the basement. There she discovered Neumann standing over A.E.N., who lay partially undressed and injured on the floor. When E.C.N. attempted to intervene, Neumann crushed E.C.N. against the floor and bit her cheek. Shortly thereafter, Neumann's brother arrived, and E.C.N. advised him that Neumann was in the basement with A.E.N. But because they were frightened by Neumann's behavior, they did not enter the basement until law enforcement officers arrived.

A.E.N. was transported to the hospital, where she received emergency surgery to repair severe lacerations to her vagina and rectum and received several blood transfusions to address the blood loss caused by the attack. Law enforcement officers transported Neumann to the hospital. En route, Neumann was yelling and spitting. After arriving at the hospital, the officers discovered that Neumann had bitten off a piece of his inner

cheek. After a psychological examination, Neumann was transported to the Crow Wing County Detention Center.

At the detention center, Neumann exhibited unusual behavior and acted aggressively toward the officers. As a result, he was placed in physical restraints and sedated. A psychiatrist determined that Neumann was grossly psychotic and could not be safely managed in a jail setting because of “his refusal of treatment and continued psychotic violence.” Under an emergency hold order issued pursuant to Minn. Stat. § 253B.05 (2010), Neumann was admitted to the Minnesota Security Hospital at St. Peter (MSH) for emergency care and treatment. Neumann also was later charged with two counts of first-degree criminal sexual conduct, a violation of Minn. Stat. § 609.342, subds. 1(c), 1(e)(i) (2008), and one count of domestic assault, a violation of Minn. Stat. § 609.2242, subd. 1(2) (2008).

The county petitioned the district court to commit Neumann as a person who is mentally ill and a danger to others, Minn. Stat. § 253B.18, subd. 1(a) (2010), and for authorization to administer neuroleptic medications, *see Jarvis v. Levine*, 418 N.W.2d 139, 150 (Minn. 1998) (requiring judicial review prior to involuntary administration of neuroleptic drugs); Minn. Stat. § 253B.092 (2010) (providing for administration of neuroleptic medications). Following a hearing, the district court found that Neumann met the statutory criteria for civil commitment as mentally ill and dangerous and required commitment. Neumann was provisionally committed for up to 60 days in the custody of the Minnesota Commissioner of Human Services at MSH. Minn. Stat. § 253B.18, subds. 1, 2 (2010).

The district court held a 60-day review hearing on May 5, 2010. *Id.*, subd. 2(a). Dr. Andre Nemouianu, a psychiatrist at MSH, submitted to the district court a 60-day treatment report, as required by Minn. Stat. § 253B.18, subd. 2(a). The report established that Dr. Nemouianu examined and observed Neumann on several occasions, received updates from Neumann's treatment team, interviewed E.C.N., and reviewed Neumann's criminal and medical records. Consistent with his report, Dr. Nemouianu testified that Neumann meets the statutory criteria for civil commitment as mentally ill and dangerous. Minn. Stat. § 253B.02, subd. 17(a) (2010). Dr. Nemouianu expressed concern about Neumann's history of severe and rapid decompensation, observing that Neumann moves from a state of well-functioning mental health to grossly impaired mental health in a very short period of time. He testified that, when symptoms occur so rapidly, it is difficult to intervene in a meaningful way to prevent a dangerous incident, as exemplified by the events of January 31, 2010. Dr. Nemouianu observed that Neumann's treatment and the prescribed medication that Neumann was using at the time of the January 31 episode were insufficient to prevent the episode. He also opined that stress caused by finances or the burden of caring for loved ones may trigger Neumann's aggressive episodes.

Dr. Nemouianu testified that Neumann lacks several characteristics typically associated with mentally ill and dangerous persons, such as a criminal history, childhood maladjustment, substance abuse, and criminal or antisocial attitudes; Neumann generally was compliant with outpatient psychiatric treatment; he has family support and strong relationships with family members; and he appeared to have stabilized in treatment. Dr. Nemouianu opined that Neumann's psychiatric status will continue to improve with

continuing close psychiatric monitoring and neuroleptic medication. But Dr. Nemouianu testified that there is a substantial likelihood that Neumann will engage in acts capable of inflicting serious physical harm.

Dr. Michael Harlow, Neumann's treating psychiatrist at MSH, also testified. Dr. Harlow testified that Neumann will continue to suffer from his mental disorder and require treatment for the rest of his life. He observed that emotional and economic-stress factors in Neumann's life trigger Neumann's mental-health episodes. Neumann missed one or two doses of his medication before his January 31 episode, which suggests that Neumann is vulnerable to decompensating after a single medication lapse. Dr. Harlow testified that Neumann's rapid decompensation in prior episodes, his occasional medication lapses, and the existence of common stress factors in his life increase the risk that Neumann will experience violent episodes in the future.

Dr. Harlow also acknowledged characteristics that minimize Neumann's risk of future dangerous episodes, such as his compliance with medication treatment, conscientiousness as a patient, and family support. He described Neumann as an "exemplary" patient and "the type of individual that you would want to have as a neighbor." But Dr. Harlow concluded that Neumann continues to pose a significant risk of danger to public safety because, if his medication lapses or he experiences stress caused by family or economic problems, Neumann has a significant chance of experiencing another manic psychotic episode which could lead to a very tragic outcome, including death. "[W]ith great difficulty and soul searching about this because of what a

tremendous patient Mr. Neumann is,” Dr. Harlow concluded that Neumann is mentally ill and dangerous.

The surgeon who operated on A.E.N. testified regarding the injuries that A.E.N. sustained on January 31, concluding that the injuries resulted from a sexual assault. E.C.N. and Neumann’s brother also testified about the events of January 31. In addition, the testimony of Neumann’s brother addressed Neumann’s prior aggressive episodes and his relationship with his brother.

On July 16, the district court issued findings of fact, conclusions of law, and an order. Observing that it “is somewhat troubled by the result” and “[a] ruling from the heart would have been different than the ruling that came from the head,” the district court concluded that Neumann continued to meet the statutory criteria for civil commitment as a person who is mentally ill and dangerous. The district court committed Neumann to the custody of the Minnesota Commissioner of Human Services for an indeterminate period of time.

Neumann moved for a new trial on the ground that the district court’s decision was not supported by the evidence, and he requested that the district court reconsider and modify its findings and conclusions. At a hearing on the motion, the parties presented their arguments without introducing any new evidence. The district court issued amended findings of fact, conclusions of law, and an order on December 17, 2010. The district court’s factual findings remained unchanged in the amended order. The district court found clear and convincing evidence to conclude that Neumann continues to meet the statutory definition of a person who is mentally ill and that Neumann engaged in an

overt act causing or attempting to cause serious physical harm to another. But the district court found that there is not clear and convincing evidence to conclude that there is a substantial likelihood that Neumann will engage in acts capable of inflicting serious physical harm on another. The district court, therefore, concluded that Neumann does not meet the statutory criteria for commitment as a person who is mentally ill and dangerous. In reaching this final determination, the district court placed “great weight on [Neumann’s] success in treatment and the support of [Neumann’s] family.” This appeal followed.

D E C I S I O N

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 mentally ill and dangerous. *Knops*, 536 N.W.2d at 620; *see also In re Thulin*, 660 N.W.2d 140, 144 (Minn. App. 2003).

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

There is no dispute that the evidence is sufficient to satisfy the mental-illness and overt-act requirements of section 253B.02. Rather, the county challenges the district court’s determination that there is not clear and convincing evidence to conclude that there is a substantial likelihood that Neumann will engage in acts capable of inflicting serious physical harm on another in the future.

The district court found that Neumann has previously experienced several violent episodes caused by his mental illness, that Neumann experiences severe and rapid decompensation after missing one dose of his prescribed neuroleptic medication, and that both experts testified that there is a substantial likelihood that Neumann will engage in acts capable of inflicting serious harm upon another. The district court also found that Neumann has strong family support and responds positively to treatment. The undisputed evidence establishes that Neumann has a history of violence caused by his mental illness and that missing one dose of his medication can trigger a physically

aggressive episode. The record establishes that Neumann has strong family support and he stabilized in treatment. The record also includes the uncontroverted testimonial evidence presented by both experts that Neumann nonetheless poses a danger to the public because of the significant risk that he may engage in behavior that is dangerous to others. Accordingly, the district court's factual findings are well supported by the evidentiary record and are not clearly erroneous.

The district court concluded that these facts do not comprise clear and convincing evidence that there is a substantial likelihood that Neumann will engage in acts capable of inflicting serious physical harm on another. We disagree and conclude that the district court erred as a matter of law in making this determination. Although the district court placed great weight on Neumann's family support and success in treatment, responsiveness to treatment and stabilization in a hospital setting do not preclude a mentally ill and dangerous determination. *See State v. Ward*, 369 N.W.2d 293, 296-97 (Minn. 1985) (holding that patient's good behavior while in treatment is not determinative of dangerousness when experts testified that patient posed danger to public); *In re Hofmaster*, 434 N.W.2d 279, 281 (Minn. App. 1989) (same). Here, after considering Neumann's family support and stabilization in treatment, both experts concluded that Neumann presents a clear danger to the safety of others. The uncontroverted evidence establishes that Neumann's mental illness will worsen with time and that commonly occurring stress factors trigger his episodes and increase the likelihood that he will experience future violent episodes. Moreover, the district court's findings, which are supported by the record, demonstrate the limited value of Neumann's

family in preventing future harmful behavior. The onset of Neumann's aggressive episodes is rapid and severe; Neumann's family members were unable to intervene effectively to prevent his violent attack on January 31. Indeed, Neumann's family members were the victims of his violence.

The district court's conclusion that Neumann does not pose a danger to others is erroneous as a matter of law, based on the findings, which are supported by expert testimony and documentary evidence. The expert consensus that Neumann remains dangerous as well as mentally ill, Neumann's history of aggressive mental-health episodes, the nature of his rapid decompensation and its triggers, and the inability of his family to effectively intervene to protect Neumann from harming himself and others are clear and convincing evidence to establish a substantial likelihood that Neumann will engage in acts capable of inflicting serious physical harm on another. The district court erred by concluding that the statutory criteria for commitment as mentally ill and dangerous are not satisfied by clear and convincing evidence. We, therefore, reverse the district court's decision not to commit Neumann as mentally ill and dangerous and remand to the district court for proceedings consistent with this opinion.

Reversed and remanded.