STATE OF MINNESOTA
IN COURT OF APPEALS
A07-1294

In the Matter of the Civil Commitment of: Erica Clarissa Thomas

Filed January 8, 2008
Affirmed
Randall, Judge

Hennepin County District Court
File No. 27-MH-PR-07-41

Gregory R. Solum, 3300 Edinborough Way, Suite 550, Edina, MN 55435 (for appellant Erica Clarissa Thomas)

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Considered and decided by Randall, Presiding Judge; Kalitowski, Judge; and Hudson, Judge.

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

RANDALL, Judge

On appeal from a civil commitment as mentally ill and dangerous for an indeterminate period of time, appellant argues that (1) she did not engage in an overt act causing or attempting to cause serious physical harm to another as required for commitment as mentally ill and dangerous under Minn. Stat. § 253B.02, subd. 17 (2006); (2) the district court's initial findings of fact and conclusions of law do not justify indeterminate commitment as mentally ill and dangerous; and (3) there was insufficient

evidence presented at the review hearing to support the district court's decision to commit appellant as mentally ill and dangerous. We affirm.

FACTS

Appellant Erica Thomas is a 26-year-old woman with a history of violent behavior. By the age of six, appellant was removed from her mother's custody and placed in foster care. During high school, appellant was involved in several fights and was expelled for a period of time. Although she graduated from high school in 1999, appellant was charged with numerous misdemeanor violations in several states between September 2000 and January 2006. She was also hospitalized for psychiatric care numerous times during this time period, and she consistently refused to take her psychiatric medications while in the community.

On January 12, 2006, appellant's mother called appellant's case manager, Francesca Vogel, seeking assistance because appellant was not taking her medications. Vogel and Nancy Speltz, a nurse case manager with Hennepin County Behavioral Health, went to the house and determined that appellant's behavior warranted removal from the residence. Speltz then drove to a nearby shelter with appellant in the passenger seat and Vogel in the back seat. Because they arrived at the shelter about 45 minutes before it was to open for the night, Speltz and Vogel recommended that appellant wait outside the shelter until it opened. Appellant responded, "You expect me to wait in the rain?" Then, according to Speltz, appellant started hitting Speltz in the face. As a result of the assault, Speltz suffered two black eyes and contusions and bruises to her face. She also suffered

a "floater"[1] in her eye, which eventually resolved about three days later. Appellant was charged with two counts of fifth-degree assault for the attack.

A few days later, appellant followed a man who was walking home from work. When the man reached the door of his home, appellant grabbed his briefcase and another bag he was carrying. Appellant then struck the man repeatedly with the briefcase and her fist. The victim suffered a cut on his forehead and a lump on the back of his head. Appellant was apprehended a short distance away and charged with simple robbery. When questioned about the incident, appellant stated that "she was under a lot of pressure and she snapped."

While appellant was in jail, she seemed confused and incoherent. She also disrobed, sang, and moved inappropriately. Appellant told the staff that she was hearing voices and, at one point, she was placed on suicide prevention when she was found with cellophane over her mouth and nose. Moreover, on February 23, 2006, when she was being released from her cell for exercise, appellant went into a control room, grabbed the ponytail of Officer Brie Pileggi, and began to punch and scratch her face. Officer Pileggi sustained cuts on her face, a bruise on her thigh, and a swollen eye. She also felt dizzy and had a headache. Another officer, who assisted in restraining appellant, suffered from back pain as a result of the altercation. Appellant subsequently pled guilty to fourth-degree assault.

[1] Although Speltz was unable to provide a definition of a "floater," she testified that from her point of view, she "would actually see a little moving - - usually it would go from left to right consistently in that eye so it always looks like there's a flash of light coming across your eye."

Hennepin County court psychologist Bruce Renken evaluated appellant for competency to stand trial on the simple robbery charge. Dr. Renken diagnosed appellant with bipolar disorder with psychotic symptoms or schizoaffective disorder; substance abuse; and likely personality disorder with antisocial features. Dr. Renken also found appellant incompetent to stand trial, and she was subsequently committed as mentally ill to Anoka Metro Regional Treatment Center (AMRTC). While at AMRTC, appellant engaged in threatening behavior towards staff and patients, struck another patient without provocation, lunged at both staff and patients with closed fists, and had to be restrained and placed in seclusion.

In July 2006, appellant was discharged from AMRTC after she was found competent to proceed with the criminal charges for simple robbery. Approximately two months later, however, appellant was picked up on a warrant and detained at the Hennepin County Adult Correctional Facility in Plymouth (Plymouth workhouse). At the Plymouth workhouse, appellant engaged in bizarre behaviors such as disrobing, walking around dripping blood while having her menstrual period, assaulting staff, rocking back and forth saying she was hearing things, talking to herself, screaming, refusing meals, and appearing dazed and disoriented.

Appellant was released from the Plymouth workhouse at about 6:00 a.m. on November 29, 2006, but refused to take the morning bus that would have taken her into Minneapolis. At about 8:00 a.m., appellant attempted to get into a van that was transporting several female inmates from one section of the Plymouth workhouse facility to another section. When Correctional Officer Erica Johnson informed appellant that she

could not give appellant a ride to Minneapolis, appellant blocked the van door and said "Bitch, give me your keys and all your money." Officer Johnson then locked the van and started walking toward the women's unit to determine appellant's status at the facility. Appellant caught up to Officer Johnson and began punching her in the face, abdomen and back. As a result of the assault, Johnson had bruises on her face, abdomen and back. She also could barely walk and missed a week of work following the assault.

Appellant was arrested and charged with fifth-degree assault. While in jail, appellant continued to engage in psychotic behavior such as reporting hearing voices, shouting, disrobing inappropriately, dumping food on the floor, urinating in her clothing, and collecting her menstrual blood in a cereal bowl. Based on her behavior, appellant was ordered to undergo another competency evaluation by Dr. Renken. Following his evaluation, Dr. Renken concluded that appellant was not competent to proceed with her criminal case due to her mental illness.

A petition for judicial commitment was filed in January 2007, after the district court found appellant incompetent to stand trial on the charge of fifth-degree assault. At the hearing, court appointed psychologist Andrea Lovett testified that appellant suffered from the mental illness of schizoaffective disorder, and there was evidence suggesting that she may also suffer from borderline personality disorder. Dr. Lovett acknowledged appellant's assaultive behavior towards Officer Johnson and referenced an allegation that appellant kicked her nephew in the head. Dr. Lovett concluded that there was a substantial likelihood that appellant would engage in further acts capable of inflicting serious physical harm on others. According to Dr. Lovett, appellant required treatment in

a secure inpatient setting and that there was no program less restrictive than the Minnesota Security Hospital (MSH) that could meet her treatment and security needs.

Dr. Dallas Erdman, a psychiatrist on staff at HCMC also testified at the hearing. Dr. Erdman testified that he has provided psychiatric services to appellant for several years and has diagnosed her with schizoaffective disorder. Dr. Erdman also testified that appellant "has absolutely no insight into her condition," and that although she sometimes acknowledges that she has an "anger problem," she does not recognize the nature of her behaviors. In addressing appellant's assault of Speltz, Dr. Erdman testified that appellant's actions were "without a doubt" capable of causing serious physical harm. According to Dr. Erdman, it would "not at all be unusual" for a person to suffer retinal detachment and loss of vision from such an injury, and that outright blindness or loss of the eye were possible. Dr. Erdman concluded that as a result of her mental illness, there was a substantial likelihood that appellant would engage in further acts capable of inflicting serious physical harm on others, and that appellant presented a clear danger to public safety. Thus, Dr. Erdman testified that appellant should be committed to the MSH for long-term supervision.

Following the hearing, the district court committed appellant to the MSH as mentally ill and dangerous. Upon her arrival at the MSH, the hospital's forensic staff evaluated appellant and provided a report as required by Minn. Stat. § 253B.18, subd. 2 (2006). The evaluation and report were done primarily by Michelle Barnett. Because she was a forensic psychology fellow, and not yet licensed as a psychologist in Minnesota, Barnett's report was completed under the review and supervision of Dr. Kelly Wilson,

the hospital's director of forensic training. The report recommended that appellant be indeterminately committed as mentally ill and dangerous.

Pursuant to Minn. Stat. § 253B.18, subd. 2, a review hearing was conducted in May 2007. At the hearing, the MSH report was submitted to the district court. The report stated that "[a]lthough [appellant] acknowledges having a mental illness as well as substance abuse problems, she seems to have little insight into how her psychiatric symptoms or substance abuse influence her behaviors." The report noted appellant's longstanding history of noncompliance with psychiatric medications in the community and appellant's violent behavior during periods of psychiatric instability and drug use. The report concluded that appellant continued to present "a clear danger to the safety of others" and that the MSH was the least restrictive setting that could meet appellant's treatment needs and the requirements of public safety. Barnett also testified at the hearing and opined that in accordance with her report, appellant remained mentally ill and dangerous.

Appellant testified at the hearing. In support of her argument that she should not be committed as mentally ill and dangerous, appellant stated:

> I'm not a dangerous person. I made a mistake and a commitment as mentally ill, yes, I can get manic, and, yes, I was doing serious street drugs, and so that mixed together brought about incidents where I was aggressive and irritable and not making right decisions and being assaultive, but I'm over that, I've been sober for seven months, and I'm looking back at everything and I'm ready to just move on. I don't know what else to say though. That's about all I wanted to say.

Following the review hearing, the district court issued its order for indeterminate commitment as mentally ill and dangerous. This appeal followed.

D E C I S I O N

On appeal, this court will examine whether the commitment is justified by the findings based on the evidence at the hearing. *In re Knops*, 536 N.W.2d 616, 620 (Minn. 1995). "The record is viewed in the light most favorable to the trial court's decision." *Id.* (citation omitted). Findings of fact will not be set aside unless clearly erroneous, with due regard given to the court's judgment of the credibility of the witnesses. *Id.;* Minn. R. Civ. P. 52.01. Whether the evidence is sufficient to support a finding that an overt act has occurred is a legal question subject to de novo review. *Knops*, 536 N.W.2d at 620.

I.

To commit a person as mentally ill and dangerous, the district court must find by clear and convincing evidence that the person is mentally ill and that

> 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 (2006) (emphasis added). "These statutory requirements are interpreted strictly." *In re Civil Commitment of Carroll*, 706 N.W.2d 527, 530 (Minn. App. 2005).

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 Kottke*, 433 N.W.2d 881, 884 (Minn. 1988). 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)(3) (2006) (emphasis added). In contrast, commitment as mentally ill and dangerous 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. Minn. Stat. § 253B.02, subd. 17(b) (emphasis added).

Appellant concedes that she satisfied the requirements for commitment as a "person who is mentally ill." But appellant argues that she does not qualify for commitment as mentally ill and dangerous. Specifically, appellant contends that her actions do not constitute "an overt act causing or attempting to cause serious physical harm to another" so as to qualify for commitment as mentally ill *and dangerous*. To support her claim, appellant points out that she did not use a weapon and that she never intended to seriously harm anyone. Appellant further argues that the victims suffered minor injuries that only had the potential to be serious injuries.

The legislature has not defined "serious physical harm." *Kottke*, 433 N.W.2d at 884. Courts should 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. Moreover, the person's intent or the outcome of the action is not relevant to the determination of whether the conduct meets the overt-act requirement. *In re Jasmer*, 447 N.W.2d 192, 195-96 (Minn. 1989).

In *Carroll*, the patient was committed as mentally ill and dangerous after he assaulted a mental-health worker and a social worker. 706 N.W.2d 528-29. The patient hit the mental-health worker in the eye while the social worker tried to protect the mental-health worker by placing a cushion between him and the patient, who at this point had picked up a chair. *Id.* at 528. The patient caused the mental-health worker to require emergency-room treatment by hitting him in the nose and mouth and causing him to crumple to the floor. *Id.*at 528-29. The patient also punched the social worker in the left temple with a closed fist and knocked off his glasses. *Id.* at 529. A psychiatrist testified that the patient's action could have caused to the mental-health worker substantial injury, ranging from a hemorrhage on the retina to a detached retina. *Id.* This court affirmed the patient's commitment as mentally ill and dangerous, concluding that the patient's "acts of violence against the hospital mental-health worker and the social worker, along with his history of violence, show that he committed overt acts causing or attempting to cause serious physical harm to another." *Id.* at 531.

The acts in *Carroll* are similar in nature to the acts committed by appellant. The district court found that appellant was "diagnosed with bipolar disorder or schizo-affective disorder, which is a substantial psychiatric disorder of her thought, mood, and perception." The district court also noted appellant's "lengthy" history of assaultive

behavior and found that she "does not believe she is mentally ill." The district court further acknowledged that appellant "assaulted the victim with serious blows to the eyes, causing potential for serious injury, such as detached retina, and loss of vision," and that there is a substantial likelihood that appellant "will engage in acts capable of inflicting serious physical harm." These findings are supported by the record and, as in *Carroll*, appellant's actions show that she committed overt acts causing or attempting to cause serious physical harm to another. The district court properly committed appellant indeterminately as mentally ill and dangerous under Minn. Stat. § 253B.02, subd. 17.

II.

Appellant argues that the district court's findings and conclusions of law in the initial commitment order were not sufficiently specific to support her mentally ill and dangerous commitment or to enable meaningful review. Specific findings ensure that statutory requirements for commitment have been met and also facilitate effective appellate review. *See In re Stewart*, 352 N.W.2d 811, 813 (Minn. App. 1984) (observing legislative mandate for specific findings). For these reasons, this court has held that legally insufficient findings require remand. *See In re Danielson*, 398 N.W.2d 32, 37 (Minn. App. 1986) (remanding for detailed findings when the district court failed to cite specific conduct that justified commitment).

Appellant asserts that under Minn. Stat. § 253B.09, subd. 2 (2006), the district court was required to "specifically state the proposed patient's conduct which is a basis for determining that each of the requisites for commitment is met." Appellant argues that the district court's findings failed to satisfy the requisites of the statute and were too

vague to enable meaningful review because (1) the district court's findings failed to identify the victim who incurred the serious injuries; and (2) the district court, in support of its finding that appellant was substantially likely to commit future harmful acts, only referenced appellant's "lengthy history of assaultive behavior."

We disagree. Minn. Stat. § 253B.09, subd. 2, requires that the district court find the facts "specifically . . . [and] specifically state the proposed patient's conduct which is a basis for determining that each of the requisites for commitment is met." Here, the district court's findings meet the requirements of section 253B.09, subd 2. As noted previously, the district court found that appellant

> presents a clear danger to the safety of others as shown by the fact that she has engaged in an overt act causing, or attempting to cause, serious physical harm to another, namely: She assaulted the victim with serious blows to the eyes, causing potential for serious injury, such as detached retina, and loss of vision.

Although the district court did not name the victim, the victim is readily identifiable from the record. As such, the district court's decision not to refer to the victim by name does not impede meaningful review.

Also, the district court's finding regarding appellant's likelihood of engaging in further dangerous acts is also sufficient. This finding provides: "There is a substantial likelihood that [appellant] will engage in acts capable of inflicting serious physical harm. [Appellant] has a lengthy history of assaultive behavior." The record reflects that appellant has a lengthy history of assaultive behavior, and the district court could have gone to great lengths to detail appellant's behavioral history. But the court chose to

remain brief and simply refer to appellant's "lengthy history of assaultive behavior." While the district court could have been more specific in its findings, this court will not reverse simply because the district court could have gone into more detail. *In re Moll*, 347 N.W.2d 67, 70-71 (Minn. App. 1984).

III.

Appellant argues that the district court erred in indeterminately committing her as mentally ill and dangerous by placing too much reliance on the findings supporting the initial commitment, and not giving sufficient weight to the positive aspects of appellant's history or her improved conditions following her arrival at the MSH. We disagree. Following a person's initial commitment as mentally ill and dangerous, the district court must hold a review hearing. Minn. Stat. § 253B.18, subd. 2(a) (2006). If the person continues to be mentally ill and dangerous, the district court must order the person committed for an indeterminate amount of time. Minn. Stat. § 253B.18, subd. 3 (2006).

At the review hearing, appellant's evaluators acknowledged that she had made improvements at the MSH. But notwithstanding her improvements, the evaluators concluded that:

> [Appellant] presents an individual who has a minimal understanding of the severity of her psychiatric condition and substance abuse problems. She tends to minimize the seriousness of the violent behavior she engages in when she is noncompliant with psychiatric medications and abusing substances. Although [appellant] acknowledges having a mental illness as well as substance abuse problems, she seems to have little insight into how her psychiatric symptoms or substance abuse influence her behaviors.

The evaluators further noted appellant's history of assaultive behavior and her inability to remain compliant with psychiatric medications. Based on their evaluations of appellant, Barnett and Dr. Wilson concluded that appellant "continues to present a clear danger to the safety of others." Thus, the evaluators concluded that appellant should remain at the MSH because it was the least restrictive facility available to meet appellant's needs. Although appellant testified that she is not dangerous, the district court did not find her testimony credible. *See Knops*, 536 N.W.2d at 620 (stating that due regard shall be given to the opportunity of the district court to judge the credibility of the witness); *see also In re Joelson*, 385 N.W.2d 810, 811 (Minn. 1986) (stating that where the findings of fact rest almost entirely on expert testimony, the district court's evaluation of credibility is of particular significance). Accordingly, there was sufficient evidence presented at the review hearing to support the district court's decision to commit appellant as mentally ill and dangerous.

Affirmed.