STATE OF MINNESOTA
IN COURT OF APPEALS
A09-0567

In the Matter of the Civil Commitment of: Frederick Douglas Brown

Filed August 25, 2009
Affirmed
Worke, Judge

Hennepin County District Court
File No. 27-MH-PR-08-1283

Roderick N. Hale, 310 Fourth Avenue South, #1150, Minneapolis, MN 55415 (for appellant Frederick Douglas Brown)

Michael O. Freeman, Hennepin County Attorney, John L. Kirwin, Assistant County Attorney, C-2000 Government Center, 300 South Sixth Street, Minneapolis, MN 55487 (for respondent)

Considered and decided by Worke, Presiding Judge; Minge, Judge; and Collins, Judge.*

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

WORKE, Judge

Appellant challenges his commitment as mentally ill, arguing that the district court (1) clearly erred in finding that he suffers from a substantial psychiatric disorder and as a result poses a substantial likelihood of causing physical harm, and (2) abused its discretion in admitting evidence. We affirm.

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

D E C I S I O N

In reviewing a civil commitment, we are limited to an examination of whether the district court complied with the requirements of the commitment act. *In re Schaefer*, 498 N.W.2d 298, 300 (Minn. App. 1993). There must be clear and convincing evidence that a person is mentally ill in order to commit that person. Minn. Stat. § 253B.09, subd. 1(a) (2008). We will not reverse a district court's findings of fact unless they are clearly erroneous. *In re McGaughey*, 536 N.W.2d 621, 623 (Minn. 1995).

Appellant Frederick Douglas Brown argues that the district court clearly erred in finding that he suffers from a substantial psychiatric disorder and as a result poses a substantial likelihood of causing physical harm. A person who is mentally ill has a "substantial psychiatric disorder," demonstrated by "a recent attempt or threat to physically harm self or others[.]" Minn. Stat. § 253B.02, subd. 13(a)(3) (2008). There must be evidence of "a recent attempt or threat to harm self or others," in order to demonstrate a substantial likelihood of physical harm. *In re McGaughey*, 536 N.W.2d at 623. "[S]peculation as to whether the person may, in the future, . . . attempt or threaten to harm self or others is not sufficient to justify civil commitment as a mentally ill person." *Id.* But so long as an overt act has demonstrated a substantial likelihood of harm, and the danger is evident, a district court need not wait until the person has harmed another before committing the person as mentally ill. *Id.* at 623-24; *see In re Terra*, 412 N.W.2d 325, 327-28 (Minn. App. 1987) (stating that a district court is not required to delay commitment until someone suffers harm when the danger of the person's condition is evident from his aggressive and intrusive behavior). Whether the evidence is sufficient to

prove an overt act is subject to de novo review. *In re Knops*, 536 N.W.2d 616, 620 (Minn. 1995).

A petition for appellant's judicial commitment was filed after a district court judge determined that he was incompetent to stand trial on felony charges of violating a harassment restraining order (HRO). S.W.E. obtained the HRO against appellant, a stranger to her, because he had been contacting her for several years. The unwanted contact began in 2002 when S.W.E. was completing a medical residency at a veterans' hospital where appellant was a patient.

Following the commitment hearing, the district court found that appellant suffers from a substantial psychiatric disorder. The district court relied on a report prepared by Bruce Renken Ph.D. who examined appellant for the pre-petition competency evaluation. After interviewing appellant, Dr. Renken concluded that appellant most likely suffers from a delusional disorder. During the interview, appellant told Dr. Renken that he and S.W.E. shared three businesses, she was raising his eldest daughter, and that they had an adopted daughter together. When asked if he and S.W.E. were married, appellant stated that: "You could call it that. We have a relationship . . . we have a home together."

Appellant argues that the district court should not have considered Dr. Renken's report because appellant was unable to cross-examine him. But the district court ruled that Dr. Renken's report was admissible as part of the district court file. *See* Minn. Stat. § 253B.08, subd. 7 (2008) (stating that the district court must admit all relevant evidence). Dr. Renken's report was relevant because it was the basis for the commitment

petition that resulted from the evaluation, which followed appellant's criminal charges. Therefore, the district court appropriately admitted and relied on Dr. Renken's report.

The district court also relied on the report and testimony of Patricia Aletky, Ph.D. who was appointed to examine appellant for the commitment proceedings. Dr. Aletky also interviewed appellant and concluded that appellant suffers from a substantial psychiatric disorder that affects his thoughts, mood, perception, memory, judgment, behavior, his capacity to recognize reality, and his capacity to reason or to understand. Dr. Aletky testified that appellant has a delusional disorder, erotomanic type, which is a very specific delusion about a person or a set of circumstances that persist, sometimes for long periods of time in spite of any kind of data to the contrary. Dr. Aletky's report indicated that appellant (1) has a specific delusion about being married to the victim since 2002; (2) has a history of depression and his anger is easily triggered; (3) has an impaired memory due to faulty thinking—mixing fantasy with reality; (4) continued stalking in spite of the HRO; (5) has a long history of impulsivity, blaming others for making him mad, and lacks empathy; (6) claims to own property with the victim; and (7) does not change his mind in spite of contradictory data.

Appellant argues that we should discredit Dr. Renken's report and Dr. Aletky's testimony because each spent only 30 minutes interviewing him. Appellant suggests that we should consider, instead, the pre-petition screener's report that indicated that the evidence was insufficient to find a serious mental illness. But the screener did not review Dr. Renken's report, which he testified would have been helpful in making a recommendation. Additionally, the screener did not personally interview appellant. The

two experts based their opinions on actual contact with appellant and the district court chose to rely on this evidence. *See* Minn. R. Civ. P. 52.01 (stating that deference is given to the district court on credibility matters); *see also In re Joelson*, 385 N.W.2d 810, 811 (Minn. 1986) (stating that due regard is given to the district court's opportunity to judge the credibility of the witnesses, particularly "[w]here the findings of fact rest almost entirely on expert opinion testimony"). The district court found that there was "almost [a] perfect coincidence" between the definition of the features of delusional disorder, erotomanic type, and appellant's behavior. Based on Dr. Renken's report and Dr. Aletky's testimony, the district court did not clearly err in finding that appellant suffers from a substantial psychiatric disorder.

The district court also found that because of appellant's substantial psychiatric disorder he poses a substantial likelihood of causing physical harm to himself or others. The district court found that based on appellant's assault convictions, spanning a 14-year period, he poses a threat of physical harm to his victims. The court also found that appellant's continued attempts to contact the victim, in spite of the HRO, combined with his history, is viewed as an implied threat. The district court based these findings on the victim's testimony and the opinions of Drs. Renken and Aletky.

S.W.E. testified that in 2002, appellant first left messages indicating that he needed to get in touch with her. She initially ignored the messages before asking a secretary to call appellant and tell him to stop attempting to contact her. S.W.E. received several more messages and then appellant ceased his attempts to contact her. Appellant resumed contacting S.W.E in late 2004 while she was living in another state. Appellant

attempted to contact S.W.E. approximately seven times. In one message, appellant indicated that he and S.W.E. shared a birthday, although they do not share a birthday. S.W.E. found appellant's messages odd and S.W.E.'s secretary told appellant to stop calling. Appellant ceased his attempts to contact S.W.E. after his birthday passed.

In the fall of 2006, S.W.E. moved back to the Twin Cities area and appellant began contacting her again. Appellant's birthday was approaching and he began leaving messages with S.W.E.'s message service and at her office. S.W.E. also received a message from appellant's defense attorney who told her that appellant had been arrested and requested that she bail him out of jail. Appellant also stopped by S.W.E.'s office and left a note stating, "Hello my love, I stopped in to see if you would have lunch with me. But I missed you." Appellant asked S.W.E. for a loan and provided his bank-account information. Appellant ended the note by stating, "I need to see you before our anniversary in June." S.W.E. felt frightened because she did not know how appellant was finding her. S.W.E. told her answering service to stop putting appellant's calls through, put a security system in her office, filed a police report, and obtained a restraining order, which appellant violated on at least two occasions. S.W.E. learned from the police that appellant has a criminal history, and was told by appellant's psychiatrist that she should take precautions and protect herself. S.W.E. testified that she cannot sleep, has stomach problems, and is afraid to go to work. S.W.E. testified that she is frightened because appellant thinks that he is married to her, he has a history of being violent with his domestic partners, and he is delusional and will not stop following her.

Dr. Renken opined that appellant should be considered a high risk to reoffend violently considering his lengthy history of assaultive behavior, probation violations, chronic severe substance abuse, and multiple offenses over a period of many years. Dr. Renken also stated that "stalking behavior focused on an individual victim can persist over many years and can escalate to serious violence." Dr. Aletky opined that appellant's continued attempts to contact the victim combined with his history "is viewed as [an] implied threat." Dr. Aletky stated that appellant has "significant potential for violence based on his apparent delusion that [S.W.E.] is his wife, has his property, [and] his children." Dr. Aletky based her opinion on the fact that when left to his own devices, appellant gets into trouble, typically involving some kind of violence. Further, appellant's actions constitute an implied threat because he could clearly see that he was upsetting S.W.E. and continued to attempt to contact her even after she asked him to stop and obtained a HRO. Dr. Aletky testified that "people with this kind of disorder very often do great harm to people. But because they are delusional they might believe they're even helping the person."

The record supports the district court's finding that appellant had recently attempted or threatened to physically harm others. Appellant testified that he believed that the allegations against him were false because he did not know S.W.E. and that if his messages reached her they were reached by the wrong person. However, the evidence demonstrates that appellant purposefully attempted to contact S.W.E. and supports the district court's conclusion that appellant suffers from a substantial psychiatric disorder that causes him to pose a substantial threat of physical harm.

Hearsay Testimony

Finally, appellant argues that the district court abused its discretion in permitting the victim to testify regarding actions taken by her secretary. "Evidentiary rulings rest within the sound discretion of the [district] court and will not be reversed absent a clear abuse of discretion." *State v. Amos*, 658 N.W.2d 201, 203 (Minn. 2003). The district court stated that the evidence was relevant and that it was "offered for the effect upon her, which is not for the truth of the matter asserted, and that makes it not hearsay." The district court must admit all relevant evidence. Minn. Stat. § 253B.08, subd. 7. This court has held that the rules of evidence regarding hearsay do not apply technically in commitment cases and that the district court is permitted to admit evidence that the court determines to be reliable. *In re Williams*, 735 N.W.2d 727, 730-31 (Minn. App. 2007), *review denied* (Minn. Sept. 26, 2007).

S.W.E. testified that her secretary and answering service received many of the messages left by appellant. She also testified that her secretary told appellant to stop calling. The district court determined that S.W.E.'s testimony regarding the actions her secretary took was reliable. While the district court is not required to provide a specific basis for its evidentiary rulings, in the particular instances cited by appellant the evidence was not only reliable, but would have been admissible under the business records exception to the hearsay rule, or admitted not for the truth of the matter asserted but for its effect upon the listener. *See* Minn. R. Evid. 801, 803(6). Therefore, the district court did not abuse its discretion in admitting the evidence.

Affirmed.