STATE OF MINNESOTA
IN COURT OF APPEALS
A10-184

In the Matter of the Civil Commitment of:
Grant Junior Grayson

Filed August 3, 2010
Affirmed
Toussaint, Chief Judge

Rice County District Court
File No. 66-PR-07-16

Stephen R. Ecker, Faribault, Minnesota (for appellant Grant Junior Grayson)

Lori Swanson, Attorney General, Noah A. Cashman, Assistant Attorney General, St. Paul, Minnesota; and

G. Paul Beaumaster, Rice County Attorney, Faribault, Minnesota (for respondent Rice County)

Considered and decided by Toussaint, Chief Judge; Hudson, Judge; and Willis, Judge. [*]

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

TOUSSAINT, Chief Judge

In this appeal from the district court's order indeterminately committing appellant Grant Junior Grayson as a sexually dangerous person (SDP), appellant argues that the

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

court clearly erred in finding that the Minnesota Sex Offender Program (MSOP) was the appropriate and least-restrictive treatment program for appellant. Because there is sufficient evidence to support the conclusion that the MSOP is the least-restrictive treatment program, we affirm.

D E C I S I O N

The issue is whether the district court clearly erred in concluding that the MSOP was the appropriate and least-restrictive treatment program for appellant. If a district court finds that a patient is an SDP, the court must commit the person to a secure treatment facility unless the patient shows by clear and convincing evidence that a less-restrictive treatment program is available that meets the patient's treatment needs and does not threaten public safety. Minn. Stat. § 253B.185, subd. 1 (2008); *In re Kindschy*, 634 N.W.2d 723, 731 (Minn. App. 2001), *review denied* (Minn. Dec. 19, 2001). But although patients have the opportunity to prove that a less-restrictive treatment program is available, they do not have the right to be assigned to it, because Minn. Stat. § 253B.185, subd. 1, does not require that commitments be made to the least-restrictive treatment program. *Kindschy*, 634 N.W.2d at 731 (reaching conclusion based on Minn. Stat. § 253B.185, subd. 1 (2000), which has not been substantively amended); *In re Senty-Haugen*, 583 N.W.2d 266, 269 (Minn. 1998) (holding that previous version of statute did not require that those committed as sexually psychopathic personality (SPP) and SDP be committed to least-restrictive treatment program). We 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 140, 144 (Minn. App. 2003).

Because appellant has a history of sexually abusing minor males, Rice County filed a petition in 2007 seeking to commit appellant as an SDP. At this time, appellant was in prison for second-degree criminal sexual conduct. Following the statutory procedure, the district court appointed two psychologists as examiners: Dr. Peter Marston and Dr. James Alsdurf, whom appellant chose.[1] These psychologists each interviewed appellant, reviewed his records and prior testing results, and Dr. Alsdurf administered an MMPI-2 test. Based on their examinations, each psychologist concluded that (1) appellant met all of the criteria for commitment as an SDP and (2) the MSOP is the least-restrictive treatment program available to appellant. Appellant stipulated to initial commitment as an SDP and the district court ordered that he be initially committed to the MSOP as an SDP upon his release from prison, which occurred in June 2009.

Following appellant's commitment to the MSOP, the district court held the review hearing required by Minn. Stat. § 253B.18, subd. 2 (2008), in October 2009. At the hearing, the district court considered, among other things, appellant's testimony, the MSOP's treatment report, and a report and testimony from Dr. Alsdurf, whom the court had appointed as the review-hearing examiner per appellant's request. Because the court concluded both that appellant still was an SDP and that the MSOP remained the least-restrictive treatment program available to meet his needs consistent with public safety, the court ordered that he be indeterminately committed to the MSOP.

[1] For an outline of the procedure for commitment as an SDP, *see* Minn. Stat. §§ 253B.07, .08, .18, .185 (2008).

Appellant did not offer any evidence—let alone clear and convincing evidence—that another less-restrictive treatment program was available to accommodate him that met public-safety requirements. Dr. Alsdurf testified at the review hearing that appellant continued to meet all the criteria for commitment as an SDP and recommended that he be committed to the MSOP. The treatment report reached the same conclusion. Appellant himself testified that he was not arguing whether he met the SDP criteria and he trusted Dr. Alsdurf's opinion that he met these criteria. The district court did not clearly err in finding that appellant must be committed to the MSOP because the evidence supported this finding and because appellant failed to demonstrate that another suitable program was available.[2]

Affirmed.

[2] Appellant also argues that his indeterminate commitment to the MSOP violates his right to substantive due process. Because appellant did not make this argument to the district court, appellant has waived this argument and we decline to consider it. *See Thiele v. Stitch*, 425 N.W.2d 580, 582 (Minn. 1998) (noting that appellate courts generally decline to reach arguments that were not argued to or considered by district court).