STATE OF MINNESOTA
IN COURT OF APPEALS
A10-757

In the Matter of the Civil Commitment of: Kenneth Robert Johnson

Filed November 2, 2010
Affirmed
Toussaint, Judge

Isanti County District Court
File No. 30-PR-10-22

Zachary B. Smith, VOX Law, L.L.C., Minneapolis, Minnesota (for appellant Kenneth Robert Johnson)

Jeffrey R. Edblad, Isanti County Attorney, Shila A. Walek Hooper, Assistant County Attorney, Cambridge, Minnesota (for respondent Isanti County)

Considered and decided by Toussaint, Presiding Judge; Halbrooks, Judge; and Harten, Judge.*

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

TOUSSAINT, Judge

Appellant Kenneth Robert Johnson challenges the district court's order for his civil commitment as mentally ill, arguing (1) that he does not meet the definition of "a person who is mentally ill" under Minn. Stat. § 253B.02, subd. 13(a) (2008); (2) that the

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

district court abused its discretion by admitting harmful hearsay evidence; (3) that the district court lacked personal jurisdiction over him; and (4) that Isanti County was not a proper venue for the commitment proceedings. Because appellant meets the definition of mentally ill, the admission of the challenged evidence was not prejudicial, and the challenges to personal jurisdiction and venue are without merit, we affirm.

D E C I S I O N

I.

Our review of involuntary civil commitments is limited to an examination of whether the district court complied with the requirements of the commitment statute and whether the commitment is "justified by findings based upon evidence at the hearing." *In re Knops*, 536 N.W.2d 616, 620 (Minn. 1995). We accord great deference to the district court's factual findings, which will only be set aside if clearly erroneous. *Id*. When an appellant challenges sufficiency of the evidence to satisfy the requirements of the applicable commitment statute, this court conducts a de novo review. *In re Thulin*, 660 N.W.2d 140, 144 (Minn. App. 2003).

Minnesota law provides that if a "court finds by clear and convincing evidence that the proposed patient is a person who is mentally ill" and "finds there is no suitable alternative to judicial commitment, the court shall commit the patient to the least restrictive treatment program or alternative programs which can meet the patient's treatment needs." Minn. Stat. § 253B.09, subd. 1(a) (2008). A person who is mentally ill is defined, in pertinent part, as

> any person who has an organic disorder of the brain or a substantial

> psychiatric disorder . . . [that] poses a substantial likelihood of physical harm to self or others as demonstrated by:
>
> (1) a failure to obtain necessary food, clothing, shelter, or medical care as a result of the impairment;
>
> (2) an inability for reasons other than indigence to obtain necessary food, clothing, shelter, or medical care as a result of the impairment and it is more probable than not that the person will suffer substantial harm, significant psychiatric deterioration or debilitation, or serious illness, unless appropriate treatment and services are provided;
>
> (3) a recent attempt or threat to physically harm self or others; or
>
> (4) recent and volitional conduct involving significant damage to substantial property.

Minn. Stat. § 253B.02, subd. 13(a) (2008).

In this case, appellant was arrested and transported to the Isanti County jail on a charge of violating a harassment restraining order by making a harassing telephone call to an individual in Isanti County. After ordering a Rule 20 evaluation of appellant by Dr. Harlan J. Gilbertson, the district court found appellant incompetent to proceed. The criminal charge was then dismissed, and the district court initiated civil commitment proceedings.

Dr. Paul M. Reitman was appointed by the district court to examine appellant for purposes of the civil commitment proceedings. In Dr. Reitman's testimony at the commitment hearing, he opined that appellant has bipolar disorder and antisocial personality disorder based on the mental status examination that Dr. Reitman performed on appellant and also his review of the earlier Rule 20 report completed by Dr. Gilbertson. Dr. Reitman testified that he observed appellant to be combative, volatile, agitated, and openly defiant toward authority, and that appellant believes his doctors are involved in a conspiracy against him. Dr. Reitman opined that appellant has no insight

into his mental illness and that he is a danger to himself because he does not provide for his psychiatric care. In particular, Dr. Reitman noted that appellant was failing to take his Lithium medication as prescribed to stabilize his psychiatric disorder, making it likely that appellant, if untreated, would eventually suffer substantial harm, significant psychiatric deterioration, or serious illness. Finally, Dr. Reitman indicated that civil commitment was the least restrictive alternative for appellant.

Dawn Sederberg, a Registered Nurse Care Management Specialist at Cambridge Medical Center, also testified at the hearing. Sederberg testified that while at Cambridge Medical Center after being transported from the Isanti County jail, appellant physically threatened staff, telling them that he wanted to "take them all out" and asking them to "bring in all the women in here, I will 'f' them one at a time." Sederberg also testified that all of the voluntary patients on appellant's unit were leaving because they were afraid of him and that the medical center had assigned up to three security staff for appellant alone.

Following the commitment hearing, the district court concluded that appellant met the statutory definition of "a person who is mentally ill" and committed appellant as mentally ill for a period not to exceed six months.

Appellant argues that his psychiatric disorder does not pose a substantial likelihood of physical harm to himself or others as demonstrated in a manner required by one of the four factors in Minn. Stat. § 253B.02, subd. 13(a). But the testimony of Drs. Reitman and Sederberg establishes that appellant has recently physically threatened others, that he is unable to obtain necessary medical care as a result of his mental

impairment, and that he is more likely than not to suffer substantial harm, significant psychiatric deterioration, or serious illness, unless he receives appropriate treatment.

Appellant argues that the district court's reliance on Dr. Reitman's testimony was improper because, in his examination of appellant, Dr. Reitman referred to psychological tests that Dr. Gilbertson conducted on appellant during the Rule 20 evaluation instead of conducting the tests himself. Appellant's argument lacks merit. Dr. Reitman testified that, in his 20 years of experience as an examiner, he rarely performs psychological tests to make his recommendation and that he would have been able to independently make the diagnoses in this case based only on his interview with appellant and appellant's medical records (i.e., without relying on any psychological tests conducted by Dr. Gilbertson).

Because the record evidence supports two of the four factors in Minn. Stat. § 253B.02, subd. 13(a), the district court did not err by concluding that appellant meets the definition of "a person who is mentally ill." *See* Minn. Stat. § 235B.02, subd. 13(a)(2),(3).

II.

Appellant argues that the district court erred by admitting into evidence a letter, allegedly written by appellant and addressed to his mother and another person, about the issue of suicide. Appellant contends that the letter is prejudicial hearsay and lacks foundation. But nothing in the district court's order indicates that the letter played a role in the district court's decision. Even without the letter, the evidence in the record supports appellant's commitment as mentally ill. The admission of the letter into evidence did not prejudice appellant and does not warrant reversal of the district court's

order. *See Midway Ctr. Assocs. v. Midway Ctr., Inc.*, 306 Minn. 352, 356, 237 N.W.2d 76, 78 (1975) (stating that, to prevail on appeal, appellant must show both error and prejudice resulting from error); *see also Bloom v. Hydrotherm, Inc.*, 499 N.W.2d 842, 845 (Minn. App. 1993) (stating that appellant bears burden of demonstrating error is prejudicial), *review denied* (Minn. June 28, 1993).

III.

We decline to address the issue of the district court's personal jurisdiction because appellant has waived review of the issue by failing to raise it in the district court. *See Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988) (stating that this court generally will not consider matters not argued to and considered by district court); *In re Ivey*, 687 N.W.2d 666, 670 (Minn. App. 2004) (stating that, unlike defense of lack of subject matter jurisdiction, defense of lack of personal jurisdiction can be waived), *review denied* (Minn. Dec. 22, 2004).

Even if we were to address the issue, we would conclude that the district court had personal jurisdiction over appellant because appellant concedes on appeal that he was confined in a Minnesota jail on a criminal charge when the district court initiated the civil commitment proceedings. *See Ivey*, 687 N.W.2d at 668 (concluding that "district court had personal jurisdiction over appellant based on the Department of Correction's apparent supervisory authority over appellant at the start of the commitment proceedings"); *see also Berryhill v. Sepp*, 106 Minn. 458, 460, 119 N.W. 404, 405 (1909) (stating that, if individual is confined in jail, that is his "usual place of abode").

IV.

Venue differs from personal jurisdiction. *State v. Smith*, 421 N.W.2d 315, 320 (Minn. 1988). "[V]enue deals with convenience and location of trial rather than with the power of the court to hear the action in the first place[.]" *Id.* At the commitment hearing, appellant argued, as he does on appeal, that Isanti County District Court was an improper venue for the commitment proceedings. The district court denied the challenge. "The district court's determination of a venue challenge raises a question of law that we review de novo." *State v. Daniels*, 765 N.W.2d 645, 648-49 (Minn. App. 2009), *review denied* (Minn. Aug. 11, 2009).

Appellant cites Minn. Stat. § 253B.07, subd. 2(a) (2008) to support his argument that Pine County District Court, rather than Isanti County District Court, was the proper venue for the commitment proceedings because appellant was a resident of Pine County when he was arrested. But section 253B.07 provides that a commitment petition may be filed "in the district court of the county of the proposed patient's residence *or presence*." Minn. Stat. § 253B.07, subd. 2(a) (emphasis added). It is undisputed that when the district court initiated commitment proceedings by serving appellant with process, appellant was present in Isanti County. There is no legal authority for appellant's argument that the fact that he was involuntarily brought to Isanti County on the criminal charge renders venue in Isanti County District Court improper.

We note that appellant does not dispute that Isanti County District Court was a proper venue for the criminal proceedings because the criminal charge brought against him in Isanti County originated from a harassing telephone call that he made to Isanti

County. Under these circumstances, the Isanti County District Court, upon finding, as it did, that appellant was mentally ill and could not understand the criminal proceedings or participate in his defense, was *required* to then commence a civil commitment proceeding. *See* Minn. R. Crim. P. 20.01, subd. 6(b)(1) (stating: "If the court finds the defendant mentally ill so as to be incapable of understanding the criminal proceedings or participating in the defense, and . . . the defendant is not under commitment, the court must commence a civil commitment proceeding."). On these facts, we conclude that Isanti County District Court was a proper venue for the civil commitment proceedings.

Affirmed.