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Minn. Stat. § 480A.08, subd. 3 (2008).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A10-1070**

In the Matter of the Civil Commitment of:
Mike Cordale Henderson a/k/a Michael Cordale Henderson.

**Filed November 16, 2010
Affirmed
Bjorkman, Judge**

Hennepin County District Court
File No. 27-MH-PR-09-607

Brian C. Southwell, Minneapolis, Minnesota (for appellant)

Michael O. Freeman, Hennepin County Attorney, Carolyn A. Peterson, John L. Kirwin,
Assistant County Attorney, Minneapolis, Minnesota (for respondent)

Considered and decided by Bjorkman, Presiding Judge; Kalitowski, Judge; and
Worke, Judge.

UNPUBLISHED OPINION

BJORKMAN, Judge

Appellant challenges his indeterminate civil commitment as a person who is mentally ill and dangerous, arguing that (1) there is insufficient evidence that because of his mental illness he is substantially likely to cause serious physical harm to others in the future and (2) the district court violated his right to due process by sua sponte requesting supplemental records from his treatment facility. We affirm.

FACTS

In October 2008, appellant Michael Henderson was charged with numerous counts of assault, kidnapping, and criminal sexual conduct. The district court appointed Andrea Lovett, Ph.D., to determine Henderson's competence to stand trial. After meeting with Henderson and reviewing records, Dr. Lovett diagnosed Henderson with psychotic disorder, not otherwise specified; rule out delusional disorder, persecutory type; rule out schizophrenia, paranoid type; and antisocial personality disorder. She opined that Henderson's mental illness interfered with his ability to understand the charges against him and to cooperate with his attorney. The district court determined that Henderson was incompetent to stand trial and ordered commencement of civil-commitment proceedings pursuant to Minn. R. Crim. P. 20.01, subd. 6(b)(1).

The district court that presided over the commitment proceedings¹ appointed Linda Berberoglu, Ph.D., to evaluate whether Henderson is "mentally ill and dangerous." *See* Minn. Stat. § 253B.02, subd. 17(a) (2008). Dr. Berberoglu met with Henderson twice and reviewed his records. She noted that Henderson's extensive criminal history dates back to the late 1980s and includes both sexual and nonsexual violence. She also observed that Henderson exhibits paranoid and delusional thinking that available records confirmed to be longstanding. Dr. Berberoglu diagnosed Henderson with psychotic disorder not otherwise specified; rule out delusional disorder; rule out schizophrenia, paranoid type; and antisocial personality disorder. She indicated that Henderson is likely, based on his history of violence, to engage in future violent conduct, but she questioned

¹ All subsequent references to the district court refer to the commitment proceeding.

the link between his mental illness and his violent propensities. She, therefore, opined that Henderson meets the criteria for commitment as a “mentally ill” person but not commitment as a “mentally ill and dangerous” person.

Dr. Lovett and Dr. Berberoglu both testified at Henderson’s commitment hearing. Henderson did not contest the issue of mental illness. The district court determined that Henderson meets the statutory definition of mentally ill and dangerous and committed him to the Minnesota Security Hospital (MSH).

MSH reviewed Henderson’s commitment after 60 days to determine whether he should remain committed as mentally ill and dangerous. *See* Minn. Stat. § 253B.18, subd. 2(a) (2008). Robin Ballina, M.D., conducted the review, but Henderson refused to meet with her. Accordingly, her assessment was limited to the medical records, other information contained in the court record, and MSH’s treatment records. Dr. Ballina agreed with the other experts that Henderson exhibits paranoid and delusional thinking. She also reported that Henderson had only one incident of physical aggression during his time at MSH but had verbally threatened a staff member on another occasion and had “demonstrated rather pervasive paranoia from the time of admission.” Because her opinion was based solely on her review of records and a very brief interaction with Henderson, Dr. Ballina tentatively diagnosed Henderson with delusional disorder, persecutory type (rule out psychosis not otherwise specified versus no Axis I diagnosis); rule out paranoid personality disorder; and antisocial traits, rule out antisocial personality disorder. Dr. Ballina endorsed the district court’s determination that there is a “nexus”

between Henderson's mental illness and his violent conduct and opined that Henderson continues to be mentally ill and dangerous.

Approximately one month after submitting her report, Dr. Ballina wrote a letter to the district court, amending her diagnosis. In the letter, Dr. Ballina indicated that "given the additional month of observation by staff, it is my opinion that Mr. Henderson does not currently meet criteria for a bona fide [delusional disorder, persecutory type] diagnosis." But she confirmed her diagnosis of paranoid personality disorder, stated that Henderson "can be expected to demonstrate severe interpersonal pathology in many settings," and opined that little improvement can be expected. Dr. Ballina did not alter her prior opinion that Henderson is mentally ill and dangerous but expressed her understanding that personality disorders do not meet the statutory mental-illness definition.

The district court conducted a review hearing to determine whether Henderson continued to meet the criteria for commitment as a mentally ill and dangerous person. *See* Minn. Stat. § 253B.18, subs. 2(a), 3 (2008). Apart from Dr. Ballina's report and letter, the district court did not receive additional evidence. Because Dr. Ballina's letter relied substantially on Henderson's behavior at MSH, and to ensure that the most recent records were available in determining Henderson's commitment status, the district court ordered MSH to submit Henderson's most recent records. Based on the entire record, the district court determined that Henderson continues to be mentally ill and dangerous and ordered his indeterminate commitment. This appeal follows.

DECISION

A district court may order the commitment of a person as mentally ill and dangerous if the court finds, by clear and convincing evidence, that the person satisfies the statutory criteria. Minn. Stat. § 253B.18, subd. 1(a) (2008). A person is “mentally ill and dangerous” under the Minnesota Commitment and Treatment Act 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.

We review a commitment under section 253B.18 to determine whether the commitment is justified by the evidence produced at the hearing. *In re Knops*, 536 N.W.2d 616, 620 (Minn. 1995). We view the record in the light most favorable to the district court’s decision and will not set aside a finding of fact unless it is clearly erroneous. *Id.* We review de novo the legal question of whether clear and convincing evidence supports the conclusion that the statutory requirements are met. *See id.*

Henderson first challenges the sufficiency of the evidence to support his indeterminate commitment as a person who is mentally ill and dangerous. He concedes, and we agree, that the evidence is sufficient to satisfy the mental-illness and overt-act requirements. But he asserts that the evidence is insufficient to show a causal connection between his mental illness and future dangerousness. We disagree.

All three mental-health experts agree that Henderson's extensive history of violence clearly demonstrates his propensity to commit dangerous acts and the substantial likelihood that he will inflict serious physical harm on others in the future. Henderson's argument that he is "violent by choice" supports the experts' assessments that he is likely to remain a danger to others in the future.

The record also contains ample evidence of a causal link between Henderson's mental illness and his dangerousness. In connection with the initial commitment hearing, Dr. Lovett and Dr. Berberoglu both opined that Henderson's mental illness increases his propensity toward violence and acts as a "disinhibiting factor." *See In re Welfare of Hofmaster*, 434 N.W.2d 279, 281 (Minn. App. 1989) (highlighting evidence that Hofmaster's mental illness "reduces his self-control and makes the likelihood of violent behavior far greater"). Dr. Lovett testified that Henderson "tends to perceive others as intending to harm him" and that this perception makes him "easily upset" and "prone to violent behavior." Although Dr. Berberoglu did not find "an obvious link between [Henderson's] somewhat circumscribed delusions about law enforcement authorities persecuting and poisoning him and his physical and sexual assaults against females," she also declared it "certainly possible that symptoms of mental illness are contributing to

anger, hostility, and behavioral disinhibition.” The district court’s initial finding that there is a “substantial likelihood” that Henderson will engage in future physically harmful acts is not clearly erroneous.

Dr. Ballina’s report that was submitted as part of the review hearing further supports the district court’s initial dangerousness finding. Dr. Ballina did not discern a clear link between Henderson’s mental illness and his sexual violence but specifically stated that she was “compelled to agree with the [district court’s] analysis regarding the nexus between [Henderson’s] paranoia and propensity to nonsexual violence.” In her supplemental letter, Dr. Ballina modified her opinion somewhat, stating that Henderson demonstrates reduced paranoia and, therefore, appears to meet the criteria of a paranoid personality disorder but not a bona fide delusional disorder or other psychotic disorder.

The district court found Dr. Ballina’s report more reliable than her letter for three reasons. First, the district court properly analyzed Henderson’s status in light of the statutory criteria for commitment, rather than focusing on a particular diagnosis. Second, the district court pointed to Dr. Ballina’s own recognition that the controlled environment in MSH had reduced stress on Henderson and that exposure to stress could cause a recurrence of the symptoms that indicated more severe mental illness. *See id.* (recognizing that improved behavior in an artificial environment does not necessarily indicate genuine improvement). Third, the MSH records document an incident that occurred three months after Dr. Ballina submitted her letter during which Henderson responded to notice of a rule violation by attacking three staff members with a pen he had sharpened to a pointed edge. Based on this evidence, the district court found that “even

within the strict confines” of MSH, Henderson “remains a clear danger to the public.” We must view the record in the light most favorable to the district court’s decision and defer to the district court’s reasoned acceptance of certain opinions over others. *See Knops*, 536 N.W.2d at 620 (affording particular deference to findings based on evaluation of expert testimony). On this record, we discern no clear error in the district court’s finding that Henderson presents a clear danger to the safety of others.

Overall, the record contains clear and convincing evidence that Henderson’s mental illness makes him substantially likely to commit acts capable of causing serious physical harm to others. Accordingly, we conclude that the district court did not clearly err in finding that Henderson meets the criteria for indeterminate commitment as mentally ill and dangerous.

Henderson next contends that the district court violated his right to due process by obtaining and considering the supplemental records from MSH. Henderson acknowledges that he received notice of the district court’s order directing MSH to provide the records and did not object or request an additional hearing. We generally do not consider issues that were not presented to the district court. *Roby v. State*, 547 N.W.2d 354, 357 (Minn. 1996). Because presentation of this issue to the district court could have remedied the very error he now alleges, the interests of justice do not warrant review of this issue. *See* Minn. R. Civ. App. P. 103.04 (permitting review of any matter in the interests of justice). We, therefore, decline to consider Henderson’s constitutional challenge.

Affirmed.