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**STATE OF MINNESOTA
IN COURT OF APPEALS
A10-1635**

In the Matter of the Civil Commitment of: Sean Francis Clancy

**Filed March 8, 2011
Affirmed
Hudson, Judge**

Olmsted County District Court
File No. 55-PR-09-8620

Mark A. Ostrem, Olmsted County Attorney, Geoffrey A. Hjerleid, Assistant County Attorney, Rochester, Minnesota (for respondent)

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Considered and decided by Johnson, Chief Judge; Hudson, Judge; and Ross, Judge.

UNPUBLISHED OPINION

HUDSON, Judge

Appellant challenges his indeterminate commitment as a person who is mentally ill and dangerous, arguing that the evidence does not support the determination that there is a substantial likelihood that he will engage in future acts capable of inflicting serious physical harm on another. Because clear and convincing evidence supports the district court's determination that appellant continued to meet the statutory criteria for commitment as mentally ill and dangerous, we affirm.

FACTS

In July 2008, the state charged appellant with one count of intentional second-degree murder and one count of second-degree felony murder, following the death of appellant's father in a Rochester hotel room. In a subsequent interview with police, appellant acknowledged that when his father asked him about his marital problems, he became angry, grabbed a towel, and choked his father. After appellant's court-ordered mental examination under Minn. R. Crim. P. 20.02, the state dismissed the felony-murder charge. In December 2009, the district court held a stipulated-facts trial and found appellant not guilty, by reason of mental illness, of intentional murder in the death of his father.

At about the same time, a petition was filed for appellant's commitment as mentally ill and dangerous. After a hearing, and based on the evaluations of two psychiatrists and a psychologist, the district court found that all the medical experts agreed that appellant was mentally ill. Specifically, the medical experts agreed that appellant suffers from two chronic disorders: a rare delusional disorder that is considered a major mental illness, and a paranoid personality disorder. Based on the experts' evaluations, the district court found that appellant needs long-term treatment with psychotropic medication and parallel psychotherapy. The district court also found that appellant presented a clear danger to the safety of others, based on the overt act of killing his father and an additional overt act of domestic violence against his wife in 2008. Appellant's wife told police that appellant broke dishes and punched holes in a wall and

that she locked herself in a bedroom because she was afraid of appellant. During the investigation of the incident, police found a knife and an ax stabbed into the wall.

The district court also found that, based on the expert opinions, there was a substantial likelihood that appellant would engage in acts capable of inflicting serious physical harm on another. The district court noted that the main features of a delusional disorder are the presence of delusions, which are unshakeable beliefs in something that is untrue, and a consistent theme, which expands over time. And here, the district court found that appellant had an “intense and . . . unremitting” suspicion that his wife was having extramarital affairs and that he believed his wife was poisoning him. Appellant also had suspicions that his father previously had sex with appellant’s wife, his daughter was being recruited into a sex ring, and a number of people were involved in a “cult” and a “sex syndicate.” In addition, the district court found that appellant’s delusional disorder was “highly resistant to treatment with medication alone.” In sum, the district court considered the chronic nature of appellant’s delusional disorder, his paranoid personality disorder, the inherent resistance of the delusional disorder to medicinal treatment, the overt act of killing his father, his continued delusions that had only recently lessened in a controlled setting, and his lack of treatment other than medication. The district court found that these factors provided clear and convincing evidence that there was a substantial likelihood that appellant would engage in acts capable of inflicting serious physical harm on another and ordered appellant committed as a person who is mentally ill and dangerous.

In May 2010, the district court held a 60-day review hearing on the issue of appellant's indeterminate commitment. The district court considered the psychological assessment of Adam Anderson, a psychologist at the Minnesota Security Hospital; the treatment report of Dr. Shane Wernsing, a forensic psychiatrist; and the evaluation of Dr. Carl Malmquist, the court-appointed and defense-retained examiner. The district court took testimony from Dr. Malmquist; Dr. Jeffrey Haun, a forensic psychologist who presented Dr. Wernsing's report; and Dr. Andrei Nemoianu, appellant's treating psychiatrist in the Minnesota State Security Hospital. Anderson's assessment indicated that, although appellant had some insight into his mental illness, appellant continued to express a suspicion that his wife had been unfaithful and did not believe that the relationship had been "built on a 'foundation of trust.'" The assessment also stated that, apart from the incident with his father, appellant denied acts of physical aggression. The assessment also reflects, however, that during a recent conference call with appellant, his wife, and members of appellant's treatment team, appellant's wife expressed concern that he may still have lingering concerns about her fidelity.

Dr. Wernsing's report stated that the course of appellant's delusional disorder was "quite variable," and he opined that, because it could not be known what course appellant's illness would take, there was a substantial likelihood that appellant would inflict serious physical harm on another. Dr. Haun testified that appellant had demonstrated excellent compliance in the hospital setting, was responding well to treatment, and did not resist taking his antipsychotic medication, but that the security hospital situation presented an artificial setting.

Dr. Nemoianu testified that appellant's continued treatment involved neuroleptic medication, that appellant was not reporting a continuing delusional belief, and there had been no behavior in the hospital suggesting that appellant was psychotic. He testified that appellant had recently taken the MMPI, which showed no evidence of overt psychotic thinking. He testified that appellant was cooperating in a relapse-prevention program and had telephone contact with family members. Dr. Nemoianu testified, however, that it would not be possible to say whether appellant's delusions have permanently resolved or whether they would have a waxing and waning course over the years. He testified that although appellant's delusional beliefs appear to be well controlled, they had previously concerned family members, and the potential stressors that he would face outside of the hospital setting were not present to the same degree while he was hospitalized. He testified that, within the last two months, appellant had discussed what led to his belief that his wife was unfaithful—a prominent theme in appellant's previous delusions.

Dr. Malmquist testified that appellant's delusions had gradually waned over a two-year period and that he believed appellant's mental illness was in remission. He testified that appellant was a willing participant in treatment, and he did not currently believe there was a substantial likelihood that appellant would engage in acts inflicting serious physical harm on another. He testified that appellant's delusions relating to his wife's perceived infidelity were simply a subpart of the onset of his delusional disorder. Dr. Malmquist testified that appellant's mental illness "may not be totally resolved," that he would need long-term treatment, and that if he were not medicated and monitored,

there would be a substantial likelihood that he would hurt someone. Dr. Malmquist favored continuing appellant's commitment as mentally ill, but not mentally ill and dangerous.

The district court determined that appellant continued to meet the criteria for a person who is mentally ill and dangerous. The district court found that although appellant had improved at the Minnesota Security Hospital, and his suspicions about his wife's infidelity "may have lessened," those suspicions "nonetheless remain," and these delusions had previously led to the killing of appellant's father. The district court found that, based on these delusions, appellant's past acts, and the serious, chronic nature of his delusional disorder, there existed a substantial likelihood that appellant would engage in acts capable of inflicting serious physical harm on another. The district court therefore ordered appellant's indeterminate commitment. This appeal follows.

DECISION

The district court may order a person committed as mentally ill and dangerous if the court finds, by clear and convincing evidence, that (1) the person is mentally ill, and (2) as a result of the mental illness, the person presents a clear danger to the safety of others. Minn. Stat. §§ 253B.18, subd. 1(a) (2010), 253B.02, subd. 17(a) (2010). The person's clear danger to the safety of others must be demonstrated by the person engaging "in an overt act causing or attempting to cause serious physical harm to another" and the existence of "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 holds a second hearing to review the written treatment report of the treatment facility. Minn. Stat. § 253B.18, subd. 2(a) (2010). If the district court finds that the patient “continues to be . . . mentally ill and dangerous,” it must order commitment for an indeterminate period. *Id.*, subd. 3 (2010).

This court reviews 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). The proponent of indeterminate commitment has the burden to establish by clear and convincing evidence that the statutory requirements for commitment continue to be met. *In re Verhelst*, 350 N.W.2d 494, 495 (Minn. App. 1984). “[W]hen the truth of the facts asserted is highly probable, the standard of proof by clear and convincing evidence has been met.” *State v. Ward*, 369 N.W.2d 293, 297 (Minn. 1985) (quotation omitted). We review 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. *Knops*, 536 N.W.2d at 620. But we review de novo the legal question whether clear and convincing evidence supports the conclusion that the statutory requirements were met. *Id.*

Appellant challenges the sufficiency of the evidence to support his indeterminate commitment. He does not contest the district court’s determinations that he is mentally ill and that his conduct satisfied the overt-act requirement. But he argues that the district court clearly erred by finding that he continues to be a clear danger to others, based on a substantial likelihood that he will engage in future acts capable of inflicting serious physical harm on another.

Appellant argues that the district court clearly erred by finding that he attempted to cause serious physical harm to his wife and that he continued to maintain delusional beliefs about his wife's infidelity. Appellant cites the absence of evidence that he harmed his wife, Dr. Malmstrom's opinion that his mental illness was in remission, and the recent favorable psychological testing. But appellant minimizes the previous domestic-violence incident in which police found a knife and ax in appellant's residence and his wife locked in the bedroom, indicating that she was afraid of appellant because she did not know his intentions. In addition, Dr. Wernsing opined that the course of appellant's delusional disorder was "quite variable." Similarly, Dr. Nemoianu testified that it was not possible to know whether appellant's delusions will permanently resolve or wax and wane over the years. Dr. Nemoianu also testified that appellant continued to discuss a belief that his wife had been unfaithful, a prominent theme in his earlier delusions. The record shows that during a conference call with appellant, members of the treatment team, and appellant's wife, appellant's wife stated that when appellant called her at home, he continued to ask her detailed questions about what she has been doing and who she was associating with. "It is within the province of the [district] court to resolve any conflicting evidence." *In re Clemons*, 494 N.W.2d 519, 520 (Minn. App. 1993). Thus, the district court was entitled to credit the testimony of Dr. Nemoianu that, although appellant's delusions related to his family members had abated, they continued to exist, and to determine that, based on these delusions as well as appellant's past acts, there was a substantial likelihood that appellant would engage in acts capable of inflicting serious physical harm on another.

Appellant also argues that no definitive evidence suggests that he will not be successful outside of a treatment setting, and the district court should therefore continue his commitment only as a person who is mentally ill, not mentally ill and dangerous. *See Verhelst*, 350 N.W.2d at 496 (concluding that when committed person was no longer mentally ill and dangerous at time of indeterminate-commitment hearing, district court was authorized only to discharge her or order her commitment as mentally ill for a determinate period). But good behavior and treatment compliance is not dispositive of whether a patient remains mentally ill and dangerous. *In re Bobo*, 376 N.W.2d 429, 432 (Minn. App. 1985); *see also In re Malm*, 375 N.W.2d 888, 891 (Minn. App. 1985) (upholding determination that a patient remained mentally ill and dangerous, even though patient's symptoms went into remission when he was taking medication). Although appellant was medication-compliant and responded well to treatment in his present controlled setting, Dr. Nemoianu testified that appellant's delusions were triggered by family relationships, which could cause stress outside of an artificial hospital-treatment setting. And Dr. Wernsing opined that, because it could not be known what course appellant's delusional disorder may take, a substantial likelihood exists of appellant inflicting serious physical harm on another. Therefore, we conclude that the district court did not clearly err by finding that appellant continued to meet the statutory criteria for commitment as mentally ill and dangerous.

Affirmed.