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Minn. Stat. § 480A.08, subd. 3 (2010).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A12-0710**

In the Matter of the Civil Commitment of:
Leah Christina Graeber.

**Filed September 17, 2012
Affirmed
Bjorkman, Judge**

Dakota County District Court
File No. 19HA-PR-11-157

Cean F. Shands, West St. Paul, Minnesota (for appellant Leah Graeber)

James C. Backstrom, Dakota County Attorney, Donald E. Bruce, Assistant County
Attorney, Hastings, Minnesota (for respondent county)

Considered and decided by Bjorkman, Presiding Judge; Johnson, Chief Judge; and
Huspeni, Judge.*

UNPUBLISHED OPINION

BJORKMAN, Judge

Appellant challenges her indeterminate commitment as a mentally ill and
dangerous person, arguing that the evidence is not sufficient to support the district court's
findings that (1) appellant is mentally ill, (2) the overt act resulted from her mental

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

illness, and (3) she is substantially likely to engage in acts capable of inflicting serious physical harm on another. We affirm.

FACTS

Appellant Leah Graeber is 29 years old and has a long history of mental illness. Her long-standing diagnoses include schizoaffective disorder (bipolar type), polysubstance abuse, and various personality disorders. Since 2001, she has had eight mental-health commitments, one stayed commitment, and two extensions of commitments. Graeber frequently requires hospitalization because she quickly becomes psychotic when she stops taking her prescribed medication.

On July 18, 2010, Graeber was involved in a car accident in Dakota County that killed an 11-year-old boy and seriously injured three other people. The accident occurred when Graeber accelerated down a hill, took evasive action to avoid a car in front of her, crossed the median, and crashed into an on-coming car. Accident reconstruction revealed that Graeber was driving in excess of 100 miles per hour when her car entered the median. The investigation did not reveal any evidence that Graeber attempted to slow down. Graeber later admitted taking Depakote the day of the accident and that it made her groggy.

Graeber sustained severe injuries and was taken to Hennepin County Medical Center (HCMC). Due to her abnormal behavior while at HCMC, Scott County initiated a commitment action. On August 18, Graeber was committed as mentally ill. She was hospitalized at HCMC until October, when she was transferred to the Anoka Metro Regional Treatment Center where she remained until February 2011.

On December 6, 2010, appellant was charged with one count of criminal vehicular homicide and other felony charges related to the accident. The district court appointed Andrea Lovett, Ph.D., to conduct a competency evaluation pursuant to Minn. R. Crim. P. 20.01. Dr. Lovett interviewed Graeber on March 10, 2011. At multiple times during the interview, appellant expressed beliefs that she was God, and Dr. Lovett characterized her as “actuely psychotic.” Dr. Lovett observed that Graeber decompensates in a “rapid and profound” fashion. Based on the interview and history, Dr. Lovett diagnosed Graeber with schizoaffective disorder (bipolar type); polysubstance dependence; and a personality disorder, not otherwise specified, with borderline and antisocial traits. Dr. Lovett concluded that Graeber was not competent to participate or aid in her criminal defense and recommended that a mentally ill and dangerous (MI&D) petition be filed because Graeber presented a serious danger to the public.

On March 18, Dakota County filed an MI&D petition. The district court appointed Roger C. Sweet, Ph.D., as the first examiner. Dr. Sweet diagnosed Graeber with schizoaffective disorder (bipolar type), cannabis dependency, and polysubstance abuse. Dr. Sweet noted that when Graeber stops taking medication “she becomes impulsively dangerous to herself and aggressive.” Dr. Sweet concluded that Graeber’s act of driving her car in a reckless manner constitutes an overt act that caused serious physical harm to another and that Graeber “requires the indefinite status and increased level of supervision that can be provided if she is committed as Mentally Ill and Dangerous to the Public.”

At Graeber's request, the district court appointed James Gilbertson, Ph.D., as the second examiner. Dr. Gilbertson also concluded that Graeber meets the MI&D-commitment criteria. Dr. Gilbertson found that Graeber "suffers from a chronic and persistent mental disorder that is probably best described as schizoaffective in form." He opined that Graeber's operation of her car was an overt act that caused serious physical harm, and that "there is a clear nexus between her mental illness and a state of altered perception and resulting faulty judgment at the time of the accident." Dr. Gilbertson expressed concern that Graeber misused her prescribed medication, noting that she "unilaterally renew[ed] the use of Depakote that had been discontinued some three to four weeks previously."

On July 15, the district court committed Graeber to the Minnesota Security Hospital (MSH) as MI&D. Two months later, the district court conducted a review hearing. Adam Milz, Ph.D., from MSH, filed a 60-day treatment report in connection with the hearing. Dr. Milz's report and testimony confirmed that Graeber "continues to meet criteria for civil commitment as MI&D." Graeber then requested a second examiner and the district court appointed Thomas Alberg, Ph.D. Dr. Alberg's report opines that Graeber continues to meet the requirements for MI&D commitment.

In a March 5, 2012 order, the district court determined that "[t]here has been no change in [Graeber's] condition or diagnosis since the Court made the earlier determination that [Graeber] clearly met the statutory requirements for commitment," and ordered her indeterminate commitment as MI&D. This appeal follows.

DECISION

We review a district court's civil-commitment decision to determine whether the district court complied with the statute and whether the evidence in the record supports the findings of fact. *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, *id.*, and will not set aside a finding of fact unless it is clearly erroneous, Minn. R. Civ. P. 52.01. But whether there is clear and convincing evidence to support the district court's legal conclusion as to whether a person meets the standard for commitment as MI&D is reviewed de novo. *Knops*, 536 N.W.2d at 620; *see also In re Thulin*, 660 N.W.2d 140, 144 (Minn. App. 2003).

A district court may order the commitment of a person as MI&D if it finds by clear and convincing evidence that the person satisfies the statutory criteria. Minn. Stat. § 253B.18, subd. 1(a) (2010). Minnesota law defines a "person who is mentally ill and dangerous to the public" as a person:

- (1) who is mentally ill; and
- (2) who 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 (2010). After the initial commitment of a person as MI&D, 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) (2010). 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 (2010).

Graeber argues that there is insufficient evidence to show that (1) she was mentally ill at the time of the car accident; (2) her overt act of speeding was the result of mental illness; and (3) she is substantially likely to engage in acts capable of inflicting serious harm to others. We address each argument in turn.

Mental illness

Graeber admits that she suffers from mental illness and has an extensive history of commitments, but she challenges the district court’s finding that she was mentally ill on the day of the accident. We are not persuaded. Graeber acknowledges that on the day of the accident, she took a drug that was previously discontinued because it made her tired and groggy. She also admitted to Dr. Lovett that she stopped taking her prescribed medication shortly before the accident, “began experiencing thoughts that she was God,” and drove fast because she did not believe that the rules applied to her. Dr. Sweet likewise testified that on the day of the accident Graeber “was becoming more anxious and started having God-like thoughts and basically wanted to get home as fast as possible and talked about wanting to drive fast.” Dr. Gilbertson concluded that “there is a clear nexus between her mental illness and a state of altered perception and resulting faulty judgment at the time of the accident.”

Graeber argues that the expert testimony is not clear and convincing because both Graeber’s sister and mother testified that she was doing well and not showing signs of mental illness during the days leading up to the accident. We disagree. Even if the

district court credited this testimony, the undisputed evidence shows that Graeber stopped taking her prescribed medication prior to the accident and has a history of decompensating rapidly under those circumstances. Dr. Lovett testified, “I have seen very few individuals who have decompensated with the extreme speed as Ms. Graeber when she stops taking her medications. It is both rapid and profound.” Dr. Lovett noted that between the time the *Jarvis*¹ order expired on February 11, 2011, and when she conducted her interview on February 15, Graeber had become acutely psychotic. All five medical professionals agreed that Graeber decompensates at a rapid pace when she stops taking her medication. On this record, we conclude that clear and convincing evidence supports the district court’s finding that Graeber was mentally ill at the time of the accident.

Overt act

Graeber does not dispute that operating a vehicle at excessive speed could constitute an overt act for purposes of MI&D commitment. Rather, she argues that there was insufficient evidence to link the overt act of speeding with her mental illness because the investigating officer could not conclusively rule out a mechanical defect as the cause of her speeding. We disagree. First, while the investigating officer acknowledged that the two cars sustained substantial damage, he was able to form the opinion that there was not “any vehicle condition that would have [contributed] to the crash.” The officer has extensive training and experience in accident reconstruction with the Minnesota State

¹ A nonconsenting committed person may be treated with neuroleptic medication by court order. Minn. Stat. § 253B.092, subd. 8 (2010); *see also Jarvis v. Levine*, 418 N.W.2d 139, 148 n.7, 150 (Minn. 1988).

Patrol, and the district court was entitled to credit his opinion. Second, Graeber admits that she experienced tunnel vision immediately before the accident and told several of the medical experts that she was having God-like thoughts and felt it was her right to drive as fast as she wanted and the road was her racetrack. Our careful review of the record reveals ample evidence linking Graeber's overt act of speeding to her mental illness.

Substantial likelihood of future harm

Finally, to order MI&D commitment, the district court must find that "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)(2). "The question of dangerousness is a factual determination for the trial court, which should not be disturbed on appeal unless it is clearly erroneous." *In re Hofmaster*, 434 N.W.2d 279, 282 (Minn. App. 1989).

Graeber asserts that there is no evidence that she is substantially likely to engage in acts capable of inflicting serious physical harm to others. Graeber relies on the fact that none of her previous mental-health commitments involved a dangerousness finding. We are not persuaded. Graeber has a history of violence and bizarre public behavior. Dr. Lovett observed that "[t]he vast majority of Ms. Graeber's hospitalizations were precipitated by medication noncompliance with resulting psychiatric decompensation and bizarre, . . . dangerous, . . . and/or aggressive behavior." Specifically, Graeber was hospitalized for screaming at neighborhood children, threatening her boyfriend and his grandfather with a knife, and trying to grab a police officer's gun. Moreover, when Graeber was hospitalized in 2009, she admitted that she considered cutting the throat of

her boyfriend's grandfather and later assaulted a nurse. Dr. Sweet opined that when Graeber stops taking her medication "she becomes impulsively dangerous to herself and aggressive. Her history includes episodes of aggressive and threatening behavior towards people in the community (boyfriend, boyfriend's grandfather, her mother) as well as hospital staff." Dr. Gilbertson administered two forensic risk instruments to assess Graeber. Graeber's score on the Historical Clinical Risk Management-20,² placed "her at high risk for future violence."

In sum, we conclude that ample evidence supports the district court's finding that Graeber is substantially likely to engage in acts capable of inflicting serious physical harm to others. Graeber's long history of mental illness, refusal to take medication, rapid rate of decompensation when she is off her medication, and past behavior when off medication, place her at high risk to inflict serious physical harm to others.

Affirmed.

² The HCR-20 is a forensic assessment instrument that allows a clinician to rate a given offender across items that have been empirically linked to a greater probability of risk for violence.