STATE OF MINNESOTA
IN COURT OF APPEALS
A07-1479

In the Matter of the Civil Commitment of:
Ryan Lynn Wilbright.

Filed January 8, 2008
Affirmed
Kalitowski, Judge

Winona County District Court
File No. 85-PR-06-1883

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Charles E. MacLean, Winona County Attorney, Winona County Courthouse, 171 West Third Street, Winona, MN 55987 (for respondent)

Considered and decided by Randall, Presiding Judge; Kalitowski, Judge; and Hudson, Judge.

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

KALITOWSKI, Judge

Appellant Ryan Lynn Wilbright was initially committed to the Minnesota Sex Offender Program (MSOP) as a sexually dangerous person (SDP) and a sexual psychopathic personality (SPP) on March 15, 2007. At a 60-day review hearing, the district court issued findings of fact, conclusions of law, and an order for appellant's

indeterminate commitment as a SDP and a SPP to treatment at MSOP. Appellant challenges the sufficiency of these findings. We affirm.

D E C I S I O N

On appeal from the district court's initial and indeterminate commitment of appellant to Minnesota's Sex Offender Program (MSOP) as a sexually dangerous person (SDP) and a sexual psychopathic personality (SPP), appellant argues that the county failed to prove by clear and convincing evidence that he engaged in a course of harmful sexual misconduct and habitual course of sexual misconduct as statutorily required for his commitment as a SDP and a SPP. We disagree.

When reviewing a judicial commitment, this court's review is limited to determining (1) whether the district court complied with the Minnesota Commitment and Treatment Act; and (2) whether the findings, based on evidence presented at the hearing, justified the commitment. *In re Knops*, 536 N.W.2d 616, 620 (Minn. 1995). Because the record is viewed in the light most favorable to the district court's decision, findings of fact justifying the commitment will "not be set aside unless clearly erroneous, and due regard shall be given to the opportunity of the trial court to judge the credibility of the witnesses." Minn. R. Civ. P. 52.01. But whether the evidence is sufficient to meet the statutory requirements for commitment is a question of law that this court reviews de novo. *In re Knops*, 536 N.W.2d at 620; *In re Linehan*, 518 N.W.2d 609, 613 (Minn. 1994).

Appellant contends that the county failed to prove by clear and convincing evidence that he engaged in a course of harmful sexual misconduct and habitual course of sexual misconduct as statutorily mandated for his commitment as a SDP and a SPP. More specifically, appellant argues that the district court's findings with respect to these factors were insufficient because: (1) the district court erroneously admitted various hearsay statements into evidence; (2) appellant had too few criminal convictions; (3) appellant's offenses did not cause sufficient harm; and (4) appellant's offenses were not sufficiently violent. Because the district court based its findings on evidence sufficient to establish the requisite statutory elements for appellant's commitment as a SDP and a SPP, we disagree.

To be committed as a SDP, the commitment statute requires that the petitioner prove certain elements by clear and convincing evidence. Minn. Stat. §§ 253B.185, subd. 1; 253B.18, subd. 1 (2006). One element required for commitment under the SDP law is proof that the individual "engaged in a course of harmful sexual conduct as defined in subdivision 7(a)." Minn. Stat. § 253B.02, subd. 18c(1) (2006). "Harmful sexual conduct" is defined as "sexual conduct that creates a substantial likelihood of serious physical or emotional harm to another." Minn. Stat. § 253B.02, subd. 7(a) (2006). Furthermore, subdivision 7(a) explains that when an individual engages in certain enumerated behaviors, including criminal sexual conduct in the first, second, third, or fourth degree, a rebuttable presumption of physical or emotional harm to the victim of the offense attaches. Minn. Stat. § 253B.02, subd. 7(a), (b) (2006). Similarly, before an

individual can be committed as a SPP, the petitioner is required to show that the person has engaged in a "habitual course of misconduct in sexual matters." Minn. Stat. § 253.02, subd. 18b (2006).

Appellant's hearsay objections lack merit.

Appellant argues that the district court's admission of various police reports and victim impact statements into evidence over his hearsay objection constituted error. We disagree. The Commitment and Treatment Act Rules govern all proceedings under the Minnesota Commitment and Treatment Act and "supersede any other body of rules otherwise applicable." Minn. R. Civ. Commitment 1. And rule 15 allows the district court to "admit all relevant, reliable evidence, including but not limited to the respondent's medical records, without requiring foundation witnesses." Minn. R. Civ. Commitment 15.

Here, the district court relied appropriately on rule 15 in its admission of the challenged evidence. Although appellant argues that the court erred in considering police reports of additional offenses allegedly committed by appellant, this court has held that incidents establishing a course of harmful sexual conduct need not consist solely of convictions. *In re Ramey*, 648 N.W.2d 260, 268 (Minn. App. 2002). Because these police reports show that appellant continued over time to engage in a pattern of sexual and physical abuse, and because these police reports were considered by the experts in forming their opinions, these reports are relevant. Minn. R. Evid. 401; 703(b); *In re Civil Commitment of Williams*, 735 N.W.2d 727, 731-32 (Minn. App. 2007); *In re Rob II*, 622 N.W.2d 564, 575 (Minn. App. 2001), *review denied* (Minn. Apr. 17, 2001).

A presumption of admissibility applies in commitment hearings, and the district court is in the best position to determine the admissibility of the evidence. *In re Williams*, 735 N.W.2d at 731. Thus, this court defers to the district court's findings that the police reports and victim impact statements were sufficiently credible and persuasive. Moreover, since the admitted documents set forth the accounts of first-hand witnesses (appellant's victims) and contained statements that were generated just after the described events took place, the record supports the district court's findings of relevancy and reliability. *See In re Williams*, 735 N.W.2d at 732 (finding the accounts of first-hand witnesses relevant and reliable). Accordingly, the district court did not commit reversible error by admitting this evidence over appellant's hearsay objections.

Appellant's behavior demonstrated a course of conduct.

Appellant contends that he had too few criminal convictions for his behavior to satisfy the course-of-conduct element of his commitment as a SDP and a SPP. We disagree.

The sheer number of convictions that an individual has is not dispositive of whether he meets the criteria for commitment as a SDP or a SPP. *In re Monson*, 478 N.W.2d 785, 789 (Minn. App. 1991). Here, although appellant has only two sexual-assault convictions, the record is replete with other evidence establishing that appellant continued over time to engage in a habitual pattern of harmful sexual behaviors. The record includes the testimony of several victims and a number of police reports detailing additional incidents of physical and sexual assault allegedly committed by appellant. Additionally, all three experts opined that appellant engaged in a habitual course of

harmful sexual conduct. Therefore, we reject appellant's argument that he had too few criminal convictions to support the district court's course-of-conduct finding.

Appellant's offenses substantially harmed his victims.

Appellant argues that his offenses caused insufficient harm to satisfy the course-of-conduct element of his commitment as a SDP and a SPP. We disagree.

This court has recognized that harm "highly likely to have a serious, lasting effect on the victim's sense of security and to cause a continuing sense of fear" is sufficient to justify an individual's commitment as a SDP and a SPP. *In re Robb II*, 622 N.W.2d at 572 (discussing and differentiating *In re Blodgett*, 510 N.W.2d 910 (Minn. 1994)). Here, the testimony of R.L.D., S.R.B., and B.A.B. detailed the physical, mental, and emotional effects they have suffered as a result of appellant's sexual assaults. An expert testified that he would expect all of appellant's victims to experience both physical and emotional trauma. Accordingly, the district court did not err in finding that appellant's offenses caused sufficient harm to establish a course of harmful sexual conduct.

Appellant's offenses involved sufficient violence.

Appellant contends that his offenses were insufficiently violent to establish the requisite course-of-conduct element for his commitment as an SDP and a SPP. We disagree. Although appellant sometimes used coercion to commit his offenses, there is also evidence in the record that appellant used physical force to restrain his adolescent female victims. Moreover, the physical force used by a sexual offender in restraining his victims is, in and of itself, sufficient to support a finding that the offender engaged in a pattern of violent sexual misconduct. *In re Preston*, 629 N.W.2d 104, 113 (Minn. App.

2001). Accordingly, appellant's offenses were sufficiently violent to satisfy the course-of-conduct requirement for his commitment as a SDP and a SPP.

Affirmed.