STATE OF MINNESOTA
IN COURT OF APPEALS
A08-1818

In the Matter of the
Civil Commitment of:
Michael J. Trones

Filed February 24, 2009
Affirmed; motion denied
Crippen, Judge[*]

Hennepin County District Court
File No. 27-MH-PR-08-250

Gregory R. Solum, 3300 Edinborough Lane, Suite 550, Edina, MN 55435 (for appellant Michael J. Trones)

Michael O. Freeman, Hennepin County Attorney, John L. Kirwin, Assistant County Attorney, C-2000 Government Center, 300 South Sixth Street, Minneapolis, MN 55487 (for respondent State of Minnesota)

Considered and decided by Peterson, Presiding Judge; Bjorkman, Judge; and Crippen, Judge.

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

CRIPPEN , Judge

Appellant challenges his indeterminate civil commitment, arguing that the state failed to prove the statutory elements for his commitment as mentally ill and dangerous.

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

He also asserts district court errors in its evidentiary rulings and in its failure to determine appellant's competence before permitting him to curtail the review hearing. We affirm.

FACTS

Appellant Michael Trones has a lengthy history of mental illness, including prior commitments and stayed orders for commitment. Evidence at the initial commitment hearing particularly addressed three incidents. In February 2008, appellant's paternal aunt visited to check on him. As she approached a service door in the garage, appellant emerged suddenly through the door and struck her twice on the arm, causing her to drop her cell phone and flee. Later in February 2008, appellant's father, Darryl Trones, was injured by a lamp that appellant was swinging around while agitated; his father then fell and hit his head on a car doorsill. After this incident, appellant was admitted to the Hennepin County Medical Center (HCMC) psychiatric unit. During his hospitalization, appellant threw a chair at one of the unit nurses.

Regarding the second event, Darryl Trones testified that he attempted to grab the lamp and deflected it, causing it to hit his head. But when the incident initially occurred, he told paramedics that his son had hit him with a lamp. Medical reports indicate that Darryl Trones suffered a compression fracture of his sinuses and that it appeared he had been struck many times. He received 30 stitches to close a gash in his head. According to the 911 recording, he assured his son that he would just tell police that he had fallen. Darryl Trones claimed that appellant could not see him clearly because of a visual impairment and that he was locked in a "terror syndrome" that was a side effect of his medication. Appellant told Dr. Kienlen, the court-appointed first examiner, that he did

not remember the incident, but told Dr. Orr, the court-appointed second examiner, that he tried to kill his father and would try again, describing it as "self defense."

Following the injury to his father, appellant was admitted to the psychiatric ward at HCMC. On March 10, appellant was involved in a third incident: he threw a 19-pound metal chair at one of the nurses while she was on the telephone. There was no apparent provocation for this attack. The nurse managed to turn her body and protect her face, but the chair hit her entire side and fell on her foot. Appellant picked up a second chair, but put it down when emergency personnel responded to the panic alarm. The nurse was treated for multiple contusions to her face and extremities, but missed only one shift of work and managed her injuries with ice and ibuprofen. At the time of the hearing, she was still receiving physical therapy.

In addition to these incidents, appellant has threatened to kill his father on other occasions, but Darryl Trones dismissed these statements as idle threats. Darryl Trones testified that appellant was not a threat to himself or to others, that the medications make appellant's behavior worse, and that some of the incidents occurred because of appellant's poor vision or because he is suffering from akathisia, a side effect of his medication.

The state initially petitioned on March 7, 2008, to commit appellant as mentally ill, but it filed a second petition to civilly commit appellant as mentally ill and dangerous (MID) on March 13, following the incident with the nurse. After a subsequent hearing, appellant was committed as MID to the Minnesota Security Hospital (MSH) in May 2008. At a 60-day review hearing in August, Dr. Robin Ballina, a forensic psychiatrist at

MSH, testified that appellant continued to meet the criteria for an MID commitment. She testified that akathisia is a possible side effect of appellant's medications, but she also stated that appellant did not appear to have the symptoms of akathisia and that some of his behaviors that were similar to akathisia were present whether or not he was on medication.

During Dr. Ballina's cross-examination, appellant told his attorney that he wanted to end the review hearing without further testimony. Appellant's counsel told the court that he believed that appellant was competent to make this decision. Appellant and his counsel appeared to agree that they were not waiving the hearing but were waiving a continuation of the hearing, so the evidence already received was allowed to stand and the state's attorney was permitted to finish his examination of Dr. Ballina. After this hearing, the district court filed an order for appellant's indeterminate commitment as MID.

This appeal is from the two commitment orders and the district court's March order permitting administration of neuroleptic medication (Jarvis order).

D E C I S I O N

We review the district court's commitment order in a light most favorable to the decision. *In re Commitment of Carroll*, 706 N.W.2d 527, 530 (Minn. App. 2005). The court's findings must be based on clear and convincing evidence. *Id.*; Minn. Stat. § 253B.18, subd. 1 (2008). Due deference is paid to the district court's opportunity to judge the credibility of witnesses, *Carroll*, 706 N.W.2d at 530, but this court reviews de novo, as a legal question, the district court's finding that an overt act within the meaning

of the statute has occurred. *Id.*; *see also In re Knops*, 536 N.W.2d 616, 620 (Minn. 1995). The state has the burden of proving that the statutory requirements for indeterminate commitment have been established. Minn. Spec. R. Commitment & Treatment Act 23(e).

a. Mentally Ill and Dangerous

A person is mentally ill and dangerous when (1) mentally ill; and (2) as a result of this mental illness, the person presents a clear danger to the safety of others. Minn. Stat. § 253B.02, subd. 17 (2008). Appellant does not dispute that he is mentally ill, but challenges the determination that he is dangerous. A "clear danger to the safety of others" exists when a "person has engaged in an overt act causing or attempting to cause serious physical harm to another" and there is a substantial likelihood that the person will engage in future acts capable of seriously harming another. *Id.*, subd. 17. The requirement to show serious physical harm distinguishes an MID commitment from a commitment for mental illness (MI). *Cf.* Minn. Stat. § 253B.02, subd. 17(a)(2) (requiring an overt act causing serious physical harm or an attempt to cause serious physical harm to another for MID commitment) and subd. 13(a) (requiring a substantial likelihood of physical harm to self or another for MI commitment).

"Serious physical harm" is not defined by statute. In *In re Kottke*, 433 N.W.2d 881, 883-84 (Minn. 1988), the supreme court concluded that the committed person was not dangerous when he struck one security guard, leaving only red knuckle marks, and hit another on the back, causing him to fall and sprain his thumb, but otherwise was "extremely mild-mannered." But actual serious bodily injury is not required. In *Carroll*,

this court found ample evidence to sustain a finding of danger where the committed person threatened a juvenile, struck a mental health worker in the eye, hit another mental health worker in the mouth and nose, hit a social worker on the left temple, knocking his glasses off, and raised a chair in a threatening manner. None of these actions caused serious injury to the victims, but the court concluded that these overt acts were an attempt to cause bodily harm. 706 N.W.2d at 528-29, 531.

In reaching this conclusion in *Carroll*, we noted a number of earlier incidents, citing the district court's findings that Carroll's records were "replete with documentation of violent outbursts and physical assaults," *Id.* at 531, and we observed that Carroll's failure to inflict serious and permanent injuries on any of his victims was "a matter of luck and not for lack of intent." *Id.* Generally, courts will consider historical actions of the committed person in evaluating whether the person meets the MID standard. *See, e.g., id.*; *In re Dirks*, 530 N.W.2d 207, 211 (Minn. App. 1995) (stating that court may consider precommitment dangerous behavior when patient is symptom-free while hospitalized and receiving medication); *In re Lufsky*, 388 N.W.2d 763, 766 (Minn. App. 1986); *In re Malm*, 375 N.W.2d 888, 891 (Minn. App. 1985). None of the behaviors in these cited cases resulted in serious physical injury, but all held the potential for serious harm, consistent with the statute, which includes overt acts causing or *attempting* to cause serious physical harm. Minn. Stat. § 253B.02, subd. 17 (emphasis added).

The record here includes sufficient clear and convincing evidence to support the district court's finding that appellant engaged in an overt act attempting to cause serious physical injury to another. This record includes evidence that appellant threw a 19-pound

chair at a nurse during his initial commitment, following an earlier attack on his father, Darryl Trones, that resulted in a fracture and a wound requiring 30 stitches. Although Darryl Trones testified that he was injured through his own fault and that the injury was accidental, the district court did not find him to be credible. This court generally defers to the district court's assessment of witness credibility, and this deference is appropriate on the record here. *Carroll*, 706 N.W.2d at 530.

Appellant also argues that the evidence does not support the district court's conclusion that there is a substantial likelihood of future harm to others. Appellant argues that his assaultive behavior did not include actions in the general community and that no one suffered serious physical harm, except Darryl Trones, who stated that it was an accident. But appellant minimizes or ignores prior behaviors, such as a 2007 incident in which he threatened a man in a coffee shop for staring at him or another 2007 incident in which he threatened strangers and threw rocks at them. Before this commitment, appellant struck his aunt when she stopped to check on his welfare, although no injury resulted. This incident, together with the incident during which appellant threw a chair at a nurse, can be generalized as a threat to the community at large. In addition, the state sets out other incidents involving appellant's landlord, neighbors, and a roommate.

The state is not obligated to prove that serious injury to another will occur at some point in the future; rather, the statutory standard is whether "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; *see In re Jasmer*, 447 N.W.2d 192, 195 (Minn. 1989) (concluding that shooting a shotgun in direction of child constituted an

overt act attempting to cause physical harm despite lack of injury). In evaluating the likelihood of future acts, courts generally look to the historical actions of a patient; when the patient has a history of violent or threatening behavior, even when no injury or minor injuries are involved, the likelihood of future dangerous acts is greater. *See Carroll*, 706 N.W.2d at 530-31; *Jasmer*, 447 N.W.2d at 195; *Lufsky*, 388 N.W.2d at 766.

Finally, appellant argues that he has never been convicted of a crime. But conviction of a crime, requiring proof beyond a reasonable doubt, is not a prerequisite to commitment. *Jasmer*, 447 N.W.2d at 195. Most crimes require proof of intent; in a commitment proceeding, the requirement is proof that actions pose a danger to the public, regardless of whether the actor intends to cause the harm or has the capacity to form the requisite intent. *Id.*

In the record before us, the state has shown by clear and convincing evidence that appellant did commit an overt act attempting to cause serious physical injury to another and that there is a substantial likelihood that he would do so in the future.

b. Evidentiary and Other Rulings

Appellant has raised a number of objections to the fairness of the hearings. Appellant initially contends that the district court favored the state in its evidentiary rulings. The district court has broad discretion in its evidentiary rulings and will be reversed only for a clear abuse of discretion. *In re Commitment of Ramey*, 648 N.W.2d 260, 270 (Minn. App. 2002), *review denied* (Minn. Sept. 17, 2002). Our careful review of the record shows that the district court was not biased or unfair in its evidentiary rulings and therefore did not abuse its discretion.

More seriously, appellant contends that the district court erred by failing to determine if he was competent to curtail the review hearing before acceding to his request. Appellant argues that he was under the influence of three "potent neuroleptic medications which hampered his ability to participate in the proceedings" and that the court had previously found him not competent to act as his own attorney or to be tried criminally.

Minn. Stat. § 253B.08, subd. 5 (2008), states that a patient must not be so under the influence of drugs or medication that he is hampered in participating in the hearing, but medications are permitted if the treating physician concludes that discontinuing medications would not be in the best interest of the patient. It is evident from the record that appellant, without medication, is actively psychotic. Further, the medical experts examined appellant and concluded that he was not suffering from akathisia, a side effect of his medication. The only evidence supporting a finding of akathisia was the testimony of Darryl Trones, who is not a medical expert.

The question of appellant's competency is difficult: he certainly was not competent to represent himself or to be tried criminally. His attorney acceded to his request to curtail the hearing and represented to the court that he was competent to request an end to the hearing. Had counsel been uncomfortable with appellant's competency on this narrow issue, the statute permits the court to continue the hearing in the absence of the patient. Minn. Stat. § 253B.08, subd. 5(b) (stating that court may exclude or excuse patient "who is seriously disruptive or who is incapable of comprehending and participating in the proceedings"). Appellant has not suggested that

he was prevented from presenting evidence, and under these circumstances, we conclude that the court did not abuse its discretion by permitting appellant to waive the balance of the hearing.

c. Motion to Enlarge Record

Appellant has requested that material found in his proposed Confidential Supplemental Record be included in the record before this court. There is merit in the state's opposing argument that the material found at pages 18-54 is not a part of the appellate record.

The record before the appellate court includes all papers filed in the district court as well as the exhibits and the transcripts of the proceedings. Minn. R. Civ. App. P. 110.01. Of the materials in the supplemental appendix, those found at pages 1-17 are already a part of the district court file and are part of our record. Those found at pages 18-54 are not part of the district court file and thus are stricken from the appellate record.

Affirmed; motion denied.