STATE OF MINNESOTA
IN COURT OF APPEALS
A08-2217

In the Matter of the Civil Commitment of: Aaron Lee Emberland

Filed May 19, 2009
Reversed
Larkin, Judge

Kandiyohi County District Court
File No. 34-PR-08-143

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Considered and decided by Stauber, Presiding Judge; Minge, Judge; and Larkin, Judge.

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

LARKIN, Judge

Appellant challenges the district court's order committing him as a person who is mentally ill. Appellant argues that he does not meet the statutory criteria for civil commitment and that there is a suitable alternative to commitment. Because the evidence is insufficient to satisfy the standard for civil commitment, we reverse.

FACTS

Appellant Aaron Lee Emberland was admitted to the emergency room on October 26, 2008 due to his "paranoia/psychosis." Emberland's mother reported that he had displayed "psychotic depressive behaviors." Emberland was placed on a 72-hour emergency hold and eventually transferred to a locked psychiatric unit. A petition for judicial commitment was filed. Emberland waived the preliminary hearing and agreed to stay in the hospital pending a commitment hearing. On November 3, 2008, a licensed psychologist and qualified examiner, Dr. John Pucel, examined Emberland and reviewed his medical records. Dr. Pucel filed a report with the district court indicating that Emberland had recently "stopped taking his psychotropic medications based on delusional beliefs about the impact of the medication on his physical system and behavior."

Emberland's commitment hearing was held on November 13. Dr. Pucel testified regarding Emberland's prior psychiatric hospitalizations and history of treatment with psychotropic medications. Dr. Pucel testified that Emberland stopped taking his psychiatric medications prior to his admission to the hospital, was focused on his somatic complaints, and believed that he may have kidney stones. Dr. Pucel testified that Emberland reported that someone had implanted a chip into his brain that was causing suicidal thoughts.[1] Dr. Pucel testified that during his one-hour interview with Emberland, Emberland would stare blankly for long periods, in a manner that indicated he was not

[1]Emberland testified that a woman struck him on the head with a board and pushed something into his head that he described as a chip from 3M.

listening or aware of what was being said. Dr. Pucel testified that this occurred seven to eight times and that it indicated Emberland was experiencing cognitive dysfunction and may have been responding to auditory hallucinations.

Dr. Pucel opined that Emberland suffers from mental illness, psychosis not otherwise specified. Dr. Pucel testified that Emberland does not believe that he has a severe psychiatric disorder, is convinced that his prescribed psychiatric medications have produced his somatic complaints, does not understand the severity of his condition, and does not realize that his psychological symptoms impact his judgment.

Dr. Pucel testified that although Emberland had not been dangerous to others in recent months, he had made threats to his mother in the past. Dr. Pucel did not testify regarding the nature or date of these threats; he merely referenced Emberland's chart. Dr. Pucel conceded that Emberland is not perceived as a danger to others and that Emberland had not behaved aggressively at the hospital. Dr. Pucel conceded that while Emberland reportedly had suicidal thoughts when he arrived at the hospital, he had made no suicidal gestures and was not overtly suicidal at the time of the evaluation.

Dr. Pucel expressed concern that Emberland's mental state would make it extremely difficult for him to provide for his basic needs of food, clothing, and shelter. Dr. Pucel opined that given Emberland's history of failing to take prescribed medications, inpatient psychiatric care and monitoring were necessary to ensure compliance with treatment recommendations and that a full six-month commitment was appropriate. Dr. Pucel testified that he considered and ruled out less-restrictive alternatives to

inpatient care because Emberland did not understand the severity of his condition or the need for treatment.

The district court found that appellant is a mentally ill person as defined by Minn. Stat. § 253B.02, subd. 13 (2008), and meets the statutory criteria for civil commitment. The district court's findings state that Emberland "is a danger to self or others and has threatened physical harm to self and has failed to provide self with food, clothing, shelter, safety or medical care." This appeal follows.

D E C I S I O N

Minnesota law provides for the judicial commitment of mentally ill persons. Minn. Stat. § 253B.09, subd. 1(a) (2008). As is relevant to this case, the commitment act defines a person who is "mentally ill" as

> [a]ny person who has an organic disorder of the brain or a substantial psychiatric disorder of thought, mood, perception, orientation, or memory which grossly impairs judgment, behavior, capacity to recognize reality, or to reason or understand, which is manifested by instances of grossly disturbed behavior or faulty perceptions and poses a substantial likelihood of physical harm to self or others as demonstrated by:
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> (1) a failure to obtain necessary food, clothing, shelter, or medical care as a result of the impairment;
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> . . . .
>
> (3) a recent attempt or threat to physically harm self or others.

Minn. Stat. § 253B.02, subd. 13(a)(1), (3).

A commitment order must be based on clear and convincing evidence that the proposed patient is "mentally ill" and that "there is no suitable alternative to judicial

commitment." Minn. Stat. § 235B.09, subd. 1(a). In a commitment proceeding, the district court "shall find the facts specifically, and separately state its conclusions of law." *Id.*, subd. 2 (2008). This court's review is limited to determining whether the district court complied with the civil commitment act and whether the commitment is justified by findings based on evidence presented at the hearing. *In re Knops*, 536 N.W.2d 616, 620 (Minn. 1995). This court will not set aside the district court's findings unless they are clearly erroneous. Minn. R. Civ. P. 52.01. We accept the findings of the district court if they are "reasonably reached from the evidence, viewing the evidence most favorably for petitioners, but having due regard for the requirement of clear and convincing evidence." *In re Leebl*, 352 N.W.2d 135, 137 (Minn. App. 1984) (citing an earlier version of section 253B.09, subdivision 1). But "[w]e review de novo the question of whether the evidence is sufficient to meet the standard of commitment." *In re Civil Commitment of Janckila*, 657 N.W.2d 899, 902 (Minn. App. 2003).

Before we begin our analysis, we must clarify the parameters of the evidentiary record in this matter. In support of its argument that there was "ample evidence" to show that Emberland meets the criteria for civil commitment, respondent cites information contained in several documents concerning Emberland, including the examiner's statement in support of petition for commitment and medical records. While these documents were filed with the district court during the course of the commitment proceeding, it does not appear that these documents were offered or received into evidence at the commitment hearing. *See* Minn. Stat. § 253B.08, subd. 7 (2008)(stating that the court shall "admit all relevant evidence at the hearing" and "make its

determination upon the entire record"); Minn. R. Civ. Commitment 15 (stating that the district court may "admit all relevant, reliable evidence, including but not limited to the respondent's medical records, without requiring foundation witnesses"). Because these documents were not received into evidence, they were not part of the evidentiary record before the district court and cannot provide support for the district court's findings and conclusions on appeal. *Knops*, 536 N.W.2d at 620.

Emberland does not contest the district court's finding that he suffers from a mental disorder. But Emberland argues that the record before the district court did not present clear and convincing evidence that Emberland's disorder poses a substantial likelihood of physical harm to Emberland or others. We agree. The supreme court has previously held that section 253B.02, subd. 13, clearly requires that there be evidence of "an overt failure to obtain the necessary food, clothing, shelter, or medical care" or "a recent attempt or threat to harm self or others," which demonstrates a substantial likelihood of physical harm. *In re McGaughey*, 536 N.W.2d 621, 623 (Minn. 1995). "[S]peculation as to whether the person may, in the future, fail to obtain necessary food, clothing, shelter, or medical care or may attempt or threaten to harm self or others is not sufficient to justify civil commitment as a mentally ill person." *Id.* But so long as an overt act has demonstrated a substantial likelihood of harm, and the danger is evident, a district court need not wait until the person has harmed another before committing the person as mentally ill. *Id.* at 623-24 n.1 (citing *In re Terra*, 412 N.W.2d 325, 326-28 (Minn. App. 1987) (explaining that the district court was not required to delay commitment until appellant or someone else suffered harm when the danger of

appellant's condition was already evident by aggressive behavior when he arrived at a television station, insisted that he see a television anchor who he claimed was his wife, and had to be subdued after he became belligerent)).

The record here does not contain evidence of an "an overt failure to obtain the necessary food, clothing, shelter, or medical care" or "a recent attempt or threat to harm self or others." *McGaughey*, 536 N.W.2d at 623. The evidence indicates that Emberland was able to provide for his basic needs. There is no evidence that Emberland lacked food. There is also no evidence that Emberland lacked appropriate clothing or shelter. With regard to Emberland's medical needs, the record indicates that he was concerned about his physical condition and sought medical treatment. Thus, the district court's finding that Emberland has "failed to provide self with food, clothing, shelter, safety or medical care" is not reasonably reached from the evidence and is, therefore, clearly erroneous. *See Leebl*, 352 N.W.2d at 137.

While the evidence indicates that Emberland had difficulty focusing during his interview with Dr. Pucel and that Emberland's lack of focus would make it difficult for him to provide for his basic needs, there is no evidence that Emberland had failed to provide for his basic needs prior to the commitment proceeding. Dr. Pucel's concern that Emberland's lack of focus might interfere with his future ability to function independently is speculative, and speculation is not sufficient to justify civil commitment. *See McGaughey*, 536 N.W.2d at 623. Concern regarding Emberland's ability to meet his basic needs in the future, however legitimate, does not justify his commitment as a person who is mentally ill. *Id.*

There is evidence that Emberland stopped taking his psychotropic medications and focused on his somatic complaints—claiming that he had kidney stones and that a chip had been implanted in his head. We have previously upheld civil commitments based, in part, on a person's refusal to take prescribed medications. But in these cases the refusal to take medication was one of several findings that together satisfied the civil commitment criteria. *See, e.g.*, *Leebl*, 352 N.W.2d at 136-37 (affirming commitment based on appellant's refusal to take prescribed medications, refusal to cooperate with other treatment, and refusal to use bathroom facilities, which resulted in appellant soiling herself, bedding, and clothing); *In re Fusa*, 355 N.W.2d 456, 457 (Minn. App. 1984) (affirming commitment based on appellant's refusal to take prescribed medications, failure to maintain hygiene, increased hostility, violent outbursts, and assault of a mental health worker). Emberland's refusal to take prescribed medications is unaccompanied by evidence that he failed to obtain necessary food, clothing, shelter or medical care, neglected his hygiene, or engaged in violent or aggressive behavior. Under these circumstances, Emberland's failure to take medication, standing alone, does not amount to an overt act that demonstrates a substantial likelihood of physical harm.

There is also no evidence that Emberland made "a recent attempt or threat to physically harm self or others." Minn. Stat. § 253B.02, subd. 13(a)(3). Dr. Pucel testified that he did not perceive Emberland to be a danger to others. Although there was a vague reference to threats that Emberland had made against his mother in the past, there was no evidence regarding the content or date of the alleged threats. Emberland had not behaved aggressively at the hospital, had not made any suicidal gestures, and was not

overtly suicidal at the time of his evaluation. Thus, the district court's finding that Emberland "is a danger to self or others and has threatened physical harm to self or others" is clearly erroneous as it cannot be reasonably reached from the evidence. *See Leebl*, 352 N.W.2d at 137. The district court also found that "[i]t is a possibility, and the court's finding, that if he were to believe he has been struck by someone, whether it occurred or not, he could respond to that physically as well, and that may place other people who actually work with or deal with [Emberland] in danger as well." This finding is speculative. And because there is no evidence in the record that Emberland has been physically aggressive toward others, the finding is clearly erroneous. *See id.*

Emberland's statements regarding the chip in his head and suicidal thoughts are of concern. But in light of Dr. Pucel's testimony that Emberland is not perceived as a danger to others and was not overtly suicidal, and given the lack of evidence that Emberland previously failed to obtain necessary food, clothing, shelter or medical care, we conclude that there is not clear and convincing evidence that Emberland's disorder poses a substantial likelihood of physical harm to self or others. The evidence does not meet the statutory criteria for Emberland's commitment as a person who is mentally ill. *See Janckila*, 657 N.W.2d at 902 (stating that whether the evidence is sufficient to meet the standard of commitment is subject to de novo review).

We acknowledge that this is a close case. Both respondent and the district court were appropriately concerned for Emberland's welfare in light of his symptoms. But civil commitment is authorized only when a person's mental illness results in a "substantial likelihood of physical harm to self or others." Minn. Stat. § 253B.02,

subd. 13(a). "There is still no constitutional basis for confining persons involuntarily if they are dangerous to no one and can live safely in freedom." *In re Nadeau*, 375 N.W.2d 85, 87 (Minn. App. 1985) (quotation omitted). While it was reasonable to question whether, absent appropriate treatment, Emberland might have difficulty providing for his basic needs in the future and might again have suicidal thoughts, speculation as to future danger or potential harm is an insufficient basis for commitment. *McGaughey*, 536 N.W.2d at 623.

The evidence is insufficient to meet the standard for Emberland's commitment as a person who is mentally ill. We therefore reverse the district court's commitment order. Because we reverse the district court's commitment order on this ground, we do not address Emberland's argument that there was a suitable alternative to civil commitment.

Reversed.

Dated: _____

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The Honorable Michelle A. Larkin