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**STATE OF MINNESOTA
IN COURT OF APPEALS
A09-398**

In the Matter of the Civil Commitment of:
Dustin Allen Bilderback

**Filed August 25, 2009
Affirmed
Ross, Judge**

Anoka County District Court
File No. 02-PR-08-134

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Considered and decided by Peterson, Presiding Judge; Ross, Judge; and Connolly, Judge.

UNPUBLISHED OPINION

ROSS, Judge

Twenty-four-year-old Dustin Bilderback challenges the district court's decision to indeterminately commit him as a mentally ill and dangerous person. Bilderback contends that the district court erred by considering evidence that he assaulted his outpatient psychiatrist and by failing to acknowledge his success in the community. Bilderback also argues that the district court failed to consider the less restrictive alternative of

committing him as mentally ill, but not dangerous. Because the district court's conclusion that Bilderback is mentally ill and dangerous is justified, we affirm.

FACTS

Bilderback has been diagnosed with bipolar affective disorder and with schizoaffective disorder. His mental-illness diagnosis was not disputed at trial. He also has a history of violent and assaultive behavior. Bilderback has previously been civilly committed as mentally ill in 2003, 2005, and 2007, each time following incidents when he threatened or harmed himself or someone else.

In 2006 and 2007, Bilderback was ordered to be involuntarily treated with neuroleptic medication. On February 15, 2008, Bilderback became frustrated that his medication change requests were not granted. He expressed his frustration by threatening the lives of Dr. Yijie Dong, his psychiatrist, and Dr. Dong's family. Police obtained an order to hold Bilderback under medical supervision.

On March 5, 2008, Bilderback met with his case management team to discuss his medication and treatment. The meeting upset Bilderback, so he stormed out. As Bilderback's psychiatrists left the meeting room, Bilderback charged Dr. Dong, threw him against the wall, and punched him repeatedly in the face. Dr. Dong sustained a loose tooth, a cut ear, bruising, and neck and shoulder pain. Since the attack, Dr. Dong also has suffered from memory loss, cognitive impairment, post-traumatic stress disorder, anxiety, headaches, flashbacks, and nightmares. The state charged Bilderback with felony third-degree assault, and Anoka County Social Services sought Bilderback's indeterminate commitment. After the county filed the commitment petition, but before trial, Bilderback

assaulted a fellow patient at the Anoka Metro Regional Treatment Center by punching him in the face and kicking him in the torso.

The district court held a three-day hearing during which it received the testimony and written reports of two court-appointed psychological examiners. The examiners agreed that Bilderback suffers from schizoaffective and antisocial personality disorders and that he presents an extremely high risk of committing a violent offense in the future. After considering less restrictive alternatives and finding them inadequate, the district court committed Bilderback to a secured hospital as a mentally ill and dangerous person. Bilderback now appeals.

DECISION

I

Bilderback asserts that the district court erred by concluding that he is a mentally ill and dangerous person in need of indeterminate commitment. This court reviews orders for commitment to decide whether the district court complied with the Minnesota Commitment and Treatment Act and whether the conclusions of law are justified by the district court's findings. *In re Knops*, 536 N.W.2d 616, 620 (Minn. 1995). A district court's factual findings should not be disturbed unless clearly erroneous, and we review the record in the light most favorable to the district court's commitment determination. *Id.* A person is deemed mentally ill and dangerous when the committing authority shows that the person "is mentally ill" and that "as a result of 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 . . . 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 (2008). Bilderback concedes that he has a mental illness.

Bilderback argues that the district court should not have concluded he was a clear danger to the safety of others because Bilderback’s other treating psychiatrist, Dr. Nancy Kermath, acknowledged that she had said something provocative to Bilderback triggering his attack on Dr. Dong. We consider whether the evidence supports the district court’s conclusions that Bilderback’s mental illness resulted in an overt act causing serious physical harm to another, and whether it is substantially likely that Bilderback will engage in future dangerous acts.

Bilderback concedes that his violent assault on Dr. Dong was an overt act that caused serious physical harm. But he asserts that he was provoked by circumstances and Dr. Kermath’s comment to him, which together he calls a “perfect storm.” He maintains that the assault therefore does not justify his commitment. Bilderback’s provocation argument misses the mark. Because Bilderback concedes that his attack was an overt act causing serious physical harm to Dr. Dong, he challenges only the district court’s determination that the act was the result of Bilderback’s mental illness. But the district court’s finding is entitled to this court’s deference. *Knops*, 536 N.W.2d at 620.

The district court received reports from two court-appointed examiners who both concluded that Bilderback’s assault of Dr. Dong was linked to Bilderback’s mental illness. One examiner, Dr. James Gilbertson, noted that Bilderback’s dual diagnoses of schizoaffective disorder and personality disorder caused Bilderback “to manifest thinking

distortions, impulse control issues, grandiosity and energized behavior.” Dr. Gilbertson concluded that Bilderback’s mental illness is linked to his aggressive behavior, which, when viewed in a light favorable to the commitment order, includes the assault on Dr. Dong. The court’s other examiner, Dr. Thomas Alberg, also connected Bilderback’s mental illness with the attack. Dr. Alberg noted that Bilderback “blamed Dr. Dong for his difficulties . . . [and] his mental illness” and that when Bilderback attacked, he “was clearly very grandiose and agitated and showing manic symptoms.” The record supports the district court’s conclusion that Bilderback’s assault was the result of his mental illness.

Bilderback contends that because Dr. Kermath deliberately provoked him under “unique circumstances,” the district court’s finding was erroneous. But the circumstances surrounding Bilderback’s attack only reinforce the district court’s conclusion that Bilderback’s mental illness and the assault were connected. At a meeting intended to review Bilderback’s treatment and eventual discharge, Dr. Kermath told Bilderback that he may have to remain hospitalized for six weeks. In response to this comment, Bilderback stormed out of the meeting and then assaulted Dr. Dong. Dr. Dong testified that Dr. Kermath “purposely triggered [Bilderback] to see how manic he can be.” Accepting that Dr. Kermath intentionally provoked Bilderback’s rage, Bilderback’s apparent inability to control his impulses led to serious physical harm to another. Whether the provocation was deliberate is immaterial; Bilderback’s response to the provocation was unreasonable and disproportionate. The district court logically attributed Bilderback’s wildly misdirected and violent response to Bilderback’s mental

illness. We will not disturb the district court's finding that Bilderback's assault on Dr. Dong was an overt act that caused serious physical harm, or its conclusion that the act demonstrates that Bilderback poses a clear danger to the safety of others as a result of his mental illness.

The state argues that we should conclude that certain previous acts help satisfy the statute's requirement of an "overt act." The district court considered evidence of Bilderback's other threatening and violent acts before concluding that he "has engaged in overt acts causing or attempting to cause serious physical harm to another." We disagree with the state that the evidence of prior assaultive behavior, including an incident when Bilderback gave his grandfather a black eye, can support a finding that on those occasions Bilderback caused or attempted to cause *serious* physical harm. But because Bilderback's assaults on Dr. Dong and on a patient at the treatment center independently support the district court's "overt act" finding, the finding passes our review.

II

The district court also found that a substantial likelihood exists that Bilderback will engage in acts capable of inflicting serious physical harm on another. Bilderback does not directly challenge this finding, but he argues that if the district court had committed him as mentally ill, rather than as mentally ill and dangerous, the risk that he would be dangerous in the future would be diminished because he could receive chemical dependency treatment. He argues that the district court erred by not dropping the "dangerous" aspect of his commitment and instead committing him less restrictively as a mentally ill person. Under the Minnesota Commitment and Treatment Act, the district

court must “commit the patient to the least restrictive treatment program . . . which can meet the patient’s treatment needs” and must consider a range of treatment alternatives. Minn. Stat. § 253B.09, subd. 1 (2008). It was Bilderback’s burden to establish by clear and convincing evidence that a less restrictive alternative is available. Minn. Stat. § 253B.18, subd. 1 (a) (2008).

The district court considered and rejected the alternatives of committing Bilderback merely as mentally ill or releasing him to reside with his grandmother, before committing him as mentally ill and dangerous. The record supports the district court’s findings and legal conclusion. Both experts concluded that committing Bilderback as a mentally ill and dangerous person represented the least restrictive alternative to address Bilderback’s treatment needs. Bilderback has been repeatedly committed as a mentally ill person, and his prior commitments have not effectively treated his aggressive behavior. The district court found that Bilderback’s history demonstrates “that he needs the level of supervision, both inside and outside the treatment facility, that is only available under a commitment as a mentally ill and dangerous person.” The record also contains ample support for the finding that Bilderback continues to lack insight into his mental illness and has demonstrated an unwillingness to take medication necessary to control his aggression.

The district court’s findings satisfy the statutory requirements for concluding that Bilderback is mentally ill and dangerous, and the findings are supported by clear and convincing evidence in the record. The alternatives suggested by Bilderback would indeed be less restrictive, but they would not address the treatment needs and public

safety concerns posed by Bilderback's mental illness. Because Bilderback failed to establish by clear and convincing evidence that a less restrictive treatment program is feasible, we affirm the district court's commitment order.

III

Bilderback also argues that the district court's commitment-review hearing findings and conclusions were erroneous. He contends that the district court should have taken the opportunity at the review hearing to conclude that he was not dangerous, and to commit him as mentally ill, pursuant to Minnesota Statutes section 253B.18, subdivision 2(c) (2008). That statute provides that a court may find that the patient should be committed but is not dangerous to the public, based on the written report filed by the treatment facility. *Id.* A finding that a patient remains mentally ill and dangerous will not be disturbed unless clearly erroneous. *In re Bobo*, 376 N.W.2d 429, 432 (Minn. App. 1985). Good behavior at a hospital is not determinative of dangerousness, "where medical experts testify the patient remains mentally ill and dangerous and their testimony is based upon their own observations." *Id.* (citing *State v. Ward*, 369 N.W.2d 293, 296–97 (Minn. 1985)).

Dr. Gregory Hanson, a forensic psychologist, prepared the treatment report and testified at the review hearing. He concluded that Bilderback remained mentally ill and dangerous. Dr. Hanson acknowledged that Bilderback had not been aggressive or disruptive during his initial commitment period but he noted that the good behavior during that time was not indicative of a reduced risk of future dangerousness. Bilderback continued to exhibit signs of his mental illness, including pressured speech, grandiose

thought processes, delusions, and a lack of insight into his illness. Dr. Hanson also testified that Bilderback believed he was prescribed medications so someone could “control” him and that Bilderback took the medication only to end his period of commitment. Bilderback also continued to blame Dr. Dong for his commitment. Based on Dr. Hanson’s report and testimony, the district court concluded that despite his cooperation with treatment during the initial period of commitment, Bilderback “continues to be mentally ill and remains dangerous to the public when outside his current treatment environment.” The district court observed that three court-appointed experts concurred that Bilderback represented a danger to the public. Because Dr. Hanson testified that Bilderback remained dangerous based on his own observations, the district court’s finding is not clearly erroneous.

Bilderback argues that good behavior and compliance with treatment during the initial commitment period is “relevant” to whether the district court should drop the “dangerous” aspect of his commitment, citing *In re Verhelst*, 350 N.W.2d 494 (Minn. App. 1984). While these factors are relevant, they are not determinative. *Bobo*, 376 N.W.2d at 432. In *Verhelst*, this court reversed a district court’s decision to commit a patient as mentally ill and dangerous when the treatment facility’s report indicated—and the district court found—that the patient was no longer mentally ill or dangerous. 350 N.W.2d at 495–96. The district court had concluded that even if the patient was no longer mentally ill and dangerous, the patient met the statutory criteria at the time of initial commitment and it committed her on that basis. *Id.* This court concluded that the district court’s findings did not support its legal conclusion. *Id.* at 496. This situation is

materially different. Bilderback was found initially to be mentally ill and dangerous and continued to be deemed mentally ill and dangerous by the treatment facility's report.

The evidence supports the district court's finding that Bilderback remains mentally ill and dangerous, and the district court's finding supports its legal conclusion that Bilderback should remain committed on that basis. We therefore affirm.

Affirmed.