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STATE OF MINNESOTA
IN COURT OF APPEALS
A09-0638

In the Matter of the Civil Commitment of:
William Richard Iverson.

Filed August 11, 2009
Affirmed in part, reversed in part, and remanded
Harten, Judge*

Washington County District Court
File No. 82-PR-08-3466

Doug Johnson, Washington County Attorney, James C. Zuleger, Assistant County Attorney, 14949 62nd Street North, P.O. Box 6, Stillwater, MN 55082 (for respondent)

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Considered and decided by Halbrooks, Presiding Judge; Johnson, Judge; and Harten, Judge.

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

HARTEN, Judge

Appellant challenges his indeterminate commitment as mentally ill and dangerous (MI&D) and the order authorizing his treatment with neuroleptic medication. Because we see no error in the admission of evidence, no statutory violation, and sufficient evidence supporting the determination that appellant meets the standard for indeterminate

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

commitment as MI&D, we affirm his commitment. Because the county agrees with appellant that the order authorizing neuroleptic medication should specify the medication and limit the authorization to two years, we reverse and remand the order for these modifications.

FACTS

Appellant William Richard Iverson was born in 1955. In 1983, he was convicted of the second-degree murder of his wife and was incarcerated until 1991. In 1997, he was convicted of the first-degree assault of his former fiancée; he has been incarcerated since then.

During his incarceration, he has been involved in violent incidents with other inmates—once in 1999, once in 2001, and once in 2007. He has also received psychiatric treatment for varying periods of time: from December 1999 to January 2000; from August 2000 to March 2001; from September 2001 to March 2003; from August 2003 to October 2003; from March 2004 to January 2005; in August 2005; from July 2006 to August 2006; and from October 2006 to the present.

In May 2008, respondent Washington County, through the licensed psychologist for the Minnesota Correctional Facility at Oak Park Heights (MCF-OPH), where appellant is currently incarcerated, petitioned for appellant's indeterminate commitment as MI&D; appellant's psychiatrist also petitioned the court for authority to treat appellant with neuroleptic medication. Three examiners were involved with the decision to commit appellant: one chosen by appellant (appellant's examiner); one chosen by the

district court (the court's examiner), and one chosen by respondent (respondent's examiner).

In November 2008, following the hearing, both petitions were granted. In January 2009, a review hearing was held, and in February 2009, the district court again ordered appellant's indeterminate commitment as MI&D and ordered the authorization of neuroleptic medication for the duration of the commitment.

Appellant challenges the November 2008 and February 2009 orders, arguing that: (1) the district court erred as a matter of law in admitting the report of one examiner and the report and testimony of another examiner into evidence; (2) appellant's commitment violated Minn. Stat. § 253B.07, subd. 1 (2006); (3) sufficient evidence does not support the district court's conclusion that appellant is MI&D; (4) the district court erred in ignoring recent evidence presented at the review hearing; and (5) the district court erred in authorizing the administration of an unspecified neuroleptic medication for the duration of appellant's commitment.[1]

[1] This court has addressed previous orders for appellant's commitment as mentally ill and for the authorization of neuroleptic medication. *In re Commitment of Iverson*, No. A07-317 (Minn. App. 31 July 2007) (affirming appellant's commitment as mentally ill and the administration of neuroleptic medication because a psychiatrist had concluded that appellant could be a danger to himself in a less restrictive setting and the record did not support appellant's claim that his religion prohibited neuroleptic medication), *review denied* (Minn. 18 Sept. 2007); *In re Commitment of Iverson*, No. A04-779 (Minn. App. 16 Nov. 2004) (affirming both appellant's commitment as mentally ill, because findings as to appellant's deteriorating psychological condition, failure to take medication, and behavior were supported by testimony, and the administration of neuroleptic medication, because findings supported determination that appellant lacks capacity to make decisions about medication), *review denied* (Minn. 20 Jan. 2005); *In re Iverson*, No. C2-00-2000 (Minn. App. 8 May 2001) (affirming orders for appellant's commitment as mentally ill and for administration of neuroleptic medications because evidence showed psychiatrist

D E C I S I O N

1. Evidentiary Issue.

Absent an erroneous interpretation of the law or an abuse of discretion, the district court's ruling on whether to admit evidence will not be disturbed. *Kroning v. State Farm Auto Ins. Co.*, 567 N.W.2d 42, 45-46 (Minn. 1997).

Appellant challenges the admission into evidence of respondent's examiner's testimony and report on the ground that respondent had no right to select a third examiner. Appellant relies on Minn. Stat. § 253B.07, subd. 3 (2006), providing that "[a]fter a petition has been filed, the court shall appoint an examiner. . . . At the proposed patient's request, the court shall appoint a second examiner of the patient's choosing . . . ." But, "[a]lthough [Minn. Stat. § 253B.07, subd. 3,] require[s] the court to appoint at least one examiner, and a second if requested, we find no statutory limit on the district court's discretion to appoint an additional examiner if requested by a party." *In re Commitment of Williams*, 735 N.W.2d 727, 734 (Minn. App. 2007), *review denied* (Minn. 26 Sept. 2007); *see also* Minn. R. Evid. 706(d) (governing court-appointed expert witnesses and providing "[n]othing in this rule limits the parties in calling expert witnesses of their own selection"). The admission of respondent's examiner's evidence was not based on an error of law, and that evidence was properly considered by the district court.[2]

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had sufficient information to conclude appellant met statutory definition of mentally ill and was a danger to himself).

[2] Appellant also argues that the district court erred in disclosing appellant's records and the other examiners' reports to respondent's examiner. But "[t]he county attorney

2. Violation of Minn. Stat. § 253B.07, subd. 1.

As a threshold matter, appellant has arguably waived his right to challenge the alleged violation of Minn. Stat. § 253B.07, subd. 1, in the pre-petition proceeding because he did not raise the issue to the district court. Generally, if the pre-petition process was not objected to before the district court, it may not be challenged on appeal. *In re Galusha*, 372 N.W.2d 843, 846 (Minn. App. 1985). However, in the interests of completeness, we will address it. *See* Minn. R. Civ. App. P. 103.04 (this court may review any matter as the interests of justice may require).

Appellant argues that his commitment should be vacated because both the psychologist who signed the petition and the pre-petition screener (or "screening team") were employees of MCF-OPH. He relies on Minn. Stat. § 253B.07, subd. 1, which provides in relevant part:

> Prior to filing a petition for commitment of . . . a proposed patient, an interested person shall apply to the designated agency . . . . The designated agency shall appoint a screening team to conduct an investigation. The petitioner may not be a member of the screening team.

But the statute does not prohibit the petitioner and the pre-petition screener from working for the same entity; it only prohibits the petitioner from participating in the screening investigation. Minn. Stat. § 253B.07, subd. 1, was not violated with respect to appellant.

[(petitioner's attorney)], [patient, patient's] attorney, court–appointed examiner, . . .and their agents and experts retained by them shall have access to all of the [patient's] medical records and the reports of the court-appointed examiners." Minn. Spec. R. Commitment & Treatment Act 13.

3. Sufficiency of the Evidence.

In reviewing an individual's commitment as MI&D, "[f]indings of fact, whether based on oral or documentary evidence, shall 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 witnesses." *In re Knops*, 536 N.W.2d 616, 620 (Minn. 1995). Appellant argues that there is not sufficient evidence to support the finding that "there is a substantial likelihood that [he] will engage in acts capable of inflicting serious physical harm on another," a criterion for commitment as MI&D set out in Minn. Stat. § 253B.02, subd. 17(b)(ii) (2006).[3] The testimony and reports of the court's examiner and respondent's examiner indicate that appellant meets this criterion.[4]

Appellant argues that the testimony and report of the court's examiner were based on appellant's history rather than his present condition. The court's examiner has known appellant since 2000. In August 2008, his conclusion regarding appellant's commitment as "[da]ngerous" was:

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[3] Appellant concedes that, because of his murder of his wife and his assault of his fiancée, he meets the criterion of Minn. Stat. § 253B.02, subd. 17(b)(i) (2006): "[the proposed patient] has engaged in an overt act causing or attempting to cause serious physical harm to another".

[4] We conclude that the evidence is sufficient even without the report of appellant's examiner. Appellant argues that his examiner's report should not have been admitted into evidence because the examiner was not called to testify and "[o]pinions of court-appointed examiners may not be admitted into evidence unless the examiner is present to testify, except by agreement of the parties." Minn. Stat. § 253B.08, subd. 5a (2006). The record does not indicate that the parties did, or did not, agree to the admission of the examiner's report. Assuming without deciding that the examiner's report was erroneously admitted into evidence, we note that the district court's reliance on it was minimal and disregard it.

> [Appellant] has exhibited over the years a clear pattern of recurrence of his mental illness that has resulted in, at times, very threatening and assaultive behavior. . . . [H]is history of polysubstance abuse remains a serious risk factor to future episodes of decompensation and recurrence of dangerous behaviors. Other risk factors include his long history of mental illness, the very strong pattern of paranoia and anger, as well as a strong tendency to blame others for his own behaviors. Also important is the fact that [appellant] labors under severe lack of insight regarding his illness. He greatly minimizes it and the need to be on medications. Thus, he has a very long history of treatment noncompliance and stopping his medications. In fact, this was going on as early as just a few months ago and was verified by a very low antipsychotic blood level obtained in February of 2008. An additional important risk factor is th[e] fact that [appellant] has shown very little remorse in previous evaluations towards his victims. During my own interview with him, I was struck by the relative lack of empathy for his victims and the clear attempt, even after all these years of therapy, to minimize the dangerousness and his [own] role in the attacks.
>
> Therefore, it appears to me that [appellant] certainly has *presented as a clear danger to the safety of . . . others* and indirectly to himself by his paranoia and unpredictable mood changes. Additionally, he has *engaged in repeated acts that caused serious physical harm to others*, and I believe that *there is a substantial likelihood that he will engage in such acts in the future* given the risk factors outlined above.

Thus, the court's examiner did not focus solely on appellant's history but rather discussed his present condition.

The court's examiner's findings were corroborated by those of respondent's examiner. He testified that, although appellant refused to participate in his evaluation, he had reviewed appellant's records. When asked if there were incidents that led him to the opinion that appellant presents a danger to others, he answered:

> [A]ppellant killed his first wife and seriously injured a past girlfriend. Within the institution . . . contributing factors are his failed attempts at rehabilitation, medication non-compliance, relative lack of insight, what I believe was a tenuous grasp on reality, based again on the records and the previously mentioned history of violence.

When asked what supported his opinion that appellant presents a substantial likelihood of engaging in future acts of violence, respondent's examiner answered:

> [T]he cyclical nature of [appellant's] psychiatric decompensation. This is an individual who appears to regain the ability to manage himself in the prison population. A relative reduction in custody occurs, he goes to another unit of the prison. There he ceases to take his medication, terminates his medication, psychiatrically decompensates and ends up back in the Mental Health Unit. . . .
>
> . . . I [see] his refusal to continue to take medication, his refusal to even acknowledge mental illness as playing a significant part in his likelihood to be violent in the future.

The evidence from these examiners is sufficient to support the finding that "there is a substantial likelihood that [appellant] will engage in acts capable of inflicting serious physical harm on another." Minn. Stat. § 253B.02, subd. 17(b)(ii).

4. Review-Hearing Findings.

Appellant claims the district court erred in failing to consider his conduct between the initial commitment hearing in August 2008 and the review hearing in January 2009. After the review hearing, the district court found that the review examiner: (1) "testified that there has been little change in [appellant's] status"; (2) "opines that [appellant] is in need of further psychological care and treatment"; (3) "reports that [appellant] continues his pattern of attempting to subvert and fail[ing] to comply with his medication regimen"; (4) testified that appellant "would stop taking his medications immediately if there were no court order in place requiring him to take them" and that "when off his medications, [appellant] demonstrates auditory and visual hallucinations and very strong delusional beliefs and presents a significant danger towards the staff and other offenders at the correctional facility"; (5) "interviewed . . . [appellant, who] denied having any history of

mental illness or ever experiencing hallucinations, which is clearly contrary to the record herein"; (6) reported that appellant "declined to participate in psychological testing on December 9, 2008 and was not cooperative in meeting for the clinical interview"; and (7) "testified that, although [appellant] has not engaged in violent behavior since the prior [November 2008] findings of the court he continues to attempt to negotiate the dosage of his prescribed medications and lacks insight into his mental illness."

The district court's order reflects its consideration of appellant's conduct between the initial hearing and the review hearing. The findings are based on the testimony and report of the review examiner, who was found credible. "[D]ue regard shall be given to the opportunity of the trial court to judge the credibility of witnesses." *Knops*, 536 N.W.2d at 620. The district court did not err in determining that appellant's conduct between the two hearings provides no basis for vacating his commitment.

5. Dosage of Neuroleptic Medication.

Appellant argues that the district court erred in authorizing "for the duration of the commitment, neuroleptic medications determined necessary in an amount and with such frequency as is medically appropriate, through involuntary means, if necessary." Respondent agrees that the matter should be remanded so the order can be amended to limit the authorization to two years and to identify the authorized neuroleptic medication. *See* Minn. Stat. § 253B.092, subd. 8(g) (2006) (providing that, in cases of indeterminate commitment, medication may not be authorized for more than two years); *In re Commitment of Raboin*, 704 N.W.2d 767, 771 (Minn. App. 2005) (holding that, to protect patient's constitutional rights, order must specify the type of neuroleptic medication to be

administered). We reverse and remand the order for a time limitation of the authorization and an identification of the medication or medications.[5]

Affirmed in part, reversed in part, and remanded.

Dated:_____ _____
James C. Harten, Judge

[5] Appellant asks that we also remand for a limitation of the dosage, but the failure to limit dosage was not error. *See* Minn. Stat. § 253B.092, subd. 8(h) (a court "may limit the maximum dosage of neuroleptic medication that may be administered"). The district court is not required to impose that limitation.