STATE OF MINNESOTA
IN COURT OF APPEALS
A09-1260

In the Matter of the Civil Commitment of Merle Richard Blanton.

Filed December 8, 2009
Affirmed
Worke, Judge

Ramsey County District Court
File No. 62-MH-PR-07-51

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Considered and decided by Shumaker, Presiding Judge; Worke, Judge; and Connolly, Judge.

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

WORKE, Judge

Appellant challenges his indeterminate commitment as a sexually dangerous person (SDP), arguing that (1) he does not meet the statutory criteria for SDP commitment because the only expert to examine him twice recommended that he be intensely monitored in the community and (2) the district court abused its discretion in failing to consider less restrictive alternatives. We affirm.

D E C I S I O N

Indeterminate Commitment

Appellant Merle Richard Blanton argues that he does not meet the statutory criteria for indeterminate commitment as a sexually dangerous person (SDP). The district court may civilly commit a person if the state proves the need for commitment by clear and convincing evidence. Minn. Stat. § 253B.18, subd. 1(a) (2008). We will uphold the district court's findings of fact if they are not clearly erroneous. Minn. R. Civ. P. 52.01; *In re Joelson*, 385 N.W.2d 810, 811 (Minn. 1986). When findings of fact rest almost entirely on expert testimony, "the [district court's] evaluation of credibility is of particular significance." *Joelson*, 385 N.W.2d at 811. We defer to the district court in its judgment of witness credibility. *In re Ramey*, 648 N.W.2d 260, 269 (Minn. App. 2002), *review denied* (Minn. Sept. 17, 2002). And we will not reweigh the evidence. *In re Linehan (Linehan III)*, 557 N.W.2d 171, 189 (Minn. 1996), *vacated on other grounds sub nom. Linehan v. Minn.*, 522 U.S. 1011, 118 S. Ct. 596 (1997), *aff'd on remand sub nom. In re Linehan (Linehan IV)*, 594 N.W.2d 867 (Minn. 1999). But whether the evidence is sufficient to demonstrate the statutory requirements for civil commitment is a question of law subject to de novo review. *In re Linehan (Linehan I)*, 518 N.W.2d 609, 613 (Minn. 1994); *In re Thulin*, 660 N.W.2d 140, 144 (Minn. App. 2003).

To support commitment of a SDP, the state must show by clear and convincing evidence that the person: (1) has engaged in a course of harmful sexual conduct; (2) has manifested a sexual, personality, or other mental disorder or dysfunction; and (3) as a result, is likely to engage in acts of harmful sexual conduct. Minn. Stat. § 253B.02,

subd. 18c(a) (2008). The state is not required to prove an inability to control sexual impulses but must show that the person has an existing disorder or dysfunction that results in inadequate impulse control, making it highly likely that the person will reoffend. *See id.*, subd. 18c(b) (2008) (stating that inability to control impulses is not required); *Linehan IV*, 594 N.W.2d at 876 (requiring high likelihood of recidivism).

The state petitioned for appellant's commitment in January 2007. The state claimed that appellant qualified as a SDP based in part on his five criminal-sexual-conduct convictions involving three victims. In 1998, the first victim reported that she babysat for appellant's children and that he had sexual intercourse with her. Appellant began assaulting her when she was ten years old. A jury found appellant guilty of third-degree criminal sexual conduct and two counts of fourth-degree criminal sexual conduct.

The second victim is appellant's daughter. In 1998, she reported that appellant had been sexually abusing her since she was two years old; she was seven years old when she reported the abuse. Appellant pleaded guilty to first-degree criminal sexual conduct and was sentenced to 64 months in prison.

After his release from prison, appellant assaulted his third victim. She was a 13-year-old acquaintance who reported that appellant had sexual intercourse with her on more than one occasion. In 2005, appellant pleaded guilty to third-degree criminal sexual conduct.

The commitment petition also cited appellant's possession of child pornography, including images of adult men engaging in sexual intercourse with prepubescent girls. The petition also cited information related to an uncharged offense involving appellant

sexually assaulting his eldest daughter when she was four years old and again when she was in her early teens.

The district court held an initial commitment hearing in November 2007, during which time appellant was serving a prison sentence. The court appointed Dr. Hector Zeller to examine appellant and appellant requested Dr. Thomas Alberg as the second examiner. Both examiners opined that appellant engaged in a course of harmful conduct and was highly likely to reoffend. Appellant also stipulated to his initial commitment and agreed to be held at the Minnesota Sex Offender Program (MSOP). The district court found that appellant's five criminal convictions for sex offenses satisfied the presumption that appellant committed harmful sexual conduct that created a substantial likelihood of serious physical or emotional harm.

In July 2008, appellant was released from prison and transported to the MSOP for a 60-day evaluation. The district court held a review hearing in February 2009. At the review hearing the district court should consider "(1) the statutorily required treatment report; (2) evidence of changes in the patient's condition since the initial commitment hearing; and (3) such other evidence as in the district court's discretion enhances its assessment of whether the patient continues to meet the statutory criteria for commitment." *In re Linehan (Linehan II)*, 557 N.W.2d 167, 171 (Minn. 1996), *vacated and remanded on other grounds sub nom. Linehan v. Minn.*, 522 U.S. 1011, 118 S. Ct. 596 (1997), *aff'd on remand sub nom. In re Linehan (Linehan IV)*, 594 N.W.2d 867 (Minn. 1999). The focus of the 60-day review hearing is to determine whether there is

"evidence of changes in the patient's condition since the initial commitment hearing." *Id.* The goal is not to reassess whether the underlying standards for commitment are met. *Id.*

The district court considered the evidence and testimony admitted at the initial commitment hearing along with testimony from Dr. Gregory Hanson, author of the MSOP's 60-day report; and court-appointed examiners Drs. Michael Farnsworth, who replaced Dr. Zeller, and Thomas Alberg. The district court concluded that there was clear and convincing evidence that appellant's mental disorder makes it highly likely that he will engage in further harmful sexual conduct. The court concluded that there was clear and convincing evidence that the MSOP is capable of meeting appellant's treatment needs and that there is no less restrictive treatment program available. The district court arrived at these conclusions based in part on the testimony of Drs. Hanson and Farnsworth; both examiners testified that there was no change in appellant from the first commitment hearing to the second.

Dr. Hanson stated that appellant repeatedly lied and deceived supervisors about his maladaptive behaviors. Dr. Hanson described appellant as someone who only admits the truth when faced with incontrovertible evidence and that he conceals his intentions and behaviors in order to indulge his ongoing desire to gain access to victims and to continue reoffending. Dr. Hanson opined that appellant did not truly benefit from treatment because of his dishonesty and manipulative tendencies. Dr. Hanson concluded that appellant's recent treatment resulted "in [no] significant change that would alter any conclusions relative to his meeting criteria for civil commitment as a [SDP]." Dr. Hanson stated that appellant is in need of intensive inpatient sex-offender treatment in a

secure environment that protects the community and that the MSOP is the only viable treatment alternative available that would satisfy the community's need for safety and appellant's need for treatment.

Dr. Farnsworth stated that appellant minimized his offenses. Appellant told Dr. Farnsworth that he has been able to shift his fantasies to age-appropriate women, but appeared uncomfortable when Dr. Farnsworth asked him how he was capable of shifting his mindset from young children to adult women. Dr. Farnsworth testified that shifting one's sexual interest is challenging and difficult and that appellant was not able to say how he was able to do this, other than he gained "insight." Dr. Farnsworth concluded that there was no rational basis for appellant's belief that he could progress to women. Dr. Farnsworth opined that appellant is still primarily sexually attracted to minor females. Dr. Farnsworth described appellant as a "flim-flam man," stating that appellant is a sophisticated type of criminal who can win a person over before taking advantage of him or her. Dr. Farnsworth described appellant as able to minimize his conduct despite "talk[ing] the talk of therapy." Dr. Farnsworth did not see a change in appellant from the time of the first commitment. Dr. Farnsworth stated that appellant's release would be a risk to public safety and he knew of no less restrictive alternative to commitment given the extent of the monitoring appellant would need.

The district court found Drs. Hanson and Farnsworth to be credible. *See In re Brown*, 414 N.W.2d 800, 803 (Minn. App. 1987) (stating that the district court is in the best position to evaluate the credibility of evidence and testimony). But appellant suggests that the district court should have relied on the opinion of Dr. Alberg, the only

expert who examined him for the initial commitment and the indeterminate commitment, and who did not recommend appellant's commitment.

Dr. Alberg stated that appellant, although acknowledging all of his convictions, tended to minimize them. Dr. Alberg also noted that appellant acknowledged being sexually attracted to underage girls and that he is attracted to their vulnerabilities and the power and control in their development. Dr. Alberg did not recommend that appellant be committed; instead, he recommended that appellant be monitored intensely in the community and that he be sent to the MSOP if he is unsuccessful in the community. Dr. Alberg stated that it is difficult to assess one's benefit from treatment without giving the person an opportunity to prove himself in the community. While there is a high risk to the public, Dr. Alberg stated that appellant was able to articulate treatment principles, outline his offense history, had a well-developed relapse-prevention plan, and was able to articulate his desire to avoid offending as in the past. Dr. Alberg concluded that appellant appears to have gained at least a "great intellectual understanding of treatment principles."

The district court considered Dr. Alberg's testimony and recommendation. But the district court found that appellant had "successfully completed" sex-offender treatment in July 2003, but later committed a sexual offense. The court found that appellant was able to deceive experienced sex-offender-treatment professionals into believing that he was successful in their treatment program. The district court noted Dr. Alberg's comments regarding appellant's understanding of treatment principles, but noted that similar comments were made in appellant's 2003 discharge summary from

sex-offender treatment. The discharge report indicated that appellant was insightful and thoughtful, completed required assignments demonstrating his ability to identify his distorted thinking, and became a good role model and support for other peers. Appellant reoffended after he was discharged in 2003, and the district court found that appellant failed to fully acknowledge that he sexually assaulted a 13-year-old girl after completing treatment.

Appellant contends that the district court relied on the consequences should he reoffend rather than the likelihood of reoffending. The supreme court has set forth six factors to be considered in examining the likelihood of reoffending: (1) the offender's demographic characteristics, (2) the offender's history of violent behavior, (3) the base-rate statistics for violent behavior among individuals with the offender's background, (4) the sources of stress in the offender's environment, (5) the similarity of the present or future context to those contexts in which the offender used violence in the past, and (6) the offender's record of participation in sex-therapy programs. *Linehan I*, 518 N.W.2d at 614.

There is evidence in the record supporting the conclusion that appellant is highly likely to reoffend. Most striking is that appellant did reoffend after "successfully" completing sex-offender treatment. The court noted that appellant lies and manipulates—not only to his victims but to experienced sex-offender-treatment professionals and investigators. Dr. Farnsworth described appellant as someone who will "talk the treatment talk" but that he really receives no benefit from treatment because he minimizes his conduct and has little empathy for his victims. Appellant also exhibited

very similar conduct with his victims. He threatened his daughters by telling them that he would ground or kill them if they told anyone what he did to them. He stated that he abused his five-year-old daughter because he knew that she loved him. He admitted to grooming his young victims by offering them special privileges and buying things for them. The record demonstrates that appellant manipulated his victims, took advantage of them and controlled them. The district court did not clearly err in concluding that there is clear and convincing evidence that appellant is highly likely to reoffend and that he meets the criteria for indeterminate commitment as a SDP.

Less Restrictive Alternatives

Appellant also argues that a less restrictive treatment program is available that is consistent with his treatment needs and public safety. "[T]he court shall commit the patient to a secure treatment facility unless the patient establishes by clear and convincing evidence that a less restrictive treatment program is available that is consistent with the patient's treatment needs and requirements of public safety." Minn. Stat. § 253B.185, subd. 1 (2008). A district court's finding that there is no less restrictive alternative will not be reversed unless it is clearly erroneous. *In re Dirks*, 530 N.W.2d 207, 211 (Minn. App. 1995).

Appellant had the burden of establishing that a less restrictive treatment program was available. Appellant seems to argue that he met the clear-and-convincing burden by way of Dr. Alberg's testimony and Dr. Farnsworth's recommendation for a "robust aftercare program." However, Dr. Farnsworth stated that it would not be worth the risk to public safety to release appellant from civil commitment and that he knew of no less

restrictive alternatives to commitment given the extent of the monitoring appellant would require. Dr. Alberg stated that the only way to determine if treatment was successful is to allow the treated person an opportunity to demonstrate such in the community. But the district court determined that it was not worth the risk to the community and that appellant would receive the type of treatment he needed at the MSOP. Appellant failed to meet his burden of showing that a less restrictive treatment program is available that is consistent with his treatment needs and the requirements of public safety. Therefore, the district court did not clearly err in determining that appellant continued to meet the criteria for commitment as a SDP, and should receive treatment at the MSOP.

Affirmed.