STATE OF MINNESOTA
IN COURT OF APPEALS
A09-2296

In the Matter of the Civil Commitment of:
James William Stehlik

Filed May 11, 2010
Affirmed
Collins, Judge[*]

Mower County District Court
File No. 50-PR-09-988

Daniel T. Donnelly, Austin, Minnesota (for appellant)

Kristen Nelson, Mower County Attorney, Austin, Minnesota; and

Scott E. Haldeman, Assistant Attorney General, St. Paul, Minnesota (for respondent Mower County)

Considered and decided by Larkin, Presiding Judge; Worke, Judge; and Collins, Judge.

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

COLLINS, Judge

The district court committed appellant James Stehlik as a sexually dangerous person (SDP) and a sexual psychopathic personality (SPP) under Minn. Stat. § 253B.02, subds. 18b, 18c (2008). On appeal from the district court's order, Stehlik argues that the

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

petitioner-county failed to demonstrate that the Minnesota Sex Offender Program (MSOP) is the least-restrictive treatment program available to meet Stehlik's needs and would provide Stehlik with a realistic opportunity for meaningful treatment. Because Stehlik failed to meet his burden to demonstrate that there is an appropriate, available, less-restrictive alternative to commitment and because Stehlik's challenge to the adequacy of treatment at MSOP is premature, we affirm.

D E C I S I O N

I.

Stehlik challenges the district court's commitment order, arguing that the county failed to prove by clear and convincing evidence that MSOP is the least-restrictive treatment program available to meet his needs.

> [T]he [district] 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 the requirements of public safety.

Minn. Stat. § 253B.185, subd. 1 (2008). This court will not reverse a district court's findings on the propriety of a treatment program unless its findings are clearly erroneous. *In re Thulin*, 660 N.W.2d 140, 144 (Minn. App. 2003). "We review de novo whether there is clear and convincing evidence in the record to support the district court's conclusion that appellant meets the standards for commitment." *Id.*

"[P]atients have the *opportunity* to prove that a less-restrictive treatment program is available, but they do not have the *right* to be assigned to it." *In re Kindschy*, 634 N.W.2d 723, 731 (Minn. App. 2001) (discussing less-restrictive option to SPP/SDP

commitment under Minn. Stat. § 253B.185, subd. 1 (2000), which has not been substantially amended), *review denied* (Minn. Dec. 19, 2001); *see In re Robb*, 622 N.W.2d 564, 574 (Minn. App. 2001) (comparing previous version of statute with current version of statute as to least-restrictive alternative option for indeterminate commitment), *review denied* (Minn. Apr. 17, 2001); *cf. In re Senty-Haugen*, 583 N.W.2d 266, 269 (Minn. 1998) (holding, under previous version of statute, there was no requirement that those committed as SPP/SDP be committed to the least-restrictive alternative).

Stehlik contends that the county failed to prove that MSOP is the least-restrictive treatment program available to meet his needs. But Stehlik had the burden to establish that a less-restrictive program is available, not the county. *See* Minn. Stat. § 253B.185, subd. 1 (stating that the district court is required to 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") (emphasis added)); *Kindschy*, 634 N.W.2d at 731 (stating that "*patients* have the *opportunity* to prove that a less-restrictive treatment program is available") (first emphasis added)).

Here, the district court appointed two licensed psychologists to examine Stehlik, and render their expert opinions at the trial on the petition. Each one interviewed Stehlik, conducted psychological testing, and reviewed police reports and other documentation regarding Stehlik's history; both experts opined at trial that, because Stehlik needs secure, highly structured, intensive treatment, MSOP is the only appropriate treatment program in Minnesota. In support of their opinions, the experts cited Stehlik's lengthy history of sexually abusing children, his lack of insight, his inability to control his behavior, his

failure to stop sexually abusing children after completing a two-year in-patient treatment program at Mille Lacs Academy, and the likelihood that Stehlik would commit future sex offenses.

In a painstaking order drawn from a well-developed record of a three-day trial, the district court found the experts' opinions to be "credible and persuasive" and concluded that "[t]here is clear and convincing evidence that Stehlik is in need of treatment and that [MSOP] is capable of meeting Stehlik's treatment needs and the requirements of public safety." Although Stelhik contends that the district court erred by deferring to the experts' opinions, "[w]here the findings of fact rest almost entirely on expert testimony, the [district] court's evaluation of credibility is of particular significance." *In re Knops*, 536 N.W.2d 616, 620 (Minn. 1995). The district court expressly found the experts to be credible and persuasive regarding Stehlik's need for treatment and the lack of a less-restrictive treatment alternative.

Other record evidence also supports the conclusion that MSOP is capable of meeting Stehlik's treatment needs. Stehlik has a long history of befriending mothers of boys approximately eight to ten years old, convincing the mothers to leave their children with Stehlik overnight or longer, and sexually abusing the children. He has not demonstrated an ability to be in the community without putting himself in high-risk situations and sexually abusing children, as is evident from the fact that he regularly had boys staying at his home, where he slept in the same bed as the boys and manipulated them in order to touch them sexually. This history supports the conclusion that the interests of public safety require that Stehlik be placed in a secure, in-patient setting

where he would not have access to children. Stehlik's sexual abuse of boys even after his completion of a two-year in-patient treatment program also supports the conclusion that he requires more intense, and possibly longer-term treatment

Moreover, Stehlik failed to present evidence that a less-restrictive alternative would be appropriate or was available to him. Instead, Stehlik testified that he had not researched any out-patient sex offender programs, nor had he been accepted into such a program. Stehlik testified generally that he does not believe civil commitment to be the answer because of its low success rate, and that he would be "more likely to succeed at a treatment that has a success rate and has seen people integrated back into the community and are successful." But Stehlik did not identify any specific alternative treatment program that might be available, nor did he present evidence that he did not need the kind of intense, secure, long-term treatment provided by MSOP.

There is ample support in the record for the district court's conclusions and ruling, and Stehlik failed to meet his burden of demonstrating the availability and appropriateness of a less-restrictive alternative. Consequently, the district court did not err by committing Stehlik to MSOP as a SDP and SPP.

II.

Stehlik next contends that commitment to MSOP "will not provide Stehlik with a realistic opportunity for meaningful treatment." "In reviewing a commitment, we are limited to an examination of whether the district court complied with the requirements of the commitment act." *In re Commitment of Janckila*, 657 N.W.2d 899, 902 (Minn. App.

2003). "We review de novo the question of whether the evidence is sufficient to meet the standard of commitment." *Id.*

A right to treatment is mandated under the civil commitment statute, which states that "[a] person receiving services under this chapter has the right to receive proper care and treatment, best adapted . . . to rendering further supervision unnecessary." Minn. Stat. § 253B.03, subd. 7 (2008). "Once a patient is admitted to a treatment facility pursuant to a commitment under this subdivision, treatment must begin[.]" Minn. Stat. § 253B.18, subd. 1(b) (2008). The final commitment hearing and appellate review of that hearing is the wrong setting in which to raise the issue of improper treatment. *See In re Wicks*, 364 N.W.2d 844, 847 (Minn. App. 1985) ("Generally, the right to treatment issue is not reviewed on appeal from a commitment order"), *review denied* (Minn. May 31, 1985); *In re Pope*, 351 N.W.2d 682, 683 (Minn. App. 1984) (whether patient is receiving proper treatment should be raised before a hospital review board and not before the committing court); *In re Martenies*, 350 N.W.2d 470, 472 (Minn. App. 1984) ("a person may not assert his right to treatment until he is actually deprived of that treatment"), *review denied* (Minn. Sept. 12, 1984).

Although Stehlik concedes that he cannot assert his right to treatment until he has actually been deprived of treatment, Stehlik argues that testimony from one of the experts establishes that he would not be successful at treatment. Stehlik's argument is premature. Stehlik appeals from the district court's order ruling that he meets the criteria for commitment to MSOP as an SDP and SPP. Our review is limited, therefore, to issues relevant to the district court's decision to commit Stehlik. In such cases brought under

section 253B.185, the district court is required to commit the patient to a secure treatment facility such as MSOP in the absence of demonstration by the patient that there is a less-restrictive alternative. Minn. Stat. § 253B.185, subd. 1. Because Stehlik does not dispute that he is an SDP and SPP under section 253B.185, our review is limited to whether Stehlik has established that there is an available, less-restrictive treatment alternative. Testimony regarding Stehlik's likelihood of success at MSOP is relevant only to his argument that he will be deprived of proper treatment, and appellate review of the commitment hearing is not the appropriate setting in which to raise the improper-treatment issue. *Wicks*, 364 N.W.2d at 847. Consequently, Stehlik's argument on this issue is presently unavailing.

Affirmed.