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**STATE OF MINNESOTA
IN COURT OF APPEALS
A10-1588**

In the Matter of the Civil Commitment of:
Ronald Erwin Schmidt.

**Filed March 8, 2011
Affirmed
Johnson, Chief Judge**

Murray County District Court
File No. 51-PR-07-113

Robert L. Gjorvad, Runchey, Louwagie & Wellman, P.L.L.P., Marshall, Minnesota (for appellant)

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Considered and decided by Johnson, Chief Judge; Toussaint, Judge; and Stoneburner, Judge.

UNPUBLISHED OPINION

JOHNSON, Chief Judge

Murray County petitioned for the civil commitment of Ronald Erwin Schmidt as a sexually dangerous person. The district court granted the petition. We conclude that the district court did not err by finding that Schmidt is highly likely to reoffend and, thus, meets the statutory definition of a sexually dangerous person. Therefore, we affirm.

FACTS

Murray County sought to civilly commit Schmidt because he had engaged in a pattern of harmful sexual conduct toward five female victims. The county's evidence of Schmidt's conduct may be summarized as follows.

First, between 1986 and 1990, Schmidt raped and sexually molested M.A.S. when she was between three and seven years old. After M.A.S. complained of severe pain while urinating and defecating, Schmidt's then-wife, J.M.S., discovered tears and blistering in M.A.S.'s genital area. M.A.S. told J.M.S. that Schmidt had touched her. In August 1990, the state charged Schmidt in Scott County with four counts of first-degree and second-degree criminal sexual conduct. Schmidt pleaded guilty to one count of first-degree criminal sexual conduct by admitting that he had vaginal and oral sex with M.A.S. In 1991, the district court sentenced him to 86 months of imprisonment but stayed the prison sentence and ordered one year in jail, sex-offender treatment at Fairview-Southdale Hospital, and 20 years of probation.

Second, in 1987, Schmidt molested T.A.S., a 12-year-old girl who babysat his children, by touching her buttocks over her clothing. Schmidt admitted that he asked T.A.S. whether she wanted to learn about sex and that he kissed her on the lips.

Third, between 1987 and 1988, Schmidt violently and repeatedly raped J.M.S., who told investigators that Schmidt hit her and punched her, leaving marks and bruises, and then engaged in sexual conduct when she did not consent. Schmidt admitted that he beat and raped J.M.S, saying he would "lose control" after he worked long hours. Schmidt and J.M.S. have since divorced.

Fourth, between 1994 and 1996, and again in 2003, Schmidt raped and sexually molested R.M.L. when she was four years old to six years old and when she was 13 years old. In January 2004, R.M.L. told an investigator that Schmidt penetrated her vagina with his penis and fingers, put his penis in her mouth, and tried to anally penetrate her. In January 2004, the state charged Schmidt in Murray County with first-degree and second-degree criminal sexual conduct. In April 2005, Schmidt entered an *Alford* plea of guilty to second-degree criminal sexual conduct. Schmidt admitted in a pre-sentence investigation that he sexually abused R.M.L. on approximately 50 occasions but denied that the abuse occurred before 2001. The district court sentenced Schmidt to 60 months of imprisonment.

Fifth, in 2000, Schmidt sexually molested a niece, L.K., who was 15 years old at the time, by touching her breasts over her clothing.

In April 2007, Murray County filed a petition to civilly commit Schmidt as a sexually dangerous person (SDP) and a sexual psychopathic personality (SPP) pursuant to Minn. Stat. § 253B.02, subds. 18b and 18c (2006). At the time, Schmidt was incarcerated at the Minnesota Correctional Facility in Moose Lake pursuant to his conviction in Murray County for sexually abusing R.M.L. In May 2007, the Scott County District Court found that Schmidt had violated probation conditions imposed on him in the 1991 case involving M.A.S., revoked his probation, and executed his prison sentence of 86 months, with credit for time served. In July 2007, Schmidt stipulated to his initial commitment as an SDP but reserved his right to a 60-day review hearing pending the completion of his prison sentence. While in prison, Schmidt received treatment through the Minnesota Sex Offender Program

(MSOP). In September 2009, Schmidt was transferred from the custody of the commissioner of corrections to the custody of the commissioner of human services.

In March 2010, the district court held a 60-day review hearing. Three examining psychologists submitted reports and testified at the hearing: Anita Schlank, Robert Riedel, and Harry Hoberman. Schlank opined that Schmidt's treatment in MSOP had reduced his risk of reoffending to a level that is "slightly lower" than the statutory requirement for commitment as an SDP. Schlank testified that Schmidt needed further treatment and that the least restrictive alternative would be placement in a department of corrections halfway house or a residential sex-offender treatment program. Riedel stated that Schmidt would not satisfy the SDP commitment criteria if he were judged solely on actuarial scores measuring his risk of reoffending. But Riedel stated that Schmidt's long-term history of serious sexual offenses—and the fact that he continued to offend after receiving sex-offender treatment at Fairview-Southdale Hospital—supported the conclusion that Schmidt continued to satisfy the SDP criteria. Hoberman opined that Schmidt had "faked" his way through MSOP treatment, noting "his willingness and his success in lying and manipulating" while in the program. Hoberman concluded that Schmidt's condition continued to satisfy the SDP commitment criteria.

In July 2010, the district court found that Schmidt's condition continues to satisfy the criteria of the SDP statute. The district court credited "Dr. Hoberman's opinion and testimony to the extent it conflicts with the opinions and testimonies of Dr. Schlank and Dr. Riedel." Accordingly, the district court ordered that Schmidt be committed on an indeterminate basis. Schmidt appeals.

DECISION

Schmidt argues that the district court erred by concluding that his condition satisfies the criteria of the SDP statute and that he should be indeterminately committed.

An SDP is a person who “(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 (2010). A party petitioning for the commitment of a person as an SDP must prove the facts necessary for commitment by clear and convincing evidence. Minn. Stat. §§ 253B.18, subd. 1(a) (2010), .185, subd. 1(a) (2010). This court applies a clear-error standard of review to the district court’s findings of fact. Minn. R. Civ. P. 52.01; *In re Joelson*, 385 N.W.2d 810, 811 (Minn. 1996). We review the record in the light most favorable to the findings of fact. *In re Commitment of Ramey*, 648 N.W.2d 260, 269 (Minn. App. 2002). We also defer to the district court’s determinations of witness credibility. *Id.* “Where the findings of fact rest almost entirely on expert testimony, the trial court’s evaluation of credibility is of particular significance.” *In re Knops*, 536 N.W.2d 616, 620 (Minn. 1995) (citing *Joelson*, 385 N.W.2d at 811). Whether the facts found by the district court satisfy the statutory criteria for commitment as an SDP is a question of law, to which we apply a *de novo* standard of review. *In re Linehan*, 518 N.W.2d 609, 613 (Minn. 1994) (*Linehan I*).

On appeal, Schmidt does not challenge the district court’s findings on the first two statutory requirements, that he engaged in a course of harmful sexual conduct and has a mental disorder or dysfunction. Rather, he argues only that the district court erred by finding that he is highly likely to reoffend. The third element requires a district court to find

that a person is “highly likely [to] engage in harmful sexual acts in the future.” *In re Commitment of Stone*, 711 N.W.2d 831, 840 (Minn. App. 2006) (citing *In re Linehan*, 594 N.W.2d 867, 876 (Minn. 1999) (*Linehan IV*)), *review denied* (Minn. June 20, 2006). To determine whether a person is “highly likely” to reoffend, a district court must consider six factors:

(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.

Id. (citing *Linehan I*, 518 N.W.2d at 614).

In finding that Schmidt was likely to reoffend, the district court analyzed the six *Linehan* factors and determined that each factor supports the conclusion that Schmidt is highly likely to reoffend. Schmidt does not challenge the district court’s analysis of the first and second *Linehan* factors; he focuses his challenge on the remaining four factors and on the district court’s ultimate finding that he is highly likely to reoffend.

Third Factor: Base-Rate Statistics for Violent Behavior. The district court found that Schmidt’s base-rate statistics support the conclusion that he is highly likely to reoffend. The three examiners disagreed about this factor, but the district court “credit[ed] Dr. Hoberman’s comprehensive analysis and opinion concerning the base-rate statistics, and credit[ed] Dr. Hoberman’s conclusion that the combined results of the actuarial measures, individual risk factors, and structured clinical assessment tools, indicate that Schmidt presents a high likelihood of sexual recidivism.”

Schmidt contends that “all of the actuarial tools” reviewed by the examiners indicated that he is not highly likely to reoffend. More specifically, he contends that a test used by Hoberman (but not by Schlank and Riedel) indicated only a 60% risk of reoffending, which he asserts is “well below” the highly likely threshold.

Hoberman estimated Schmidt’s risk of reoffending would be below 50% if it were based solely on the Static-99 and MnSOST-R tests. But Hoberman opined that the Static-99 and MnSOST-R tests “were not designed or tested to be effective measures of sexual offending against persons with prolonged histories of sexual offending against family members.” Hoberman stated that the SORAG test better measures “incest offenders” and adjusts for underreporting sexual offenses by accounting for violent recidivism. Hoberman estimated Schmidt’s risk of reoffending to be 58% over seven years and 80% over ten years based on the SORAG test. Hoberman cautioned that Schmidt’s actuarial scores “significant[ly] underestimate” his risk of reoffending because Schmidt has “an extensive amount” of uncharged sexual conduct.

The district court credited Hoberman’s conclusion that Schmidt is highly likely to reoffend. To the extent that Hoberman’s testimony and opinions conflicted with Riedel and Schlank, we defer to the district court’s determination of which witness’s testimony was more persuasive, especially because the district court’s decision was based on expert testimony. *See Knops*, 536 N.W.2d at 620. Schmidt has not cited any caselaw indicating that an 80% probability of reoffending is not a high likelihood. Thus, the district court did not err in reasoning that Schmidt’s base-rate statistics support the conclusion that he is highly likely to reoffend.

Fourth and Fifth Factors: Sources of Stress in Offender's Environment and Similarity of Past Violent Contexts to Present or Future Contexts. The district court found that the stresses Schmidt would face if released would be similar to those he faced after he completed sex-offender treatment at Fairview-Southdale Hospital. The district court noted that "Schmidt plans on returning to, by and large, the same geographic area and support group in which he offended in the past." The district court reasoned that the similarity of the environments increased the likelihood that Schmidt would reoffend.

Schmidt contends that the district court's analysis of these factors is erroneous because he testified that MSOP treatment would help him avoid stress and reoffending and that he planned to live in an area in which family and friends would support him. But the district court did not credit Schmidt's testimony that he made arrangements to live with a family friend because neither a probation officer nor Schmidt's mother was able to contact the friend. The district court also did not credit Schmidt's testimony that his family and friends would support him because Schmidt had never relied on them in the past. Rather, the district court credited Hoberman's opinions to reject Schmidt's testimony and argument that the department of corrections MSOP program has reduced his risk of reoffending. The record supports the district court's findings on these points. Thus, the district court did not err in reasoning that the fourth and fifth factors support the conclusion that Schmidt is highly likely to reoffend.

Sixth Factor: Participation Record in Sex-Therapy Programs. The district court found that Schmidt's lack of meaningful participation in sex-therapy programs supports the conclusion that he is highly likely to reoffend. Schmidt contends that the district court erred

by minimizing his progress in the MSOP program by relying on the fact that he reoffended after receiving outpatient treatment at Fairview-Southdale Hospital. Schmidt also contends that his treatment in MSOP reduced his risk of reoffending and that the district court erred by relying on Hoberman's opinion that Schmidt had faked his way through treatment. Schmidt further contends that the district court erred by relying on Hoberman's opinion to make a factual finding that Schmidt lacked motivation in treatment.

The district court credited Hoberman's testimony that Schmidt's condition has not improved since his initial commitment and that Schmidt is faking his way through treatment. The record supports these findings. Furthermore, the record supports the district court's finding that Schmidt lacked motivation in treatment. We defer to the district court on witness credibility issues, particularly if those findings are based on expert testimony. *Ramey*, 648 N.W.2d at 269; *Knops*, 536 N.W.2d at 620. Thus, the district court did not err in reasoning that Schmidt's record of participation in sex-therapy programs supports the conclusion that he is highly likely to reoffend.

In light of our conclusions that the district court did not erroneously consider the third, fourth, fifth, and sixth *Linehan* factors, we conclude that district court did not err in its ultimate finding that Schmidt is highly likely to reoffend. Thus, the district court did not err by committing Schmidt indeterminately.

Affirmed.