**STATE OF MINNESOTA**
**IN COURT OF APPEALS**
**A13-2002**

In the Matter of the Civil Commitment of:
Lenora Jonea Pollard, II

**Filed March 17, 2014**
**Affirmed**
**Worke, Judge**

Dakota County District Court
File No. 19HA-PR-12-786

David A. Jaehne, West St. Paul, Minnesota (for appellant Lenora Jonea Pollard, II)

Lori Swanson, Attorney General, St. Paul, Minnesota

James C. Backstrom, Dakota County Attorney, Jennifer L. Jackson, Assistant County Attorney, Hastings, Minnesota (for respondent Dakota County)

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

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

**WORKE**, Judge

Appellant challenges her indeterminate commitment as mentally ill and dangerous, arguing that she should be committed only as mentally ill and be placed at a less-restrictive setting because she does not have a significant history of violence and does not present a risk of future harm. We affirm.

## FACTS

On December 20, 2012, a petition was filed for appellant Lenora Jonea Pollard, II's commitment as mentally ill and dangerous after she assaulted and stabbed her mother and was diagnosed with paranoid schizophrenia. Dr. Roger Sweet and Dr. Mary Kenning were appointed to examine Pollard.

Dr. Sweet reported that on December 17, Pollard had threated to kill one of her children with a hammer, and when her mother intervened, Pollard assaulted her with a remote control and a knife. Dr. Sweet opined that Pollard met the statutory criteria for commitment as mentally ill and dangerous; he explained:

> Pollard suffers from schizophrenia (paranoid type). She does not accept this diagnosis, claiming she suffers from PTSD and a plethora of unsubstantiated medical problems. The foundation for her assaultive behavior towards her mother is based upon a series of bizarre delusions where she claims her mother sold her 8 year old niece to the Russians who are using her in the sex trade and that her mother also wants to do the same to her sons. She has also threatened to harm/kill at least one of her sons.
>
> She also believes her mother and sister want to kill her and that her sister pushed her down stairs when she was pregnant. None of these claims have been substantiated.
>
> There is indication . . . that this wasn't the first time that an assault has occurred but it was certainly the most serious. Even though she is currently taking prescribed medication . . . she remains labile, very delusional with some of those delusions directly involving perceived wrong doings by her mother and sister. . . . [E]ven if medicated it is my opinion that . . . Pollard remains dangerous to all of her family members . . . . Because some of her delusions involve people outside the family, I would also consider her to be dangerous to the public at large.

Dr. Kenning similarly reported that Pollard is significantly mentally ill and appeared to meet the criteria for commitment as mentally ill and dangerous, explaining:

> She committed an overt act in attacking her mother, causing serious physical harm. . . . Pollard shows the following factors present: serious violent behavior, unstable relationship with her mother and family, a major mental illness, supervision failure (outpatient mental health), lack of insight into her situation, negative attitudes (toward her need for treatment and toward the victim), active symptoms of mental illness, impulsivity, lack of significant response to treatment with medication, exposure to stress (lack of housing if discharged, criminal charges, likely limits on contact with children), lack of feasible discharge plans . . . , and lack of personal support outside her family. This is a total of 12 of 20 risk factors present, indicating a substantial likelihood she will engage in acts capable of inflicting serious physical harm on another.

After the district court ordered Pollard's initial commitment as mentally ill and dangerous, Dr. Apryl Alexander submitted a 60-day report. She stated that Pollard "is at an increased baseline risk of engaging in future violent acts similar to those she has engaged in previously." She explained that although Pollard "has an elevated risk for violent re-offense; whether or not her level of risk constitutes a 'substantial likelihood' is a decision that is rightfully and respectfully deferred to the trier of fact."

Dr. Sweet also submitted a follow-up report. He opined that Pollard continued to meet the criteria for mentally ill and dangerous and should remain at the Minnesota Security Hospital (MSH); he stated:

> Pollard continues to remain grossly delusional and in need of continued treatment. Furthermore, between 2005-2008, Pollard was committed for mental illness on 4 occasions. Her commitment history, current mental status, the ongoing fixed delusions and the aggressive actions which led to her current

> situation, suggest a need for prolonged treatment and monitoring not always possible or available under [a mental illness] commitment.

The district court held a hearing on September 26, 2013. Dr. Kenning testified that if Pollard were committed as mentally ill and provisionally discharged, she believed that Pollard would be dangerous to her family because of her delusions. Dr. Kenning also stated that Pollard is "not reality based a good deal of the time and she's only minimally cooperative with treatment." She stated that Pollard had paranoid delusions about MSH staff—she believed "that people pick on her, that they cut her hair in the night, that they're putting holes in her face, poisoning her through medication, [and] putting poison gas into her room"—and she threatened to "pop one of the nursing staff," and another patient. Dr. Kenning stated that because of these things, Pollard could not be safely discharged into the community. Dr. Kenning further testified that while the December 17 altercation was likely the most serious, she believed that there had been other altercations.

Dr. Alexander testified that although Pollard is of significant risk of committing a violent re-offense and is a danger to herself or the public, she believed that Pollard could be held somewhere other than MSH. She stated:

> she doesn't have a significant violent history. This overt act was kind of her first instance of violence in the past. And she doesn't present with as many risk factors for future violence as we do see with the sort of typical [mentally ill and dangerous] patients. She also hasn't been a behavioral management concern at MSH.

Dr. Sweet testified that he was "convinced" that Pollard "might be dangerous to others" because she "has entertained" a "whole series of additional delusions" regarding hospital staff. He stated that she required the stringent, long-term supervision of a commitment as mentally ill and dangerous because she had been committed as mentally ill on four previous occasions and after the commitments expired, she discontinued her medication and decompensated; the last resulted in the attack on her mother.

The district court ordered Pollard's indeterminate commitment as mentally ill and dangerous after finding that: Pollard suffers from delusions and a diagnosis of paranoid schizophrenia; Pollard assaulted her mother on December 17, 2012; Pollard failed to cooperate with treatment; and Drs. Kenning, Alexander, and Sweet testified that there is a substantial likelihood that Pollard will engage in future acts capable of inflicting serious harm on another as a result of her mental illness. The district court concluded that the MSH is the least-restrictive program that can meet Pollard's treatment needs.

**D E C I S I O N**

Pollard argues that the evidence is insufficient to support the district court's conclusion that she satisfies the requirements for commitment as mentally ill and dangerous. The facts necessary for commitment must be supported by clear and convincing evidence. Minn. Stat. § 253B.18, subd. 1(a) (2012). This court defers to the district court's findings of fact and will not reverse those findings unless they are clearly erroneous. *In re Commitment of Ramey*, 648 N.W.2d 260, 269 (Minn. App. 2002), *review denied* (Minn. Sept. 17, 2002). But this court reviews 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." *In re Thulin*, 660 N.W.2d 140, 144 (Minn. App. 2003).

To commit a person as "mentally ill and dangerous," the district court must find by clear and convincing evidence that the person is mentally ill and, as a result, presents a "clear danger to the safety of others" because the person has "engaged in an overt act causing or attempting to cause serious physical harm to another" and "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(a) (2012).

There is no dispute that Pollard is mentally ill or that she engaged in an overt act that caused serious harm to another. Pollard disputes only that "there is a substantial likelihood that [she] will engage in acts capable of inflicting serious harm on another." Pollard relies on Dr. Alexander's opinion that she "could be held elsewhere" because

> [S]he doesn't have a significant violent history. This overt act was kind of her first instance of violence in the past. And she doesn't present with as many risk factors for future violence as we do see with the sort of typical [mentally ill and dangerous] patients. She also hasn't been a behavioral management concern at MSH.

But the record supports with clear and convincing evidence the district court's finding that Pollard is mentally ill and dangerous. Drs. Sweet and Kenning both testified that Pollard meets the criteria for commitment as a mentally ill and dangerous person.

Dr. Kenning testified that if Pollard were committed as mentally ill and provisionally discharged, she believed that Pollard would be dangerous to her family because of her ongoing delusions. In contradiction to Dr. Alexander's statement that

Pollard "hasn't been a behavioral management concern at MSH," Dr. Kenning stated that Pollard is "not reality based a good deal of the time and she's only minimally cooperative with treatment." She stated that Pollard's paranoid delusions about MSH staff—believing "that people pick on her, that they cut her hair in the night, that they're putting holes in her face, poisoning her through medication, [and] putting poison gas into her room"—would not allow for her safe discharge into the community. Also, in contradiction to Dr. Alexander's statement that "[t]his overt act was kind of her first instance of violence in the past," Dr. Kenning stated that while she did not believe that there had been any altercation previous to December 17, 2012, more serious than that incident, that there had been other altercations.

Similar to Dr. Kenning, Dr. Sweet declined to designate Pollard as only mentally ill for purposes of this proceeding because following her four previous commitments as mentally ill she stopped taking her medication and decompensated. He also testified that she requires the long-term treatment and stringent supervision that a patient receives when committed as mentally ill and dangerous. Dr. Sweet explained: "Her commitment history, current mental status, the ongoing fixed delusions and the aggressive actions which led to her current situation, suggest a need for prolonged treatment and monitoring not always possible or available under a [mental illness] commitment."

Additionally, Dr. Sweet agreed with Dr. Kenning in contradicting Dr. Alexander's statement that the "overt act was kind of her first instance of violence." In his initial report, Dr. Sweet stated: "There is indication . . . that this wasn't the first time that an assault has occurred but it was certainly the most serious." And Dr. Sweet also agreed

with Dr. Kenning that Pollard's delusions regarding hospital staff, in addition to her delusions regarding her family, convinced him that she might be dangerous to others.

Further, although Dr. Alexander suggested that Pollard could be held somewhere other than MSH, she testified that Pollard "present[s] as a significant risk for committing violent re-offense," but deferred to the district court as to whether this "significant risk" equates to "a substantial likelihood of inflicting serious physical harm on another." The district court found that it did. Based on this record, the district court did not err in determining that Pollard meets the criteria for commitment as mentally ill and dangerous.

Finally, district courts "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.18, subd. 1(a). MSH is specifically named in the definition of a "secure treatment facility." Minn. Stat. § 253B.02, subd. 18a (2012). "[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), *review denied* (Minn. Dec. 19, 2001); *see also In re Robb*, 622 N.W.2d 564, 574 (Minn. App. 2001), (stating that it is the patient's burden of proving that a less-restrictive program is available), *review denied* (Minn. Apr. 17, 2001). This court will not reverse a district court's findings on the propriety of a treatment program unless its findings are clearly erroneous. *Thulin*, 660 N.W.2d at 144.

Although Dr. Alexander identified Anoka Metro Regional Treatment Center as an example of a less-restrictive program, Pollard did not establish "by clear and convincing evidence that a less restrictive treatment program [was] available." *See* Minn. Stat. § 253B.18, subd. 1(a). Therefore, the district court appropriately committed Pollard to MSH.

**Affirmed.**