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**STATE OF MINNESOTA
IN COURT OF APPEALS
A14-1837**

In the Matter of the Civil Commitment of:
River Theodore Pendleton.

**Filed March 9, 2015
Affirmed
Cleary, Chief Judge**

Kandiyohi County District Court
File No. 34-PR-14-73

Shane Baker, Kandiyohi County Attorney, Stephen J. Wentzell, Assistant County Attorney, Willmar, Minnesota (for respondent)

LeeAnn Clayton, Spicer, Minnesota (for appellant)

Considered and decided by Rodenberg, Presiding Judge; Cleary, Chief Judge; and Chutich, Judge.

UNPUBLISHED OPINION

CLEARY, Chief Judge

Appellant River Pendleton appeals from his commitment as mentally ill and dangerous (MID). Pendleton argues that the district court erred in concluding that he met the statutory requirements for MID and that there was no less-restrictive alternative available to his initial commitment to a secure treatment facility. Because the record supports the district court's conclusions, we affirm.

FACTS

Appellant River Pendleton was first diagnosed with a conduct disorder in 2006. Since then, he has accumulated multiple diagnoses of emotional and behavioral disorders, a history of substance abuse, and a history of aggressive actions toward others. The incident leading to Pendleton's civil commitment occurred in April 2014, when Pendleton was seventeen years old. At the time, Pendleton resided with his mother, A.R., three younger siblings, and S.N., A.R.'s fiancé. On April 14, 2014, Pendleton was arguing with A.R. when S.N. entered the room. While S.N. was caring for the dog in the room, Pendleton stabbed S.N. seven times. S.N. later received fifteen staples for wounds in his right shoulder, right arm, right collarbone, chest, left jaw, left ear, and left eye.

Pendleton was charged with second-degree assault with a dangerous weapon and causing substantial bodily harm. He was designated as an extended jurisdiction juvenile and the court ordered an examination pursuant to Minn. R. Juv. Delinq. P. 20. The examiner diagnosed Pendleton with schizophreniform disorder, concluded that Pendleton was not competent to proceed in his defense, and recommended that petitions for Pendleton's initial commitment as mentally ill and MID be filed on Pendleton's behalf. On July 14, 2014, after Pendleton's eighteenth birthday, the court suspended Pendleton's juvenile proceeding and found him incompetent to proceed due to mental illness. Respondent subsequently filed a petition seeking Pendleton's commitment as MID.

The district court appointed two mental-health professionals, Dr. Linda Marshall and Dr. George Komaridis, to examine Pendleton in connection with the petition. Each

submitted an examination report for the court's consideration. Dr. Marshall diagnosed Pendleton with psychotic disorder not otherwise specified (NOS) and recommended commitment as MID. Dr. Komaridis diagnosed Pendleton with schizophreniform disorder. Dr. Komaridis recommended that Pendleton be committed as mentally ill (but not MID) and that Pendleton be treated at a community behavioral health hospital (CBHH), with the understanding that he would be transferred to a more secure hospital "when [his] behavior becomes unmanageable in the [CBHH]."

At the judicial commitment hearing, the district court heard testimony from Dr. Marshall, Dr. Komaridis, S.N., A.R., Pendleton's grandmother, and the police officers who interviewed S.N. and A.R. at the scene of the stabbing incident. The district court concluded that respondent met its burden to prove that Pendleton met the statutory criteria for civil commitment as MID, and that there was no reasonable and available less-restrictive alternative to Pendleton's initial commitment to a secure treatment facility. This appeal followed.

DECISION

I. Did the district court err in concluding that Pendleton met the elements required for commitment as MID?

Pendleton challenges the district court's legal conclusion that he satisfies the criteria for MID, as well as the district court's factual findings that underlie that conclusion. A district court must order the commitment of a person as MID if it finds by clear and convincing evidence that the person satisfies the statutory definition. Minn.

Stat. § 253B.18, subd. 1(a) (2014). Minn. Stat. § 253B.02, subd. 17(a) (2014) defines a person who is “mentally ill and dangerous to the public” as a person

- (1) who is mentally ill; and
- (2) who as a result of that mental illness presents a clear danger to the safety of others, as demonstrated by the facts that (i) the person has engaged in an overt act causing or attempting to cause serious physical harm to another and (ii) there is a substantial likelihood that the person will engage in acts capable of inflicting serious physical harm on another.

The petitioner has the burden of proving by clear and convincing evidence that an individual meets the statutory criteria for MID. *In re Welfare of Hofmaster*, 434 N.W.2d 279, 280 (Minn. App. 1989).

An appellate court will not set aside a district court’s findings of fact supporting the conclusion that a person is MID unless the findings are clearly erroneous. *In re Knops*, 536 N.W.2d 616, 620 (Minn. 1995). The appellate court gives due regard to the district court’s superior opportunity to judge the credibility of witnesses. *Id.*

On the other hand, the question of whether the record supports commitment is a matter of law. *In re Civil Commitment of Martin*, 661 N.W.2d 632, 638 (Minn. App. 2003). Therefore, an appellate court reviews de novo the question of 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). In deciding whether there is sufficient factual support, this court does not reweigh the evidence, but will instead consider the record in the light most favorable to the decision to determine whether the “evidence as a whole presents

substantial support for the district court’s conclusions.” *In re Linehan*, 557 N.W.2d 171, 189 (Minn. 1996), *vacated on other grounds sub nom. Linehan v. Minnesota*, 522 U.S. 1011, 118 S. Ct. 596 (1997).

A. Did Pendleton commit an “overt act?”

Pendleton challenges the district court’s conclusions that he committed an “overt act.” Minn. Stat. § 253B.02, subd. 17(a)(2)(i) requires that the person must have committed at least one “overt act causing or attempting to cause serious physical harm to another.” A person attempts to cause serious physical harm if the overt dangerous act is *capable* of causing serious physical harm. *In re Jasmer*, 447 N.W.2d 192 (Minn. 1989). Because the term “serious,” is not defined in the statute, Minnesota courts have used the common understanding of the word for interpretation. *In re Lufsky*, 388 N.W.2d 763, 765-66 (Minn. App. 1986). A person’s intent or the outcome of the action is not relevant to whether the conduct meets the overt-act requirement. *In re Civil Commitment of Carroll*, 706 N.W.2d 527, 530 (Minn. App. 2005).

The district court concluded that Pendleton’s attack on S.N. was an overt act causing or attempting to cause serious physical harm to another. To challenge the district court’s conclusion that Pendleton’s attack on S.N. constituted an “overt act,” Pendleton argues that the record does not support a finding that the attack on S.N. was unprovoked. However, as the district court noted in its order, neither the statute nor case law require the court to determine whether provocation played a role in the overt-act requirement. Therefore, whether the attack was provoked is irrelevant to the question of whether an

overt act occurred. Pendleton also alleges that S.N. exaggerated the seriousness of his injuries. Whether or not S.N. exaggerated his injuries is also irrelevant to the court's determination of whether Pendleton committed an act capable of causing serious injury.

To conclude that Pendleton's attack on S.N. satisfied the overt-act requirement, the district court relied upon the seriousness and number of the injuries that S.N. incurred in the attack, as well as Pendleton's use of a knife "several inches long" to stab S.N. None of the parties disputed these facts. There is clear and convincing evidence in the record to support the district court's conclusion that Pendleton's attack on S.N. satisfied the overt-act criterion under Minn. Stat. § 253B.02, subd. 17(a)(2)(i).

B. Was Pendleton substantially likely to engage in future acts capable of inflicting serious harm on another?

Pendleton also challenges the district court's conclusion that there was a substantial likelihood that he would engage in future dangerous acts. Minn. Stat. § 253B.02, subd. 17(a)(2)(ii) requires a showing that the person poses a substantial likelihood of engaging in acts capable of inflicting serious physical harm in the future. To make this determination, courts may consider the person's entire history, *Hofmaster*, 434 N.W.2d at 281, but a single act can support a finding of future dangerousness when coupled with oral threats. *In re Clemons*, 494 N.W.2d 519, 521 (Minn. App. 1993).

To make its determination as to this statutory requirement, the district court relied upon its findings that: (1) Pendleton had a history of mental illness and his illness had escalated since 2011; (2) Pendleton had shown a pattern of expressing disproportionate aggression in response to perceived threats, including the attack on S.N. and previous

instances; (3) the results of the HCR-20, a risk-prediction tool, indicated a high risk level for future violence; and (4) Pendleton had shown an inability and/or refusal to receive mental health treatment. These findings were supported by a variety of evidence, including testimony by Dr. Marshall and Dr. Komaridis regarding their examination of and interactions with Pendleton; testimony as to the circumstances surrounding the attack on S.N.; the psychological evaluations by both Dr. Marshall and Dr. Komaridis; a police report regarding a 2011 domestic assault by Pendleton; and testimony by A.R. regarding Pendleton's past mental illness, failure to comply with treatment, and aggressive actions.

To challenge the district court's conclusion that Pendleton is substantially likely to engage in future dangerous acts, Pendleton again argues that the district court clearly erred in finding that the attack was unprovoked. Pendleton reasons that, if the attack was provoked, the district court could not rely upon the attack to show Pendleton's future dangerousness. As to provocation, the district court found, specifically, that the stabbing was unprovoked "in the colloquial sense" but that Pendleton had "perceived the normal, everyday activities of [S.N.] to be provocation due to [Pendleton's] mental illness symptoms." To make this finding, the district court relied upon testimony by S.N. and A.R. regarding their perceptions of Pendleton's attack on S.N. The district court found S.N.'s testimony that the attack was unprovoked credible. Because A.R.'s testimony was inconsistent as to provocation, the court considered A.R.'s testimony less credible than S.N.'s. This court defers to the district court's superior ability to judge the credibility of

witnesses. *In re Knops*, 536 N.W.2d at 620. The district court did not clearly err in finding that Pendleton's attack was unprovoked in the colloquial sense.

Pendleton also argues that the district court's conclusion as to the future-dangerousness criterion was inappropriate because Dr. Marshall's analysis and testimony in court were flawed. Specifically, Pendleton argues that the court should not have relied on Dr. Marshall's conclusions because Dr. Marshall's testimony exhibited less-than-complete knowledge of Pendleton's medical history and because the HCR-20 evaluation completed by Dr. Marshall was based largely on information from the previous Rule 20 examination.

In a de novo review of whether there is clear and convincing evidence to support the court's conclusion, we do not reweigh the evidence, but instead consider whether the "evidence as a whole presents substantial support for the district court's conclusions." *In re Linehan*, 557 N.W.2d at 189. Here, the record as a whole provides ample evidence on which the district court could rely in reaching its conclusion that Pendleton was substantially likely to engage in future dangerous acts. Dr. Marshall's testimony exhibited substantial knowledge of Pendleton's history. There was no indication that the information Dr. Marshall drew from the Rule 20 examination was unreliable or that Dr. Marshall conducted the HCR-20 evaluation improperly. Dr. Marshall's and Dr. Komaridis's psychological evaluations consistently stated that Pendleton's behaviors indicated he was disconnected from reality. Both evaluations documented Pendleton's history of oppositional and aggressive behavior in school, in treatment facilities, and at

home. Dr. Komaridis's evaluation additionally emphasized that Pendleton had a pattern of responding to perceived threats with disproportionate aggression. Both Dr. Marshall and Dr. Komaridis concluded that Pendleton's mental illness appeared to be escalating. A.R.'s testimony regarding Pendleton's failure to follow through with treatment for his mental illness supported the conclusion that Pendleton's aggressive tendencies resulting from his mental illness might continue to go untreated. Even A.R.'s testimony that S.N. smirked and thereby provoked Pendleton to attack him, to the extent it was credible, supported the district court's conclusion that, in Pendleton's current mental state, he tends to misperceive threats and to respond with disproportionate aggression to perceived threats. Because there was much evidence in the record supporting the district court's conclusion, and very little evidence to contradict it, the district court did not err in concluding that Pendleton was substantially likely to engage in future dangerous acts.

II. Did the district court err in concluding that no less-restrictive alternative to a secure treatment facility was available?

Pendleton disputes the district court's conclusion that he did not establish by clear and convincing evidence that a less-restrictive treatment program was available. The district court may only decline to commit a person who meets the criteria for MID to a secure treatment facility if the person establishes by clear and convincing evidence that a less-restrictive treatment program is available that is consistent with the person's treatment needs and the requirements of public safety. Minn. Stat. § 253B.18, subd. 1(a). Again, we consider the record to determine whether the evidence as a whole substantially supports the district court's conclusion. *In re Linehan*, 557 N.W.2d at 189.

In support of his argument that a less-restrictive treatment program was available, Pendleton offered only the testimony of Dr. Komaridis that civil commitment was not yet necessary and that Pendleton could be treated at a CBHH or other similar “twenty-four seven supervised treatment facility.” However, Pendleton did not address the current availability of such a facility, or whether such a facility would accept a patient under commitment as MID. Nor did Pendleton address the dual concerns of meeting his treatment needs and protecting the public safety: he presented neither (1) evidence as to the type of treatment he would receive at such a facility, nor (2) evidence describing the security he would be subject to at such a facility.

Pendleton argues here that the court erred by relying on Dr. Marshall’s testimony, which he claims was flawed, that there is no less-restrictive alternative to commitment in a secure treatment facility. However, this argument misinterprets the burden of proof regarding less-restrictive alternatives. Once respondent had satisfied its burden of proof in showing that Pendleton met the statutory criteria for MID, the burden was on Pendleton to show clear and convincing evidence that there was a less-restrictive alternative available and that the alternative was appropriate under the circumstances. *See* Minn. Stat. § 253B.18, subd. 1(a). The alleged flaws in Dr. Marshall’s testimony are therefore irrelevant to the question of whether Pendleton showed clear and convincing evidence regarding a less-restrictive alternative. The district court concluded that Dr. Komaridis’s testimony regarding a less-restrictive alternative did not meet the standard of clear and convincing evidence, based on the evidentiary shortcomings discussed above.

The conclusion that there was no less-restrictive alternative available was reasonable and substantially supported by the record.

Ample evidence supported the conclusion that Pendleton satisfied the criteria for MID, and Pendleton did not meet the burden of proof to show that a less-restrictive treatment alternative was available. Therefore, although we are sensitive to the problematic consequences of labeling such a young man as “mentally ill and dangerous,” we conclude that the district court did not err by ordering Pendleton’s initial commitment. We appreciate the passionate advocacy of Pendleton’s attorney, who reminded us that the courts bear a grave and weighty responsibility, in civil commitment matters, to balance an individual’s freedom with the public safety. We sincerely hope that during Pendleton’s initial commitment, he will successfully complete treatment that will render his continued commitment unnecessary.

Affirmed.