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**STATE OF MINNESOTA
IN COURT OF APPEALS
A08-1461**

In the Matter of the Civil Commitment of:
Randy Earl Hammermeister.

**Filed February 17, 2009
Affirmed
Ross, Judge**

Mower County District Court
File No. 50-PR-07-4409

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Considered and decided by Connolly, Presiding Judge; Ross, Judge; and Bjorkman, Judge.

UNPUBLISHED OPINION

ROSS, Judge

Randy Hammermeister challenges his indeterminate civil commitment as a sexually dangerous person and as a sexual psychopathic personality. He argues that the state failed to prove that he is highly likely to engage in future harmful sexual conduct and that he cannot control his deviant sexual interests. Because the record supports the

district court's very detailed and thoroughly analyzed findings of fact and its conclusion that Hammermeister meets the statutory criteria for commitment, we affirm.

FACTS

Randy Hammermeister, who is 48 years old, has an extensive history of sexual offenses against children, but has not been convicted of a sexual offense since 1995. He grew up in a rural community, graduated from high school, and completed a two-year technical degree in mechanics in 1980. He married in April 1988 and had two daughters from that marriage. He has been in and out of sex offender treatment programs since the early 1980s. He completed a sex offender treatment program in 1986, and although he has participated in many treatment programs since then, he has completed none of them. He has always been suspended or terminated from them for violating program rules or for failing to progress in treatment. Mower County filed a petition in December 2007 seeking to commit Hammermeister as a sexually dangerous person and sexual psychopathic personality, based primarily on his criminal sexual offenses against children and his failure to complete treatment.

Sexual Offenses by Hammermeister

Hammermeister's extensive history of sexual misconduct began in his childhood. Hammermeister described inappropriately touching his younger sister when she was eight years old and he was ten years old. He described how they would "play doctor" by examining each other's genitals with a spoon and butter knife. Hammermeister sexually assaulted his five-year-old cousin when he was 13 or 14 years old. The abuse included two or three incidents when he talked his cousin into letting him rub her vagina and

digitally penetrate her. He admitted to these assaults while in treatment, but the details varied when he testified at the hearing. He was not charged for these offenses.

In June 1980, when he was 20 years old, Hammermeister was charged with first-degree criminal sexual conduct for sexually assaulting a four-year-old girl, L.A.G. He assaulted her on several occasions by fondling her, vaginally penetrating her with his penis, and orally penetrating her. Hammermeister testified that he babysat L.A.G. and “groomed” her for the offenses by giving her gifts, hugs, kisses, and motorcycle rides. In treatment and at the commitment hearing in this matter, Hammermeister admitted that he had sexual intercourse with L.A.G. on five or six occasions.

In 1982, Hammermeister sexually abused his step-nephews, J.R.H. and J.A.H., who were five years old and three years old. The boys gave taped interviews recounting the abuse. They explained that Hammermeister inserted his penis in each of their anuses. J.A.H. had cried when it happened. He indicated that Hammermeister abused him each time that he babysat them. Although Hammermeister initially denied abusing the boys, he later admitted it, but he gave a slightly different version of the events. At the commitment hearing, Hammermeister admitted abusing the boys, but again changed his account of the details of the abuse.

Hammermeister’s last charged incident of abuse occurred in 1993, when he sexually abused his four-year-old daughter, R.M.H. In 1994, R.M.H. told a psychologist that her father touched her where she goes potty. R.M.H. also demonstrated with anatomical dolls that Hammermeister had sexual intercourse with her. Hammermeister was charged with first-degree criminal sexual conduct. He ultimately pleaded guilty to an amended charge of second-degree criminal sexual conduct. Hammermeister initially

admitted only to bathing R.M.H. and washing her privates for too long, but he later admitted to rubbing his penis on her vagina and ejaculating on her stomach. He also admitted that he had planned his sexual offenses against R.M.H., abused her between 15 and 20 times, and told her not to tell anyone. Hammermeister received a 44-month prison sentence in April 1995 for abusing R.M.H.

Other Sexual Behavior

During sex offender treatment, Hammermeister admitted to other incidents of sexual behavior. During his commitment hearing, Hammermeister contradicted some of these admissions, leading the district court to question his credibility. But he testified to several other acts of sexual behavior: watching while his sister had sex with a neighbor boy; mutually masturbating with his brother; having a calf suck his penis, at least once to the point of ejaculation; using a vacuum cleaner to suck his penis; masturbating dogs; inserting a stick into a cat's anus; and smelling his sister's underwear and wearing his wife's underwear for sexual stimulation.

Hammermeister's Treatment Record

After Hammermeister was convicted of first-degree criminal sexual conduct in 1980, he was evaluated by the Freeborn–Mower County Mental Health Center as required under his plea agreement. The details of this treatment are unknown because Hammermeister testified that he did not remember it.

After Hammermeister's convictions for sexual assault against J.A.H. and J.R.H., he was admitted to the Minnesota Security Hospital for a sexual evaluation and a social history assessment. The assessment report indicated that Hammermeister reported being abused by his older brother and a neighbor when Hammermeister was 14 years old.

Hammermeister reported being angry that “he was charged for sexual assault and his brother never was.” The assessment also described Hammermeister as being isolated, without significant peer relationships, and with a possible substance abuse problem evidenced by alcohol-related driving offenses and his admission that he would sometimes commit abuse after drinking heavily. In July 1983, the security hospital “recommended that Hammermeister be placed on probation with the stipulation that he enter and complete the in-patient and out-patient portions of the Alpha House Sex Offender Program.”

Hammermeister began treatment at Alpha House in August 1983. Progress reports from Alpha House indicate that Hammermeister did not perform well in the program, was very irresponsible in completing his work, and rarely participated in group therapy. When Hammermeister participated in treatment, he admitted details of his prior offenses including having vaginal intercourse with L.A.G. and having oral and anal sex with J.R.H. and J.A.H. In July 1985, Hammermeister’s probation agent noted that Hammermeister was not progressing in treatment, due primarily to his lack of motivation and because of numerous rule violations. But in October 1985, after limited progress, Hammermeister moved to post-residential treatment.

During the next year, Hammermeister received his certificate of completion for sex offender treatment at Alpha House. Hammermeister’s termination summary from Alpha House indicated that he had numerous set-backs because he procrastinated, lacked self-directedness, and avoided responsibility. Although Hammermeister had progressed slowly through therapy, the summary indicated that the probability that he would reoffend was significantly reduced.

Hammermeister's next treatment began in 1995 after he pleaded guilty to sexually assaulting R.M.H. In August 1995, he was accepted into the program at the Sexual Education and Evaluation Center (SEEC) at the Stillwater correctional facility. During treatment at SEEC, Hammermeister received warnings for behavioral violations, and on November 7, 1995, was placed on a probation contract. In December 1995, Hammermeister was terminated from the SEEC program. Two months later, he was accepted into the sex offender treatment program at the Lino Lakes correctional facility. In June 1996, he was transferred to the Moose Lake correctional facility to begin his next treatment program.

During his treatment at Moose Lake, Hammermeister admitted penetrating R.M.H. with his penis and abusing her approximately 50 times. He also admitted trying to set up situations where he could offend against his victims by babysitting them and trying to be alone with them. In May 1997, Hammermeister was assessed for possible civil commitment, but was not referred to commitment at that time because of his placement in treatment. Hammermeister was suspended from treatment for gambling, and in December 1997 he was released on intensive supervised release.

Hammermeister's release was conditioned on his participation in outpatient sex offender treatment; having no direct or indirect contact with victims or minors without his probation agent's prior written consent; and not being present where children congregate. Hammermeister was cited for numerous violations of these terms. His probation agent reported that Hammermeister went to a family picnic where children were present, contacted one of his victims by phone, and had contact with at least 11 other minors. Hammermeister's therapists at Riverside Psychological Services noted that

he appeared to be grooming multiple children for abuse and was being secretive, dishonest, and manipulative in treatment. In November 1999, Hammermeister's probation agent recommended that he be returned to prison.

Hammermeister returned to prison in December 1999. He again began inpatient treatment at Lino Lakes. In April 2000, the Hearings and Release Unit met and gave Hammermeister a projected release date of one year if he completed sex offender treatment, avoided major discipline, and developed a suitable release plan. During the next few months, Hammermeister was reprimanded for having pictures of dolls and other material depicting children in his room. He was again suspended from treatment. And he was soon terminated from treatment for continued dishonesty. In February 2001, the Hearings and Release Unit extended Hammermeister's term by 60 days for failing to complete sex offender treatment. In June 2001, Hammermeister was once again released on intensive supervision.

Hammermeister was admitted to outpatient treatment at Riverside Psychological Services. He again displayed limited motivation for treatment and had multiple treatment violations. In January 2003, St. Paul police discovered that Hammermeister was dating a 23-year-old woman who had a two-year-old daughter, A.M.P. Hammermeister babysat and had unsupervised contact with A.M.P. Police arrested Hammermeister for this violation. A.M.P. underwent an examination during which she was very resistant, but the examination report indicated that it could not be determined whether Hammermeister had any inappropriate sexual contact with her. Hammermeister admitted to having unsupervised contact with A.M.P., and he denied abusing her. His probation agent recommended that he be returned to prison.

Hammermeister returned to the Lino Lakes correctional facility in February 2003 for violations, including his contact with A.M.P. He participated in treatment and again was cited for numerous violations including attempted contact with A.M.P.'s mother, having inappropriate material in his room, making inappropriate comments, and failing to progress in treatment. Hammermeister was terminated from the Lino Lakes program and referred to sex offender treatment at Moose Lake in December 2004.

Hammermeister began treatment at the Moose Lake correctional facility. He was cited for behavioral violations including viewing inappropriate sexual pictures. In March 2006 he reported having "deviant sexual fantasies" about his victims. In August 2007, he was put on probation from treatment for breaking confidentiality. He never completed treatment at Moose Lake.

Examiners' Reports, Observations, and Diagnoses

After the state petitioned for Hammermeister's civil commitment, the district court appointed Dr. Rosemary Linderman and, on Hammermeister's request, Dr. Harry Hoberman. The doctors were appointed to examine Hammermeister and determine whether he met the criteria for civil commitment. The doctors conducted independent psychological evaluations and filed separate reports. Dr. Linderman reported that Hammermeister is emotionally unstable and impulsive, lacks customary standards of good judgment, and fails to appreciate the consequences of his actions. She diagnosed Hammermeister with pedophilia, paraphilia, and personality disorder not otherwise specified with avoidant, dependent, passive aggressive features. Dr. Hoberman diagnosed Hammermeister with pedophilia, paraphilia, and mixed personality disorder. Both examiners found that Hammermeister exhibited a high risk of engaging in future

harmful sexual conduct and that he lacks the ability to control his deviant sexual interests. Both examiners also concluded that Hammermeister meets the criteria for commitment as a sexually dangerous person and sexual psychopathic personality.

Following a two-day trial in February 2008, the district court issued a 115-page initial commitment order, consisting of 547 detailed findings of fact derived from trial testimony and nearly 3500 pages of exhibits. The district court ordered Hammermeister to be committed to the state sex offender treatment program because it concluded that he satisfied the requirements for commitment as a sexually dangerous person and sexual psychopathic personality.

The state filed a treatment report with the district court within 60 days of the initial commitment. The report diagnosed Hammermeister with pedophilia, sexually attracted to both genders; paraphilia not otherwise specified; and personality disorder not otherwise specified with antisocial and narcissistic features. The report noted concerns about Hammermeister's limited insight into his offense pattern and failure to complete treatment even after multiple opportunities. It stated that his "condition is essentially unchanged" since Hammermeister's initial diagnosis and that he continues to meet the criteria for commitment as a sexually dangerous person and sexual psychopathic personality. The report concluded that "Hammermeister's diagnoses are long-term problems that require further care and treatment" and his needs will "best be met in a secure residential setting that allows for intense observation and supervision during treatment."

The district court committed Hammermeister to treatment for an indeterminate period as a sexually dangerous person and sexual psychopathic personality, finding that

the criteria for commitment continue to be met and that the treatment program is the appropriate and least-restrictive alternative available to provide him with confinement, care and treatment. This appeal follows.

DECISION

Hammermeister challenges the district court's order of civil commitment. To successfully petition a district court for civil commitment under the Minnesota Commitment and Treatment Act, the state must prove by clear and convincing evidence that the statutory standards for commitment are met. Minn. Stat. § 253B.18, subd.1(a) (2006). Reviewing a civil commitment on appeal, we are limited to examining the district court's compliance with the statute and determining whether its findings support its conclusions of law. *In re Knops*, 536 N.W.2d 616, 620 (Minn. 1995). We review the record in the light most favorable to the district court's decision, deferring to the district court's credibility determinations and its resolution of conflicting evidence. *Id.* We will affirm the district court's factual findings unless they are clearly erroneous. *In re Joelson*, 385 N.W.2d 810, 811 (Minn. 1986). Whether the factual findings and the record provide clear and convincing evidence to support the district court's legal conclusion that the statutory requirements for commitment were and continue to be met is a question of law, which we review de novo. *In re Civil Commitment of Martin*, 661 N.W.2d 632, 638–39 (Minn. App. 2003), *review denied* (Minn. Aug. 5, 2003).

Hammermeister does not assert that any specific finding by the district court is clearly erroneous. Rather, he contends that the district court merely relied on the experts' opinions without making its own findings. This contention is incredible considering the thoroughness of the district court's order, with 547 detailed findings of fact.

Hammermeister also argues that the state failed to introduce clear and convincing evidence that he meets the statutory criteria for commitment as a sexually dangerous person and as a sexual psychopathic personality. We address the two designations in turn.

I

To support commitment of a sexually dangerous person, the state must show by clear and convincing evidence that the person (1) engaged in a prior course of harmful sexual conduct; (2) has manifested a sexual, personality, or other mental disorder or dysfunction that does not allow the person to adequately control his or her sexual impulses; and (3) as a result, is highly likely to engage in future harmful sexual conduct. Minn. Stat. § 253B.02, subd. 18c(a) (2006); *In re Linehan*, 594 N.W.2d 867, 873–74, 876 (Minn. 1999). Hammermeister limits his challenge to the third element, contending that the state did not prove that he is likely to engage in harmful sexual conduct. Minn. Stat. § 253B.02, subd. 18c(a)(3). Harmful sexual conduct is “sexual conduct that creates a substantial likelihood of serious physical or emotional harm to another.” Minn. Stat. § 253B.02, subd. 7a(a) (2006). Contrary to Hammermeister’s contention, the record supports the district court’s conclusion that the state proved by clear and convincing evidence that he is highly likely to engage in future harmful sexual conduct.

To determine whether a person is highly likely to engage in future harmful sexual conduct, district courts are required to 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 or participation in sex treatment programs. *In re Linehan*, 518 N.W.2d 609, 614 (Minn. 1994). Here, the experts' reports and testimony address each of the six *Linehan* factors in concluding that Hammermeister is highly likely to reoffend.

Both examiners indicated that Hammermeister's demographic characteristics increase his risk of reoffending. Dr. Linderman testified that Hammermeister's erratic employment history increases his risk of reoffending. Dr. Hoberman noted that while the rate of recidivism in sex offenders generally decreases with age, the rate of recidivism in child molesters usually does not. He noted that studies have shown that the age-of-onset of sexual offending was more associated with the rate of recidivism than the offender's age upon the last sexual offense. And because Hammermeister began offending at a young age, there would be no expected decrease in his estimated risk merely because he is 48 years old. Dr. Linderman also testified that pedophiles tend to offend later into life than nonpedophilic rapists.

The evidence indicated that Hammermeister's history of violent behavior also increases his risk of reoffending. Dr. Linderman testified that Hammermeister's sexual crimes—using force on children in a “rape style”—are inherently violent. Both examiners concluded that Hammermeister's history of violent sexual offenses, all perpetrated on children from ages three to five, increases his risk of reoffending.

Based on psychological tests and statistical tools, Dr. Linderman also determined that Hammermeister presented at least a 52% chance of reoffending over the course of his lifetime. She noted that because he molested both male and female victims, the likelihood of reoffending was even greater. Hammermeister received a score of 5 on the

Static-99 test, which placed Hammermeister in the moderately high risk category for re-offense. Dr. Hoberman evaluated Hammermeister using a variety of tests, including the Sex Offender Risk Assessment Guide. Based on Hammermeister's score, Dr. Hoberman calculated that he was 58% likely to reoffend within seven years of release from incarceration and 80% likely to reoffend within ten years of release. Dr. Hoberman acknowledged that inherent difficulties exist in calculating the likelihood of future offense, but he reported that the complement of psychological tests that Hammermeister completed indicate that he is highly unlikely to control his sexual arousal and urges, and highly likely to inflict injury or pain on his victims.

Dr. Linderman explained that Hammermeister's sources of environmental stress include his alienation and disconnection from others, irresistible urges to engage with children emotionally and sexually, and failure to overcome his pedophilic urges despite external sanctions and treatment. These factors significantly increase his risk of reoffending. Dr. Hoberman testified that Hammermeister does not exhibit the necessary coping skills or have the support system in the community to address these external stressors in a healthy manner, and that, therefore, his risk of reoffending is increased.

Both examiners testified that the similarity of the present or future environment to those in which Hammermeister has used violence increases his likelihood of reoffending. On his most recent supervised release, Hammermeister had a relationship with a single mother who had a two-year-old daughter, which indicates that he continues to place himself in high-risk situations. Dr. Hoberman testified that Hammermeister's proposed living situation and support group consisting of other sex offenders places him at a high risk to reoffend.

Hammermeister's poor record of treatment and reported lack of insight greatly increases his likelihood of reoffending. The only treatment program that he completed was in 1986. He then reoffended by abusing his four-year-old daughter. In the numerous treatment programs in which he participated, he has been repeatedly terminated for lack of cooperation or progress or suspended or placed on probation for violating rules. Dr. Linderman testified that Hammermeister has merely memorized treatment terms with no understanding of what the terms mean. Both examiners concluded that the sixth factor increases Hammermeister's likelihood of reoffending.

Based on all *Linehan* factors, clear and convincing evidence supports the district court's conclusion that Hammermeister is highly likely to engage in future harmful sexual conduct. The district court also found that Hammermeister's contradictory testimony was not credible. The district court did not err by indeterminately committing Hammermeister as a sexually dangerous person.

II

Commitment as a sexual psychopathic personality requires clear and convincing proof that a person: (1) has either emotional instability, impulsive behavior, a lack of customary standards of good judgment, or a failure to appreciate the consequences of personal acts; (2) has, as a result, engaged in a habitual course of sexual misconduct; and (3) has an utter lack of power to control sexual impulses and, therefore, is dangerous to others. Minn. Stat. § 253B.02, subd. 18b (2006). Both experts explained in their reports and testified in detail that Hammermeister meets each factor and element as a sexual psychopathic personality.

Hammermeister argues that the state did not present clear and convincing evidence to show that he has a sexual psychopathic personality because it improperly focused on his past conduct and did not show that he had an utter lack of power to control his sexual impulses. Hammermeister focuses on the fact that he has had no sexual convictions since 1995. But the fact that Hammermeister has not been charged with or convicted of an offense since 1995 does not prevent a conclusion that he is a sexual psychopathic personality. *See id.* (defining sexual psychopathic personality). And because Hammermeister has been incarcerated or in inpatient treatment for the majority of time since 1995, his opportunity to reoffend has been minimal. That he violated conditions during the periods he was released and had contact with minors indicates that he is unable or unwilling to grasp or apply treatment concepts necessary to control his sexual impulses.

The state offered the examiners' testimony, reports, and conclusions that Hammermeister has an utter lack of power to control his sexual impulses and dangerousness. Both examiners testified to the six relevant factors that show an offender's utter lack of power to control his or her sexual impulses. *See In re Blodgett*, 510 N.W.2d 910, 915 (Minn. 1994) (explaining that "the nature and frequency of the sexual assaults, the degree of violence involved, the relationship (or lack thereof) between the offender and the victims, the offender's attitude and mood, the offender's medical and family history, the results of psychological and psychiatric testing," all bear on the predatory impulse and the lack of power to control it). Based on their evaluation of each of the *Blodgett* factors, Dr. Linderman and Dr. Hoberman concluded that Hammermeister has an utter lack of power to control his sexual behavior. The district

court noted the experts' largely uncontested opinions, made its own detailed findings of fact based on each of the *Blodgett* factors, and concluded that Hammermeister had an utter lack of power to control his sexual impulses. The district court did not err by concluding that clear and convincing evidence demonstrates that Hammermeister has an utter lack of power to control his sexual impulses.

Because clear and convincing evidence supports the district court's detailed findings of fact that Hammermeister met the statutory criteria for commitment as a sexually dangerous person and as a sexual psychopathic personality, we affirm the district court's order for his indeterminate civil commitment.

Affirmed.