

CASE NO. A07-671

STATE OF MINNESOTA
IN COURT OF APPEALS

In the Matter of the Civil Commitment of:

HAYDEN MICHAEL RICHARDS,

APPELLANT
Respondent.

RESPONDENT'S BRIEF

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ISSUE STATEMENTS

- I. WHETHER A FINAL ORDER OF DEPORTATION PREEMPTS THE STATE COURT FROM EXERCISING ITS JURISDICTION IN CIVIL COMMITMENT PROCEEDINGS.

The district court determined that it was not preempted from exercising its jurisdiction.

Caterpillar Inc. v. Williams, 482 U.S. 386 (1987)

Sprietsma v. Mercury Marine, 537 U.S. 51 (2002)

Michigan Canners and Freezers Ass'n, Inc. v. Agric. Mktg. and Bargaining Bd.,
467 U.S. 461 (1984)

8 U.S.C. §§ 1101, et seq.

Minn. Ch. 253B

- II. WHETHER A PERSON SUBJECT TO A FINAL ORDER OF DEPORTATION IS ELIGIBLE FOR CIVIL COMMITMENT UNDER MINNESOTA LAW.

The trial court found that Appellant was eligible for civil commitment as a sexually dangerous person and sexual psychopathic personality.

Minn. Stat. 253B.18

Minn. Stat. 253B.185

STANDARD OF REVIEW

In reviewing a civil commitment order, the standard of review is whether the district court complied with the requirements of the commitment statute. *See In re Knops*, 536 N.W.2d 616, 620 (Minn. 1995).

As the trier of fact, the trial court resolves factual conflicts and determines the credibility of witnesses. *See Flynn v. Sawyer*, 272 N.W.2d 904, 909-10 (Minn. 1978). On review, “[c]onsiderable deference is due to the district court’s decision because a district court is in a superior position to assess the credibility of witnesses.” *In re Welfare of L.A.F.*, 554 N.W.2d 393, 396 (Minn. 1996). The appellate court must sustain the trial court’s findings unless they are clearly erroneous. *See* Minn. R. Civ. P. 52.01. A finding is clearly erroneous if the reviewing court is “left with the definite and firm conviction that a mistake has been made.” *Gjovik v. Strobe*, 401 N.W.2d 664, 667 (Minn. 1987). The reviewing court will not reweigh the evidence but “will determine if the evidence as a whole presents substantial support for the district court’s conclusions.” *In re Linehan (Linehan III)*, 557 N.W.2d 171, 189 (Minn. 1996) (citing *Johnson v. Noot*, 323 N.W.2d 724, 728 (Minn. 1982), *vacated and remanded*, 522 U.S. 1011 (1997), *aff’d as modified*, 594 N.W.2d 867 (Minn. 1999)).

If the issue is whether certain facts found by the district court satisfy the commitment statute as a legal matter, then it is a question of law which the appellate court reviews *de novo*. *See In re Linehan (Linehan I)*, 518 N.W.2d 609, 613 (Minn. 1994); *Knops*, 536 N.W.2d at 620.

STATEMENT OF THE CASE

Appellant appeals from two civil commitment orders executed by the Honorable Salvador M. Rosas, Judge of Ramsey County District Court.

Respondent Ramsey County filed a Petition for Judicial Commitment as a Sexual Psychopathic Personality (SPP) and/or Sexually Dangerous Person (SDP) dated February 2, 2006. (Appellant's App. "AA" 16.) On February 9, 2006 a pretrial was held, and the court granted Respondent's motion that Appellant be held at the Minnesota Security Hospital upon release from the Department of Corrections pending the commitment trial. Trans. 2/9/06 at 8.

Appellant filed a Notice of Motion and Motion to Dismiss the commitment petition dated March 19, 2006. (AA 30.) Judge Rosas heard Appellant's motion on April 18, 2006, reserved ruling, (Trans. 4/18/06 at 5) and then denied the motion on April 24, 2006. (Trans. 4/24/06 at 1, 6, 7.)

On April 24-25, 2006, Appellant's initial commitment hearing was held. The court signed the Findings of Fact, Conclusions of Law and Order for Initial Commitment on August 3, 2006. (AA 34.) The court committed Appellant as a SDP and SPP to the Minnesota Sex Offender Program (MSOP) at St. Peter and Moose Lake, Minnesota. (AA 50.)

A sixty day review hearing was held October 13, 2006, and on February 7, 2007, the court filed its Findings of Fact, Conclusions of Law and Order for Indeterminate Commitment. (AA 51.) The court committed Appellant to the MSOP Program for an

indeterminate period. (AA 55.) By Notice of Appeal to the Court of Appeals dated March 27, 2007, Appellant appeals the two civil commitment orders. (AA 56.)

ARGUMENT

I. A FINAL ORDER OF DEPORTATION ISSUED BY THE DEPARTMENT OF HOMELAND SECURITY DOES NOT PREEMPT THE STATE COURT FROM EXERCISING JURISDICTION UNDER THE MINNESOTA COMMITMENT AND TREATMENT ACT.

The state court is not preempted by Appellant's final order of deportation from exercising jurisdiction under the Minnesota Commitment and Treatment Act and civilly committing Appellant. While Appellant is civilly committed, the Immigration Service can, at any time, take physical custody of and deport Appellant. However, neither Appellant, Respondent, nor the state court has the authority to make the Immigration Service execute the deportation order.

"The pre-emption doctrine, which has its roots in the Supremacy Clause, U.S. Const., Art. VI, cl. 2, requires ... [an examination of] congressional intent." *Fidelity Fed. Sav. and Loan Ass'n v. de la Cuesta*, 458 U.S. 141, 152 (1982). "Preemption is either express or implied." *Id.* at 152-53. Express preemption occurs when Congress, in enacting a federal law, "explicitly define[s] the extent to which it intends to pre-empt state law." *Caterpillar Inc. v. Williams*, 482 U.S. 386, 393 (1987).

Implied preemption occurs in one of two ways: (1) "when the scope of a statute indicates that Congress intended federal law to occupy a field exclusively," *Sprietsma v. Mercury Marine*, 537 U.S. 51, 64 (2002) (quoting *English v. General Elec. Co.*, 496 U.S. 72, 78-79 (1990)), or (2) when "state law actually conflicts with federal law." *Michigan*

Canners and Freezers Ass'n, Inc. v. Agric. Mktg. and Bargaining Bd., 467 U.S. 461, 469 (1984). Conflict preemption, comes in two varieties: (a) when it is “impossible ... to comply with both federal and state requirements,” *Sprietsma* at 64 (quoting *English*, 496 U.S. at 79), and (b) when state law is “an obstacle to the accomplishment and execution of the full purposes and objectives of Congress.” *Id.* (quoting *Hines v. Davidowitz*, 312 U.S. 52, 67 (1941)).

The respondent does not dispute that the “[p]ower to regulate immigration is unquestionably exclusively a federal power.” *DeCanas v. Bica*, 424 U.S. 351, 354 (1975). However, the Immigration and Nationality Act (INA), as codified at 8 USC §§ 1101, et seq., does not explicitly state that the INA intends to supersede state civil commitment law nor does it even attempt to occupy the field of civil commitment. Therefore, the next step in the preemption analysis is to determine whether state civil commitment law actually conflicts with federal immigration law. In this particular case, conflict preemption would occur in either of the following scenarios: (a) it was impossible for Appellant to comply with both his civil commitment order and the deportation order, or (b) the state civil commitment order was an obstacle to the execution of Appellant’s deportation order.

To support his flawed position that there is conflict preemption in his civil commitment case, Appellant erroneously relies on *In re the Welfare of C.M.K.*, 552 N.W.2d 768 (Minn. App. 1996). In *C.M.K.* an illegal alien child who fled China and was smuggled into the United States, attempted to use Minnesota child protection law to circumvent the immigration court’s March 6, 1995 denial of his asylum claim and

subsequent deportation order. *Id.* at 769. Because the child had no family, legal guardian, or adult relative in the U.S. to whom he could be released from INS custody, physical custody was transferred to Lutheran Social Service of Minnesota and he was placed with foster care providers pending deportation. *Id.* The INS retained legal custody of the child. *Id.* In October 1995 the foster care providers sought juvenile court permission to file a private Child in Need of Protection or Services (CHIPS) petition in juvenile court but were denied. *Id.*

Based on the immigration laws and regulations in effect at that time, the court of appeals held that the juvenile court lacked subject matter jurisdiction “to grant leave to file a CHIPS petition, because federal immigration proceedings preempted state court proceedings where the sole basis for the CHIPS petition was the child’s fear of deportation and the circumstances awaiting the child in his country of origin.” *Id.* at 771. As the appellate court explained, “The factual and statutory bases on which the Wiles allege C.M.K. is in need of state court protection or services demonstrate that state court action here would be in direct conflict with the deportation proceedings.” *Id.* at 770. There would have been direct conflict because the immigration proceedings already addressed, through his asylum claim, the child’s fears of returning to China.

Unlike *C.M.K.*, the exercise of the trial court’s jurisdiction in Appellant’s case does not prevent enforcement of Appellant’s final order of deportation. As stated in the respondent’s Memorandum of Law dated November 13, 2006: “[T]he civil commitment of Mr. Richards would not directly conflict with federal immigration law because INS would remain free to assume physical custody and deport Mr. Richards whenever it

decides to exercise its superior authority The timing of this deportation is controlled exclusively by the INS – not by Ramsey County, the State of Minnesota, or Mr. Richards.” (App. at A-10.)

The other type of conflict preemption, the impossibility of complying with both state and federal law, does not apply in Appellant’s situation. No impossibility of compliance exists in this case. It is not up to Appellant to deport himself, which he clearly would be unable to do while civilly committed; rather the Immigration Service can, at any time, take physical custody of and deport Appellant. Clearly, there is no conflict.

Because the doctrine of preemption does not apply to Appellant’s case, the Minnesota state court is not prohibited from exercising its jurisdiction under the Minnesota Commitment and Treatment Act.

II. APPELLANT MEETS THE CIVIL COMMITMENT REQUIREMENTS AS BOTH A SEXUALLY DANGEROUS PERSON (SDP) AND PERSON WITH A SEXUAL PSYCHOPATHIC PERSONALITY (SPP) AND MUST BE COMMITTED BECAUSE HE FAILED TO ESTABLISH BY CLEAR AND CONVINCING EVIDENCE THAT THERE IS A LESS RESTRICTIVE TREATMENT PROGRAM AVAILABLE TO HIM.

Regardless of Appellant’s immigration status, he meets the elements for commitment as a sexually dangerous person and person with a sexual psychopathic personality, and the trial court properly committed him to a secure treatment facility after Appellant failed to establish by clear and convincing evidence that there is a less restrictive treatment program available to him that would meet his treatment needs as well as the requirements of public safety.

A. Appellant is a sexually dangerous person and has a sexual psychopathic personality under Minnesota law.

In its order civilly committing Appellant as a sexually dangerous person (SDP) and sexual psychopathic personality (SPP), the trial court correctly concluded that the respondent presented clear and convincing evidence demonstrating that Appellant is both a SDP and SPP, as defined by statute and case law.

A “sexually dangerous person” is defined as a person who:

- (1) has engaged in a course of harmful sexual conduct as defined in subdivision 7a;
- (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 as defined in subdivision 7a.

Minn. Stat. § 253B.02, Subd. 18c(a).

Case law also requires a showing that the person’s disorder “does not allow [him] to adequately control [his] sexual impulses.” *In re Linehan (Linehan IV)*, 594 N.W.2d 867, 876 (Minn. 1999).

Under Minnesota statute, a sexual psychopathic personality means:

[T]he existence in any person of such conditions of emotional instability, or impulsiveness of behavior, or lack of customary standards of good judgment, or failure to appreciate the consequences of personal acts, or a combination of any of these conditions, which render the person irresponsible for personal conduct with respect to sexual matters, if the person has evidenced, by a habitual course of misconduct in sexual matters, an utter lack of power to control the person’s sexual impulses and, as a result, is dangerous to other persons.

Minn. Stat. § 253B.02, Subd. 18b.

The petitioner must prove the facts supporting commitment by clear and

convincing evidence. Minn. Stat. § 253B.185, Subd. 1. In his submissions to this Court, Appellant does not dispute that, by clear and convincing evidence, he meets the statutory and case law requirements to be committed as a SDP and SPP. Instead, Appellant argues that he is not a proper candidate for civil commitment due to his final deportation order. Appellant's position is without merit because his potential deportation has absolutely no effect on the legal elements for civil commitment. As Judge Rosas correctly concluded in his February 7, 2007 commitment order, "[Appellant's] immigration status does not affect or suspend enforcement of civil commitment statutes. In addition, [Appellant's] immigration status is not relevant to the court's conclusion that he meets the statutory requirements to be considered" as a SDP or SPP. (AA 54)

B. Appellant failed to establish by clear and convincing evidence that an appropriate less restrictive treatment program is available.

Because Appellant failed to establish by clear and convincing evidence that there is an appropriate less restrictive treatment program available to him, the trial court was mandated by statute to commit the appellant to a secure treatment facility. Minnesota law provides that "the court shall commit the patient to a secure treatment facility unless that patient establishes by clear and convincing evidence that a less restrictive program is available that is consistent with the patient's treatment needs and the requirements of public safety." Minn. Stat. § 253B.185, Subd. 1.

Appellant argues that because he is subject to a final order of deportation, he is not a danger to the community of the United States and "is now a person to be dealt with by

Trinidad.” (AA 5.) Appellant is essentially arguing that deportation is a less restrictive alternative to commitment; however, neither Appellant, Respondent, nor state court has the authority to force the Immigration Service to deport Appellant. More importantly, Appellant’s position does not take into account that so long as Appellant is not deported and remains in Minnesota, he is subject to the laws of Minnesota, including the Minnesota Commitment and Treatment Act. And aside from protecting the community, the Act’s purpose is to treat patients who have been civilly committed. Deportation does not address Appellant’s treatment needs. As pointed out in Respondent’s Memorandum of Law dated November 13, 2006, Appellant’s treatment program can adequately address his needs and take into account any concerns regarding Appellant’s immigration status as well as aid the appellant’s transition to release. (AA 12.) Because deportation is not an appropriate treatment alternative, the trial court properly committed Appellant to a secure treatment facility.

CONCLUSION

For the foregoing reasons, the district court correctly concluded that Appellant should be committed as a SDP and SPP at the Minnesota State Security Hospital. Respondent respectfully requests that the district court's decision be affirmed in all respects.

Respectfully submitted,

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