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**STATE OF MINNESOTA
IN COURT OF APPEALS
A20-0495**

In the Matter of the Civil Commitment of:
Mark Steven Wallace.

**Filed September 8, 2020
Affirmed
Slieter, Judge**

Anoka County District Court
File No. 02-PR-19-469

Jennifer L. Thon, Steven D. Winkler, Warren J. Maas, Jones Law Office, Mankato, Minnesota (for appellant Mark Steven Wallace)

Anthony Palumbo, Anoka County Attorney, Lisa Broos Jones, Assistant County Attorney, Anoka, Minnesota (for respondent Anoka County Social Services)

Considered and decided by Slieter, Presiding Judge; Ross, Judge; and Reyes, Judge.

UNPUBLISHED OPINION

SLIETER, Judge

On direct appeal from his commitment as a sexually dangerous person (SDP) and a sexual psychopathic personality (SPP), appellant Mark Steven Wallace argues his commitment must be reversed because the district court's findings are not supported by the record. Because the district court made sufficient independent findings in support of Wallace's commitment as an SDP and an SPP, and because those findings are supported by the record, we affirm.

FACTS

Anoka County filed a petition in August 2019 to commit Wallace as a sexually dangerous person, pursuant to Minn. Stat. § 253D.02, subd. 16 (2018), and sexual psychopathic personality, pursuant to Minn. Stat. § 253D.02, subd. 15 (2018). The district court held a commitment hearing on the petition in November and heard testimony from several witnesses including two court-appointed psychologists, Drs. James Gilbertson and Anne Pascucci, who examined Wallace. Following the receipt of a proposed order from each party, the district court issued a written order which concluded, based on the testimony and record, there was clear and convincing evidence that Wallace met the statutory criteria for civil commitment as both an SDP and an SPP, and ordered Wallace committed to the Minnesota Sex Offender Program. This appeal follows.

DECISION

When reviewing a commitment on appeal, “[our] court is limited to an examination of the trial court’s compliance with the statute, and the commitment must be justified by findings based upon evidence at the hearing.” *See 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, and findings of fact will not be set aside unless clearly erroneous. *Id.* Our review of the record compels us to conclude that the district court did not err in determining that Wallace met the statutory criteria for civil commitment as an SDP and an SPP.

Commitment as an SDP

To conclude that Wallace met the statutory criteria for commitment as an SDP, the district court must find by clear and convincing evidence that Wallace had (1) “engaged in a course of harmful sexual conduct”; (2) had “manifested a sexual, personality, or other mental disorder or dysfunction;” and (3) “is likely to engage in acts of harmful sexual conduct.” Minn. Stat. § 253D.02, subd. 16. Wallace challenges only the third factor, arguing that the record does not support the district court’s findings that he is likely to engage in acts of harmful sexual conduct.

During the commitment hearing, the district court was presented with evidence of Wallace’s lengthy criminal history that supports the district court’s finding that Wallace presents a high risk of reoffending. This history includes convictions in 1988 of criminal sexual conduct in the third degree after having nonconsensual intercourse with a 16-year-old female, and criminal sexual conduct in the first degree after having nonconsensual intercourse with a 23-year-old female. Finally, in 2017, Wallace pleaded guilty to felony kidnapping after physically assaulting A.S. and holding A.S. in a hotel room against her will. A.S. testified at the commitment hearing that Wallace had also sexually assaulted her and arranged for other men to have sex with her.

The two psychologists used the Static-99R actuarial assessment tool to assess Wallace’s likelihood of reoffending. The reports and testimony of Drs. Gilbertson and Pascucci establish that the Static-99R is the most frequently-used actuarial tool to predict recidivism in adult males, and is widely used in civil commitment cases. The test assesses ten factors, one of which is the subject’s prior sexual offenses, to determine the likelihood

of recidivism, and assigns the subject a final score of one to ten, with a score of ten indicating the highest likelihood of reoffending.

Dr. Gilbertson testified and stated in his report that Wallace scored either “five” or “six” on the Static-99R, depending upon whether the 2016 kidnapping of A.S. was sexually motivated. During his testimony he revised his score to “a six or a seven” upon learning that A.S. reported to law enforcement that Wallace forced her to have sex with men for money and, therefore, the kidnapping was sexually motivated. In its written order, the district court found Dr. Gilbertson’s testimony and report credible.

Dr. Pascucci testified and stated in her report that Wallace scored a three on the Static-99R and was therefore an average risk to reoffend. This score was based, in part, upon her conclusion that the kidnapping of A.S. was not sexually motivated as the state did not pursue sex trafficking charges against Wallace following the kidnapping. Dr. Pascucci determined that Wallace technically met the statutory criteria for civil commitment as an SDP, but commitment was premature and a lesser-restrictive alternative should be pursued. The district court made findings that “Dr. Pascucci’s opinion [was] less credible” than Dr. Gilbertson’s, and that “[s]he opined the kidnapping offense was not sexually motivated” despite being “present in the courtroom when [A.S.] testified.” We presume this is a reference to A.S.’s testimony regarding Wallace’s alleged sex trafficking of her. The district court additionally found, “Despite [Dr. Pascucci’s] knowledge of the regular and numerous sexual assaults [Wallace] perpetrated against [A.S.], Dr. Pascucci remained firm in her opinion that the assaults were not sexually motivated.”

The district court also found that Dr. Pascucci failed to follow the coding rules of the Static-99R by not considering the kidnapping offense as sexually motivated, that Dr. Pascucci had misapplied the law in a past civil commitment case, and that Dr. Pascucci did not address whether a lesser-restrictive alternative placement for Wallace was presently available.

Our review of the district court's commitment order reflects that the district court reviewed the evidence and the reports of examiners—including, and especially, the two examiners who testified—and considered the basis of their opinions and made credibility findings. These findings were supported by the record and support the district court's finding that Wallace is highly likely to reoffend.

Wallace argues that the district court's credibility findings of the examiners were not independently made because, Wallace purports, the district court's order substantially adopted language contained in the proposed orders submitted by the parties to the court. As an example, counsel for Wallace claimed during the oral argument that the district court appeared to adopt a proposed finding related to Dr. Gilbertson's report and testimony from Wallace's proposed order, but removed select words and sentences from the finding to support commitment. Counsel made a similar argument related to a proposed finding submitted regarding the credibility of Dr. Pascucci.

We agree that large portions of the district court's order were adopted from the proposed orders of both parties, and that some of the findings issued by the district court, including the findings referenced by counsel for Wallace during the oral argument, contained only slight modifications from the proposed language submitted by counsel.

However, we have carefully reviewed the proposed findings of both parties and contrasted them with the final order of the district court, and conclude that the district court did independently evaluate the witnesses and evidence in a manner sufficient to establish that Wallace met the statutory criteria for commitment as an SDP. We therefore affirm commitment on these grounds.

This serves as a reminder that a district court must, despite the voluminous record in cases such as this and an understandable temptation to do otherwise, independently evaluate testimony and evidence. *See Bliss v. Bliss*, 493 N.W.2d 583, 590 (Minn. App. 1992) (stating that wholesale adoption of proposed findings raises questions of whether district court independently evaluated testimony and evidence), *review denied* (Minn. Feb. 12, 1993).¹ As described above, we are satisfied in this proceeding that the district court did, in fact, carefully and independently evaluate this evidence.

Commitment as an SPP

To commit Wallace as an SPP, the district court must find by clear and convincing evidence that Wallace has “an *utter lack of power to control [his] sexual impulses* and, as a result, is dangerous to other persons.” Minn. Stat. § 253D.02, subd. 15 (emphasis added). Wallace argues that the record is insufficient to support the district court’s finding that he evidenced an utter lack of power to control his sexual impulses. We disagree.

¹ One alternative available to the district court when a great percentage of the order includes necessary but uncontested facts, is to ask counsel to submit a joint proposed order with all such uncontested facts. Separately, the district court can ask each counsel to submit proposed findings as to the remaining, often fewer, contested facts such as those involving contrasting experts.

In considering whether a person has an utter lack of power to control sexual impulses, the supreme court has directed district courts to consider: (1) “the nature and frequency of the sexual assaults,” (2) “the degree of violence involved,” (3) the relationship between the offender and the victim, (4) “the offender's attitude and mood,” (5) “the offender’s medical and family history,” and (6) the results of psychological testing. *In re Blodgett*, 510 N.W.2d 910, 915 (Minn. 1994).

The district court addressed these factors in its order and found that, based upon the record, Wallace verbally, physically and sexually assaulted young women and held young women against their will. Both Drs. Gilbertson and Pascucci testified and stated in their reports that Wallace met the criteria for commitment as an SPP. The district court credited the testimony of Drs. Gilbertson and Pascucci that Wallace does not acknowledge that he has a problem, and, consistent with Minnesota caselaw, that failure to acknowledge or recognize that a person has engaged in offending behavior is an indicator of an inability to control impulses and an utter lack of control. *See In re Irwin*, 529 N.W.2d 366, 375 (Minn. App. 1995), *review denied* (Minn. May 16, 1995). The district court also made detailed findings, consistent with the reports of Drs. Gilbertson and Pascucci, that Wallace showed an utter lack of control pursuant to the criteria described in our court’s ruling in *In re Bieganowski*, 520 N.W.2d 525, 529-30 (Minn. App. 1994), *review denied* (Minn. Oct 27, 1994) (citing *State ex rel. Pearson v. Prob. Court of Ramsey Cty.*, 287 N.W. 297, 302 (1939)).

In sum, the district court made independent and detailed findings, which were supported by the record, to show by clear and convincing evidence that Wallace met the

criteria for commitment as an SPP in that he evidenced an utter lack of power to control his sexual impulses. Because there is a factual basis in the record that supports the district court's findings concerning Wallace's commitment as an SPP, those findings are not clearly erroneous.

Affirmed.