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**STATE OF MINNESOTA
IN COURT OF APPEALS
A08-0136**

In the Matter of the Civil Commitment of:
Jeremy Neil Bartholomew

**Filed July 15, 2008
Affirmed
Lansing, Judge**

Mower County District Court
File No. 50-PR-07-1853

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Jeremy Neil Bartholomew)

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(for respondent Mower County)

Considered and decided by Lansing, Presiding Judge; Stoneburner, Judge; and
Worke, Judge.

UNPUBLISHED OPINION

LANSING, Judge

In this appeal from an order for indeterminate civil commitment as a sexually
dangerous person and sexual psychopathic personality, Jeremy Bartholomew resubmits
the two issues that he raised on appeal from his initial commitment. Because

Bartholomew's arguments are identical to those raised in his earlier appeal, rely on no new evidence, and, consequently, raise only issues that have previously been resolved on appeal, we affirm.

F A C T S

A district court ordered Jeremy Bartholomew initially committed as a sexually dangerous person (SDP) and sexual psychopathic personality (SPP) in September 2007. The court based its determination on evidence of Bartholomew's harmful sexual conduct affecting eight females ranging in age from eight to adult and on the testimony of two court-appointed examiners who both recommended Bartholomew's commitment as an SDP and an SPP. The details of each of Bartholomew's harmful sexual acts are set forth in our decision on his appeal from the initial-commitment order. *In re Commitment of Bartholomew*, No. A07-1892, 2008 WL 853593 (Minn. App. Apr. 1, 2008).

In his initial appeal, Bartholomew argued that the district court did not properly weigh the testimony of the two court-appointed examiners and that the state did not prove by clear and convincing evidence that he is unable to adequately control his harmful sexual conduct. We affirmed the district court's initial commitment of Bartholomew in April 2008. *Id.* at *4.

Following Bartholomew's initial commitment, the district court held a hearing to determine whether Bartholomew should be indeterminately committed as an SDP and SPP. *See* Minn. Stat. § 253B.18, subd. 3 (2006) (requiring court to hold hearing following initial commitment to determine whether to order indeterminate commitment). The court took judicial notice of evidence admitted at the initial-commitment hearing and

admitted several exhibits including a sixty-day treatment report that the state was required to file under Minn. Stat. § 253B.18, subd. 2 (2006). Bartholomew testified to his experience at the Minnesota Sex Offender Program during his sixty-day initial commitment but provided no additional evidence.

The district court determined that Bartholomew continued to be an SDP and an SPP and ordered him committed for an indeterminate period of time. Bartholomew now appeals from his indeterminate commitment.

D E C I S I O N

In Jeremy Bartholomew’s appeal from his initial commitment as a sexually dangerous person (SDP) and sexual psychopathic personality (SPP), we addressed the two issues raised in his brief on the adequacy of the evidence offered in support of his commitment. *In re Commitment of Bartholomew*, No. A07-1892, 2008 WL 853593, at *2-*4 (Minn. App. Apr. 1, 2008). We concluded that the “district court’s findings show that it carefully evaluated the experts’ testimony” and that the district court properly determined that the expert testimony was credible and persuasive. *Id.* at *2-*3. We then concluded that clear and convincing evidence supported Bartholomew’s commitment as an SDP and SPP. *Id.*

Bartholomew’s brief in this appeal from the district court’s indeterminate commitment is identical to the brief he filed in his appeal from his initial commitment. The brief, in verbatim language, raises the same two issues that were raised and decided in his previous appeal.

The state asks that we apply the law-of-the-case doctrine to affirm the district court. In an ordinary civil case, this argument would likely prevail. *See Mattson v. Underwriters at Lloyds of London*, 414 N.W.2d 717, 719-20 (Minn. 1987) (stating that “[i]ssues determined in a first appeal will not be relitigated in the [district] court nor reexamined in a second appeal”). But, because of the significant liberty interest at stake in commitment hearings, Minnesota courts have expressed hesitancy in applying preclusive doctrines. *See In re Linehan*, 557 N.W.2d 167, 170-71 (Minn. 1996) (reasoning that “because of the significant liberty interests at stake, we are hesitant to confer res judicata status on the initial commitment order and believe the district court must retain the discretion to consider other evidence which is new and helpful”), *vacated and remanded on other grounds*, 522 U.S. 1011, 118 S. Ct. 596 (1997). We therefore consider, in this unusual context of a replicate brief, whether Bartholomew has, on appeal, invoked review or demonstrated a basis for reversing the determination that he continues to meet the statutory criteria for commitment. *See id.* (limiting issues that may be considered at sixty-day review hearing). We conclude that he has not.

Bartholomew’s first argument—that the commitment should be reversed because the district court did not properly weigh the testimony of the two court-appointed examiners—does not implicate the second hearing because the court’s findings demonstrate that it did not rely on the examiners’ testimony in reaching its conclusion that Bartholomew should be indeterminately committed. *See In re Linehan*, 544 N.W.2d 308, 316-17 (Minn. App. 1996) (noting that alleged error must result in prejudice to support reversal), *aff’d*, 557 N.W.2d 171 (Minn. 1996), *vacated and remanded on other*

grounds, 522 U.S. 1011, 118 S. Ct. 596 (1997). Indeed, the district court could not have relied on the examiners' testimony because the examiners testified about Bartholomew's behavior *before* the initial commitment and the issue at the indeterminate-commitment hearing was whether Bartholomew continued to meet the SDP and SPP standards *following* the initial commitment. Minn. Stat. §§ 253B.12, subd. 4, .18, subd. 3, .185, subd. 1 (2006). Because the district court did not rely on the examiners' testimony, Bartholomew's argument that the district court improperly weighed the testimony does not raise a cognizable issue for review and therefore the argument does not support reversal.

Bartholomew's second argument is also unavailing. Interpreted broadly in the context of this second appeal, his brief suggests that the state did not adequately prove that Bartholomew met either the utter-lack-of-control standard for SPP commitment or the lack-of-adequate-control standard for SDP commitment. *See In re Linehan*, 594 N.W.2d 867, 869-76 (Minn. 1999) (discussing lack-of-control standards). On appeal from an indeterminate commitment, our review is limited to whether the state proved by clear and convincing evidence that Bartholomew *continued* to meet the standards for commitment following the initial commitment. Minn. Stat. §§ 253B.12, subd. 4, .18, subd. 3, .185, subd. 1.

The record in this case establishes by clear and convincing evidence that there has been no change in Bartholomew's condition since the time of his initial commitment. The Minnesota Sex Offender Program (MSOP) reported in its sixty-day report that

Mr. Bartholomew has been found . . . to satisfy the statutory requirements for commitment as SDP and SPP. The findings of fact pertaining to his sexual behavior and related diagnoses support the commitment. His condition is unchanged and there is no new information that would suggest his risk to the community has diminished since the initial commitment.

The MSOP report further stated that Bartholomew's "level of motivation and participation in outpatient sex offender treatment, to date, has been poor"; that Bartholomew "demonstrates numerous . . . personality characteristics which are often viewed as a significant impediment to treatment"; and that Bartholomew thwarted MSOP's attempts to obtain additional evidence by refusing to be interviewed in connection with the sixty-day report.

We conclude that even if Bartholomew has invoked review on either issue, he has not demonstrated a basis for reversal. Bartholomew met the lack-of-control standards prior to his initial commitment, and the state has shown by clear and convincing evidence that no change has occurred in his condition since that time and that he continues to meet the statutory criteria for commitment.

Affirmed.