STATE OF MINNESOTA
IN COURT OF APPEALS
A10-159

In the Matter of the Civil Commitment of:
Rodney Jon Heginger

Filed July 13, 2010
Affirmed
Halbrooks, Judge

Olmsted County District Court
File No. 55-PR-08-6920

Jacob C. Allen, Allen & Heim Law Office, Rochester, Minnesota (for appellant)

Mark A. Ostrem, Olmsted County Attorney, Geoffrey A. Hjerleid, Assistant County Attorney, Rochester, Minnesota (for respondent)

Considered and decided by Halbrooks, Presiding Judge; Johnson, Judge; and Larkin, Judge.

U N P U B L I S H E D O P I N I O N

HALBROOKS, Judge

Appellant challenges his involuntary civil commitment as a sexually dangerous person (SDP) contending that respondent Olmsted County (1) failed to prove by clear and convincing evidence that he is unable to adequately control his sexual impulses or behavior and (2) failed to prove by clear and convincing evidence that he is "highly likely" to engage in future acts of harmful sexual conduct. Because we conclude that the

district court did not err in determining that the county proved by clear and convincing evidence that appellant meets the criteria of an SDP, we affirm.

FACTS

Appellant Rodney J. Heginger is a 43-year-old single male who was raised in a family with six biological siblings and two step-siblings. During his childhood, appellant was physically and emotionally abused by his father. At age six or seven, appellant's father caught him masturbating and beat him severely with a belt in the genital area, causing serious injuries. At age 11 or 12, after appellant saw his father sexually abusing his sister, his father tied the two children naked to the rafters and beat them with a leather belt. After this incident, appellant and his siblings were removed from the home, and appellant was placed in foster care. At age 18, appellant returned to live with his family, and his parents divorced shortly thereafter.

Appellant's offending history began at a young age; he acknowledged sexually touching his younger sister when he was an adolescent.[1] Appellant has admitted that he sexually abused his sister on multiple occasions and attempted to fondle one of his foster sisters.

At 20 years old, appellant was arrested and charged with assault. The charges alleged that appellant, who was working at a carnival, blocked a 12-year-old girl from

[1] The exact details of appellant's sexual history vary throughout the record. As noted by the experts who testified at his commitment hearing, these discrepancies are a result of appellant's fabrications or omissions of facts throughout his treatment. But the experts testified as to why they found certain details persuasive, and the district court credited this testimony. Therefore, we find nothing improper about the district court's reliance on appellant's self-reported sexual history in making its determination.

leaving a haunted house and allegedly touched the girl's breast. Appellant was held in custody for approximately 20 days, but the charges were subsequently dropped. Appellant continues to deny this offense.

When appellant was 23 years old, he met A.S., a 13-year-old girl, and the two began a relationship. At the beginning of their relationship, appellant was not aware of her age, but he later realized that she was a minor. The two began a sexual relationship when A.S. was 14, and A.S. became pregnant at age 14. The two married when A.S. was 16. They had five children together, but one died at the age of four months due to sudden-infant-death syndrome. Appellant also admitted to having sexual contact with a 15- or 16-year-old girl during or shortly after his marriage. Appellant and A.S. divorced in 1998.

In 1999, appellant sexually abused H.P., a 12-year-old girl. Appellant testified that in 1997 he was investigated for giving H.P. a "hickey" on her hip and on her neck. Appellant claims that it was a "pinch hickey." The incident was never charged. In December 1999, appellant took his children, H.P, and H.P.'s siblings to a motel. After the other children fell asleep, appellant asked H.P. to lay with him on the bed. Appellant removed H.P.'s clothing and then engaged in both oral sex and intercourse with H.P. H.P. later indicated that she hit appellant during the assault and told him to stop, but appellant did not listen. When confronted by police, appellant admitted to engaging in sexual contact with H.P. and also admitted that he had had oral sex and intercourse with H.P. on three prior occasions. Appellant pleaded guilty to one count of first-degree criminal sexual conduct and was sentenced to 60 months in prison.

Appellant later admitted that he had H.P. masturbate him three times during a car ride while the other children were present in the vehicle. Appellant also stated that he saw H.P. every day following the incident. According to appellant, he was afraid that H.P. would tell somebody what had happened, so he visited her as a "scare tactic." During an interview prior to the commitment proceedings, appellant stated that he still found it "hard to believe that what I did was wrong" and that he "still want[s] to believe that it wasn't coercion."

Appellant was incarcerated and began a Sex Offender Treatment Program (SOTP) at the Lino Lakes prison in October 2001. Appellant was placed on probationary status in the program in September 2002 due to his unsatisfactory progress, "including misrepresentation, distortion of the truth, and manipulative behavior." He appealed and was permitted back into the program but was ultimately terminated from the program in January 2003 for "minimizing his offensive behavior, lack of accountability, and failure to show commitment to change."

Appellant was released from prison on intensive supervised release in 2003, and he began participating in sex-offender treatment at Riverside Psychological Services. He requested and received a transfer to Iowa to continue his probation and participated in sex-offender treatment through Catholic Social Services. In 2004, authorities discovered that appellant had been contacting a 14-year-old girl, S. Appellant was warned not to continue contact with S. But during the course of an unrelated investigation, authorities discovered letters from appellant in S.'s possession, some of which were postmarked after his initial warning. Many of the letters were sexually explicit in nature and

discussed both oral sex and intercourse. Appellant was terminated from sex-offender treatment due to his contact with S.

Appellant's supervised release was revoked in 2005 for his failure to refrain from contact with minors. He was readmitted into the SOTP at Lino Lakes. In April 2007, appellant attempted to add a niece, who was a minor, to his visitation list, and even after bring confronted, he failed to recognize the inappropriateness of his actions. Appellant was ultimately terminated from SOTP for "ongoing involvement in negative criminal behavior" and "failure to intervene in his abuse cycle." Appellant admitted that during treatment he would watch television programs featuring young girls and fantasize about "touching them sexually and seeing them in the nude." Appellant also admitted to manipulating other program participants into telling him the details of their crimes which he would later use for fantasies and masturbation. In February 2008, appellant was assigned the level 3 sex-offender risk status by the Minnesota Department of Corrections.

Appellant was scheduled to be released from prison on August 6, 2008. Prior to his release date, the county filed a petition seeking appellant's involuntary commitment. The district court appointed Kelly Wilson, Psy.D., LP, as an examiner for purposes of the commitment determination. The district court appointed a second examiner, Mary Kenning, Ph.D., at appellant's request. Both experts testified at the commitment hearing that appellant meets the criteria for commitment as an SDP. Based on the evidence, the district court determined that the county proved by clear and convincing evidence that appellant is an SDP and ordered him committed to the Minnesota Sex Offender Program at St. Peter/Moose Lake. This appeal follows.

D E C I S I O N

When reviewing a district court's findings on the elements of the civil-commitment statutes, we review factual findings for clear error. *In re Commitment of Stone*, 711 N.W.2d 831, 836 (Minn. App. 2006), *review denied* (Minn. June 20, 2006). And "[w]here the findings of fact rest almost entirely on expert testimony, the [district] court's evaluation of credibility is of particular significance." *In re Knops*, 536 N.W.2d 616, 620 (Minn. 1995). But whether the evidence is sufficient to meet the statutory requirements for commitment is a question of law, which this court reviews de novo. *In re Commitment of Martin*, 661 N.W.2d 632, 638 (Minn. App. 2003), *review denied* (Minn. Aug. 5, 2003).

Minn. Stat. § 253B.18, subd. 1(a) (2008), provides for the civil commitment of sexually dangerous persons.[2] A person is considered sexually dangerous if that person:

> (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) (2008). "[T]he Minnesota SDP Act requires a finding of future dangerousness, and then links that finding to the existence of a mental abnormality or personality disorder that makes it difficult, if not impossible, for the person to control his dangerous behavior." *Hince v. O'Keefe*, 632 N.W.2d 577, 581-82

[2] *See* Minn. Stat. § 253B.02, subd. 17(b) (2008) (defining "person who is mentally ill and dangerous to the public" to include "[a] person committed as a sexual psychopathic personality or sexually dangerous person").

(Minn. 2001) (quotations omitted). Appellant challenges the district court's determination that he is unable to adequately control his sexual impulses and that he is likely to engage in future acts of harmful sexual conduct.

A. Adequate Control

To commit a person as an SDP, the county must prove that the person has manifested a sexual, personality, or other mental disorder or dysfunction, and that the person's disorder "does not allow [him] to adequately control [his] sexual impulses." *In re Linehan*, 594 N.W.2d 867, 876 (Minn. 1999) (*Linehan IV*). But it is not necessary to prove that the person has an inability to control his sexual impulses. Minn. Stat. § 253B.02, subd. 18c(b).

Dr. Wilson diagnosed appellant with Paraphilia Not Otherwise Specified and Antisocial Personality Disorder. Dr. Kenning also diagnosed appellant with Paraphilia Not Otherwise Specified, as well as Antisocial Personality Disorder with Narcissistic features, and Dysthymia.[3] The district court relied in part on the conclusions of the two experts in making its determination that appellant is unable to adequately control his impulses. Dr. Kenning opined that appellant's personality disorders cause him to be unable to adequately control his sexual impulses because his disorders result in a strong sense of entitlement and little interest in the thoughts and feelings of others. Likewise, Dr. Wilson concluded that appellant's history and sexual disorders are indicative of an individual who has an inability to adequately control his sexual impulses.

[3] Appellant does not challenge his diagnoses on appeal.

The district court made additional factual findings to support the determination that appellant lacks an adequate ability to control his sexual impulses. These factual findings are not challenged by appellant. Specifically, the district court found it relevant that appellant maintained relationships with his victims, engaged in grooming behavior with them, and "continued to place himself in (or fail to remove himself from) situations similar to those in which he has previously offended" throughout his life.

The district court stated that "[b]ased upon the history of his statements in treatment programs, and his testimony at trial, [appellant] does not demonstrate any significant insight into his offending." The district court found it significant that appellant could not detail his cycle of offending and discredited appellant's testimony regarding his relapse-prevention plan.

We conclude that these findings reflect clear and convincing evidence that appellant is not able to adequately control his sexual impulses. Appellant's lack of insight into his offending cycle, his inability to intervene in that cycle, his failed attempts in treatment, his history of sexual assaults, and the opinions of experts regarding his psychological diagnoses all support the district court's determination. Therefore, we conclude that the district court did not err in determining that the county demonstrated by clear and convincing evidence that appellant meets this criterion of an SDP.

B. Highly Likely to Engage in Future Acts of Harmful Sexual Conduct

The third criterion of the statute requires proof that the individual is likely to engage in future acts of harmful sexual conduct. Minn. Stat. § 253B.02, subd. 18c(a)(3). The Minnesota Supreme Court has interpreted the statute as requiring the future harmful

conduct to be "highly likely" in order to commit a patient as an SDP. *Linehan IV*, 594 N.W.2d at 876. In determining whether a sex offender is highly likely to engage in harmful sexual conduct, the district court considers the following six factors: (1) the offender's demographic characteristics; (2) the offender's history of violent behavior; (3) 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 of participation in sex-therapy programs. *In re Linehan*, 518 N.W.2d 609, 614 (Minn. 1994) (*Linehan I*) (discussing the guidelines for predicting dangerousness under the predecessor psychopathic-personality statute); *see also In re Linehan*, 557 N.W.2d 171, 189 (Minn. 1996) (*Linehan III*) ("We conclude that the guidelines for dangerousness prediction in *Linehan I* apply to the SDP Act . . . ."), *vacated on other grounds and remanded sub. nom. Linehan v. Minn.*, 522 U.S. 1011, 118 S. Ct. 596 (1997), *aff'd on remand*, *Linehan IV*, 594 N.W.2d 867. The district court made findings on each *Linehan* element and determined that appellant is highly likely to engage in harmful sexual conduct in the future. We conclude that appellant's argument that the *Linehan* factors do not support his commitment is without merit.

1. Demographic Characteristics

The district court determined that appellant's demographic characteristics support a finding that appellant is highly likely to reoffend. The district court's conclusion is based on the following facts: appellant's abusive childhood, his history of juvenile misconduct and delinquency, instances of sexual abuse against siblings, and the fact that

he has few healthy or constructive social contacts outside prison. The district court also found that appellant's low level of education and sporadic employment history increase his risk of reoffense. Both experts relied on similar facts to conclude that appellant is at a high risk to reoffend. Based on the factual findings of the district court, we conclude that appellant's demographic characteristics clearly and convincingly support the district court's conclusion that appellant is highly likely to reoffend.

2. Violent History

With respect to this *Linehan* factor, the district court noted that appellant's history of sexual misconduct is not one characterized by violence. But the district court found that appellant "employ[ed] intimidation and threats to either accomplish the assaults or prevent his victims from reporting the abuse." The district court also found that appellant has a history of assault, fighting, and domestic violence. Again, both experts relied on similar facts to conclude that appellant is at a high risk to reoffend. Appellant does not argue that these findings are erroneous and instead challenges the ultimate determination of the district court. But we conclude that these findings support the conclusion that the record contains clear and convincing evidence that appellant is highly likely to reoffend.

3. Base-Rate Statistics

Appellant asserts that the results of the actuarial measures utilized by Dr. Kenning and Dr. Wilson indicate only a moderate-to-high risk of re-offense, which does not provide clear and convincing evidence that he is highly likely to reoffend. Both experts testified at length about appellant's actuarial scores and their conclusions regarding the results. Dr. Kenning testified that while appellant's moderate scores on various actuarial

measures did give her pause, when "you really look clinically at his history and his dynamic risk factors," appellant's record weighed in favor of commitment. Furthermore, Dr. Kenning noted that appellant's moderate score on the Minnesota Sex Offender Screening Tool-Revised (MN-SOST-R) undervalues appellant's risk because it fails to take appellant's non-conviction behavior into consideration. Both experts discussed appellant's score on the Psychopath Check List-Revised (PCL-R). Dr. Kenning stated that appellant's PCL-R score is "considered statistically unusually high even in comparison to the male felony level offender population." Dr. Wilson testified that she found appellant's high score on the PCL-R to be significant and concerning.

When questioned by the district court about appellant's moderate scores on some actuarial tests, Dr. Kenning testified about her use of the Sexual Violence Risk 20 (SVR-20) assessment guide, which is clinical rather than purely actuarial. According to Dr. Kenning, the SVR-20 is the best measure to predict overall risk of recidivism because it takes into account behavior not tied to a conviction. Dr. Kenning testified that appellant has 13 of the 20 risk factors, and thus he has a much higher risk of recidivism than is indicated by the purely actuarial measures. Overall, both experts opined that the actuarial measures reflect that appellant is at a high risk to reoffend.

We conclude that the base-rate statistics reported by the experts and relied on by the district court provide clear and convincing evidence that appellant is highly likely to engage in harmful sexual conduct in the future.

4. Stress Sources and Similarity of Past-Future Contexts

Appellant argues that there is no evidence to support a finding that he is predisposed to cope with stress in a violent manner. He further contends that the circumstances that would exist upon his release are markedly different than those existing when he was offending because he understands his offending cycle and would seek out support upon release to keep from reoffending. Both experts disagreed with these assertions. Dr. Kenning concluded that appellant's circumstances following release would be similar to those that contributed to offenses in the past. Dr. Wilson opined that appellant is unable to identify a person who could be considered a healthy support system. Dr. Wilson also testified that appellant "can identify an understanding of triggers and warning signs in writing, but rarely utilizes interventions independent of the assignment." Both experts noted that appellant has not learned coping skills to manage stress or strategies to keep himself free of sexual-offending behavior.

The district court determined that appellant's circumstances following release would be similar to the circumstances following his release in 2003, which led to appellant's contact with minors and the revocation of his supervised release. The district court found that appellant planned to live in a hotel, despite the fact that such a living situation would give him access to children.

Based on this record, the district court did not err in its determination that the conclusions of the two experts regarding appellant's stress and the similarity of his past and future social contexts offer clear and convincing evidence that appellant is highly likely to reoffend.

5. Record in Sex-Therapy Programs

Appellant argues that despite the fact that he has not completed sex-offender programming, he has internalized the treatment concepts. But the district court's findings regarding appellant's history in sex-therapy programs support the conclusion that he is at a high risk to reoffend. Appellant has had repeated failures in many sex-offender-treatment programs, and his termination from these programs has been due to "dishonest, manipulative, contradictory, and undermining" behavior. Appellant began contacting S. while he was in treatment but denied this behavior until confronted. Appellant also attempted to add a minor female to his visitor list and "continues to contend that there was nothing inappropriate or risky in this," despite the fact that such behavior fits within his offending cycle. The district court's findings are supported by the experts' opinions.

The district court did not err in its determination that the county offered clear and convincing evidence that appellant meets the criteria for commitment as an SDP. Specifically, we conclude that the record is sufficient to sustain the district court's determination that appellant is unable to adequately control his sexual impulses and that appellant is highly likely to engage in future acts of harmful sexual conduct. We affirm the district court's commitment of appellant as an SDP.

Affirmed.