STATE OF MINNESOTA
IN COURT OF APPEALS
A10-699

In the Matter of the Civil Commitment of:
Kevin Aaron Beaulieu.

Filed August 31, 2010
Affirmed
Klaphake, Judge

Clearwater County District Court
File No. 15-PR-09-302

Stephanie M. Johnson, Timothy L. Aldrich, Johnson and Aldrich, Bemidji, Minnesota; and

Frank W. Bibeau, Deer River, Minnesota (for appellant Beaulieu)

Lori Swanson, Attorney General, John D. Gross, Assistant Attorney General, St. Paul, Minnesota; and

Jeanine R. Brand, Clearwater County Attorney, Bagley, Minnesota (for respondent State of Minnesota)

Considered and decided by Klaphake, Presiding Judge; Shumaker, Judge; and Harten, Judge.*

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

KLAPHAKE, Judge

In this appeal challenging his civil commitment as a sexually dangerous person (SDP) and sexual psychopathic personality (SPP), Kevin Beaulieau challenges the

* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

subject-matter jurisdiction of the district court, because he is an enrolled member of the White Earth Band of Ojibwe. He also claims that there was not clear and convincing evidence to support his civil commitment because respondent's experts failed to offer evidence of how the effects of historical trauma and post-traumatic stress impacted his need for culturally appropriate treatment. Because the district court had subject-matter jurisdiction over this matter and because appellant did not submit clear and convincing evidence to establish that he was in need of alternative treatment, we affirm.

D E C I S I O N

I.

By statute, this state permits the civil commitment of SDP and SPP persons "for an indeterminate period of time." Minn. Stat. § 253B.18, subd. 3 (2008). A person who has been civilly committed as SDP or SPP may be discharged only upon a showing that "the patient is capable of making an acceptable adjustment to open society, is no longer dangerous to the public, and is no longer in need of inpatient treatment and supervision." *Id.*, subd. 15 (2008). At oral argument, respondent conceded, and it is widely known, that it is rare for a person in this state to gain discharge from commitment once having been civilly committed as SDP or SPP.

The state proposes to civilly commit appellant, who the parties agree is an enrolled member of the White Earth Band of Ojibwe. Appellant claims that due to his status as a tribal member, the district court lacks subject-matter jurisdiction over this case. Appellate courts give de novo review to issues of subject-matter jurisdiction. *State v. Davis*, 773 N.W.2d 66, 68 (Minn. 2009). Because subject-matter jurisdiction determines

the court's authority to hear a particular class of actions, the issue may be raised at any time, including for the first time on appeal. Minn. R. Civ. P. 12.08(c); *Irwin v. Goodno*, 686 N.W.2d 878, 880 (Minn. App. 2004).

Indian tribes retain "attributes of sovereignty over both their members and their territory," *California v. Cabazon Band of Mission Indians*, 480 U.S. 202, 207, 107 S. Ct. 1083, 1087 (1987) (quotations omitted), but that sovereignty is "dependent on, and subordinate to, only the Federal Government, not the States." *Id.* Public Law 280 provides for state jurisdiction in Indian country under certain circumstances when it is not preempted by federal law, including for Minnesota in "[a]ll Indian country within the State, except the Red Lake Reservation." 18 U.S.C. § 1162(a) (2010), 28 U.S.C. § 1360 (2009); *see Davis*, 773 N.W.2d at 69 ("In Public Law 280, Congress expressly granted Minnesota . . . jurisdiction over certain civil and criminal matters committed on Indian reservations"); *State v. R.M.H.*, 617 N.W.2d 55, 58 (Minn. 2000) ("a state may exercise its authority if the operation of federal law does not preempt it from doing so").

As interpreted, Public Law 280 applies to private civil and criminal actions but does not apply to civil/regulatory actions. *Id.*

> [W]hen a [s]tate seeks to enforce a law within an Indian reservation under the authority of [Public Law 280], it must be determined whether the law is criminal in nature, and thus fully applicable to the reservation . . ., or civil in nature, and applicable only as it may be relevant to private civil litigation in state court.

Cabazon, 480 U.S. at 208, 107 S. Ct. at 1088; *R.M.H.*, 617 N.W.2d at 59.

The most recent published opinion by a Minnesota appellate court to address the state's subject-matter jurisdiction over civil commitment proceedings is *In re Civil Commitment of Johnson*, 782 N.W.2d 274 (Minn. App. 2010), *review granted* (Minn. Aug. 10, 2010). There, this court ruled that SDP civil commitment is "unquestionably civil in nature" and "a form of civil regulation, not civil litigation between private parties." 782 N.W.2d at 279. Therefore, the court ruled that Public Law 280 does not grant Minnesota express jurisdiction over SDP commitments as private civil litigation. *Id.* at 280.

However, the court's analysis went further. The court ruled that the state could "exercise its authority over Indian country if *exceptional circumstances* exist and federal law does not preempt state jurisdiction." *Id.* (emphasis added). The exceptional circumstances in civil commitments, according to *Johnson*, are the state's heightened or compelling interest in protecting the public from "dangerous and repeat sex offenders" and its interest in "the care and treatment of sex offenders and the mentally disordered." *Id.* at 281 (quotations omitted). To determine whether federal law preempted state jurisdiction, this court considered four factors:

> (1) whether state jurisdiction would threaten the federal interest in encouraging Indian self-government; (2) whether state jurisdiction would interfere with the goals of encouraging tribal self-sufficiency and economic development; (3) whether state jurisdiction relates to an area that is so pervasively regulated by federal law that state regulation would obstruct federal policies; and (4) whether the interests of the state are sufficient to justify the assertion of state authority.

Id. at 280. Applying those factors, the *Johnson* court concluded that exceptional circumstances existed to warrant this state's taking subject-matter jurisdiction over the SDP commitment, and that federal law did not preempt the issue. *Id.* at 281.

Because *Johnson* was released by this court less than two months ago, we are constrained to follow it. *See State v. Lee*, 706 N.W.2d 491, 494 (Minn. 2005) (requiring that under the principle of stare decisis, a court must be extremely reluctant to overturn its own precedent and must have "compelling reason" for doing so). However, we are sympathetic to appellant's arguments regarding the potential for fruitful cooperation between various entities of this state's government and the White Earth Band of Ojibwe in the future to address mutual interests in protecting the public from SDP and SPP persons and in treating those afflicted with such disorders. While Indian self-governance and self-sufficiency are not encouraged when this state takes control of an Indian sex offender, such action is necessitated at this time because appellant has offered no evidence that the White Earth Band of Ojibwe has a civil commitment law or that it has any structure in place to treat SDP or SPP individuals. Thus, we conclude, as did this court in *Johnson*, that federal law does not preempt state jurisdiction, and exceptional circumstances exist to permit this state to exercise subject-matter jurisdiction over the SDP/SPP civil commitment involving appellant.

II.

Appellant also claims that the district court erred by civilly committing him when the record did not include clear and convincing evidence that "the court's experts made any findings as to whether [appellant,] being an Indian suffering under the effects of

historical trauma and PTSD[,] is in need of culturally appropriate treatment." We reject this argument for two reasons. First, under the commitment statute, "the court shall commit the patient to a secure treatment facility *unless the patient establishes by clear and convincing evidence* that a less restrictive treatment program is available that is consistent with the patient's treatment needs and the requirements of public safety." Minn. Stat. § 253B.185, subd. 1 (2008) (emphasis added). Thus, appellant is incorrect in suggesting that respondent had the duty to establish by clear and convincing evidence that appellant did not need "culturally appropriate treatment." Second, the evidence that appellant relies on in making this claim was not introduced during the commitment proceedings, is not a part of the record on appeal, and by court order of July 7, 2010, this court has ruled that it will "decline[] to consider evidence on the effect of historical trauma on health problems within native communities" because such materials were outside the district court record. *See* Minn. R. Civ. App. P. 110.01 (stating that record on appeal is composed of "papers filed in the trial court, the exhibits, and the transcript of the proceedings"). For these reasons, we reject appellant's challenge to the sufficiency of the evidence to support the district court's commitment decision.

Affirmed.