STATE OF MINNESOTA
IN COURT OF APPEALS
A12-243

In the Matter of the Civil Commitment of:
Bradly A. McHorse

Filed July 2, 2012
Affirmed
Muehlberg, Judge[*]

Clay County District Court
File No. 14-PR-10-3842

Peter E. Karlsson, Moorhead, Minnesota (for appellant McHorse)

Brian J. Melton, Clay County Attorney, Gregg Jensen, Assistant County Attorney, Moorhead, Minnesota (for respondent county)

Considered and decided by Ross, Presiding Judge; Wright, Judge; and Muehlberg, Judge.

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

MUEHLBERG, Judge

Appellant challenges the district court's decision to commit him for an indeterminate period as mentally ill and dangerous and the district court's denial of his motion for a change of venue. We affirm.

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

FACTS

Appellant Bradly McHorse was at an adult foster care home in Duluth, Minnesota, on October 2, 2010, when he had a seizure and was hospitalized. The attending physicians took him off of his anti-psychotic medication because they believed it was making him prone to seizures. On October 19, 2010, while at the hospital, he was examined for a pre-petition screening report; the district court approved a hold order for McHorse on the state's petition alleging that he was mentally ill and dangerous. On that same date, McHorse struck one of the female nurses in the face hard enough to knock her unconscious. McHorse has been the subject of a number of reports from various treating or examining psychiatrists at various points throughout the process.[1]

A preliminary hearing pursuant to Minn. Stat. § 253B.07, subd. 7 (2010), was held on December 14 and 16, 2010. The district court found clear and convincing evidence that showed McHorse was mentally ill and dangerous and committed him to the custody of the Commissioner of Human Services. After some delay, a 60-day review hearing was held on March 16, 2011. At that hearing, McHorse requested a 10-month continuance so that his condition could improve while he was at the Minnesota Security Hospital in St. Peter. The district court granted this request, but also found that McHorse "has a mental illness that requires continued commitment to a secured treatment facility." A hearing for a final determination under Minn. Stat. § 253B.18, subd. 2 (2010), was held on January 4, 2012, after which the district court found that McHorse continued to be mentally ill and

[1] Much of the information pertaining to McHorse's treatment and mental health is confidential. While we will not discuss that information in this opinion, we note that we have considered it in making our decision.

dangerous and therefore committed him to the Minnesota Security Hospital for an indeterminate period. McHorse now appeals the district court's determination that he is dangerous as that term is defined in Minn. Stat. § 253B.02, subd. 17 (2010), and the district court's denial of his motion for a change of venue to St. Louis County.

D E C I S I O N

I. Did the district court err in deciding that McHorse was mentally ill and dangerous?

McHorse argues that the district court erred in deciding that he is mentally ill and dangerous (MID), as defined by Minn. Stat. § 253B.02, subd. 17, and that he must be committed indeterminately. This court reviews a district court's civil-commitment decision to determine whether the district court complied with the statute and whether the evidence in the record supports the findings of fact. *In re Knops*, 536 N.W.2d 616, 620 (Minn. 1995). The record is viewed in the light most favorable to the district court's decision and findings of fact shall not be set aside unless clearly erroneous. *Id.* But this court "review[s] de novo whether there is clear and convincing evidence in the record to support the district court's conclusion that appellant meets the standards for commitment." *In re Thulin*, 660 N.W.2d 140, 144 (Minn. App. 2003).

A "person who is mentally ill and dangerous to the public" is a person:

> (1) who is mentally ill; and
> (2) who as a result of that mental illness presents a clear danger to the safety of others as demonstrated by the facts that (i) the person has engaged in an overt act causing or attempting to cause serious physical harm to another and (ii) there is a substantial likelihood that the person will

> engage in acts capable of inflicting serious physical harm on another.

Minn. Stat. § 253B.02, subd. 17(a). Though he does not explicitly concede that he is mentally ill, McHorse does not contest that the "mentally ill" requirement has been satisfied. Rather, he argues solely that there is insufficient evidence that he is dangerous. First, McHorse argues that the October 19, 2010 assault on the nurse was not his fault because it was the product of his treating physician's orders to cease administering psychotropic medication, and therefore the assault was not an "overt act." Second, McHorse argues that there was insufficient evidence of future danger and insufficient consideration given to the opinion of McHorse's treating psychiatrist.

When evaluating the overt act requirement, we focus "on the seriousness of the act and whether it did occur." *Knops*, 536 N.W.2d at 620. The focus is solely on those two questions because the "person's intent or the outcome of the action is not relevant to the determination of whether the conduct meets the overt-act requirement." *In re Carroll*, 706 N.W.2d 527, 530 (Minn. App. 2005).

Here, McHorse "does not argue that the nurse he hit at Miller Dwan Hospital did not suffer serious physical harm [because] . . . [t]he nurse is reported to have been unconscious." Rather, McHorse points out that his treating psychiatrist testified that he didn't "believe what happened at Miller-Dwan was Mr. McHorse's fault in the sense [he didn't] think he did anything wrong to generate what happened up there." This psychiatrist opined that the assault was simply the result of "someone who is severely mentally ill who was taken off his meds." But the intent of the individual in performing

the overt act is not determinative. *Carroll*, 706 N.W.2d at 530. This is true regardless of "whether the actor had the capacity to form an intention to cause harm or even to recognize its potential for causing serious harm." *In re Jasmer*, 447 N.W.2d 192, 195 (Minn. 1989). While it may be true in this case that McHorse did not intend to assault the nurse, or may not have been in full control of his actions at the time, it is still an overt act under the statute. Because there is no argument that the act did not occur or that the act did not cause serious harm, the assault on a nurse satisfies the statutory requirement that "the person has engaged in an overt act causing . . . serious physical harm to another." Minn. Stat. § 253B.02, subd. 17(a)(2)(i).

McHorse also argues that there is insufficient evidence that "there is a substantial likelihood that [he] will engage in acts capable of inflicting serious physical harm on another." Minn. Stat. § 253B.02, subd. 17(a)(2)(ii). "The question of dangerousness is a factual determination for the [district] court, which should not be disturbed on appeal unless it is clearly erroneous." *In re Hofmaster*, 434 N.W.2d 279, 282 (Minn. App. 1989). The district court may consider the person's "entire history" when determining whether "he remains a clear danger to others." *Id.* at 281. The district court credited the expert's reports and testimony, and "[w]here the findings of fact rest almost entirely on expert testimony, the [district] court's evaluation of credibility is of particular significance." *Knops*, 536 N.W.2d at 620. It is appropriate for the district court to consider past conduct in determining the likelihood of future dangerousness. *See Carroll*, 706 N.W.2d at 531 (considering patient's records, which were "replete with documentation of violent outbursts and physical assaults"); *Hofmaster*, 434 N.W.2d at

280–81 (considering patient's entire history of dangerous acts, including a stabbing assault on his wife).

McHorse argues that the district erred in finding that there was a substantial likelihood of future dangerousness because it did not properly consider McHorse's treating psychiatrist's opinion that the assault on the nurse was not McHorse's fault,. However, it is unclear how this testimony about a single past incident would have affected the conclusion of the district court that McHorse was likely to be dangerous in the future.

First, the treating psychiatrist's testimony also indicated that McHorse had been involved in a second assault of a patient at the Security Hospital that did not cause serious harm. The psychiatrist further testified that McHorse was "in fact, mentally ill, and he does have a problem with dangerousness." Second, another report prepared in anticipation of the January 4, 2012 hearing indicates that McHorse has been involved in a number of disruptive and violent incidents since the treating psychiatrist's testimony in March 2011. Third, McHorse's history prior to his current commitment indicates that he has a propensity for making threats and causing potentially dangerous disruptions.

While it may have been preferable for McHorse's treating psychiatrist to be at the January 4, 2012 hearing, we conclude that the district court did not err in its decision. Considering the confidential facts in the record, it is difficult to see how any possible failure to sufficiently consider the treating psychiatrist's testimony would have had an effect on the decision. Taken as a whole, the record supports the district court's finding that there is a "substantial likelihood that [McHorse] will engage in acts capable of

inflicting serious physical harm on another." Minn. Stat. § 253B.02, subd. 17(a)(2)(ii). For these reasons, we conclude that the the district court did not err in finding that McHorse was mentally ill and dangerous.

II. Did the district court err in denying the motion to change the venue to St. Louis County?

McHorse argues that venue in Clay County is improper because "he is not and was not a resident of Clay County." As a result, McHorse argues that this case should be venued in St. Louis County because the petition for commitment was filed while McHorse was at a treatment facility in Duluth. This argument originally arose from a pro se motion for a change of venue filed on August 5, 2011, and reiterated in a second pro se motion for a change of venue on October 7, 2011.

McHorse is empowered to "move to have the venue of the petition changed to the district court of the Minnesota county where the person currently lives, whether independently or pursuant to a placement." Minn. Stat. § 253B.07, subd. 2d (2010). "The court shall grant the motion if it determines that the transfer is appropriate and is in the interests of justice." *Id.*

In this case, McHorse has not indicated that he thinks that the proceedings in Clay County have been unfair, nor does he allege that any of the judicial actors are prejudiced. Further, the statute only allows a transfer of venue to "the Minnesota county where the person currently lives." Minn. Stat. § 253B.07, subd. 2d. McHorse is seeking a change

of venue to St. Louis County, but he does not currently live there. Therefore, his motion for change of venue was properly denied.

Affirmed.