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**STATE OF MINNESOTA
IN COURT OF APPEALS
A12-0493**

In the Matter of the Civil Commitment of:
Joseph Franciosa Thomas

**Filed August 6, 2012
Affirmed
Chutich, Judge**

Steele County District Court
File No. 74-PR-11-1796

Joel D. Eaton, Eaton & Mitchell, LLP, Owatonna, Minnesota (for appellant)

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Considered and decided by Chutich, Presiding Judge; Kalitowski, Judge; and Stoneburner, Judge.

UNPUBLISHED OPINION

CHUTICH, Judge

Appellant Joseph Franciosa Thomas challenges his commitment as a sexually dangerous person, arguing that insufficient evidence exists to support his commitment and that the district court erred in finding that the Minnesota Sex Offender Program is capable of meeting his treatment needs. Because clear and convincing evidence supports the district court's determination that Thomas is a sexually dangerous person, we affirm.

FACTS

On September 23, 2011, Steele County filed a petition seeking to commit Thomas as a sexually psychopathic personality and a sexually dangerous person under Minn. Stat. § 253B.185, subdivisions 18b and 18c (2010). The district court held a commitment trial over the course of four days in December 2011.

Evidence at trial showed that Thomas “engaged in a course of harmful sexual conduct,” one of the necessary factors to find a “sexually dangerous person.” *Id.*, subd. 18c(a). Because Thomas does not challenge this finding on appeal, his harmful conduct need not be described in detail, but it included the following. In June 1993, when he was 25 years of age, he sexually assaulted 15-year-old N.B., using force to do so. A few months later in October 1993, at the age of 26, Thomas provided S.H., R.S., and M.N., all age 13, with alcohol, and then sexually assaulted them multiple times over the course of a day. The assaults involved vaginal penetration and oral sexual contact. A jury convicted Thomas of multiple counts of criminal sexual conduct in the first and third degree for his assaults of N.B., S.H., R.S., and M.N. The district court then sentenced him to 17 years in prison.

During the time that Thomas served in prison, he violated several major prison rules, including committing disorderly conduct, aggravated disorderly conduct, harassment, assault, and aggravated assault. Although he was referred to sex offender treatment numerous times during his incarceration, Thomas refused to go; he continued to deny that he committed the sexual assaults.

At the trial, three experts testified as to whether Thomas met the statutory criteria for civil commitment: Dr. Linda Marshall, Ph.D., L.P., as first examiner; Dr. Peter Marston, Ph.D., L.P., as second examiner; and Dr. Rosemary Linderman, Psy.D., L.P., as an expert for Steele County. Dr. Linderman did not interview Thomas but reviewed documents and transcripts of interviews of Thomas by Dr. Marshall and Dr. Marston.

Dr. Marshall and Dr. Linderman opined that Thomas met the criteria of a sexually dangerous person, but not that of a sexually psychopathic personality. Dr. Marston did not agree that Thomas met the criteria for commitment as a sexually dangerous person because he did not diagnose Thomas with a personality disorder. In addition, he opined that Thomas was only moderately likely to sexually reoffend.

At the end of the trial, Thomas moved for a directed verdict on the portion of the petition seeking his commitment as a sexual psychopathic personality, and the court granted the motion. The district court found, however, that Thomas was a sexually dangerous person based on the testimony of Dr. Marshall and Dr. Linderman. Accordingly, on January 25, 2012, the district court issued an indeterminate commitment order for Thomas as a sexually dangerous person. This appeal followed.

D E C I S I O N

I. Sufficiency of the Evidence

In an appeal from civil commitment as a sexually dangerous person, we review the district court's factual findings for clear error and the district court's determination of whether the statutory standard for commitment has been satisfied de novo. *In re Commitment of Stone*, 711 N.W.2d 831, 836 (Minn. App. 2006), *review denied* (Minn.

June 20, 2006). We view the evidence in the light most favorable to the district court's conclusion. *Id.* at 840.

A sexually dangerous person is one who: (1) "has engaged in a course of harmful sexual conduct"; (2) "has manifested a sexual, personality, or other mental disorder or dysfunction"; and (3) "is likely to engage in acts of harmful sexual conduct." Minn. Stat. § 253B.02, subd. 18c(a) (2010). The state must prove the facts necessary for commitment by clear and convincing evidence. Minn. Stat. §§ 253B.18, subd. 1(a) (2010), .185, subd. 1 (Supp. 2011). Thomas challenges the district court's ruling only on the second and third factors, contending that the evidence is insufficient to show that he manifested a sexual, personality, or mental dysfunction, or that he is highly likely to reoffend.

A. Sexual, Personality, or Other Mental Disorder or Dysfunction

To satisfy the second prong of the statutory criteria, the district court must find that Thomas suffers from a mental abnormality or personality disorder that does not allow him to adequately control his sexual impulses. *In re Linehan*, 594 N.W.2d 867, 876 (Minn. 1999). Thomas contends that the district court's finding that he suffers from sexual and personality disorders is clearly erroneous.

At trial, all three experts testified as to whether Thomas has a personality disorder. Dr. Marshall diagnosed Thomas with personality disorder not otherwise specified with antisocial, histrionic, and compulsive traits. Dr. Linderman opined that she would diagnose Thomas with antisocial personality disorder or personality disorder not otherwise specified with antisocial and narcissistic features. Dr. Marston opined that,

while Thomas displayed characteristics of anti-social personality disorder and personality disorder not otherwise specified, he had insufficient evidence to make those particular diagnoses.

The district court found Dr. Marshall's and Dr. Linderman's opinions "credible and persuasive," concluding that Thomas suffers from a personality disorder. Dr. Marston opined that he would not diagnose Thomas with a personality disorder because a formal diagnosis required evidence of a conduct disorder before the age of 15. But the district court found that Dr. Marston's conclusions were not credible because the record was "replete with examples of Thomas's antisocial, narcissistic, and compulsive personality disorder traits throughout his lifetime." The district court found the testimony of Dr. Marshall and Dr. Linderman more credible than Dr. Marston's testimony, and we defer to the district court's credibility determinations on appeal. *In re Commitment of Ramey*, 648 N.W.2d 260, 270 (Minn. App. 2002), *review denied* (Minn. Sept. 17, 2002); *see also In re Knops*, 536 N.W.2d 616, 620 (Minn. 1995) ("Where the findings of fact rest almost entirely on expert testimony, the [district] court's evaluation of credibility is of particular significance."). Clear and convincing evidence supports the district court's finding that Thomas suffers from a personality disorder.

Thomas further contends that the district court erred by making a general finding that he suffers from disorders and failing to specify a particular diagnosis under the Diagnostic and Statistical Manual of Mental Disorders (DSM-IV). The plain language of the statute, however, does not require a specific diagnosis under the DSM-IV. *See* Minn. Stat. § 253B.02, subd. 18c(a)(2). In addition, states have great leeway in defining the

mental disorders that make a person eligible for commitment. *Kansas v. Hendricks*, 521 U.S. 346, 358–59, 117 S. Ct. 2072, 2080–81 (1997) (rejecting contention that civil commitment must be based on a finding of serious mental illness).

In any event, Dr. Linderman and Dr. Marshall did agree on a particular diagnosis—personality disorder not otherwise specified—and the district court found their testimony to be credible and persuasive. A diagnosis of personality disorder not otherwise specified is a recognized diagnosis under the DSM-IV.

The district court also concluded that Thomas suffers from a sexual disorder; it made no factual findings to support this conclusion, however. While this conclusion is not supported by the record, such a finding is not necessary for commitment. The statute requires that the person have “manifested a sexual, personality, *or* other mental disorder or dysfunction.” Minn. Stat. § 253B.02, subd. 18c(a)(2) (emphasis added). Because the record supports the district court’s finding that Thomas suffers from a personality disorder, the statute’s second prong is met.

B. Propensity to Reoffend

The district court must also determine whether, as a result of Thomas’s course of misconduct and mental disorders or dysfunctions, he “is likely to engage in acts of harmful sexual conduct.” Minn. Stat. § 253B.02, subd. 18c(a)(3). This phrase has been narrowly construed to require a showing that the offender is “highly likely” to engage in future harmful sexual conduct. *In re Linehan*, 557 N.W.2d 171, 180 (Minn. 1996), *vacated on other grounds sub nom. Linehan v. Minnesota*, 522 U.S. 1011, 118 S. Ct. 596 (1997).

Courts consider six factors in examining the likelihood of reoffense: (1) the offender's demographic characteristics; (2) the offender's history of violent behavior; (3) the 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).

The district court considered all six of the *Linehan* factors in finding that Thomas is highly likely to reoffend. Thomas specifically contests the district court's findings concerning four of the six factors: demographic characteristics, base-rate statistics, sources of stress, and context.

Regarding these four factors, the district court first found that Thomas's demographic characteristics increased his risk of reoffending. It noted that his age, 44 years old, was not a "sufficient protective factor," and that his male gender increased the risk of reoffense. The district court next found that base-rate statistics indicated that Thomas is highly likely to reoffend.¹ The court further found that Thomas will "face substantial stress in the community because he will be a level three sex offender with full community notification." Regarding the fifth *Linehan* factor, the similarity of the present or future context to those contexts in which the offender has used violence in the past, the

¹ The district court's finding that extra-familial sex abusers have a recidivism rate of 25% was likely a typographical error. Dr. Marshall and Dr. Linderman reported that extra-familial abusers have a recidivism rate of 52%. The recidivism rate of 52% provides even more support than the stated 25% for the district court's findings that this factor indicated a high likelihood of reoffending.

district court found that there was “little evidence that Thomas has gained tools that are sufficient to prevent reoffending.”

All of the district court’s findings are supported by the testimony of Dr. Linderman and Dr. Marshall, along with their reports. Both doctors reported that Thomas’s demographics and the base-rate statistics indicate a high rate of recidivism. The doctors also reported that Thomas’s designation as a level three sex offender would be a source of stress and that he has not demonstrated a change in his behavior since he was originally admitted to prison. Because each *Linehan* factor supports the district court’s conclusion that Thomas is highly likely to reoffend, the district court did not err in finding that the third prong of the statute was satisfied.

Thomas further argues that the district court erred by weighing other factors more heavily than the *Linehan* factors in determining that he is highly likely to reoffend. Specifically, Thomas objects to the district court’s finding that his denial of the sexual offenses increases his likelihood of reoffending. This finding is supported by the record, however. Dr. Marshall testified that Thomas’s denial of the offenses would make it difficult for him to avoid risky situations in the future. In her report, Dr. Linderman opined that without awareness of his actions, Thomas will be unable to change his behavior.

Moreover, the court’s finding directly relates to Thomas’s record of treatment, the sixth *Linehan* factor. Thomas repeatedly refused to go to treatment or was not allowed to participate because he denied committing the offenses. Thus, he has had no treatment to

address the behaviors underlying his convictions. The district court did not err in making this finding.

II. Civil Commitment Program

Thomas argues that the district court erred in finding that the Minnesota Sex Offender Program is an appropriate treatment program. In its attached memorandum, the district court criticized the program because, as of the date of the order, no one had been released from it. The district court's opinion regarding the Minnesota Sex Offender Program is not relevant to whether Thomas meets the commitment criteria under Minn. Stat. § 253B.02, subd. 18c(a) and does not affect the validity of the district court's commitment order.

Affirmed.