STATE OF MINNESOTA
IN COURT OF APPEALS
A12-1088

In the Matter of the Civil Commitment of:
Steven Loren Edwards

Filed November 13, 2012
Affirmed
Chutich, Judge

Dakota County District Court
File No. 19HA-PR-10-32

Joe C. Dalager, Law Office of Joe C. Dalager, P.A., West St. Paul, Minnesota (for appellant)

James C. Backstrom, Dakota County Attorney, Debra E. Schmidt, Assistant County Attorney, Hastings, Minnesota (for respondent)

Considered and decided by Chutich, Presiding Judge; Stauber, Judge; and Cleary, Judge.

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

CHUTICH, Judge

Appellant Steven Edwards appeals his indeterminate civil commitment as a sexually dangerous person. Specifically, Edwards challenges the district court's conclusion that he is likely to engage in future harmful sexual conduct. Because we conclude that the district court's findings of fact are not clearly erroneous, and its conclusions are supported by clear and convincing evidence, we affirm.

FACTS

At the time of the commitment proceedings, Edwards was 40 years old and had been in prison for nearly 10 years. He had a difficult childhood, and reported being physically, emotionally, and sexually abused by members of his family. Edwards has an extensive criminal history and has been in and out of juvenile and adult detention centers, or on probation, since 1981. As an adult, Edwards has been convicted of, in addition to his sexual offenses, criminal damage to property, theft, fleeing a police officer, escape from custody, driving under the influence, driving after revocation, controlled substance crimes, assault, and theft of a motor vehicle. Edwards began using crack cocaine and other drugs as a teenager, and has struggled with substance abuse for most of his life. Before being sent to prison in 2001, Edwards had attempted chemical-dependency treatment, unsuccessfully, at least five times.

The two charged criminal sexual conduct offenses leading to the filing of this civil commitment petition occurred in 2001. On July 25, 2001, Edwards stopped a 15-year-old girl who was out walking, and asked her to drive around with him. Several hours later, after the girl asked Edwards to take her home, he stopped the car and pulled down the top of her dress. He touched the girl's legs and breasts, and asked to see her genitals. When she refused, Edwards hit her in the face and threatened to hit her again if she did not take her dress off, but the girl managed to escape from the car. As a result of the July 25 incident, Edwards pleaded guilty to second-degree criminal sexual conduct.

The second offense occurred only two months later. On September 22, 2001, Edwards approached a 16-year-old girl and asked her for a ride, and the girl agreed.

Edwards asked the girl to take a shortcut, off the main road, and then put a sharp object to her throat and made her stop the vehicle. At knifepoint, he forced the girl to perform oral sex on him, and he removed her clothing and performed oral sex on her. Edwards then raped the girl both vaginally and anally. The girl was eventually able to escape from the car and run for help.

Edwards did not deny this description of the September 22 incident. He admitted intending to rape the girl, and said that "it wasn't about violence, it was about wanting what I wanted when I wanted it." Edwards pleaded guilty to one count of kidnapping and one count of first-degree criminal sexual conduct for the second incident.

Edwards also has two uncharged incidents of a sexual nature that appeared in police records. The first occurred on December 8, 2000, when Edwards tried to force himself on a female acquaintance. The woman claimed that Edwards told her to give him a "blow job," and when she refused, they struggled and Edwards tried to gag her with his t-shirt and punched her in the face.

The second uncharged incident occurred on July 15, 2001. Edwards stopped his car and asked a woman for directions. She decided to get in the car and show him where to go, and while they were driving, Edwards masturbated and touched her breasts several times. She asked him to stop the car, but he drove her around for about six hours before he allowed her to get out of the car. Edwards was under the influence of drugs or alcohol during all of these sexual offenses.

In July 2008, while in prison for the 2001 convictions, Edwards entered the Sex Offender Treatment Program at the Minnesota Correctional Facility—Lino Lakes. One

year later, in July 2009, Edwards successfully completed Track 2 of that program, which addresses chemical dependency issues. Although he admitted to making and selling "hooch" and using other illegal substances while in prison, Edwards claimed to have been sober since about 2006. After chemical dependency treatment, Edwards began Track 3, the Intensive Sex Offender Treatment portion of the program, and was close to finishing that track when civil commitment proceedings began.

Dakota County filed a petition to civilly commit Edwards as a sexually dangerous person in January 2011. In considering the commitment petition, the district court heard the testimony of four experts. Dr. Mary Kenning and Dr. Rosemary Linderman-Worlien were retained by Dakota County. Dr. Catherine Carlson and Dr. Thomas Alberg were appointed by the court. Each doctor submitted a written report to the court before the initial commitment hearing. All of the doctors testified consistent with their written reports, and the court received several exhibits relating to Edwards's history.

Each expert agreed that Edwards engaged in a course of harmful sexual conduct, and that he manifested a sexual, personality, or other mental disorder or dysfunction, as required by the commitment statute. The experts differed, however, on whether his disorders or dysfunctions made it likely that he would engage in harmful sexual conduct in the future. All of the experts considered Edwards's scores on actuarial measures compared with base rate statistics, his level of psychopathy and sexual deviance, and other individual factors.

Dr. Kenning and Dr. Alberg concluded that Edwards was not highly likely to reoffend. While recognizing his high level of psychopathy, Dr. Kenning and Dr. Alberg

emphasized Edwards's sobriety and treatment progress, and concluded that any risk of recidivism could be effectively managed through intensive supervised release and designation as a Level III sex offender. Thus, Dr. Kenning and Dr. Alberg concluded that Edwards was not a sexually dangerous person and recommended against commitment.

Dr. Linderman-Worlien and Dr. Carlson, on the other hand, concluded that Edwards was highly likely to reoffend. Dr. Linderman-Worlien doubted the sincerity of Edwards's performance in treatment and was also concerned, as was Dr. Carlson, with Edwards's high level of psychopathy and his failure to recognize responsibility for his sexual offenses. They believed that community supervision would not be adequate for Edwards, given his history of substance abuse and non-compliance with supervision. Thus, Dr. Linderman-Worlien and Dr. Carlson recommended committing Edwards as a sexually dangerous person.

The district court noted that it "respects the opinions of all of the experts," but found the opinions of Dr. Linderman-Worlien and Dr. Carlson more persuasive on the question of whether Edwards was highly likely to reoffend. The district court noted Edwards's progress in treatment, but ultimately found that it was not sufficient to mitigate his risk to reoffend. Based on all of this evidence and testimony, the district court concluded that clear and convincing evidence existed to commit Edwards indeterminately as a sexually dangerous person. Edwards now appeals this order.

D E C I S I O N

The Minnesota Commitment and Treatment Act requires the state to prove the need for commitment by clear and convincing evidence. Minn. Stat. § 253B.18, subd. 1(a) (2010). We review the district court's factual findings under a clearly-erroneous standard. *In re Commitment of Stone*, 711 N.W.2d 831, 836 (Minn. App. 2006), *review denied* (Minn. June 20, 2006). We will not reweigh the evidence when reviewing the findings of fact. *In re Salkin*, 430 N.W.2d 13, 16 (Minn. App. 1988), *review denied* (Minn. Nov. 23, 1988). We give deference to the district court's credibility determinations, and we review the record "in a light most favorable to the district court's findings." *In re Commitment of Ramey*, 648 N.W.2d 260, 269 (Minn. App. 2002), *review denied* (Minn. Sept. 17, 2002).

Whether the district court's factual findings support commitment by clear and convincing evidence, is a question of law that we review de novo. *In re Commitment of Martin*, 661 N.W.2d 632, 638 (Minn. App. 2003), *review denied* (Minn. Aug. 5, 2003); *see also In re Commitment of Jackson*, 658 N.W.2d 219, 224 (Minn. App. 2003) ("On appeal from an order committing a person as a sexually dangerous person, 'this court is limited to an examination of the [district] court's compliance with the statute, and the commitment must be justified by findings based on evidence at the hearing.'" (quoting *In re Knops*, 536 N.W.2d 616, 620 (Minn. 1995))), *review denied* (Minn. May 20, 2003).

To commit someone as a sexually dangerous person, the state must show by clear and convincing evidence that the person: "(1) has engaged in a course of harmful sexual conduct . . . ; (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 . . . ." Minn. Stat. § 253B.02, subd. 18c(a) (2010). Edwards does not challenge the sufficiency of the evidence on the first and second factors, but contends that clear and convincing evidence does not support the district court's finding on the third factor.

The Minnesota Supreme Court has interpreted this third factor to mean that, along with engaging in a course of harmful sexual conduct, the state must show that the person's "present disorder or dysfunction does not allow them to adequately control their sexual impulses, making it highly likely that they will engage in harmful sexual acts in the future." *In re Linehan*, 594 N.W.2d 867, 876 (Minn. 1999), *cert. denied*, 528 U.S. 1049, 120 S. Ct. 587 (1999).

The supreme court has identified six factors to consider in determining whether the "highly likely" standard is met. *In re Linehan*, 518 N.W.2d 609, 614 (Minn. 1994). These factors include a person's demographics, history of violence, base rate statistics for recidivism among people of the person's background, environmental stressors, similarity of present or future contexts to those in which the person used violence in the past, and sex-therapy treatment record. *Id.* No single factor is determinative, and whether someone is highly likely to reoffend is a complex inquiry. *See In re Linehan*, 557 N.W.2d 171, 189 (Minn. 1996) (stating that "dangerousness prediction methodology is complex and contested"); *see also In re Commitment of Navratil*, 799 N.W.2d 643, 649 (Minn. App. 2011), *review denied* (Minn. Aug. 24, 2011).

Each expert analyzed the *Linehan* factors in his or her report. Although it did not make detailed findings on each factor, the district court concluded that Edwards's history

of violence, base rate statistics, environmental stressors, and similarity of present or future contexts to contexts in which he used violence in the past suggested that Edwards was highly likely to engage in harmful sexual conduct in the future. Edwards does not challenge the district court's particular findings on each factor, but rather contends that the district court did not give sufficient weight to his treatment progress, since he had been progressing in sex offender treatment at Lino Lakes at the time of the commitment.

Edwards contends that the district court wrongfully credited the testimony and reports of Dr. Linderman-Worlien and Dr. Carlson, who recommended commitment, over those of Dr. Kenning and Dr. Alberg, who recommended against commitment. Because we must defer to the district court's credibility determinations and its opportunity to weigh the evidence, we find this contention to be without merit. *See Ramey*, 648 N.W.2d at 269; *Navratil*, 799 N.W.2d at 648 ("We defer to a district court's evaluation of expert testimony."). As the district court noted, each professional was qualified as an expert by the court and undertook a thorough analysis of Edwards's case. Given the complexity of the actuarial and other diagnostic measures involved in a case such as this, and valid differences between the experts in how they analyze the issues, we cannot conclude that the district court clearly erred in any of its findings.

The district court's conclusion that Edwards is highly likely to reoffend is supported by clear and convincing evidence. While Edwards was progressing in treatment, the experts and the district court were understandably troubled by Edwards's high level of clinical psychopathy, impulsivity, and poor record while on supervision in the past. Further, each expert found that Edwards's scores on actuarial measures showed

that he had a moderately high or high likelihood of sexual recidivism compared to base-rate statistics. While Dr. Kenning and Dr. Alberg thought that Edwards's sobriety and treatment progress mitigated these high scores, we must defer to the district court's decision to credit opinions of Dr. Linderman-Worlien and Dr. Carlson that Edwards's recent progress did not mitigate these scores, especially given his high level of clinical psychopathy.

In addition, both Dr. Kenning and Dr. Alberg noted that if Edwards were to start using substances again, his risk to reoffend would markedly rise. Edwards's sobriety has never been tested outside of the controlled environment of prison, and even in prison he had created and imbibed "hooch." The district court was validly concerned about whether Edwards could maintain sobriety if released, especially since his sexual offenses occurred while he was under the influence of drugs.

In sum, giving due deference to the district court's credibility determinations, we conclude that its findings are not clearly erroneous and provide clear and convincing evidence that Edwards meets the statutory criteria for commitment as a sexually dangerous person. We therefore affirm his indeterminate civil commitment.

Affirmed.