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Minn. Stat. § 480A.08, subd. 3 (2012).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A12-1804**

In the Matter of the Civil Commitment of: Ida Deberry,

**Filed March 4, 2013
Affirmed
Klaphake, Judge***

Hennepin County District Court
File No. 27-JV-12-3380

Joel A. Fisher, McGuire•Fisher Attorneys, Richfield, Minnesota (for appellant Ida Deberry)

Michael O. Freeman, Hennepin County Attorney, John Kirwin, Assistant County Attorney, Minneapolis, Minnesota (for respondent Hennepin County)

Considered and decided by Schellhas, Presiding Judge; Bjorkman, Judge; and Klaphake, Judge.

UNPUBLISHED OPINION

KLAPHAKE, Judge

Appellant Ida Deberry challenges her commitment as a mentally ill person. She argues that the state did not prove by clear and convincing evidence that she is substantially likely to physically harm herself or others under Minn. Stat. § 253B.02, subd. 13(a) (2012). We affirm.

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

DECISION

On appeal, we examine only whether the district court complied with the requirements of the Minnesota Commitment and Treatment Act. *In re Knops*, 536 N.W.2d 616, 620 (Minn. 1995). To civilly commit a person as mentally ill, the district court must find by clear and convincing evidence that the person is “mentally ill,” as defined by the act. Minn. Stat. § 253B.09, subd. 1(a) (2012). We review de novo whether the evidence is sufficient to meet the standard of commitment. *Knops*, 536 N.W.2d at 620. And we will not set aside findings of fact unless they are clearly erroneous. *In re McGaughey*, 536 N.W.2d 621, 623 (Minn. 1995).

Section 253B.02, subd. 13(a) defines a person who is mentally ill as follows:

A “person who is mentally ill” means any person who has an organic disorder of the brain or a substantial psychiatric disorder of thought, mood, perception, orientation, or memory which grossly impairs judgment, behavior, capacity to recognize reality or to reason or understand, which is manifested by instances of grossly disturbed behavior or faulty perceptions and poses a substantial likelihood of physical harm to self or others as demonstrated by:

(1) a failure to obtain necessary food, clothing, shelter, or medical care as a result of the impairment;

(2) an inability for reasons other than indigence to obtain necessary food, clothing, shelter, or medical care as a result of the impairment and it is more probable than not that the person will suffer substantial harm, significant psychiatric deterioration or debilitation, or serious illness, unless appropriate treatment and services are provided;

(3) a recent attempt or threat to physically harm self or others; or

(4) recent and volitional conduct involving significant damage to substantial property.

The statute has two parts: the first describes the requirement of an organic brain disorder or substantial psychiatric disorder, and the second describes the requirement of physical harm to self or others. With regard to the second part, substantial likelihood of physical harm must be demonstrated by an overt act. *See McGaughey*, 536 N.W.2d at 623 (stating that this may be shown by an overt failure to obtain necessary food, clothing, shelter, or medical care, or by a recent attempt or threat to harm self or others). Thus, “speculation as to whether the person may fail, in the future, to obtain necessary food, clothing, shelter, or medical care or may attempt or threaten to harm self or others is not sufficient to justify civil commitment as a mentally ill person.” *Id.* “This is not to say, however, that the person must either come to harm or harm others before commitment as a mentally ill person is justified.” *Id.*; *see In re Harvego*, 389 N.W.2d 266, 268 (Minn. App. 1986) (“The trial court was not compelled to delay action until irreparable physical harm was suffered, so long as the danger of appellant’s condition had already become evident.”).

Appellant argues that the record does not demonstrate by clear and convincing evidence that she is substantially likely to physically harm herself or others, and therefore, she is not mentally ill under section 253B.02, subd. 13(a). We disagree.

Here, the evidence established that appellant (1) suffers from schizophrenia, paranoid-type; (2) hears voices and is delusional; (3) is unaware of her mental illness; (4) has refused prescribed medication and distrusts medical personnel; (5) is likely to engage in threatening or aggressive behavior; (6) carries a kitchen knife in her purse for self-protection; (7) applied for a gun permit for self-protection; and (8) intends to use

these weapons to protect herself against people she erroneously perceives as threats. Given these facts, we cannot say that the district court erred by concluding that appellant is substantially likely to physically harm herself or others. Appellant's mental disorder, combined with her overtly threatening behavior, make her substantially likely to harm other people. The district court was not required to delay commitment until appellant or someone else was actually harmed, "so long as the danger of [her] condition had already become evident." *In re Terra*, 412 N.W.2d 325, 328 (Minn. App. 1987) (quotation omitted). Thus, the record contains clear and convincing evidence supporting the district court's determination that appellant is mentally ill.

Affirmed.