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STATE OF MINNESOTA
IN COURT OF APPEALS
A12-2249

In the Matter of the Civil Commitment of: Ivan Jon Cook

Filed July 15, 2013
Affirmed
Klaphake, Judge[*]

Olmsted County District Court
File No. 55-PR-11-7817

Jacob C. Allen, Allen & Associates, Rochester, Minnesota (for appellant Cook)

Mark A. Ostrem, Olmsted County Attorney, Geoffrey A. Hjerleid, Senior Assistant County Attorney, Rochester, Minnesota (for respondent Olmsted County)

Considered and decided by Chutich, Presiding Judge; Smith, Judge; and Klaphake, Judge.

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

KLAPHAKE, Judge

Appellant Ivan Jon Cook, who was civilly committed as a sexually dangerous person (SDP), claims that there is insufficient evidence to support the finding that he is "highly likely" to engage in future acts of harmful sexual conduct and that there is a less restrictive alternative treatment program to his commitment. Because the record includes clear and convincing evidence that appellant meets the standards for commitment as an

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

SDP and because appellant failed to establish that there is a less restrictive program available that meets his needs and is consistent with the requirements of public safety, we affirm.

D E C I S I O N

Standard of Review

A petition for civil commitment as an SDP must be proved by clear and convincing evidence. *In re Civil Commitment of Stone*, 711 N.W.2d 831, 836 (Minn. App. 2006), *review denied* (Minn. June 20, 2006). 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 as a question of law subject to de novo review. *Id.* We view the evidence in the light most favorable to the district court's conclusion. *Id.* at 840.

Sufficiency of the Evidence

A "sexually dangerous person" is defined as a person 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) as a result, is likely to engage in acts of harmful sexual conduct." Minn. Stat. § 253B.02, subd. 18c(a) (2012). To meet the third element, the petitioner must show that the person must be "highly likely" to engage in future acts of harmful sexual conduct. *Stone*, 711 N.W.2d at 840 (quoting *In re Linehan*, 594 N.W.2d 867, 876 (Minn. 1999) (*Linehan IV*)). Appellant asserts that the evidence is insufficient to show that he is "highly likely" to engage in future acts of harmful sexual conduct.

To determine whether a person is "highly likely" to reoffend, the Minnesota Supreme Court has stated that a court must consider six factors:

> (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.

Id. (citing *In re Linehan*, 518 N.W.2d 609, 614 (Minn. 1994) (*Linehan I*)).

(1) Although one expert, Dr. Michael D. Thompson, believed that appellant's current age of 58 was a mitigating factor, Dr. Thompson was concerned about appellant's current thinking in relation to his daughter, whom appellant repeatedly victimized between the time of her infancy and age 14. Dr. Thompson described appellant's current thoughts, sexual and otherwise, of his daughter as "unacceptably distorted" and "obsessional." The second expert, Dr. Paul M. Reitman, determined that appellant's age was not a mitigating factor because appellant had no access to his preferred victim pool during his 17 years of incarceration and because he did not complete sex offender treatment after reoffending in 1993.

(2) Although appellant did not use force in committing his sexual offenses, Dr. Reitman noted that he was violent in other respects, having, at age 13, brutally beaten his brother and having physically abused his wife. Also, appellant was convicted of multiple offenses of first- and second-degree criminal sexual conduct. Those offenses are presumptively violent, and Dr. Thompson assigned weight to the fact that, when

appellant's daughter resisted a sexual act, appellant became angry and acted to control the sexual contact.

(3) Although Dr. Thompson determined that appellant's scores on two static factor risk assessments did not indicate a likelihood to reoffend, Dr. Reitman offered a contrary opinion. Dr. Reitman determined that appellant's actuarial scores on six risk assessments indicated a very high risk of reoffending based on static factor analysis and an even higher risk based on dynamic factor analysis.

(4) Dr. Reitman opined that appellant would be subjected to multiple environmental stressors because he would not be subject to intensive supervised release (ISR), lacked an adaptive community support network, had been abused by family members, and had victimized family members. Dr. Thompson noted that appellant would likely have difficulty finding a job because his criminal record makes him a poor candidate for employment, leading to potentially severe economic hardships.

Potential difficulty coping with environmental stressors was also indicated by appellant's history of probation violations, which include using marijuana, absconding from supervision, possessing a firearm, and committing a criminal sexual conduct offense while on probation for a previous criminal sexual conduct offense. Patricia Rime, who supervised appellant on probation during the 1990s, testified that appellant was particularly challenging to supervise and that there was no evidence indicating that supervision would be easier than it was previously.

(5) Appellant argues that his victim pool is unavailable because his daughter is now an adult and he can be restricted from contact with children. But Dr. Reitman

testified that, if released, appellant would be unsupervised in the same environment in which he committed his offenses and that he has shown in the past that supervision and/or probation did not deter him from committing acts in violation of probation. Most significantly, both experts diagnosed appellant as a pedophile, and appellant acknowledged to both experts that at age 58 he remains sexually attracted to children.

(6) Although Dr. Reitman founded appellant's current desire for treatment sincere, appellant has a history of reoffending after completing outpatient sex offender treatment and did not complete sex offender treatment upon reincarceration. Also, appellant claimed to desire treatment when he applied for acceptance into a corrections treatment program, but he voluntarily withdrew prior to completion, stating, "I don't play well with others . . . I can do this I just don't want to."

The district court's detailed findings show that it thoroughly considered the evidence in the record, and the district court's conclusion that appellant meets the statutory criteria for commitment as an SDP is supported by clear and convincing evidence.

Least Restrictive Treatment Alternative

District courts "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(d) (2010). "[T]he burden of proving that a less-restrictive program is available is on the patient." *In re Robb*, 622 N.W.2d 564, 674 (Minn. App. 2001), *review denied* (Minn. Apr. 17, 2001).

This court will not reverse a district court's findings on the propriety of a treatment program unless its findings are clearly erroneous. *In re Thulin*, 660 N.W.2d 140, 144 (Minn. App. 2003).

Appellant argues that ISR is available for him based on the testimony of Molly Busby, a community corrections program manager/supervisor. But Busby did not state that ISR would provide an adequate level of supervision for appellant. And although her opinion was based in "substantial part" on appellant's past history, that history remained relevant because appellant had been incarcerated since 1993. Also, both Dr. Reitman and Dr. Thompson agreed that appellant needs treatment in a secure facility, and Dr. Reitman testified that DOC would not accept appellant, leaving MSOP as the only treatment alternative.

The district court did not err in finding that appellant failed to satisfy his burden of proving that a less restrictive treatment program was available.

Affirmed.