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**STATE OF MINNESOTA
IN COURT OF APPEALS
A13-0517**

In the Matter of the Civil Commitment of:
Richard Steven Donaldson, Jr.

**Filed September 9, 2013
Affirmed
Halbrooks, Judge**

Anoka County District Court
File No. 02-PR-11-629

James S. Dahlquist, Minneapolis, Minnesota (for appellant Richard Steven Donaldson, Jr.)

Anthony C. Palumbo, Anoka County Attorney, Janice M. Allen, Assistant County Attorney, Anoka, Minnesota (for respondent Anoka County)

Considered and decided by Larkin, Presiding Judge; Halbrooks, Judge; and Worke, Judge.

UNPUBLISHED OPINION

HALBROOKS, Judge

Appellant challenges his indeterminate civil commitment as a sexually dangerous person (SDP), arguing that the county failed to prove by clear and convincing evidence that he meets the statutory definition of an SDP. Alternatively, he argues that he adequately proved the availability of a less-restrictive alternative to civil commitment as an SDP. We affirm.

FACTS

In 2006, appellant Richard Steven Donaldson, Jr., was convicted of third-degree criminal sexual conduct and solicitation of a minor, for which he received a 46-month prison sentence. Donaldson left prison on supervised release in 2008 but returned to prison after violating the terms of his release. Donaldson was later allowed to enter Alpha Human Services, a residential sex-offender treatment program.

As part of his treatment, Donaldson documented his sexual history. He reported having sexual contact with a total of 21 victims. Donaldson did not successfully complete treatment at Alpha Human Services. He was suspended twice and eventually terminated from programming due to rule violations and negative behavior. As a result, Donaldson returned to prison.

On November 15, 2011, Anoka County petitioned to civilly commit Donaldson as an SDP and a sexual psychopathic personality (SPP). The district court appointed James Gilbertson, Ph.D., to examine Donaldson. In his initial report, Dr. Gilbertson opined that Donaldson is an SDP because he has a prior course of harmful sexual conduct, exhibits a mental disorder, and is highly likely to engage in future acts of harmful sexual conduct. Dr. Gilbertson determined that Donaldson's "self-disclosures and . . . two convictions would constitute a prior course of sexual conduct of the kind that would have the probability of producing harm." Dr. Gilbertson diagnosed Donaldson with a number of mental disorders including antisocial personality disorder. He further opined that Donaldson is highly likely to reoffend as evidenced by actuarial-risk results and dynamic-risk factors.

The district court granted Donaldson's request to appoint Thomas Alberg, Ph.D., as a second examiner. Dr. Alberg agreed with Dr. Gilbertson that Donaldson suffers from mental disorders, including antisocial personality disorder. But Dr. Alberg disagreed that Donaldson has a prior course of harmful sexual conduct or is highly likely to engage in future acts of harmful sexual conduct because Dr. Alberg questions whether the self-disclosed offenses actually occurred. Dr. Alberg opined that if Donaldson had committed only one sexual offense then there "would not necessarily be a course of harmful sexual behavior." But Dr. Alberg advised Donaldson's attorney that he believed that Donaldson would meet the criteria for commitment as mentally ill and dangerous (MI&D).

On the date that his civil-commitment trial on the SDP/SPP petition was set to commence, Donaldson, Donaldson's attorney, the county, and Dr. Gilbertson proposed to the district court that (1) the county amend the petition to add allegations that Donaldson is MI&D and chemically dependent (CD); (2) Donaldson admit that he is MI&D and CD; (3) Donaldson agree to be initially committed at the Minnesota Security Hospital (MSH) subject to a 60-day evaluation; and (4) trial on the SPP/SDP petition be continued to the date of Donaldson's review hearing on MI&D commitment. The district court accepted the parties' agreement, and Donaldson was transferred to MSH.

Dr. Gilbertson and Dr. Alberg submitted supplemental reports to the district court after meeting with Donaldson at MSH. Dr. Gilbertson offered his opinion that Donaldson meets the criteria for commitment as an SDP and as MI&D. Dr. Alberg indicated his belief that Donaldson meets the criteria for MI&D but not an SDP.

A three-day trial on the amended petition was held in October 2012. The district court dismissed the SPP and CD allegations pursuant to the parties' agreement. Accordingly, the issue presented at trial was whether Donaldson meets the statutory definition of MI&D and/or an SDP.

The district court admitted 15 exhibits offered by the county without objection from Donaldson. Those exhibits included reports from Dr. Gilbertson, Dr. Alberg, and Donaldson's records from Alpha Human Services. Donaldson's attorney noted his concern that the Alpha Human Services records were incomplete, which the county acknowledged. Several witnesses testified at trial, including Donaldson and the experts. The district court questioned Donaldson directly regarding his self-disclosed acts of sexual conduct. Donaldson testified that, in treatment, he stated an inaccurate number of victims with whom he had sexual contact. But he admitted to engaging in some acts of harmful or wrongful sexual conduct.

The district court concluded that the county proved by clear and convincing evidence that Donaldson is an SDP and MI&D and that Donaldson failed to establish by clear and convincing evidence the availability of a less-restrictive treatment facility or program that is consistent with his treatment needs and public safety. The district court ordered Donaldson's dual civil commitment as an SDP and MI&D for an indeterminate period of time with placement at the Minnesota Sex Offender Program (MSOP). Donaldson appeals his commitment as an SDP. He does not challenge his commitment as MI&D.

DECISION

I.

Donaldson challenges the sufficiency of the evidence in support of his civil commitment as an SDP. An SDP is 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.” 2013 Minn. Laws ch. 49, § 22, at 229 (recodifying Minn. Stat. § 253B.02, subd. 18c (2012) as 253D.02, subd. 12 (Supp. 2013)). A person may be civilly committed as an SDP if the petitioner proves the statutory criteria by clear and convincing evidence. 2013 Minn. Law Ch. 49, § 22, at 229 (recodifying Minn. Stat. § 253B.185, subd. 1(a) (2012) as 253D.07, subd. 1 (Supp. 2013)). This court reviews a district court’s factual findings for clear error. *In re Civil Commitment of Stone*, 711 N.W.2d 831, 836 (Minn. App. 2006), *review denied* (Minn. June 20, 2006). But whether the evidence is sufficient to meet the statutory criteria for commitment is a question of law reviewed de novo. *In re Civil Commitment of Martin*, 661 N.W.2d 632, 638 (Minn. App. 2003), *review denied* (Minn. Aug. 5, 2003).

Donaldson argues that the evidence is insufficient to support his commitment solely on grounds that Dr. Gilbertson and Dr. Alberg offered differing opinions on two SDP criteria—whether Donaldson engaged in a course of harmful sexual conduct and whether he is highly likely to reoffend. But Donaldson fails to cite any authority for the proposition that conflicting expert testimony precludes a finding by clear and convincing evidence in support of civil commitment, and none in fact exists. It is a well-established

principle that we defer to a district court's evaluation of expert testimony. *In re Civil Commitment of Navratil*, 799 N.W.2d 643, 648 (Minn. App. 2011), *review denied* (Minn. Aug. 24, 2011); *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."); *In re Pirkel*, 531 N.W.2d 902, 910 (Minn. App. 1995) (stating it is the district court's job to weigh expert opinion regarding commitment), *review denied* (Minn. Aug. 30, 1995). This principle equally applies to civil-commitment cases involving conflicting expert testimony. *See In re Civil Commitment of Crosby*, 824 N.W.2d 351, 361 (Minn. App. 2013), *review denied* (Minn. Mar. 27, 2013).

The district court concluded that "[b]ecause the conduct that resulted in [Donaldson's] conviction involved repeated sexual conduct over a period of time, . . . this conviction not only involved harmful sexual conduct, it also involved a *course of* harmful sexual conduct against the 15-year-old victim." Donaldson's trial testimony and disclosures during sex-offender treatment and Dr. Gilbertson's opinion provide clear and convincing support for this finding. While in sex-offender treatment, Donaldson reported that he manipulated his 15-year old victim "into giving [him] sexual pleasure over 20 times in a 2 week time frame." He also reported 21 uncharged incidents of harmful sexual conduct. Dr. Gilbertson relied on Donaldson's self-disclosures and the circumstances surrounding his conviction to deduce that Donaldson had engaged in a course of harmful sexual conduct. That the district court elected not to credit Dr. Alberg's contrary opinion does nothing to undermine the sufficiency of the record

evidence upon which the district court relied in making its determination under the SDP statute.

Likewise, in concluding that Donaldson is highly likely to engage in future acts of harmful sexual conduct, the district court discredited Dr. Alberg's opinion. The district court explained,

Dr. Alberg's attempt to distinguish between [Donaldson's] risk of future dangerous behavior in general and his risk of future harmful sexual conduct in particular is not supported even by Dr. Alberg's findings with respect to risk assessment instruments and application of dynamic risk factors to [Donaldson]. In fact, [Donaldson's] history of inappropriate sexual conduct is pervasive and continuous throughout his life. The history of non-sexual violence causing or capable of causing serious physical harm to others is scant and minimal causing both Drs. Alberg and Gilbertson to decline to identify a history of violence as a significant risk factor for [Donaldson].

Because the district court is charged with the task of weighing expert opinion regarding commitment, it did not err by discounting Dr. Alberg's opinion and crediting differing record evidence, including Dr. Gilbertson's opinion, Donaldson's history of inappropriate sexual conduct, and the risk-factor results from Donaldson's three evaluations. Because clear and convincing evidence supports the district court's findings regarding Donaldson's high risk of engaging in future harmful sexual conduct, the district court's determination that Donaldson is an SDP is not erroneous.

II.

In the alternative, Donaldson argues that the district court erred by concluding that he did not establish the availability of a less-restrictive alternative to commitment as an

SDP. A patient has the opportunity to prove that a less-restrictive treatment program is available, but they do not have the right to be assigned to it. *In re Kindschy*, 634 N.W.2d 723, 731 (Minn. App. 2001), *review denied* (Minn. Dec. 19, 2001). A patient may establish “by clear and convincing evidence that a less restrictive treatment program is available that is consistent with the [person’s] treatment needs and the requirements of public safety.” 2013 Minn. Laws ch. 49, § 22, at 226 (recodifying Minn. Stat. § 253B.185, subd. 1(d) (2012) as 253D.07, subd. 4 (Supp. 2013)). We will not reverse a district court’s findings on the availability of a less-restrictive treatment program unless they are clearly erroneous. *In re Thulin*, 660 N.W.2d 140, 144 (Minn. App. 2003).

Donaldson argues that he proved the availability of a less-restrictive treatment program by being civilly committed as MI&D. In support of his position, Donaldson asserts that he agreed to be committed as MI&D “with the hope that the SDP Petition would be . . . dropped” and that commitment as MI&D “has long been used when treating [MI&D persons] who have a sex offending record.” But these assertions neither address the statutory criterion that alternative placement be consistent with Donaldson’s treatment needs and public safety nor reflect that civil commitment as MI&D is a less-restrictive alternative to commitment as an SDP. Donaldson’s argument that he met his burden to establish the availability of a less-restrictive treatment program or facility is without merit.

III.

After briefing was complete, Donaldson’s attorney submitted a letter to this court on Donaldson’s behalf that addressed errors in his appellate brief. While submission of a

letter is not authorized by the rules of appellate procedure, we reviewed the letter and determined that the cited errors affected neither the district court's decision nor our review of that commitment decision. In particular, Donaldson expresses concern about reference in his brief to a prior juvenile adjudication of delinquency, arguing that the alleged offense never occurred. But the district court did not reference a juvenile adjudication anywhere in its order. The other cited errors are immaterial to our determination that Donaldson meets the statutory criteria for civil commitment as an SDP.

Affirmed.