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**STATE OF MINNESOTA
IN COURT OF APPEALS
A18-0145**

In the Matter of the Civil Commitment of: Adam Howard Torke.

**Filed July 9, 2018
Affirmed
Schellhas, Judge**

Kandiyohi County District Court
File No. 34-PR-17-57

John E. Mack, Mack & Daby P.A., New London, Minnesota (for appellant Torke)

Shane D. Baker, Kandiyohi County Attorney, Willmar, Minnesota (for respondent county)

Considered and decided by Schellhas, Presiding Judge; Bratvold, Judge; and
Klaphake, Judge.*

UNPUBLISHED OPINION

SCHELLHAS, Judge

Appellant challenges his civil commitment and order for involuntary administration of neuroleptics, arguing that the district court failed to make adequate findings. We affirm.

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

FACTS

Appellant Adam Torke has an extensive history of substance abuse and dependence, suicide attempts, psychiatric treatment, and hospitalization. Torke has been the subject of civil-commitment orders almost every year from 2005 through 2017.

In March 2017, Prairie St. John's Hospital (St. John's) admitted Torke for depression, anxiety, pain, and intermittent suicidal thoughts. Kathryn Ney, M.D., diagnosed Torke with major depressive disorder, severe with psychotic features vs. schizoaffective disorder, acute stress disorder, alcohol-use disorder, opioid-use disorder, and borderline personality disorder. St. John's attempted to place Torke in multiple outpatient care facilities, but it ceased its placement efforts after Torke refused discharge and due to Torke's history of significant behavioral problems.

In June 2017, St. John's petitioned for authorization to administer neuroleptics to Torke and requested a *Jarvis* hearing, and respondent Kandiyohi County petitioned for Torke's judicial commitment. The district court ordered that Torke be confined at St. John's, examined by Linda Marshall, Ph.D., and appointed an attorney. Dr. Marshall's evaluation concluded that sufficient criteria existed to commit Torke as mentally ill and chemically dependent (MI/CD). In her report, Dr. Marshall supported Torke's confinement and the administration of neuroleptics, stating that Torke "lacks insight into his mental health," "engages in medication seeking," "presents as a danger to himself due to intermittent suicidal ideation and a danger to others by his threats and aggression," and "lacks the capacity to make decisions" regarding his treatment.

At the *Jarvis* hearing, Dr. Marshall and Dr. Ney testified and agreed that Torke was MI/CD, lacked capacity to make decisions regarding neuroleptics, and required continued confinement and use of neuroleptics. Torke testified that he did not want confinement or neuroleptics, and that St. John's staff had poisoned him. The district court found that Torke suffered from mental illness, the benefits of neuroleptics outweighed the risks, and ordered a six-month commitment extension.

In August 2017, the county transferred Torke to Anoka Metro Regional Treatment Center (AMRTC). On November 16, the Minnesota Department of Human Services (DHS) recommended a 12-month commitment extension. A six-month report stated that Torke lacked capacity to provide informed consent for treatment and understand his illnesses.

At a November 30 hearing, Lyubod Burleson, M.D., Torke's AMRTC psychiatrist, testified in support of continued commitment and neuroleptic treatment. Dr. Burleson cited Torke's delusional thinking, violent threats, and hallucinations. Torke repeatedly interrupted the district court and Dr. Burleson's testimony, claiming that it was "a bunch of lies." Torke testified that he disagreed with both his diagnosis of chemical dependency and the assertion that he had voices in his head. He also testified that he did not want further commitment.

The district court ordered an additional commitment period not to exceed six months, expiring on May 30, 2018. In a November 30 order, the court found that Torke was MI/CD and met the statutory criteria for civil commitment, citing his continued hallucinations, behavioral outbursts, and opioid addiction. The court found that Torke was a danger to himself because he would not be able to provide for his own needs due to his

MI/CD, citing to his isolative and bed-bound behavior at AMRTC. The court explicitly stated that it had considered alternatives, but that none were available. The court also ordered continued use of neuroleptics. Torke filed his notice of appeal on January 25, 2018.

We take judicial notice of Torke’s case file records, which reveal events that occurred after the district court’s November 30, 2017 order. *See* Minn. R. Evid. 201(b) (allowing for judicial notice of facts “capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned”). The events described do not serve as the basis for our decision today, but we include them to provide context.

On February 9, 2018, the district court provisionally discharged Torke, and AMRTC released him. But, on February 28, the county sought an order to apprehend and detain Torke for violating his provisional discharge. The county reported that Torke was exhibiting “suicidal ideation,” increased paranoia, and failing to manage his symptoms. Torke had held a butcher knife and a paring knife to his neck, while making threats to harm himself. On March 6, the court revoked Torke’s provisional discharge and ordered him committed for the remainder of his commitment to expire on May 30, 2018.

This appeal from the district court’s November 30, 2017 order follows.

D E C I S I O N

I.

Torke contends that the district court failed to abide by the requirements of the Minnesota Commitment and Treatment Act, Minn. Stat. §§ 253B.01-.24 (2016), and failed to make the requisite findings to continue his civil commitment. On appeal, we are “limited to an examination of the [district] court’s compliance with the statute, and the commitment

must be justified by findings based upon evidence at the hearing.” *In re Knops*, 536 N.W.2d 616, 620 (Minn. 1995). We review the record in the light most favorable to the district court’s decision. *Id.* We will not set aside findings of fact, whether based on oral or documentary evidence, unless clearly erroneous, giving due regard to the district court’s opportunity to judge the credibility of the witnesses. *Id.* When findings rest almost entirely on expert testimony, the district court’s evaluation of credibility is particularly significant. *Id.* We review the district court’s legal conclusions de novo. *In re Thulin*, 660 N.W.2d 140, 144 (Minn. App. 2003).

“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 Minnesota Civil Commitment Act.” *In re McGaughey*, 536 N.W.2d 621, 623 (Minn. 1995) (citing Minn. Stat. §§ 253B.02, subd. 13, 253B.09, subd. 1 (1994)).

A person who is mentally ill is defined as 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 instance of grossly disturbed behavior or faulty perceptions and poses a substantial likelihood of physical harm to self or others as demonstrated by:

. . . .

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

Minn. Stat. § 253B.02, subd. 13(a). For an initial commitment, the commitment statute “requires that the substantial likelihood of physical harm must be demonstrated by . . . a

recent attempt or threat of harm to self or others.” *McGaughey*, 536 N.W.2d at 623 (emphasis omitted).

Following an initial commitment, when the district court must determine whether a person continues to be mentally ill, “the court need not find that there has been a recent attempt or threat to physically harm self or others. Instead, the court must find that the patient is likely to attempt to physically harm self or others . . . unless involuntary commitment is continued.” Minn. Stat. § 253B.12, subd. 4. When continuing an involuntary commitment, a district court’s “findings of fact and conclusions of law shall specifically state the conduct of the proposed patient which is the basis for the final determination, that the statutory criteria of commitment continue to be met, and that less restrictive alternatives have been considered and rejected by the court.” *Id.*, subd. 7. The district court must state its reasons for rejecting less-restrictive treatment alternatives. *Id.*

In this case, the district court’s order reflects that the court reviewed Torke’s conduct, including his “behavioral outbursts,” “delusional behavior,” “hallucinations,” belief that “he is being poisoned,” and that he has been “isolative and largely bed-bound.” The order also reflects the court’s consideration of treatment alternatives, along with its determination that “there is no reasonable and available alternative.” The court noted in the order that it considered the “petition and attachments”; the “Pre-Petition Screening Report”; Dr. Ney’s “Physician’s statement”; Dr. Marshall’s “Psychological Evaluation,” 60-90 day report and six-month report; and Dr. Burleson’s testimony. Torke argues that the district court failed to make the requisite findings and that even if the record supports

the court's order, this court must reverse and remand to make the proper findings. We disagree and conclude that the court made the requisite findings.

Torke argues that the record does not support the district court's finding that he is a danger to self and would not be able to provide for his own needs due to his MI/CD, arguing that "[f]ew facts were elicited which would support this finding." We disagree. Dr. Burleson testified about Torke's "delusional thinking" and "behavioral outburst[s]." She also testified that he is "unable to take care of himself at this time," explaining that his room is often "very messy" and that he does not "get out of bed all day." She also stated that Torke still required supervision as a committed patient because he posed a threat to himself and others and physically threatened hospital staff.

Torke argues that the district court cannot rely on Dr. Burleson's testimony because it violates Minn. R. Evid. 703, and that her only qualifications were as "a licensed psychiatrist and has been Mr. Torke's treating psychiatrist for five weeks." Torke did not object to Dr. Burleson's testimony at trial. We therefore conclude that Torke forfeited this argument. *See State v. Lilienthal*, 889 N.W.2d 780, 785 (Minn. 2017) ("[The supreme court has] held that an objection to the admissibility of evidence must be made at the first opportunity, and that the failure to do so forfeits the right to raise the question on appeal."); *Stand Up Multipositional Advantage MRI, P.A. v. Am. Family Ins. Co.*, 889 N.W.2d 543, 550–51 n.8 (Minn. 2017) (applying forfeiture doctrine to a civil case).

And even if we disregard Dr. Burleson's testimony, clear and convincing evidence considered by the district court supports Torke's continued commitment. Both the 60-90 day report and 6-month report recommended continued commitment. Each contains

detailed information about Torke’s status and treatment, and recommended “a safe and therapeutic environment” that can be accomplished with a “[c]ommitment extension.”

While the better practice for the district court would have been to make more detailed findings, citing portions of the record on which it relied, clear and convincing evidence supports its conclusion. *See Grein v. Grein*, 364 N.W.2d 383, 387 (Minn. 1985) (affirming district court’s order where “on remand the [district] court would undoubtedly make findings that comport with the statutory language”). We therefore conclude that the district court properly continued Torke’s commitment. *See Thulin*, 660 N.W.2d at 144 (affirming continued commitment where the “evidence in the record [was] sufficient to support the statutory requirements for continued commitment”).

II.

Torke contends that the district court did not make the proper findings to support continued neuroleptic treatment. We disagree.

If the district court “finds by clear and convincing evidence that the proposed patient is a person who is ‘MI/CD,’” then it “shall commit the patient to the least restrictive treatment program” that “can meet the patient’s treatment needs.” Minn. Stat. § 253B.09, subd. 1(a). A district court may order involuntary neuroleptic treatment if it finds that the patient lacks capacity to manage his or her medication. Minn. Stat. § 253B.092, subd. 8(e).

“A patient is presumed to have capacity to make decisions regarding administration of neuroleptic medication.” *Id.*, subd. 5(a). In determining a person’s capacity to make decisions regarding the involuntary administration of neuroleptics, the court shall consider:

- (1) Whether the person demonstrates an awareness of the nature of the person's situation, including the reasons for hospitalization, and the possible consequences of refusing treatment;
- (2) whether the person demonstrates an understanding of treatment with neuroleptic medications and the risks, benefits, and alternatives; and
- (3) whether the person communicates verbally or nonverbally a clear choice regarding treatment with neuroleptic medications that is a reasoned one not based on delusion, even though it may not be in the person's best interests.

Id., subd. 5(b). This determination must be supported by "clear and convincing evidence."

Thulin, 660 N.W.2d at 145.

Here, the district court's order authorizes the continued involuntary use of neuroleptics, concluding that it considered alternatives, but that no reasonable alternative existed. The order contains a review of Torke's state and treatment progress.

Torke nevertheless argues that the evidence does not support the district court's finding that no reasonable alternative to involuntary use of neuroleptics exists. He argues that the "only testimony given [that no alternative existed] was a brief opinion from Dr. Burleson." But Torke provides no legal authority to support the argument that the district court erred if it only relied on one medical expert's testimony to decide that no reasonable alternatives were available. We therefore conclude that Torke waived this argument. *See Fannie Mae v. Heather Apartments Ltd. P'ship*, 811 N.W.2d 596, 600 n.2 (Minn. 2012) ("Summary arguments made without citation to legal support are waived.").

Moreover, the record contains clear and convincing evidence in support of the district court's order. Dr. Burleson testified about Torke's incapacity to make an informed decision regarding neuroleptics and the unavailability of reasonable alternatives. She cited

Torke’s “delusional” and “disorganized thinking” and his “behavioral outburst[s]” that could cause him to “refuse [his] medication.” She explained how Torke “believes that he’s being poisoned” and “shot . . . in his head by his perpetrator.” Torke’s own testimony alluded to his delusions. The court’s order cites the 60-90 day report, 6-month report, and the testimony of Torke’s previous psychiatrist. Both reports support the court’s order to continue neuroleptics, concluding that Torke “lacks the capacity” to give informed consent on treatment and its risks and benefits, and was “unable to take care of himself.”

We conclude that clear and convincing evidence supports continued involuntary neuroleptic use. *See In re Civil Commitment of Janckila*, 657 N.W.2d 899, 904 (Minn. App. 2003) (relying only on testimony from three mental-health professionals to support involuntary neuroleptic treatment and stating that “[w]hen the findings of fact rest almost entirely on expert testimony, the district court’s evaluation of credibility is particularly significant”). The district court therefore properly ordered continued involuntary neuroleptic use. *See Thulin*, 660 N.W.2d at 145–46 (affirming order continuing use of involuntary neuroleptics where the “record provides clear and convincing evidence to support” the district court’s determination because “nothing had changed with respect to that issue since the court’s initial [commitment] order”).

Affirmed.