STATE OF MINNESOTA
IN COURT OF APPEALS
A18-0304

In the Matter of the Civil Commitment of:
Soua Kue

Filed July 23, 2018
Affirmed
Smith, Tracy M., Judge

Ramsey County District Court
File No. 62-MH-PR-17-16

Kathleen K. Rauenhorst, Rauenhorst & Associate, P.A., Roseville, Minnesota (for appellant Soua Kue)

John Choi, Ramsey County Attorney, Timothy Carey, Assistant County Attorney, St. Paul, Minnesota (for respondent Ramsey County)

Considered and decided by Smith, Tracy M., Presiding Judge; Bratvold, Judge; and Kalitowski, Judge.*

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

SMITH, TRACY M., Judge

Appellant Soua Kue was civilly committed as mentally ill and dangerous. Kue appeals the district court's final-determination order, arguing that the district court's finding that she is mentally ill and dangerous is not supported by sufficient evidence. We affirm.

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

FACTS

In the late summer and fall of 2016, Kue had difficulty maintaining psychiatric stability and required multiple hospitalizations. During her hospitalizations, Kue had several violent episodes: on October 16, she struck a nurse in the head with a closed fist and attempted to escape; on October 21, she punched a nurse repeatedly; and on December 30, she assaulted a nurse, repeatedly hitting the nurse in the head and scratching her, causing significant injury.

The Ramsey County Attorney's Office filed a petition for judicial commitment on January 6, 2017, alleging that Kue is (1) mentally ill and dangerous and (2) chemically dependent. A preliminary hearing was held. The district court concluded that Kue is a "mentally ill and dangerous person in need of commitment." Kue was initially committed to the custody of Minnesota Security Hospital, and a 60-day evaluation and report was ordered. In September, Dr. Adam Milz submitted his 60-day report. In November, Dr. Peter Meyers evaluated Kue and wrote a final-determination report based on that evaluation. In December, Kue's final-determination hearing was held. Dr. Meyers and Kue testified at the hearing. The court also considered Dr. Milz's report and recommendations.

The district court issued its final determination on December 28. After summarizing Dr. Meyers's testimony and Dr. Milz's report regarding Kue's diagnosed mental illness, treatment needs, and elevated risk of future violent acts based on that illness, the district court concluded that "there is clear and convincing evidence, which was presented at the final determination hearing, that [Kue] continues to be a person who is Mentally Ill and

Dangerous" and that "there is no evidence of a less restrictive alternative that is available to meet both [Kue's] treatment needs and the needs of public safety other than treatment at the Minnesota Security Hospital."

Kue appeals.

D E C I S I O N

A person may be committed if the district court finds that the proposed patient is mentally ill, mentally ill and dangerous, developmentally disabled, or chemically dependent. Minn. Stat. §§ 253B.09, subd. 1(a), .18, subd. 1(a) (2016). A person is mentally ill and dangerous if the individual (1) is mentally ill and (2) presents a "clear danger to the safety of others" as demonstrated by facts showing that "the person has engaged in an overt act causing or attempting to cause serious physical harm to another" and "there is a substantial likelihood that the person will engage in acts capable of inflicting serious physical harm" in the future. Minn. Stat. § 253B.02, subd. 17(a) (2016).

Kue does not challenge the conclusion that she is mentally ill. But Kue argues that the county failed to produce clear and convincing evidence that she met the statutory requirements for judicial commitment as a mentally ill and dangerous person. Specifically, she asserts that "[n]o evidence was presented that [she] caused serious physical harm"; instead, the district court merely "presumed" that she intended to cause harm and that her mental illness could "not be treated and supervised" so that she would no longer "pose a future risk of inflicting serious physical harm to another."

The county has the burden of proving the necessary facts by clear and convincing evidence. Minn. Stat. § 253B.18, subd. 1(a). "On appeal, this court applies a clear-error

standard of review to the district court's findings of fact and reviews the record in the light most favorable to the findings of fact". *In re Civil Commitment of Spicer*, 853 N.W.2d 803, 807 (Minn. App. 2014).

We conclude that the final-determination order was supported by clear and convincing evidence that Kue remained mentally ill and dangerous within the provisions of Minn. Stat. § 253B.02, subd. 17(a). The record indicates that Kue has been consistently diagnosed with schizoaffective disorder, antisocial personality disorder, and polysubstance abuse, and various medical reports have documented her violent behavior for over eight years. At the final-determination hearing, Dr. Meyers testified that Kue "continues to meet criteria for a substantial mental illness," had a history of "multiple issues of violence against others," and continued to present a clear danger to the safety of others because "she has tremendous mood lability, and in that mood lability she becomes violent against others." Noting Kue's most recent acts of violence in the fall of 2016, Dr. Meyers observed in his report:

> [Kue's] assaults leading into [Minnesota Security Hospital] were unprovoked attacks toward staff who were there to help her. Her attacks were significant leaving her victims unable to work, one of whom has not yet returned. Given her history of poor compliance, the use of street drugs, and limited insight into overall care it is opined she continues to remain a threat to self and others and is dangerous. Historically, when left on her own all treatment and recommendations stop once back in the community; violence and decompensation bring her back into the hospital.

In assessing Kue's risk for future violent behavior, Dr. Milz noted that Kue's "long-term risk for future violence is elevated as a result of a history of problems with violence (i.e.,

. . . threatening and physically assaultive behavior . . .)." Likewise, another expert who evaluated Kue at the hospital concluded that she "had a very high risk for future violence." Based on the expert testimony and reports presented at the final-determination hearing, it is clear that Kue has a mental illness, previously engaged in overt acts of violence, and continues to have a significant likelihood of committing future acts of physical harm against others as a result of this mental illness.

Viewing the record in the light most favorable to the district court's findings, we conclude that clear and convincing evidence supports the district court's conclusion that Kue continues to be a person who is mentally ill and dangerous under the statutory definition.

Affirmed.