STATE OF MINNESOTA
IN COURT OF APPEALS
A18-0431

In the Matter of the Civil Commitment of: Shane Paul Olson

Filed July 23, 2018
Affirmed
Bjorkman, Judge

St. Louis County District Court
File No. 69HI-PR-16-117

Todd E. Deal, Virginia, Minnesota (for appellant Shane Paul Olson)

Mark S. Rubin, St. Louis County Attorney, Gayle M. Goff, Assistant County Attorney, Hibbing, Minnesota (for respondent St. Louis County Public Health and Human Services)

Considered and decided by Reilly, Presiding Judge; Larkin, Judge; and Bjorkman, Judge.

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

BJORKMAN, Judge

Appellant challenges his indeterminate commitment as mentally ill and dangerous (MID), arguing that the district court: (1) clearly erred by finding that there is a substantial likelihood appellant will engage in acts capable of inflicting harm on others and (2) erred by concluding that there is no less-restrictive alternative to commitment in a secure facility. We affirm.

FACTS

Forty-year-old appellant Shane Paul Olson has experienced significant mental-health issues and battled chemical dependency for most of his life. He was first hospitalized for mental-health treatment at the age of 12. By 2011, he had been hospitalized for such issues more than 42 times. Over the years he has been diagnosed with bipolar disorder, borderline personality disorder (BPD), depression, and severe polysubstance dependence.

Olson appeared at hospital emergency rooms in October and November 2016, reporting suicidal and homicidal thoughts, including cannibalism. He was admitted to the behavioral-health unit on both occasions. During his November hospitalization, Olson assaulted a nurse and attempted to gouge out her eyes, and tried to punch another patient. Later the same day, he threatened to suffocate a patient and urinated on the nurses' station. Respondent St. Louis County Public Health and Human Services subsequently filed a commitment petition. Following an evidentiary hearing at which two medical experts testified, Olson was involuntarily committed as MID and chemically dependent on December 19, 2016.[1]

At the district court's direction, Sheryl Delain-Adderley, Ph.D., L.P., filed a 60-day treatment report on behalf of the Minnesota State Hospital (MSH). The February 2017 report recounts Dr. Delain-Adderley's thorough evaluation of Olson's background, diagnoses, and treatment history. She opined that Olson suffers from BPD with antisocial

[1] The parties agreed to continue the commitment, without a review hearing, for one year.

personality traits and severe stimulant-, cannabis-, and opioid-use disorders. She explained that his previous bipolar-disorder diagnosis was likely due to his chemical dependency, which was in remission during his commitment. Dr. Delain-Adderley concluded that Olson still met the statutory criteria for commitment. Although she acknowledged studies indicate long-term hospitalizations may aggravate BPD, she noted Olson had "not been successful under multiple MI/CD [mentally ill/chemically dependent] commitments," and "his chronic substance abuse has exacerbated symptoms and proven a barrier to success in mental health treatment and residential placements." She recommended that Olson remain in MSH based on "his history and risk status."

In January 2018, the district court conducted a hearing to review Olson's commitment. Dr. Delain-Adderley filed an updated treatment report and testified at the hearing. She confirmed Olson's mental-health diagnoses, and noted he was not "displaying any pronounced symptoms of a major mood disorder" and that his symptoms had improved "relative to abstinence from [controlled] substances." But in the two months before the hearing, Olson engaged in six violent acts[2] toward himself and others, including attempting to hang himself in November 2017. Dr. Delain-Adderley opined that Olson presents a substantial likelihood of engaging in acts capable of inflicting serious harm on another, citing test results and his "poor insight, negative attitudes, active symptoms of mental illness, impulsivity, and limited responsiveness to treatment." And, citing Olson's poor response to prior treatment, Dr. Delain-Adderley testified that his proposed release to a

[2] On December 5, 2017, Olson told a staff member that he needed to remain at MSH because he was afraid he would hurt someone if he lived in the community.

community-based chemical-dependency treatment program would not manage the risk of future harm.

Dr. Delain-Adderley reiterated that BPD patients may show greater improvement in less-restrictive treatment settings. But she emphasized Olson's many failed attempts at short-term commitments and hospitalizations, concluding that Olson continued to "need . . . placement in a secure and structured setting, with long-term, intensive supervision and oversight." She recommended Olson's continued placement at MSH.

Olson also testified at the review hearing. He did not dispute his diagnoses or his need for treatment. But he stated that MSH does not provide effective treatment. He urged the district court to commit him as MI/CD and release him to a community-based treatment program.

On January 19, 2018, the district court ordered Olson's indeterminate commitment as MID. Olson appeals.

D E C I S I O N

I. Clear and convincing evidence supports the district court's finding that there is a substantial likelihood that Olson will engage in acts capable of inflicting serious physical harm on another.

Our review of an MID commitment order is limited to whether the district court complied with the statute and whether its findings of fact justify its legal conclusions. *In re Knops*, 536 N.W.2d 616, 620 (Minn. 1995). We review findings of fact for clear error, deferring to the district court's credibility determinations. *Id.*

A person may be committed as MID if the person is mentally ill, and, as a result of the mental illness, "presents a clear danger to the safety of others as demonstrated by the

facts that (i) the person has engaged in an overt act causing or attempting to cause serious physical harm to another and (ii) there is a substantial likelihood that the person will engage in acts capable of inflicting serious physical harm on another." Minn. Stat. § 253B.02, subd. 17 (2016).

Olson concedes that he is mentally ill and engaged in an overt aggressive act as a result of his illness. But he challenges the district court's finding that he is substantially likely to engage in acts capable of inflicting serious harm on another person. He asserts that his recent acts of aggression, including his November 2017 suicide attempt, and his threatening words and actions toward others (including attempting to stab a staff member with a pen), flow from a change in his medication rather than his mental illness. And he points to a July 2017 incident in which he did not retaliate against another patient who struck him as evidence of his ability to exercise restraint. We are not persuaded. Olson was taken off antipsychotic medication between April and June 2017. Dr. Delain-Adderley reported that "[d]uring the period of medication adjustments, transient paranoia or suspiciousness was noted, but resolved." Because the six violent acts at issue here occurred five to six months later, we cannot say that this record compels a finding that Olson's medication change caused him to engage in aggressive behavior.

Other record evidence further supports the district court's finding that Olson is substantially likely to act in ways that are harmful to others. Dr. Delain-Adderley opined that Olson continues to present an elevated risk for future aggressive behavior. She noted his "static risk factors"—history of violence, young age at first violent incident, lack of stable relationships, early maladjustment, major mental illness, substance abuse,

employment issues, personality disorder, and "prior supervision failure." She stated that Olson's violence-prevention plan, which includes returning to his significant other's residence and community-based treatment, is unlikely to succeed based on his undisputed past failures to maintain abstinence and comply with treatment programs. She specifically observed that, despite "several years of [dialectical behavioral therapy]-based treatment [for BPD], he fails to implement these skills during times of distress, reports he finds himself unable to self-calm and emotionally regulate during these periods, and is resistant to feedback." Based on her findings and experience, and Olson's history, Dr. Delain-Adderley concluded that Olson presents "an elevated risk of engaging in acts capable of inflicting serious harm on another."

Based on our careful review of the record, giving deference to the district court's assessment of witness credibility,[3] we conclude that clear and convincing evidence supports the district court's finding that Olson is substantially likely to commit acts capable of inflicting serious physical harm on another. Because Olson does not otherwise challenge his designation as MID, we consider whether his continued placement at MSH is appropriate.

II. The district court did not err by concluding that there is no less-restrictive alternative to commitment at MSH that is consistent with Olson's treatment needs and public safety.

A person found to be MID must be committed to a secure treatment facility, "unless the patient establishes by clear and convincing evidence that a less restrictive treatment

[3] We particularly defer to a district court's credibility findings where, as here, "the findings of fact rest almost entirely on expert testimony." *Knops*, 536 N.W.2d at 620.

program is available that is consistent with the patient's treatment needs and the requirements of public safety." Minn. Stat. § 253B.18, subd. 1 (2016).

Olson first argues that he met this burden because he is not receiving effective treatment for BPD at MSH and long-term hospitalization is detrimental to his recovery. While, as noted above, Dr. Delain-Adderley's testimony lends some support for these arguments, she also testified that Olson's 42 short-term hospitalizations were unsuccessful and that Olson needs the structure and security of MSH to successfully address his mental-health and chemical-dependency issues. The record supports the district court's finding that Olson had not been successful in community mental-illness and chemical-dependency treatment programs, despite multiple attempts.

Moreover, this court rejected a similar argument in *In re Dirks*, 530 N.W.2d 207 (Minn. App. 1995). Dirks challenged his MID commitment on the grounds that there were better treatment options for his mental illness and chemical dependency at open hospitals. 530 N.W.2d at 211-12. Dirks argued that his commitment erroneously placed greater emphasis on public safety than on his treatment needs. We affirmed his commitment, citing "the need for the structure and security provided by [MSH] for mentally ill and dangerous patients." *Id.* at 212.

Olson next asserts that his proposed alternative placement is consistent with public safety. This argument is unavailing. The district court acknowledged Olson's plan to attend a 90-day treatment program followed by placement in a halfway house, but found that he had not been successful "in [his] many mental health and chemical dependency treatment programs." And the district court found Olson engaged in six violent acts—five

of which were directed at others—during the two months preceding the review hearing. Olson does not challenge these findings. Finally, Dr. Delain-Adderley indicated she could not "specifically identify a less restrictive setting that could appropriately manage [Olson's] aggression and instability at present with safety of staff and the community in mind." Olson had the burden of presenting clear and convincing evidence that there is a less-restrictive treatment setting that would be consistent with his treatment needs and public safety. He has not met this burden.

Affirmed.