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**STATE OF MINNESOTA
IN COURT OF APPEALS
A18-0890**

In the Matter of the Civil Commitment of:
Craig R. Jackman.

**Filed December 3, 2018
Reversed and remanded
Smith, John, Judge***

Dakota County District Court
File No. 19HA-PR-18-268

William Lubov, Lubov Anderson, LLC, Golden Valley, Minnesota; and

Michael C. Hager, Minneapolis, Minnesota (for appellant Craig R. Jackman)

James C. Backstrom, Dakota County Attorney, Jessica A. Bierwerth, Anna Light, Assistant
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Considered and decided by Smith, Tracy M., Presiding Judge; Reilly, Judge; and
Smith, John, Judge.

UNPUBLISHED OPINION

SMITH, JOHN, Judge

We reverse and remand appellant's civil commitment and the order authorizing the
involuntary administration of neuroleptic medication because the district court relied on
hearsay statements without making findings regarding the reliability of those statements.

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

FACTS

On April 5, 2018, appellant returned to Minnesota from a trip to Honduras because his brother and sister-in-law went to get him. Appellant's sister-in-law had called the Dakota County Crisis Unit earlier that day to say that she believed that appellant needed to be hospitalized as soon as he arrived in Minneapolis. Despite her request, airport police did not intervene, and appellant took a cab home from the airport by himself. The next day, appellant went to the Hennepin County Medical Center (HCMC) for knee injuries that he received during an interaction with Honduran police. Because appellant presented as "manic, disorganized, grandiose, impulsive, elevated, and lacking insight into recent poor decision making," he was placed on a 72-hour hold. Appellant has a history of being bipolar with psychosis and manic episodes and, in 2016, appellant was subject to a stayed commitment.

On April 11, 2018, HCMC filed petitions to commit appellant and authorize the involuntary administration of neuroleptic medication. The district court appointed Dr. Kent Kodalen to examine appellant. Dr. Kodalen reviewed appellant's medical file, interviewed appellant, and submitted a report recommending that appellant be committed as mentally ill. Dr. Kodalen relied, in part, on hearsay reports of appellant's conduct while in Honduras, which were contained in his medical file.

On April 26, 2018, the district court held a commitment hearing. The district court received exhibits over appellant's objection that they contained hearsay regarding events in Honduras. The district court indicated that appellant's arguments regarding hearsay would be factored into the weight given to the exhibits. The exhibits contained information

that first was relayed by an unknown source to appellant's sister-in-law, who in turn, reported the information to the Dakota County Crisis Unit, which ultimately then provided the information to HCMC. According to the hearsay statements, while appellant was in Honduras, he lit fires by a gas station. The hearsay statements further indicated that appellant walked down the middle of the street, stopping traffic; that he had been beaten by Honduran police; and that he had spent roughly \$40,000 over the previous weeks.

During the hearing, appellant testified that the statements in the exhibits were inaccurate. He agreed that there was an incident at a gas station, but he testified that it involved him smoking a cigarette near the station, not lighting anything on fire, and that he walked away from the pumps when asked. Appellant also agreed that he stopped cars on the road to ask for money to buy cigarettes because the ATM was not working, and that as a result, police approached him, put him in handcuffs, and "slapped [him] on the stomach with a machete." Appellant submitted an exhibit containing copies of 5 ATM receipts, with total withdrawals of 4,500 Honduran lempira, which amounted to \$190. Appellant testified that those receipts represented the only money that he withdrew while in Honduras. Respondent presented no testimony or financial records to indicate otherwise. Appellant's testimony provided the only first-hand account of what occurred in Honduras.

Dr. Kodalen testified that appellant suffers from a substantial psychiatric disorder of thought and that he had diagnosed appellant with "bipolar disorder type 1, severe, manic with psychosis." He further testified that there is a risk that appellant will not be able to provide for his own medical care and that appellant would benefit from neuroleptic medication but did not have the capacity to consent to taking it.

The district court found that respondent proved by clear and convincing evidence that appellant is mentally ill and committed him for a period not to exceed six months. By a separate order, the district court authorized the involuntary use of neuroleptic medication. This appeal follows.

D E C I S I O N

I. The district court’s findings are insufficient to permit appellate review of the reliability of the hearsay statements.

Appellant argues that the district court erred in admitting unreliable hearsay statements. “The decision of whether to admit or exclude evidence is within the district court’s discretion and will be reversed only if the court has clearly abused its discretion.” *In re Civil Commitment of Spicer*, 853 N.W.2d 803, 813 (Minn. App. 2014) (quotation omitted).

Minn. Stat. § 253B.08, subd. 7, permits the admission of relevant and *reliable* hearsay as evidence in civil-commitment proceedings. *See In re Civil Commitment of Williams*, 735 N.W.2d 727, 731-33 (Minn. App. 2007), *review denied* (Minn. Sept. 26, 2007). In *Williams*, the county sought to admit hearsay evidence, including “the accounts of first-hand witnesses.” *Id.* at 732. We recognized in *Williams* that “the trustworthiness of evidence is the primary concern of the rules of evidence generally and of the hearsay rule particularly. The purpose of the hearsay rule with its various exceptions is to prevent unreliable evidence from infecting the fairness of process.” *Id.* In that case, we determined that the district court properly admitted the hearsay evidence after it “diligently vetted the exhibits . . . and examined the reliability of each statement, line-by-line.” *Id.* at 731. We

concluded that “[t]he hearsay evidence had threshold indicia of reliability for admission, and [the appellant] has not shown that the challenged evidence is false or unreliable.” *Id.* at 731.

In this case, the hearsay statements present significant reliability questions. Initially they came from an unknown source and were then relayed through several people. Appellant admitted that the incidents referenced in the hearsay statements occurred in some form, but suggested that the statements presented to the district court had become exaggerated versions of those events. For example, appellant testified that he withdrew \$190, which amounted to 4,500 Honduran lempira, and in the hearsay statements appellant was said to have withdrawn \$40,000. Appellant also testified that he was smoking a cigarette near a gas station, and in the hearsay statements, appellant was said to have been lighting fires. The county did not admit police reports from Honduras, financial records, or the testimony of appellant’s sister-in-law, which might have provided more context for the hearsay statements.

The district court admitted the exhibits without making any reliability findings, stating only that it would give the hearsay statements the weight it believed they deserved. In its commitment order, the district court relied on the hearsay statements to find that appellant “threatened to start a fire near a gas station,” but it did not address, nor can we determine, its basis for finding the hearsay statements reliable. Accordingly, we cannot determine whether the district court erred in admitting the hearsay statements.

“[R]emand is the appropriate remedy when the district court has made insufficient findings to enable appellate review.” *Gams v. Houghton*, 869 N.W.2d 60, 65 (Minn. App.

2015), *aff'd as modified*, 884 N.W.2d 611 (Minn. 2016). Because the district court civilly committed appellant based on the hearsay statements, as discussed in more detail below, remand is necessary. On remand, the district court must address which hearsay statements it finds reliable and upon what bases.

II. Without the findings based on the improperly admitted hearsay, the district court's remaining findings are insufficient to support appellant's commitment and the involuntary use of neuroleptic medication.

Appellant argues that, without the hearsay statements, there is insufficient evidence to support his commitment and the accompanying order authorizing the involuntary administration of neuroleptic medication. Our review of an involuntary civil commitment is limited to examining whether the district court complied with statutory requirements and whether the commitment is “justified by findings based upon evidence at the hearing.” *In re Knops*, 536 N.W.2d 616, 620 (Minn. 1995). We apply a clear-error standard of review to a district court's findings of fact, and we review de novo the question of whether the evidence is sufficient to support a commitment. *In re Civil Commitment of Janckila*, 657 N.W.2d 899, 902 (Minn. App. 2003). We review the record in the light most favorable to the district court's decision. *In re Civil Commitment of Carroll*, 706 N.W.2d 527, 530 (Minn. App. 2005).

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 instances of grossly disturbed behavior or faulty perceptions and poses a substantial likelihood of physical harm to self or others as demonstrated by:

(1) a failure to obtain necessary food, clothing, shelter, or medical care as a result of the impairment;

(2) an inability for reasons other than indigence to obtain necessary food, clothing, shelter, or medical care as a result of the impairment and it is more probable than not that the person will suffer substantial harm, significant psychiatric deterioration or debilitation, or serious illness, unless appropriate treatment and services are provided;

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

(4) recent and volitional conduct involving significant damage to substantial property.

Minn. Stat. § 253B.02, subd. 13(a) (2016).

Minn. Stat. § 253B.09, subd. 2, requires that, when a district court orders a commitment, “the findings of fact and conclusions of law specifically state the proposed patient’s conduct which is a basis for determining that each of the requisites for commitment is met.” Minn. Stat. § 253.09, subd. 2 (2016). “As the trier of fact, the district court will be in the best position to determine the weight to be attributed to each factor [supporting civil commitment], as well as to evaluate the credibility of witnesses—a critical function in these cases that rely so heavily on the opinions of experts.” *In re Civil Commitment of Ince*, 847 N.W.2d 13, 23-24 (Minn. 2014). However, we cannot conduct a thorough review when the district court’s findings are conclusory and fail to address the statutory bases for commitment. *See Spicer*, 853 N.W.2d at 811-12 (finding district court’s findings insufficient and remanding for further findings).

Here, the district court did not specify the statutory provision under which it found that appellant met the definition of mentally ill. Rather, the district court found that appellant had threatened to start a fire near a gas station while in Honduras. This fact could

support a finding that he threatened physical harm to himself or others. But the only information that appellant lit fires while in Honduras came from hearsay statements, which were admitted without a finding regarding their reliability. The district court also found that appellant had interacted with police in Honduras and had to be escorted from the plane but neither finding addresses the bases for commitment under Minn. Stat. § 253B.02, subd. 13(a), or provides the specificity required by the statute.

Because the district court's finding that appellant threatened to light fires was based on the hearsay statements, and the district court's other findings do not relate directly to the statutory bases for civil commitment, the findings are insufficient to allow thorough judicial review. We reverse and remand the district court's order civilly committing appellant for further factual findings regarding the statutory factors that support civil commitment.

Appellant also challenges the order authorizing involuntary administration of neuroleptic medication. Neuroleptic medications may be involuntarily administered to patients subject to civil commitment as mentally ill. Minn. Stat. § 253B.092, subds. 1, 8 (2016). The district court's findings are insufficient to allow review of the order permitting administration of neuroleptic medication. We also reverse and remand the district court's order on this point.

Reversed and remanded.