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**STATE OF MINNESOTA
IN COURT OF APPEALS
A18-1556**

In the Matter of the Civil Commitment of:
Fitzgerald Calvin Stewart.

**Filed February 4, 2019
Affirmed
Cleary, Chief Judge**

Sherburne County District Court
File No. 71-PR-17-39

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Kathleen Heaney, Sherburne County Attorney, Elk River, Minnesota (for respondent Sherburne County)

Considered and decided by Cleary, Chief Judge; Reilly, Judge; and Florey, Judge.

UNPUBLISHED OPINION

CLEARY, Chief Judge

Appellant Fitzgerald Calvin Stewart challenges his commitment as a sexually dangerous person (SDP) and a sexual psychopathic personality (SPP), arguing that the district court erred in finding that he possesses a mental disorder or dysfunction. We affirm.

FACTS

Appellant Stewart was indeterminately committed as an SDP and SPP in July 2018. Since 1982, Stewart has committed both violent and sex-related offenses; he has spent the majority of his adult life incarcerated. His non-sexual criminal history includes: fourth-degree assault; terroristic threats; robbery; armed robbery; aggravated battery of a peace officer; and residential burglary.

In 1982, at the age of 19, Stewart was convicted of contributing to the sexual delinquency of a minor in Illinois. At the civil commitment trial, Stewart testified that he and his then-girlfriend, who was 15 years old at the time, were in a consensual sexual relationship, and that her mother informed police of the sexual relationship. Stewart testified that, at the time of the incident, he did not know that their sexual relationship violated the law.

In 1987, Stewart, 23 years old, approached Y.T., 19 years old, and her friend at a payphone in Chicago. Stewart asked them for change for one dollar, and indicated that the dollar was on the front seat of his truck. Y.T. walked to the vehicle with Stewart, and he pulled a knife and forced her into the vehicle. Stewart drove to an alley, removed Y.T.'s clothing, and sexually assaulted her both vaginally and anally. Stewart was convicted of two counts of aggravated criminal sexual assault and one count of aggravated battery. At the civil commitment trial, Stewart testified that the encounter was consensual, but that he had tricked Y.T. into having sex in exchange for cocaine.

In 2011, St. Cloud police responded to a report that an adult male had sexually assaulted M.N.B., an 11-year-old male. M.N.B. told police that he went to stay at a friend's

house. M.N.B.'s friend lived with his mother, father, brothers, and grandfather. The grandfather was later identified as Stewart. M.N.B. reported that he was in the basement watching television when Stewart touched M.N.B.'s stomach under his shirt. When M.N.B. asked Stewart what he was doing, Stewart responded that he wanted to see if M.N.B. was hot or "something." Stewart then unbuckled M.N.B.'s belt, unbuttoned and reached inside his pants, and touched M.N.B.'s penis. Stewart placed both of his hands and mouth on M.N.B.'s penis. M.N.B. pushed Stewart's hands off, ran upstairs, and called his mother to pick him up. A jury acquitted Stewart of first-degree criminal sexual conduct, but found him guilty of second-degree criminal sexual conduct. During the civil commitment trial, Stewart denied the offense.

In November 2012, while in prison for his offense against M.N.B., Stewart entered sex-offender treatment. A few days after arriving, Stewart informed his mentor that he intended to push the boundaries of the treatment staff. The next day, Stewart falsely accused his therapist of calling him a racial epithet. Stewart compared the false accusation against his therapist to, what he believed to be, the false accusation against him regarding his conviction for sexually assaulting M.N.B. After approximately one month in treatment, Stewart's therapist noted that he indicated a desire to leave the program, but was hesitant because he would be incarcerated for one more year for failure to follow treatment directives. By the end of December 2012, Stewart was terminated from the treatment program due to his conduct in hitting a peer, failing to complete a restorative justice project, confronting correctional officers, making indirect threats, and threatening other peers.

A petition was filed to commit Stewart as an SDP in December 2017. A few months later, the petition was amended to also request that Stewart be committed as an SPP. The district court appointed Dr. Paul Reitman to serve as the first court-appointed examiner. At Stewart's request, the court appointed Dr. Robert Riedel to serve as the second court-appointed examiner. The state retained Dr. James Alsdurf as its expert. Dr. Alsdurf was unable to interview Stewart for his report because Stewart refused the interview.

The district court held a civil-commitment trial in April 2018. During the trial, Dr. Reitman, Dr. Riedel, Dr. Alsdurf, and Stewart testified. Dr. Reitman and Dr. Alsdurf opined that Stewart satisfied the statutory criteria for SDP and SPP commitment. Dr. Riedel opined that Stewart satisfied the statutory criteria for SDP commitment, but not SPP commitment because he believed that Stewart exhibited a significant, but not an utter, lack of power to control his sexual impulses. In June 2018, the district court filed a 55-page order in which it concluded that Stewart satisfied the criteria for SDP and SPP commitment and ordered that Stewart be indeterminately committed to the Minnesota Sex Offender Program. This appeal followed.

D E C I S I O N

A person may be civilly committed as an SDP or SPP if the statutory criteria are proved by clear and convincing evidence. Minn. Stat. § 253D.07, subd. 3 (2018). We review a district court's factual findings on the elements of the civil commitment statutes for clear error. *In re Civil Commitment of Stone*, 711 N.W.2d 831, 836 (Minn. App. 2006), review denied (Minn. June 20, 2006). "Where the findings of fact rest almost entirely on expert testimony, the [district] court's evaluation of credibility is of particular

significance.” *In re Knops*, 536 N.W.2d 616, 620 (Minn. 1995). But whether the evidence is sufficient to meet the statutory requirements for commitment is a question of law, which we review de novo. *In re Civil Commitment of Crosby*, 824 N.W.2d 351, 356 (Minn. App. 2013), *review denied* (Minn. Mar. 27, 2013).

I. The district court did not err in finding that Stewart satisfied the statutory criteria for SDP commitment.

A person may be committed as an SDP if the person “(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.” Minn. Stat. § 253D.02, subd. 16(a) (2018). When committing an individual as an SDP, the statute does not require the state to prove that the person has an inability to control his sexual impulses. Minn. Stat. § 253D.02, subd. 16(b) (2018). But the individual must have a “present disorder or dysfunction [that] does not allow [him] to adequately control [his] sexual impulses.” *In re Linehan*, 594 N.W.2d 867, 876 (Minn. 1999).

Stewart challenges the second element—the manifestation of a sexual, personality, or other mental disorder or dysfunction that does not allow him to control his sexual impulses. Stewart argues that the district court clearly erred in finding that he manifests a mental disorder or dysfunction because the district court did not credit any one expert’s diagnosis over the others. Stewart further asserts that the record does not support the district court’s finding that he is unable to control his sexual impulses as a result of a disorder or dysfunction.

Here, the district court found that all three examiners determined that Stewart has a mental, sexual, or personality disorder or dysfunction. The district court also found that Stewart's "entire record reflects lack of adequate control of his sexual impulses" and he will "satisfy his sexual impulses whenever he has the opportunity." Specifically, the district court found that Stewart has multiple sexual deviances and a personality disorder with antisocial traits. The district court found that due to these disorders, Stewart has "serious difficulty" in controlling his sexually harmful behavior.

The district court's findings are supported by the record. In Dr. Reitman's report, he concluded that Stewart meets the diagnostic criteria for Personality Disorder with Paranoid, Antisocial, and Narcissistic Traits, Anxiety Disorder, Paraphilia, Sexual Sadism, and possible Substance Abuse. Dr. Reitman noted in his report, and testified at trial, that "[a]ll of these diagnoses singularly and in combination contribute to [Stewart]'s sexual acting out." On cross-examination, Dr. Reitman explained that "Personality Disorder" is a category of disorders and Stewart's Personality-Disorder diagnosis could also fall under Personality Disorder, Not Otherwise Specified, with antisocial and narcissistic traits. Stewart argues that this is a fictitious diagnosis, as it is not included in the fifth edition of the American Psychiatric Association's *Diagnostic and Statistical Manual of Mental Disorders* (5th ed. 2013) (DSM-5). But the language "not otherwise specified" has merely been replaced in the latest edition with the language "other specified disorder" and "unspecified disorder." *Id.* at 15-16.

Dr. Riedel diagnosed Stewart with Antisocial Personality Disorder with Narcissistic Features. In explaining his diagnosis at trial, Dr. Riedel testified that Stewart has failed to

conform to societal norms, engaged in deceitfulness as reflected in his repeated lying, use of aliases, and conning of others for personal profit, and displays impulsivity, irritability, aggressive behaviors, and a lack of remorse. Dr. Riedel further testified that although Stewart was not formally diagnosed with a conduct disorder prior to the age of 15, as required for a diagnosis of Antisocial Personality Disorder, there is evidence in Stewart's record to support the existence of such a conduct disorder.¹

Dr. Alsdurf similarly concluded that Stewart satisfies the diagnostic criteria for Antisocial Personality Disorder, Rule Out Substance Abuse Disorder, and Rule Out Paraphilia Not Otherwise Specified. In his report, Dr. Alsdurf opined that Stewart is "entrenched in his personality [disorder] and such a disorder raises his risk for re-offending." Dr. Alsdurf further noted that Stewart has never engaged in sex offender treatment, "exhibits pervasive denial" about past events, and "has no insight into his sexual offending."

Although the three experts disagreed as to Stewart's diagnosis, there is no evidence that this disagreement detracts from the conclusions of each expert that Stewart manifests a sexual, personality, or other mental disorder or dysfunction, and as a result is likely to engage in acts of harmful sexual conduct. The record contains clear and convincing evidence that Stewart meets this element, and the district court did not err in determining that Stewart satisfied the SDP criteria.

¹ Stewart also contends that the diagnoses provided by the court-appointed experts lack support in the record. But this argument is unpersuasive given that an expert may rely on facts or data not in evidence to provide a basis for his or her opinions. Minn. R. Evid. 703(a).

II. The district court did not err in finding that Stewart satisfied the statutory criteria for SPP commitment.

A sexual psychopathic personality is statutorily defined as

the existence in any person of such conditions of emotional instability, or impulsiveness of behavior, or lack of customary standards of good judgment, or failure to appreciate the consequences of personal acts, or a combination of any of these conditions, which render the person irresponsible for personal conduct with respect to sexual matters

Minn. Stat. § 253D.02, subd. 15 (2018).

Stewart argues that the district court erred in determining that he manifests the four statutory conditions rendering him irresponsible for personal conduct with respect to sexual matters. He contends that in order to find that he has manifested one of these four conditions, the district court was required to find the presence of a mental disorder. For this proposition, Stewart cites *State ex rel. Pearson v. Probate Court of Ramsey County*, 287 N.W. 297 (Minn. 1939). But *Pearson*, decided in 1939, narrowed the construction of a predecessor statute to include only those individuals “who, by a habitual course of misconduct in sexual matters, have evidenced an utter lack of power to control their sexual impulses and who, as a result, are likely to attack or otherwise inflict injury, loss, pain, or other evil on the objects of their uncontrolled and uncontrollable desire.” *Id.* at 302. This narrowed construction of the SPP statute has been applied and reaffirmed by the Minnesota Supreme Court. *In re Linehan*, 518 N.W.2d 609 (Minn. 1994) (applying *Pearson* construction of the SPP statute); *In re Blodgett*, 510 N.W.2d 910 (Minn. 1994) (holding that the SPP statute is constitutional and reaffirming *Pearson* construction of statute), *cert. denied*, 513 U.S. 849, 115 S. Ct. 146 (Oct. 3, 1994). This narrowed construction of the

SPP statute does not support the contention that the statute requires a finding of a mental disorder or dysfunction.

Stewart also argues, citing *Blodgett*, that caselaw requires a finding of volitional dysfunction, in addition to a finding of a mental disorder or dysfunction. However, *Blodgett* states that “[t]he psychopathic personality statute identifies a volitional dysfunction which grossly impairs judgment and behavior with respect to the sex drive.” 510 N.W.2d at 915. The court further explained, “Whatever the explanation or label, the ‘psychopathic personality’ is an identifiable and documentable violent sexually deviant condition or disorder.” *Id.* (footnote omitted). Accordingly, *Blodgett* suggests that the ultimate SPP determination identifies the volitional dysfunction. *See id.*

Here, the district court found that Stewart possessed all four conditions specified in the SPP statute and that the conditions render him irresponsible with regard to sexual matters. Dr. Reitman observed that Stewart has been emotionally unstable his entire life. Dr. Reitman also opined that Stewart exhibits impulsive behavior in his lifestyle and inability to self-intervene with regard to his impulsivity. Considering Stewart’s offense history, Dr. Reitman testified that he lacks standards of good judgment and has never appreciated the consequences of his acts because even while in prison, he failed to learn from the consequences of his behavior. Similarly, Dr. Riedel testified that Stewart is emotionally unstable and “almost presents as bipolar.” Dr. Riedel opined that Stewart’s records show that he is impulsive, indifferent to standards of good judgment, and has no appreciation for the consequences of his actions. While Dr. Alsdurf opined that Stewart has some emotional instability, he stated in his report that Stewart is “most certainly”

impulsive given his offense history. Dr. Alsdurf's report also observed that Stewart's history of sexual offenses illustrates a lack of good judgment, including his failure to meet treatment expectations. Dr. Alsdurf further noted that Stewart not only fails to appreciate the consequences of his actions, but also "reframes them as having not occurred." The district court found that the expert witnesses were in "virtual unanimity" that these conditions render Stewart irresponsible for his conduct with respect to sexual matters. The record supports the district court's findings, and the district court did not err in determining that Stewart satisfied the SPP criteria.

Affirmed.