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**STATE OF MINNESOTA
IN COURT OF APPEALS
A19-0966**

In the Matter of the Civil Commitment of: Christopher Scott Malz.

**Filed December 16, 2019
Affirmed
Reyes, Judge**

Blue Earth County District Court
File No. 07-PR-18-873

Jennifer L. Thon, Steven D. Winkler, Warren J. Maas, Jones Law Office, Mankato, Minnesota (for appellant Christopher Scott Malz)

Keith Ellison, Attorney General, John D. Gross, Assistant Attorney General, St. Paul, Minnesota; and

Pat McDermott, Blue Earth County Attorney, Mankato, Minnesota (for respondent State)

Considered and decided by Florey, Presiding Judge; Reyes, Judge; and Smith, Tracy M., Judge.

UNPUBLISHED OPINION

REYES, Judge

In this direct appeal from his indeterminate commitment as a sexually dangerous person (“SDP”) and a sexual psychopathic personality (“SPP”), appellant argues that (1) existing caselaw about risk assessments is outdated because it fails to acknowledge recent improvements and should be overturned; (2) this record does not support committing

appellant as an SDP or an SPP under current law; and (3) the district court's findings of fact are insufficient to support his commitment. We affirm.

FACTS

Appellant Christopher Scott Malz has an extensive chemical-dependency history prior to 2002, out-of-the-home-placement history, and juvenile and adult criminal history. He also struggles with a pornography addiction that includes child pornography and erotica.

At the age of 17, appellant began living with 14-year-old M.B. The couple had three children together, including a daughter, S.A.M. Appellant repeatedly sexually assaulted M.B. and S.A.M. No charges were filed against appellant for his offenses against M.B.

Appellant began showing S.A.M. pornographic images when she was five years old. His abuse progressed to fondling her, performing oral sex on her, forcing her to perform oral sex on him, and eventually anally raping her. In total, appellant assaulted S.A.M. anywhere from seven to 35 times. The State of Minnesota charged appellant with six first-degree criminal-sexual-conduct counts for his offenses against S.A.M. A jury found appellant guilty of all charges in 2003, resulting in a 144-month sentence.

Appellant has been in and out of outpatient sex-offender treatment since 2003. He had intermittent participation in sex-offender treatment due to his expulsion for breaking the rules by watching child pornography, having unsupervised contact with a minor female, failing to register as a predatory offender, and spending time in local parks. As a result, he had his release from prison revoked a number of times. Most recently, in 2017, the Hearings and Release Unit terminated appellant's release following the discovery of

images and text files detailing child erotica and pornography, as well as internet searches for child pornography. At several points during his sex-offender-treatment process, staff opined that appellant presented a moderate to high level of risk for reoffense.

On May 1, 2018, Blue Earth County filed a petition to commit appellant as both an SDP and an SPP. The district court held a hearing to determine whether to civilly commit appellant as an SDP or an SPP. Three psychologists testified. Pursuant to Minn. Stat. § 253B.07, subd. 3 (2018), the district court appointed two psychologists, Drs. Marshall and Kenning, as court examiners. The county retained Dr. Linderman to conduct a record review and a prepetition-screening report. Dr. Marshall recommended civilly committing appellant as both an SDP and an SPP. Drs. Linderman and Kenning testified that appellant did not meet the criteria for civil commitment as either an SDP or an SPP.

The district court considered caselaw factors and conflicting expert testimony from the three psychologists, who employed an array of actuarial and risk-assessment tools and clinical judgment. The district court also conducted its own analysis and relied heavily on additional factors identified by Dr. Marshall as having a high association with sex-offense recidivism: sexual deviance, antisocial behavior, and supervision violations. The district court determined that appellant met the statutory criteria for civil commitment as an SDP and an SPP by clear and convincing evidence. As a result, the district court indeterminately committed appellant to the Minnesota Sex Offender Program (MSOP). This appeal follows.

DECISION

I. We decline to adopt a new test and instead follow binding precedent.

Appellant urges us to adopt a new test deemphasizing caselaw factors in favor of actuarial and risk-assessment tools. Appellant argues that requiring experts to consider caselaw factors forces them to engage in clinical judgment, which is less empirically valid than actuarial and risk-assessment tools. Appellant also argues that experts should have the flexibility to update the methodology of their risk assessments according to the newest and most accurate practices because static caselaw factors become outdated as methodology develops. We reject the argument that we should disregard precedential caselaw.

The Minnesota Supreme Court recently reaffirmed its direction to district courts to apply the *Linehan* factors¹ and engage in a multi-factor analysis to determine whether a person meets the elements of an SDP. *In re Civil Commitment of Ince*, 847 N.W.2d 13, 23 (Minn. 2014). This court “is bound by supreme court precedent.” *State v. Curtis*, 921 N.W.2d 342, 346 (Minn. 2018). “[T]he task of extending existing law falls to the supreme court or the legislature, but it does not fall to this court.” *Tereault v. Palmer*, 413 N.W.2d 283, 286 (Minn. App. 1987), *review denied* (Minn. Dec. 18, 1987). The role of this court is to correct errors made by the district court, not to change the law. *Lake George Park*,

¹ See *In re Linehan (Linehan III)*, 557 N.W.2d 171, 178, 189 (Minn. 1996), *vacated and remanded*, 522 U.S. 1011, 118 S. Ct. 596 (1997), *aff’d on remand*, 594 N.W.2d 867 (Minn. 1999) (providing six factors for district courts to consider in analyzing whether a person meets the criteria to be committed as an SDP).

L.L.C. v. IBM Mid-Am. Emps. Fed. Credit Union, 576 N.W.2d 463, 466 (Minn. App. 1998), review denied (Minn. June 17, 1998).

II. The record contains sufficient evidence to allow for meaningful appellate review.

Appellant argues that the district court failed to explain why it found specific evidence persuasive and failed to meaningfully tie its findings of fact to conclusions of law. Appellant's argument lacks merit.

Particularized findings of fact are necessary to enable appellate review, to ensure that the district court properly applied the law, and to assure the parties that the district court fairly considered and decided the issues. *See Reyes v. Schmidt*, 403 N.W.2d 291, 293 (Minn. App. 1987). This court in *Spicer* identified three factors to consider in determining whether we can undertake meaningful appellate review: (1) whether the district court's findings merely recited witness testimony; (2) whether the district court's findings were conclusory; and (3) whether the district court meaningfully tied its findings to the ultimate conclusions of law. *In re Civil Commitment of Spicer*, 853 N.W.2d 803, 810-11 (Minn. App. 2014), review denied (Minn. Aug. 25, 2015).

First, the district court did not just recite testimony. Rather, the district court's findings of fact reveal a careful and thorough analysis of appellant's individual history, the caselaw factors, and the actuarial and risk-assessment tools. Second, the district court's findings were not conclusory because this court can "identify the facts that the district court has determined to be true and the facts on which the district court's decision is based." *Spicer*, 853 N.W.2d at 811 (citations omitted). Finally, the district court's findings are

meaningfully tied to its conclusions of law. For example, the district court reviewed Dr. Marshall's reasoning and explained why it agreed with her decision to weigh specific factors more heavily than actuarial and risk-assessment results.

Appellant also challenges the district court's analysis of the *Linehan* factors. The supreme court cautioned that a district court simply reviewing the *Linehan* factors without indicating the significance of each factor in its analysis does not allow for meaningful appellate review. *Ince*, 847 N.W.2d at 24. Here, the district court addressed each *Linehan* factor, commented on its relevance and persuasiveness, and compared the factors to the results of the actuarial and risk assessments. We conclude that its findings are sufficiently particularized to allow for meaningful appellate review.

III. Clear and convincing evidence supports the district court's decision to commit appellant as an SDP and an SPP.

Appellant contends that the state failed to prove by clear and convincing evidence the basis for committing him because the more empirically valid caselaw and actuarial risk-assessment tools do not show that he met the statutory elements for an SDP or an SPP. We are not persuaded.

We undertake a de novo review to determine whether clear and convincing evidence supports the district court's conclusion that appellant meets the standards for commitment as an SDP and an SPP. *Id.* at 23; *Spicer*, 853 N.W.2d at 807. We apply "a clear-error standard of review to the district court's findings of fact and review[] the record in the light most favorable to the findings of fact." *Spicer*, 853 N.W.2d at 807. Finally, we defer to the district court's credibility determinations and its resolution of conflicting evidence. *In*

re Knops, 536 N.W.2d 616, 620 (Minn. 1995). The district court may credit the testimony of one expert witness over others. Minn. R. Civ. P. 52.01 (“[D]ue regard shall be given to the opportunity of the trial court to judge the credibility of the witnesses.”); *see* Minn. Spec. R. Commit. & Treat. Act 1(b) (noting that commitment rules suspend civil rule application only to the extent commitment rules conflict with civil rules). The district court may also weigh both actuarial and non-actuarial evidence and draw conclusions from that evidence, so long as its conclusions are supported by the record. *Ince*, 847 N.W.2d at 23-24.

A. SDP

To commit a person as an SDP, the state must prove by clear and convincing evidence that the person has (1) engaged in a course of harmful sexual conduct; (2) 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), .07, subd. 3 (2018). Appellant only disputes the third element, which the supreme court has interpreted to mean “highly likely” to reoffend. *Linehan III*, 557 N.W.2d at 180. District courts must consider the six *Linehan* factors in their analysis of the third SDP element:

(a) the person’s relevant demographic characteristics (*e.g.*, age, education, etc.); (b) the person’s history of violent behavior (paying particular attention to recency, severity, and frequency of violent acts); (c) the base rate statistics for violent behavior among individuals of this person’s background (*e.g.*, data showing the rate at which rapists recidivate, the correlation between age and criminal sexual activity, etc.); (d) the sources of stress in the environment (cognitive and affective factors which indicate that the person may be predisposed to cope with stress in a violent or nonviolent manner); (e) the similarity of the present or future context to those contexts in which the

person has used violence in the past; and (f) the person's record with respect to sex therapy programs.

In re Linehan (Linehan I), 518 N.W.2d 609, 614 (Minn. 1994). The supreme court also encourages district courts to think more broadly and to consider and weigh any factors important for predicting harmful sexual conduct. *Ince*, 847 N.W.2d at 23-24. We conclude that the record supports the district court's analysis of the six *Linehan* factors, which appellant does not challenge.

The district court discounted the actuarial and risk-assessment tools, but it did not disregard them. More importantly, the fact that actuarial assessment tools suggested appellant did not pose a high risk of reoffense is not dispositive. The *Ince* court affirmed the district court's decision to consider more than just actuarial and risk-assessment tools by stating that "'highly likely' cannot be defined by a numeric value." *Ince*, 847 N.W.2d at 21, 23; *see also In re Civil Commitment of Navratil*, 799 N.W.2d 643, 649 (Minn. App. 2011) (affirming a district court's discounting of risk-assessment tools in favor of other factors), *review denied* (Minn. Aug. 24, 2011). The district court properly engaged in a multi-factor analysis in concluding that appellant met the third SDP element of "highly likely" to reoffend. *See Ince*, 847 N.W.2d at 21.

The district court found Dr. Marshall's opinion that appellant met the SDP factors to be more persuasive than either Drs. Kenning or Linderman because it agreed with Dr. Marshall's emphasis on the applicable caselaw factors. Furthermore, the district court noted that it strongly considered appellant's history of sexual offending, sexual deviance, antisocial behavior, and poor history of complying with supervision. It explained why it

placed greater weight on certain factors even if the actuarial and risk-assessment tools considered them, noting that the tools failed to account adequately for individualized circumstances. Furthermore, it discounted Dr. Kenning's conclusion in part because she testified that five of the six *Linehan* factors exacerbated appellant's risk for reoffense, but still concluded that appellant was not highly likely to reoffend. The district court disagreed with the decision of Drs. Kenning and Linderman to place less importance on the caselaw factors. The district court concluded that five of six *Linehan* factors suggested that appellant is highly likely to reoffend. In sum, the record provides clear and convincing evidence to support both the district court's assessment of the *Linehan* factors and its conclusion that appellant meets the criteria for commitment as an SDP.

B. SPP

Appellant also contends that there is insufficient evidence to commit him as an SPP. We disagree.

To commit a person as an SPP, the state must prove by clear and convincing evidence that the person (1) has such "conditions of emotional instability," impulsive behavior, "lack of customary standards of good judgment," "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"; (2) has "a habitual course of misconduct in sexual matters"; (3) has "an utter lack of power to control" his sexual impulses; and (4) as a result, is dangerous to other persons. Minn. Stat. § 253D.02, subd. 15. Appellant only disputes only the third element.

The supreme court and this court have identified numerous caselaw factors that help clarify whether a person has an “utter lack of power to control” his sexual impulses. The district court

considers the nature and frequency of the sexual assaults, the degree of violence involved, the relationship [] between the offender and the victims, the offender’s attitude and mood, the offender’s medical and family history, the results of psychological and psychiatric testing and evaluation, and such other factors that bear on the predatory sex impulse and the lack of power to control it.

In re Blodgett, 510 N.W.2d 910, 915 (Minn. 1994). Other caselaw factors include the person’s need for security, chemical-dependency issues, history of flight, and need for sex-offender treatment. See *In re Pirkkl*, 531 N.W.2d 902, 907-08 (Minn. App. 1995), *review denied* (Minn. Aug. 30, 1995); *In re Irwin*, 529 N.W.2d 366, 375 (Minn. App. 1995), *review denied* (Minn. May 16, 1995); *In re Bieganowski*, 520 N.W.2d 525, 529-30 (Minn. App. 1994), *review denied* (Minn. Oct. 27, 1994).

The district court here considered the above caselaw factors and determined that they supported the conclusion that appellant has an utter lack of power to control his sexual impulses. The record establishes that appellant offended against two victims many times and that the severity of his offenses increased over time. He has offended against people in his family, including the mother of his daughter and his daughter. Appellant failed to complete sex-offender treatment or abide by the conditions of his release. He also failed to keep himself from engaging in high-risk behaviors that would otherwise lead to reoffense, such as viewing child pornography and having unsupervised contact with

underage females. And, at the time of his sex-offense conviction, appellant threatened suicide if not removed from the general prison population.

Importantly, appellant denied having a problem with impulse control, but testified that he knew what he was doing was wrong yet still continued. Appellant also denied being addicted to pornography, but admitted that he uses it as a coping mechanism despite acknowledging that he should avoid it because it played a part in his sex offenses. Dr. Marshall testified that appellant met the “utter lack” element. The record provides clear and convincing evidence to support the district court’s conclusion that appellant should be committed as an SPP and as an SDP.

Affirmed.