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Minn. Stat. § 480A.08, subd. 3 (2018).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A19-1707**

In the Matter of the Civil Commitment of:
Joseph Allen Stone.

**Filed March 2, 2020
Affirmed
Bjorkman, Judge**

St. Louis County District Court
File No. 69VI-PR-18-129

Todd E. Deal, Virginia, Minnesota (for appellant Joseph Stone)

Mark S. Rubin, St. Louis County Attorney, Leah Stauber, Assistant County Attorney,
Virginia, Minnesota (for respondent St. Louis County Public Health and Human Services)

Considered and decided by Bjorkman, Presiding Judge; Rodenberg, Judge; and
Slieter, Judge.

UNPUBLISHED OPINION

BJORKMAN, Judge

Appellant challenges his civil commitment as a mentally ill and dangerous (MI&D) person, arguing that the district court clearly erred by finding that he is substantially likely to engage in acts capable of inflicting serious physical harm on another in the future. We affirm.

FACTS

Appellant Joseph Allen Stone has a significant history of mental illness and assaultive criminal behavior. He has bipolar schizoaffective disorder and was civilly committed as a result of mental illness from July 2015 through May 2016, and June 2016 through December 2017.¹ His criminal history between 2002 and 2016 includes 13 convictions for violent conduct such as domestic assault (two), obstructing legal process (two), and felony assault against a police officer.

In June 2018, Stone was charged with obstructing legal process with force after he physically assaulted law-enforcement officers arresting him pursuant to a warrant. Stone remained agitated and became “increasingly aggressive” in jail, making delusional statements that precipitated a mental-health assessment by jail staff. By July, Stone was placed on a jail management plan due to his behavior. The plan required Stone to be fully shackled during personal interactions and supervised by officers armed with Tasers. Despite the plan, Stone physically assaulted his attorney during a jail meeting in August.

Following the recommendations of a court-appointed examiner, whose interview was cut off after 5-10 minutes due to Stone’s behavior, the district court deemed Stone incompetent to stand trial. The state filed a petition to commit Stone as MI&D. A second examiner was appointed at Stone’s request. As before, the examiner’s interview was terminated after only 15 minutes because Stone was “entirely uncooperative,” rendering the examiner unable to “ask any relevant questions due to [Stone’s] incessant interruptions

¹ Stone’s psychiatric records show that he was also hospitalized seven other times for periods up to three months between March 2014 and October 2016.

and delusional digressions.” The examiner’s report describes Stone’s mental illness and acute psychotic symptoms in detail. It states that Stone denies his mental illness and “will not voluntarily commit to treatment in any respect,” and recommends civil commitment where “he would be ordered to adhere to neuroleptic medication(s) . . . and manage his mental illness.” On September 12, following a hearing, the district court issued an initial order civilly committing Stone as MI&D pursuant to Minn. Stat. § 253B.18, subd. 1(a) (2018).

In November, Jason Lewis, Ph.D., submitted a 60-day evaluation report to the district court, opining that Stone continued to meet the statutory criteria for civil commitment and remained “acutely psychotic.” Dr. Lewis submitted an updated report containing essentially the same findings prior to the August 2019 final commitment review hearing. At Stone’s request, the district court appointed examiner Shane Wernsing, M.D., just before the final hearing. Dr. Wernsing met with Stone on August 25, and used a structured clinical interview tool, the “HCR-20,” to assess risk based on historical, clinical, and risk-management factors. Dr. Wernsing opined that Stone’s clinical risk factors had improved, including his active symptoms, impulsivity, and responsiveness to treatment.² And he noted that in his experience, Stone’s is the first case “where an apparently clinically significant improvement” in a person initially committed as MI&D occurred just before the final commitment hearing. But Dr. Wernsing concluded that Stone still meets the

² At the time of the hearing, Stone had been taking court-ordered neuroleptic medications for nine months.

criteria for MI&D commitment because historical factors are most predictive of future dangerousness.

On August 28, the district court conducted the final review hearing pursuant to Minn. Stat. § 253B.18, subd. 2(a) (2018). The district court considered the examiners' reports and Stone's medical records. And the court heard testimony from Dr. Lewis, Dr. Wernsing, and Stone. In its order for indeterminate civil commitment, the district court notes the examiners' somewhat divergent views regarding Stone's response to treatment and current mental status. The district court found that the medical records support Dr. Wernsing's testimony that Stone's clinical status has improved, but rejected the notion that this reduced Stone's risk of future violence because Stone is in an environment that ensures medication and sobriety compliance. The court concluded that Stone meets the statutory criteria for MI&D commitment and that there are no appropriate less-restrictive alternatives. Stone appeals.

D E C I S I O N

Appellate review of a MI&D 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 the district court's factual findings for clear error based on the record as a whole, *In re Civil Commitment of Ince*, 847 N.W.2d 13, 22 (Minn. 2014), and defer to the court's credibility determinations, *Knops*, 536 N.W.2d at 620.

A person is MI&D if the person is mentally ill, and as the result of that illness presents a "clear danger to the safety of others." Minn. Stat. § 253B.02, subd. 17(a) (2018).

Clear danger is shown by an overt act capable of causing “serious physical harm to another” and “a substantial likelihood that the person will engage in acts capable of inflicting serious physical harm on another.” *Id.* If, at the final review hearing, the district court finds clear and convincing evidence “that the patient continues to be a person who is mentally ill and dangerous, then the court shall order commitment of the proposed patient for an indeterminate period of time.” Minn. Stat. § 253B.18, subd. 3 (2018).

Stone concedes that the evidence establishes that he is mentally ill and engaged in an overt act that caused serious harm to another. His sole argument on appeal is that the district court clearly erred by finding that he is substantially likely to engage in acts that are capable of seriously harming another person in the future. He specifically points to evidence that adjustments in his medication allowed him to make significant progress just before the August 2019 final hearing. We are not persuaded.

A finding of fact is clearly erroneous if it lacks support considering the evidence as a whole. *In re Civil Commitment of Kropp*, 895 N.W.2d 647, 650 (Minn. App. 2017), review denied (Minn. June 20, 2017). But, “[i]f the evidence as a whole sustains the [decision-maker’s] findings, it is immaterial that the record might also provide a reasonable basis for inferences and findings to the contrary.” *Id.* Contrary to Stone’s assertion, the record contains ample and largely undisputed evidence to support the district court’s finding that there is a substantial likelihood that Stone will engage in acts capable of inflicting serious physical harm on another. “Whether the individual is mentally ill and dangerous to either himself or others and is in need of confined therapy turns on the meaning of the facts which must be interpreted by expert psychiatrists and psychologists.”

Addington v. Texas, 441 U.S. 418, 429, 99 S. Ct. 1804, 1811 (1979). Accordingly, we begin our analysis with the testimony and reports of Dr. Lewis, the court’s examiner, and Dr. Wernsing, Stone’s examiner.

In his November 2018 report, Dr. Lewis comprehensively addressed Stone’s long history of violent and threatening behavior, which continued after his June 2018 arrest. He correlated Stone’s violent behavior to his mental illness, noted Stone “lacks insight into his illness and need for treatment,” and opined Stone was likely to engage in future violent acts. In addition to Stone’s historical risk factors, Dr. Lewis opined that “Mr. Stone also presents with clinical risk factors associated with an increased risk for future violence (e.g., problems with insight, problems with symptoms of major mental disorder, problems with instability/impulsivity).” After reevaluating Stone in August 2019, Dr. Lewis reported that Stone remained “acutely psychotic”; showed grossly disorganized thoughts; made statements that were paranoid, delusional, and nonsensical; and demonstrated only “marginal clinical improvement.” Dr. Lewis concluded that Stone “presents a substantial likelihood of engaging in future violence” due to both his “historical risk factors,” which show “an increased baseline risk for future violent behavior,” and his “uncontrolled” clinical risk factors.

Likewise, Dr. Wernsing’s report and testimony indicates that Stone continues to meet the criteria for MI&D commitment. As to the likelihood that Stone would commit violent acts against another in the future, Dr. Wernsing opined that this commitment criterion was met because Stone’s historical risk factors are weighted more heavily than

clinical risk factors because they are most predictive of future dangerousness. This is consistent with Dr. Lewis's testimony regarding the risk-assessment factors.³

Stone's testimony supported the experts' opinions regarding his mental status. That Stone continues to suffer delusions was evident in his testimony, including when he told the district court that "snakes and mice" had come into his bedding the week before, and they were "biting my legs and stuff, but I'm not sure what they've done to try to collect all of them." And when asked if there were any snakes or lasers in the courthouse, Stone replied that there were lasers in the "center courtroom."

The district court, as fact-finder, was free to assess and weigh all of the evidence. *See In re Civil Commitment of Ramey*, 648 N.W.2d 260, 269 (Minn. App. 2002) (deferring to the district court's role as fact-finder and assessor of witness credibility), *review denied* (Minn. Sept. 17, 2002). And the court was permitted to give greater weight to Stone's past conduct than to his recent clinical improvement. *See State v. Ward*, 369 N.W.2d 293, 296-97 (Minn. 1985) (relying on experts' testimony that patient posed danger to public and holding that patient's good behavior in treatment was not determinative of dangerousness).

³ Dr. Wernsing likewise explained, "Historical factors are the most robust predictor of risk and generally cannot change. Clinical factors involve current presentation and are considered amenable to treatment. Risk management factors pertain to how a patient will adjust to future circumstances. Clinical and risk management factors lack the empirical robustness demonstrated by historical factors."

Because we observe no clear error in the district court's findings, we affirm Stone's civil commitment as MI&D.⁴

Affirmed.

⁴ Because we affirm the district court's decision that Stone meets the criteria for MI&D commitment, we need not consider his argument that he should be committed as mentally ill and chemically dependent.