STATE OF MINNESOTA
IN COURT OF APPEALS
A20-0152

In the Matter of the Civil Commitment of: Cody Jerome Kaiser.

Filed August 10, 2020
Affirmed
Connolly, Judge

Dakota County District Court
File No. 19HA-PR-19-261

David A. Jaehne, West St. Paul, Minnesota (for appellant)

James C. Backstrom, Dakota County Attorney, Heather D. Pipenhagen, Assistant County Attorney, Hastings, Minnesota (for respondent Dakota County)

Considered and decided by Connolly, Presiding Judge; Johnson, Judge; and Larkin, Judge.

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

CONNOLLY, Judge

Appellant challenges his indeterminate commitment as mentally ill and dangerous, arguing that he showed sufficient improvement that he should not have been committed. Because the district court did not clearly err in finding that appellant is mentally ill and dangerous, we affirm.

FACTS

In April 2019, Dakota County filed a petition for judicial commitment of appellant Cody Kaiser. The petition arose after appellant threatened his father and sister with a knife multiple times, assaulted his sister with a hammer, and choked his father. After an initial commitment hearing, the district court issued an order in June 2019, civilly committing appellant as mentally ill and dangerous, based on the reports and testimony of two court-appointed examiners.

The district court held a 60-day review hearing on November 1, 2019.[1] Dr. Jason Lewis, a forensic examiner at appellant's treatment facility, testified at the hearing. He also conducted a 60-day evaluation of appellant and submitted a report to the district court. Dr. Lewis testified that appellant had achieved some stabilization since his hospitalization, but that he continued to demonstrate disorganized thoughts and delusional ideation. Dr. Lewis stated that, even though appellant had expressed insight as to his mental illness and his need for medication, such insight appeared to be "impression management," so that appellant could "look good on paper" and avoid being committed. Based on appellant's history and ongoing symptoms, Dr. Lewis opined that appellant's prognosis was "marginal to poor." He therefore concluded that appellant was mentally ill with schizoaffective disorder, bipolar type, and that, as a result of that illness, appellant represented a danger to the public or himself.

[1] The review hearing was originally scheduled for August 2019, but the district court twice continued the hearing. Appellant does not challenge this delay in the review hearing.

Dr. Lewis testified that appellant was in need of further psychiatric care and treatment for the foreseeable future, that appellant needed to continue treatment in a secure treatment setting, and that appellant's current treatment facility provided the type of treatment that appellant needed. On cross-examination, Dr. Lewis conceded that treatment in a community-based setting may be appropriate for appellant. He clarified, however, that he did not know whether any treatment facility existed that both had a community-based setting and was secure and met the other requirements for appellant's treatment. On redirect examination, Dr. Lewis concluded that appellant's current treatment facility was the least restrictive alternative for appellant.

The two court-appointed examiners who testified at the initial commitment hearing also testified at the review hearing. Both examiners opined, based on their review of appellant's medical records and Dr. Lewis's 60-day evaluation, that appellant was still mentally ill and dangerous. They conceded, however, that they had not spoken with appellant since his initial commitment and had not reviewed his most recent medical records. And one examiner recognized that appellant had shown improvement since his initial commitment.

Appellant's father testified at the review hearing. He stated that he had visited appellant at the treatment facility about once per week and that appellant had shown improvement since his initial commitment. Specifically, appellant's father believed that appellant's "thoughts are organized," that appellant was "a lot more willing to take medication," and that he had "accepted his illness now" and knew he had to take medication

to cope with his illness. Appellant's father does not have any training as a psychologist or psychiatrist.

Finally, appellant testified at the review hearing. Appellant recognized that he had schizoaffective disorder and that he had to take medication for the rest of his life in order to manage his mental illness. He claimed that he had not had any delusional thoughts since May 2019. Additionally, appellant entered into evidence a discharge plan that he had prepared for himself. He testified that he was willing to participate in inpatient treatment if required, but he did not believe that such treatment was necessary.

On November 26, 2019, the district court issued an order indeterminately committing appellant as mentally ill and dangerous. In reaching that determination, the district court found credible the testimony of Dr. Lewis and the two court-appointed examiners. It found that appellant's proposed discharge plan was not "compelling or viable" under the circumstances. The district court concluded that there had been "no significant changes in [appellant's] condition or diagnosis" since appellant's initial commitment, and that there remained clear and convincing evidence that the statutory requirements for commitment as mentally ill and dangerous were satisfied. The district court also determined that there would be "a clear danger to public safety" if appellant did not receive treatment in a secure facility and that appellant's current treatment facility was the least restrictive alternative for meeting appellant's treatment needs and for protecting the public.

This appeal follows.

D E C I S I O N

On appeal from a district court's order of commitment, we review whether the district court complied with the statute and whether its findings of fact support the commitment. *In re Knops*, 536 N.W.2d 616, 620 (Minn. 1995). We view the evidence in the light most favorable to the district court's decision, do not set aside findings of fact unless they are clearly erroneous, and give the district court the opportunity to judge the credibility of witnesses. *Id.* We look to the record as a whole when determining whether the findings are clearly erroneous. *In re Civil Commitment of Ince*, 847 N.W.2d 13, 22 (Minn. 2014). "Where the findings of fact rest almost entirely on expert testimony, the [district] court's evaluation of credibility is of particular significance." *Knops*, 536 N.W.2d at 620.

The district court must commit a patient to a secure treatment facility if it finds, by clear and convincing evidence, that the patient is "mentally ill and dangerous to the public." Minn. Stat. § 253B.18, subd. 1(a) (2018). A patient is "mentally ill and dangerous to the public" when he is "mentally ill" and "as a result of that mental illness presents a clear danger to the safety of others." Minn. Stat. § 253B.02, subd. 17 (2018). A clear danger to the safety of others is demonstrated by the facts that (1) "the person has engaged in an overt act causing or attempting to cause serious physical harm to another" and (2) "there is a substantial likelihood that the person will engage in acts capable of inflicting serious physical harm on another." *Id.*

When a patient is committed as mentally ill and dangerous, the treatment facility must file a written treatment report with the district court within 60 days after commitment,

and the district court must hold a hearing to make a final determination as to whether the patient should remain committed as mentally ill and dangerous. Minn. Stat. § 253B.18, subd. 2(a) (2018). "If the court finds at the final determination hearing . . . 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." *Id.*, subd. 3 (2018).

Appellant argues that he had shown significant improvement since the initial commitment hearing so as not to be indeterminately committed as mentally ill and dangerous. He points to the testimony of Dr. Lewis and one of the court-appointed examiners that appellant's condition was improving. In making this argument, appellant does not dispute that he meets the first requirement for being mentally ill and dangerous—that he has engaged in an overt act causing or attempting to cause serious physical harm to another. But he appears to dispute that he meets the second requirement—that there is a substantial likelihood that he will engage in acts capable of inflicting serious physical harm on another.

It is true that two examiners testified that appellant had shown improvement since his initial commitment. But we must look at the entire record when determining whether the district court's findings are clearly erroneous, not just portions of the record. *See Ince*, 847 N.W.2d at 22. At the review hearing, Dr. Lewis also testified that appellant demonstrated disorganized thoughts and delusional ideation and that appellant's insights into his mental illness appeared to be impression management designed to avoid being committed. Dr. Lewis concluded that, despite appellant's improvement before the review

hearing, appellant still represented a danger to the public or himself based on his history of violence. And the two court-appointed examiners opined that appellant remained mentally ill and dangerous, based on their review of Dr. Lewis's 60-day evaluation and appellant's medical records. In concluding that appellant continued to represent a threat to public safety, the district court relied heavily on the testimony of the three examiners and found their testimony to be credible. The district court's evaluation of credibility is especially important when its findings of fact are based on expert testimony. *Knops*, 536 N.W.2d at 620. On this record, there is no basis for concluding that the district court clearly erred in finding that there is a substantial likelihood that appellant will engage in acts capable of inflicting serious physical harm on another.

Therefore, the district court's finding that appellant continued to be mentally ill and dangerous, thus requiring indeterminate commitment, is not clearly erroneous.

Affirmed.