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**STATE OF MINNESOTA
IN COURT OF APPEALS
A20-0805**

In the Matter of the Civil Commitment of:
Nicholas Scott Thompson.

**Filed November 9, 2020
Affirmed
Segal, Chief Judge**

Jackson County District Court
File No. 32-PR-20-9

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

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Considered and decided by Segal, Chief Judge; Hooten, Judge; and Florey, Judge.

UNPUBLISHED OPINION

SEGAL, Chief Judge

Appellant challenges the findings in support of the district court's order continuing his commitment as a person with mental illness. Because the evidence is sufficient to support his continued commitment, we affirm.

FACTS

In July 2018, an individual called 911 and informed dispatch that a person at the address required assistance. Law enforcement responded and found appellant Nicholas

Scott Thompson's mother deceased as a result of strangulation. Thompson was charged with second-degree murder, but was found not competent to stand trial due to mental illness. In March 2019, Thompson was civilly committed as mentally ill for a period of six months. In September 2019, his commitment was continued for an additional six months based on a lack of progress and continued threatening behavior.

Thompson was initially housed at Anoka Metro Regional Treatment Center (AMRTC). He remained at AMRTC from March 2019 until May 2019, when he was transferred to the Minnesota Security Hospital (MSH). His discharge summary from AMRTC indicates that he adamantly refused to participate in treatment, and was transferred to MSH based on "alleged behaviors not appropriate for the AMRTC setting." These behaviors included "stirring up the other patients," smearing feces on the wall, and pitting the other patients against one another. He was transferred to MSH with a diagnosis of delusional disorder, persecutory type.

At MSH, Thompson continued to refuse treatment and exhibited delusional thinking, including a claim that the police department and his family were conspiring against him. Dr. John Franzen examined Thompson at MSH, and his report indicates that Thompson made "a few odd statements that it would be legal to kill somebody in his home if he felt threatened" and that Dr. Franzen "did not push that issue because Mr. Thompson gets very irate very quickly and Mr. Thompson could very well be dangerous." Thompson was discharged from MSH to Jackson County Jail in December 2019, on the grounds that he was at "baseline psychiatrically."

In February 2020, respondent Des Moines Valley Health and Human Services (the county) filed a petition to continue Thompson's commitment. The county alleged that continued commitment was necessary because Thompson still exhibited delusional and paranoid thinking and had not participated in any services or taken medication for his mental illness since his initial commitment. Dr. Charles Chmielewski and Dr. Tyler Dority were appointed to examine Thompson. Both agreed that Thompson still suffered from delusional disorder, persecutory type. Dr. Chmielewski supported Thompson's continued commitment, but Dr. Dority did not. Dr. Dority acknowledged that Thompson "clearly suffers from a delusional disorder and is certainly in need of ongoing psychiatric and psychological treatment toward long-term stabilization," and may be a danger to himself and others if he were released. Dr. Dority, however, opined that, because Thompson was incarcerated at Jackson County Jail and would remain incarcerated until his criminal case was concluded, he did not pose a danger to the public. Dr. Dority felt the more appropriate course of action would be to wait until the conclusion of Thompson's criminal case and then have the county re-file a commitment petition if Thompson were acquitted of the charges.

In April 2020, the district court continued Thompson's commitment. The district court determined that Thompson met the statutory definition of a mentally ill person, was a risk to himself and others, and there were no less restrictive alternatives that would adequately provide treatment and safeguard Thompson and others. This appeal follows.

DECISION

In reviewing a commitment order, we will not reverse a district court's findings of fact unless they are clearly erroneous. *In re McGaughey*, 536 N.W.2d 621, 623 (Minn. 1995). The court reviews de novo whether the evidence is sufficient to meet the standard of commitment. *In re Thulin*, 660 N.W.2d 140, 144 (Minn. App. 2003).

An action to continue the commitment of an individual as mentally ill, after one six-month continuance has already been granted, must be commenced by the filing of a new petition. *In re Brown*, 640 N.W.2d 919, 922-23 (Minn. 2002). A district court may not grant the petition unless it is supported by clear and convincing evidence that the proposed patient is mentally ill, as defined by statute, and no suitable alternative to commitment exists. Minn. Stat. § 253B.09, subd. 1(a) (2018); *Brown*, 640 N.W.2d at 922. The phrase “person who is mentally ill” is defined in the statute to include a person with “a substantial psychiatric disorder” which “grossly impairs” behavior or cognition, causes “grossly disturbed behavior or faulty perceptions,” and “poses a substantial likelihood of physical harm” to the person or others. Minn. Stat. § 253B.02, subd. 13(a) (2018). A substantial likelihood of harm may be demonstrated by “a failure to obtain necessary food, clothing, shelter, or medical care as a result of the impairment.” *Id.*, subd. 13(a)(1).

The district court determined that Thompson met the statutory criteria for continued commitment based on his diagnosis and that the “nature of Thompson’s disorder places him at greater risk of harm to himself or other[s] and involuntary commitment is necessary for the protection of Thompson or others.” The district court also found that there were no less restrictive alternatives.

Thompson argues that the record does not support the determination that he meets the standard for commitment. He first argues that the record lacks sufficient evidence that commitment is necessary to protect himself or others. He points to Dr. Dority's opinion that he is not a risk to the public because he remains incarcerated at Jackson County Jail. But being incarcerated in jail does not mean that he does not interact with others, including the jail staff. And as the district court noted, Thompson believes that the jail staff, police and his family are conspiring against him and, as a result of his disorder, he may lash out when he feels threatened. Moreover, there is a pending criminal case against him that alleges he murdered his mother, and he has allegedly attempted to strangle his father in the past. Dr. Chmielewski opined that Thompson is "potentially very dangerous, and absolutely should not be released in his current untreated state."

Thompson also meets the statutory definition of a "person with mental illness" based on his refusal to participate in treatment for his illness. Under the statute, a "person with a mental illness" includes an individual who has a substantial psychiatric disorder

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, . . . medical care as a result of the impairment[.]

Minn. Stat. § 253B.02, subd. 13(a)(1). Here, the record demonstrates that, despite his diagnosis, Thompson has continually denied that he has a mental illness, refused to participate in treatment, and even alleged that he could "turn off" his delusions if needed. Both Dr. Dority and Dr. Chmielewski opined that Thompson plainly required continued

psychiatric treatment, and Dr. Dority noted that there is evidence that his psychiatric disorder had hindered his ability to “obtain medical care . . . or adhere to medication suggestions.” The district court specifically noted that Thompson had been resistant to treatment and that, without continued commitment, “it is unlikely that [Thompson] would voluntarily participate in treatment.” Based on the evidence presented, the record supports the district court’s determination that Thompson meets the statutory definition of a “person who is mentally ill.”

Thompson next argues that the record does not support the determination that there are no less restrictive alternatives. He argues that dismissal of the petition is a less restrictive alternative because he would remain incarcerated. But we fail to see how confinement in jail offers a “less restrictive alternative” to commitment at a psychiatric hospital.

Finally, Thompson claims that, because there is a separate petition for commitment pending to commit him as mentally ill and dangerous (MI&D), dismissing this petition is a suitable, less restrictive alternative because the county could refile the petition if the MI&D petition is denied. While this might be a path the county could have chosen, this does not alter the propriety of the district court’s order at issue here. Moreover, this path is also not a *less* restrictive alternative because the MI&D petition also seeks a commitment. We therefore conclude that there are no less restrictive alternatives, and the district court did not err in determining that Thompson met the criteria for continued commitment.

Affirmed.