

*This opinion is nonprecedential except as provided by
Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A20-1209**

In the Matter of the Civil Commitment of: Harry Denton Lewis.

**Filed February 16, 2021
Affirmed
Connolly, Judge**

Ramsey County District Court
File No. 62-MH-PR-19-459

Kathleen K. Rauenhorst, Rauenhorst & Associates, P.A., Roseville, Minnesota (for appellant Harry Lewis)

John Choi, Ramsey County Attorney, Timothy P. Carey, Assistant County Attorney, St. Paul, Minnesota (for respondent Ramsey County)

Considered and decided by Connolly, Presiding Judge; Reyes, Judge; and Halbrooks, Judge.*

NONPRECEDENTIAL OPINION

CONNOLLY, Judge

Appellant challenges his indeterminate commitment as mentally ill and dangerous by the district court. He argues that he does not meet the statutory requirements of Minn.

* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

Stat. § 253B.18, subd. 17 (2018), for commitment because respondent failed to establish that (1) he caused or intended to cause harm and (2) he poses a risk of inflicting serious harm on another. Appellant asks this court to reverse the order and dismiss the petition in its entirety, or, in the alternative, he requests a remand for an order for a less restrictive alternative. We affirm.

FACTS

Appellant Harry Lewis has a lengthy history of mental illness. One of several psychologists familiar with this case diagnosed appellant with multiple disorders, including: Antisocial Personality Disorder, Schizoaffective Disorder, and Substance Abuse Disorder. The psychologist stated that appellant also suffers distorted beliefs, paranoid delusions, auditory hallucinations, command-based hallucinations, and visual hallucinations; he has behavior manifestations of mood disturbances, including decreased need for sleep, flight of ideas, rage, distractibility, and depression with multiple suicide attempts.

Appellant's mental-health and chemical-health issues have resulted in frequent encounters with law enforcement, dating back to the late 1980s. Appellant lived in Utah where he was physically and sexually violent to women on multiple occasions. After serving a sentence under the supervision of the correctional department in Utah, appellant moved to Minnesota. He has resided here for almost 20 years. Over this time, appellant has almost always been under a type of civil commitment, residing either in the community or in a secure facility. Despite this supervision, appellant continues to engage in dangerous behavior and illicit drug and alcohol use. As one psychologist determined, "it is therefore

nearly impossible to argue [appellant] does not pose a continuing risk to the public, as there is no indication his violent behavior will cease, particularly should he continue to abuse alcohol and illicit substances.”

Appellant was in the Minnesota Department of Corrections’ custody in 2019, and upon his release from treatment, respondent State of Minnesota filed a petition requesting an order committing appellant as a mentally ill and dangerous person. A hearing was held on June 2, 2020, and the district court found appellant mentally ill and dangerous and placed him under indeterminate commitment by order on August 18, 2020. This appeal follows.

DECISION

“We review de novo whether there is clear and convincing evidence in the record to support the district court’s conclusion that appellant meets the standards for commitment.” *In re Thulin*, 660 N.W.2d 140, 144 (Minn. App. 2003). The record is reviewed according to a clear-error standard of review of the district court’s findings of fact, and this court reviews the case in the light most favorable to the findings of fact. Minn. R. Civ. P. 52.01; *In re Knops*, 536 N.W.2d 616, 620 (Minn. 1995). Due deference is given to the district court’s findings of fact, as the district court is the best judge of the credibility of witnesses. *In re Civil Commitment of Crosby*, 824 N.W.2d 351, 356 (Minn. App. 2013), *review denied* (Minn. Mar. 27, 2013).

“A ‘person who is mentally ill’ means any person who has an organic disorder of the brain or substantial psychiatric disorder.” Minn. Stat. § 253B.02, subd. 13(a) (2018). A person is considered mentally ill and dangerous if the person is mentally ill and

who as a result of that mental illness presents a clear danger to the safety of others as demonstrated by the facts that (i) *the person has engaged in an overt act causing or attempting to cause serious physical harm to another* and (ii) *there is a substantial likelihood that the person will engage in acts capable of inflicting serious physical harm on another*.

Id., subd. 17(a) (2018) (emphasis added). Appellant does not challenge the fact that he is mentally ill. Instead, appellant argues that respondent failed to prove that he engaged in an overt act with intent to cause serious physical harm, and that respondent failed to prove that there is a substantial likelihood that he will inflict serious harm on another in the future.

Appellant's first argument is misplaced; the statute does not require that an individual *intend* to cause physical harm. The Minnesota Supreme Court has held that it is not necessary that the person intend to, or even succeed in, causing serious physical harm. *In re Jasmer*, 447 N.W.2d 192, 195-96 (Minn. 1989). Later, this court reiterated the same principle: "The person's intent or the outcome of the action is not relevant to the determination of whether the conduct meets the overt act requirement." *In re Civil Commitment of Carroll*, 706 N.W.2d 527, 530 (Minn. App. 2005). To satisfy the first requirement, respondent must merely show that "the person has engaged in an overt act causing or attempting to cause serious physical harm to another." Minn. Stat. § 253B.02, subd. 17(a)(2)(i). Respondent satisfied this requirement; the record is replete with instances of violent conduct by appellant spanning over 30 years.

In its August 2020 order, the district court found that "[appellant] has engaged in remote overt acts of violence that form part of the determination that he is a dangerous person, including several sexual assaults that occurred over thirty years ago in the state of

Utah.” The district court went on to state that this “initial concern about his dangerousness is expanded by more recent conduct that has demonstrated a danger to others.” For example, in 2017, after being asked to leave a bar due to his aggressive conduct towards other patrons, appellant held a pair of scissors over the bartender’s head and told her that he would stab her, then rape her. In 2018, he approached a vague acquaintance on the street and began yelling obscenities and threats. He retreated after punching the man in the face, but he returned with a large stick and continued the assault. During his transport to jail, he threatened the arresting officers’ lives. According to the district court, the appellant stated: “[Y]eah, because they brought me to jail and not him (the victim)[.] I’m not bullsh-tting, somebody is going to f-ing die.” The record clearly supports the finding that appellant “engaged in an overt act causing or attempting to cause serious physical harm to another” as required under Minn. Stat. § 253B.02, subd. 17(a)(2)(i).

The statute also requires a showing that “there is a substantial likelihood that the person will engage in acts capable of inflicting serious physical harm on another.” *Id.*, subd. 17(a)(2)(ii). The district court stated several times in its order that the capacity for serious harm to another is evident by individual instances of violent behavior. The district court also stated that “[o]f particular concern, is that [appellant] has actually delivered on these threats during his most recent time in the community.” Appellant was under commitment as a person who suffered from mental illness with chemical dependency, with community support from case management and probation officers, during both the 2017 and 2018 incidents. Additional violent episodes occurred while appellant was in the more restrictive environment of the Anoka Metro Regional Treatment Center pending

proceedings on this matter. According to the district court's findings, appellant threw a cup of water at a care provider, called her a "f-cking b-tch," and continued berating her as she walked away. The fact that appellant continues to engage in violent behavior despite being under supervision—in the community and in secure facilities—supports the finding that he has caused, and is capable of causing, harm to another.

At the commitment hearing, several psychologists presented diagnostic reports and opinions regarding the threat that appellant continues to pose to the community. One psychologist completed a 60-day evaluation for the district court and opined, "multiple unmitigated clinical risk factors remain present that likely further [appellant's] risk for engaging in violence." Another psychologist submitted a report stating that appellant presents with a substantial likelihood of engaging in future acts capable of inflicting serious physical harm on another, and emphasized the point that over the past sixteen years, he issued violent threats, including threats of sexual violence, and assaulted others. As the district court found, this conduct "bear[s] a strong resemblance" to the actual sexual violence appellant engaged in when he lived in Utah. And finally, one of the psychologists who conducted a violence-risk assessment concluded that appellant's likelihood for recidivism was "substantially higher than the base rate . . . and at the high end of the scale."

Based on the expert testimony from several psychologists, and appellant's lengthy history of violence in both Utah and Minnesota, the district court concluded that he met the statutory requirements of Minn. Stat. § 253B.02, subd. 17. The record clearly supports the

district court's decision to place appellant under indeterminate commitment as a mentally ill and dangerous person.

Affirmed.