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Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A20-1230**

In the Matter of the Civil Commitment of:
Anthony John Dentz.

**Filed January 19, 2021
Reversed and remanded
Frisch, Judge**

Dakota County District Court
File No. 19HA-PR-19-877

Daniel S. Kufus, Kufus Law, LLC, Roseville, Minnesota (for appellant Anthony Dentz)

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Considered and decided by Frisch, Presiding Judge; Segal, Chief Judge; and Hooten, Judge.

NONPRECEDENTIAL OPINION

FRISCH, Judge

Appellant argues that the district court misapplied the law and made clearly erroneous findings in its order committing him as a sexually dangerous person. We reverse and remand for further proceedings.

FACTS

On December 31, 2019, respondent Dakota County Social Services (the county) petitioned the district court to order appellant Anthony John Dentz committed to the

custody of the Minnesota Commissioner of Human Services as a sexually dangerous person (SDP). *See* Minn. Stat. §§ 253D.02, subd. 16 (defining sexually dangerous person), .07, subds. 1-2 (establishing petition procedure) (2018). The county alleged that commitment was necessary because Dentz: (1) had engaged in a course of harmful sexual conduct based on convictions for criminal sexual conduct, solicitation of minors, and possession of child pornography; (2) had been diagnosed with various disorders, including paraphilic and pedophilic disorders; (3) had violated the terms of his supervised release and been discharged from outpatient sex-offender treatment; and (4) was highly likely to engage in harmful sexual conduct in the future. The petition proceeded to a hearing before the district court, where the following evidence was received.

Prior Convictions

In July 2014, the state charged Dentz with fifth-degree criminal sexual conduct in violation of Minn. Stat. § 609.3451, subd. 1(1) (2012), based on allegations that Dentz had oral and vaginal intercourse with a minor. Dentz pleaded guilty, and in January 2015, the district court stayed execution of a one-year sentence and placed Dentz on supervised probation.

In February 2016, the state charged Dentz with solicitation of a child to engage in sexual communication in violation of Minn. Stat. § 609.352, subd. 2a(2) (2014), and solicitation of a child to engage in sexual conduct in violation of Minn. Stat. § 609.352, subd. 2a(1) (2014). The underlying factual basis for the charges included allegations that Dentz used social media to exchange sexual messages with, and attempt to arrange sexual

encounters with, underage girls. In June 2016, Dentz pleaded guilty to solicitation of a minor to engage in sexual conduct.

On July 26, 2016, Dentz admitted that he violated probation in his fifth-degree criminal-sexual-conduct case and the district court executed the remainder of his sentence. Also in July 2016, the state charged Dentz with six counts of possession of a pornographic work involving a minor in violation of Minn. Stat. § 617.247, subd. 4(a) (2014). The factual basis for the charges included allegations that in February 2016, officers executing a search warrant seized Dentz's laptop from his home and discovered several pornographic images of prepubescent girls.

In September 2016, the state charged Dentz with five additional counts of electronic solicitation of a child to engage in sexual conduct in violation of Minn. Stat. § 609.352, subd. 2a(1). The underlying basis for the charges included allegations that between November 2015 and February 2016, Dentz messaged underage girls through social media in attempts to arrange sexual encounters. Later in September 2016, the district court sentenced Dentz in his preexisting solicitation case, staying execution of a 20-month sentence and placing Dentz on supervised probation.

In April 2017, Dentz pleaded guilty to three counts of possession of a pornographic work involving a minor and three counts of solicitation of a minor. The district court imposed various concurrent sentences, the highest of which was 54 months' imprisonment for possession of a pornographic work involving a minor.

Supervised-Release Violation and Report

In February 2019, the Minnesota Department of Corrections (DOC) released Dentz under supervision. Among other conditions, the DOC required Dentz to: (1) complete outpatient sex-offender programming; (2) refrain from accessing sexually explicit materials; (3) refrain from contacting any underage persons without approval; and (4) maintain contact with, and follow directions from, his probation agent. On October 29, 2019, corrections filed a report alleging that Dentz violated his conditions of release because he: (1) admitted to accessing pornographic materials; (2) admitted to contact with minors in which he engaged in sexually explicit conversations and solicited a photograph from an underage girl; (3) accessed the internet through an undisclosed cell phone and a friend's phone; and (4) had been terminated from sex-offender programming.

Evaluator Report and Testimony

The district court received the court-appointed evaluator's written report and heard her testimony. The evaluator diagnosed Dentz with an Other Specified Disruptive, Impulse Control, or Conduct Disorder, a Rule Out Unspecified Paraphilic Disorder (teen and preteen girls), and an Unspecified Personality Disorder with Histrionic, Narcissistic, and Borderline Traits.

The evaluator administered the Hare Psychopathy Checklist-R Second Edition (PCL-R), which indicated that Dentz's risk of recidivism was "low" relative to other incarcerated adult males. The Static-99R placed Dentz at an above-average risk level of six, indicating that he is "about 3.77 times" more likely to reoffend relative to "a typical sex offender" and falls within a group whose recidivism rate is between 18.4% and 22.5%

over a five-year period. The Static-2002R placed Dentz at a Level IVb (“Well Above Average”) risk category, indicating that Dentz “is about [seven] times the risk of an average sex offender” and falls within a group whose recidivism rate is between 36.5% and 51.2% over a five-year period. The Static-99R results combined with the Structured Risk Assessment-Forensic Version (SRA-FV) instrument revealed “an above average but not high level of psychological or dynamic needs . . . [and] significant vulnerabilities to re-offense.” The Sexual Violence Risk-20 instrument demonstrated the existence of 7 of 20 risk factors. Dentz also demonstrated 12 of 16 protective factors “thought to buffer the individual against the destabilizing influence of risk factors.” In balancing risk factors and protective factors, the evaluator concluded: “In the future, Mr. Dentz is at significant risk to continue his most recent behaviors, which has been his acknowledged interest in sexual talk with girls and multiple impersonal sexual encounters.”

The evaluator concluded that Dentz’s disorders impeded his ability to control his sexual impulses. She also determined that Dentz posed a high risk of re-offense for non-contact offenses but questioned whether his behavior was “harmful” as defined by law. Despite indicators of risk, the evaluator noted that Dentz: (1) had no history of violent offenses, (2) would be subject to heightened supervision if released, (3) had an interest in treatment, and (4) had not committed any new criminal offenses upon release despite his violations of supervised-release terms. The evaluator concluded that Dentz’s risk could be managed with community-based intervention, and therefore, Dentz did not “appear to be among the group of offenders whose risk level warrants the extraordinary intervention of civil commitment as a sexually dangerous person.”

Findings, Conclusions, and Order for Commitment

The district court found that Dentz had been convicted of fifth-degree criminal sexual conduct, numerous counts of electronic solicitation of a minor, and numerous counts of possession of child pornography. The district court explained that it “d[id] not consider the viewing and possession of child pornography to be a victimless crime” and that the offense fell “within the scope of violent crime.” In its conclusions of law, the district court explained:

The evidence is clear and convincing that [Dentz’s] convictions for Criminal Sexual Conduct in the Fifth Degree, four counts of Electronic Solicitation of a Minor, and three counts of Possession of Child Pornography raise the presumption that the victims sustained serious physical and/or emotional harm, which [Dentz] has failed to rebut. Therefore, this conduct constitutes harmful sexual conduct as that term is defined in Minn. Stat. § 253D.02, [s]ubd. 8.

The district court also found that Dentz “manifested sexual and personality disorders,” and credited the diagnoses set forth in the court-appointed evaluator’s report.

The district court also found that “[t]he evidence is clear and convincing that [Dentz] is highly likely to engage in harmful sexual conduct in the future due to [his] history of harmful behavior, base rate statistics, similarity of present and future contexts to past [contexts], and sources of stress in the environment.” It found that Dentz had “view[ed] child pornography” while on supervised release in the summer of 2019. It also found that, despite the lack of any violent history, Dentz had a history of harmful sexual contact with minors and “engaged in behavior evidencing escalating sexual contact with minors.” It also noted that Dentz’s youth increased his likelihood to re-offend, and that he was

“statistically more likely to re-offend than the typical sex offender.” It found that Dentz was likely to face the same stressors he faced previously and that any release would be subject to the same conditions that he violated while on supervised release in 2019.

The district court determined that Dentz is a sexually dangerous person, that he requires treatment in a confined setting for public-safety purposes, and that Dentz failed to establish any less-restrictive alternative to secure confinement. The district court granted the county’s petition and ordered Dentz committed to the Minnesota Commissioner of Human Services. This appeal follows.

DECISION

Dentz seeks reversal of the commitment order, arguing that the district court misapplied the law in determining that he engaged in a course of harmful sexual conduct, and the district court’s determination that Dentz is highly likely to engage in future harmful sexual conduct either lacks clear and convincing support in the record or is premised on clearly erroneous findings. “In order to commit someone as [an SDP], the district court must find by clear and convincing evidence that the person: (1) has engaged in a course of harmful sexual conduct; (2) has 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.” *In re Civil Commitment of Ince*, 847 N.W.2d 13, 20 (Minn. 2014); *see also* Minn. Stat. § 253D.02, subd. 16(a)(1)-(3). This appeal concerns the first and third elements.

Generally, we limit our appellate review of a commitment decision “to an examination of the [district] court’s compliance with the statute,” and we consider whether commitment is “justified by findings based upon evidence at the hearing.” *In re Knops*,

536 N.W.2d 616, 620 (Minn. 1995). “This court reviews de novo whether the record contains clear and convincing evidence that each element of the standard for commitment has been met.” *In re Civil Commitment of Jackson*, 658 N.W.2d 219, 224 (Minn. App. 2003), *review denied* (Minn. May 20, 2003). “We review the district court’s factual findings under a clear error standard to determine whether they are supported by the record as a whole.” *Ince*, 847 N.W.2d at 22.

I. The district court misapplied the law in finding that Dentz engaged in a course of harmful conduct.

Dentz argues that the district court erred by applying a statutory presumption of harm to the conduct underlying his convictions and by improperly requiring him to rebut that presumption. We agree.

To commit an individual as an SDP, the district court must find that the individual “has engaged in a course of harmful sexual conduct.” Minn. Stat. § 253D.02, subd. 16(a)(1). “‘Harmful sexual conduct’ means sexual conduct that creates a substantial likelihood of serious physical or emotional harm to another.” *Id.*, subd. 8(a) (2018). The legislature has defined certain types of conduct that carry a rebuttable presumption of a substantial likelihood of serious harm:

There is a rebuttable presumption that conduct described in the following provisions creates a substantial likelihood that a victim will suffer serious physical or emotional harm: section 609.342 (criminal sexual conduct in the first degree), 609.343 (criminal sexual conduct in the second degree), 609.344 (criminal sexual conduct in the third degree), or 609.345 (criminal sexual conduct in the fourth degree). If the conduct was motivated by the person’s sexual impulses or was part of a pattern of behavior that had criminal sexual conduct as a goal, the presumption also applies to

conduct described in section 609.185 (murder in the first degree), 609.19 (murder in the second degree), 609.195 (murder in the third degree), 609.20 (manslaughter in the first degree), 609.205 (manslaughter in the second degree), 609.221 (assault in the first degree), 609.222 (assault in the second degree), 609.223 (assault in the third degree), 609.24 (simple robbery), 609.245 (aggravated robbery), 609.25 (kidnapping), 609.255 (false imprisonment), 609.365 (incest), 609.498 (tampering with a witness), 609.561 (arson in the first degree), 609.582, subdivision 1 (burglary in the first degree), 609.713 (terroristic threats), or 609.749, subdivision 3 or 5 (harassment or stalking).

Id., subd. 8(b) (Supp. 2019). A “course” means a “systemic or orderly succession; a sequence.” *In re Civil Commitment of Ramey*, 648 N.W.2d 260, 268 (Minn. App. 2002) (quotation omitted), *review denied* (Minn. Sept. 17, 2002). Interpretation of commitment statutes presents a question of law that we review de novo. *Ince*, 847 N.W.2d at 20.

Here, the district court specifically found that Dentz’s convictions “raise the presumption that the victims sustained serious physical and/or emotional harm.” But none of the statutes under which Dentz was convicted appear in subdivision 8(b). The county concedes this fact. Accordingly, the statutory presumption did not apply, and the district court erred by applying the presumption to Dentz’s prior convictions.

The county nonetheless suggests that the district court might have properly found a course of harmful sexual conduct under subdivision 8(a) because it made findings regarding the violent nature of child-pornography crimes and referenced the presumption of harm only in its conclusions of law. Although we agree with the district court that child pornography is not a victimless crime and is a serious offense, the district court used unambiguous language erroneously applying the presumption and noted Dentz’s failure to

rebut the presumption. And although the district court might have made conduct-specific findings and conclusions regarding the likelihood of serious harm under subdivision 8(a), it did not do so and instead relied on an erroneous application of the law.

Dentz suggests that the error requires reversal without remand. At oral argument, counsel argued that the county failed to produce any evidence of actual harm, precluding the district court from finding on remand that Dentz engaged in a course of harmful sexual conduct as defined by law. But the statutory definition of “harmful sexual conduct” does not require proof of actual harm; instead, “harmful sexual conduct” is defined as “sexual conduct that *creates a substantial likelihood* of serious physical or emotional harm to another.” Minn. Stat. § 253D.02, subd. 8(a) (emphasis added). And where the county presented evidence regarding the underlying bases for Dentz’s prior crimes, we cannot say that the record precludes the district court from finding that Dentz’s conduct “create[d] a substantial likelihood of serious physical or emotional harm” to others. *Id.* Accordingly, remand is appropriate.

II. The district court made clearly erroneous findings and misapplied the law to find it highly likely that Dentz will engage in future harmful sexual conduct.

Dentz also argues that the county failed to prove that he is highly likely to engage in harmful sexual conduct in the future, that the district court clearly erred by finding that he viewed child pornography while on supervised release, and that the district court misapplied the presumption of harm to that conduct. We agree in part.

Before a district court can civilly commit an individual as an SDP, it must find that an individual “is likely to engage in acts of harmful sexual conduct as defined in

subdivision 8.” Minn. Stat. § 253D.02, subd. 16(a)(3). “Likely” means “highly likely.”

Ince, 847 N.W.2d at 20 (quotation omitted). The district court must consider:

(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, 518 N.W.2d 609, 614 (Minn. 1994) (the *Linehan* factors). The district court should also consider any additional factors important to predicting harmful sexual conduct.

Ince, 847 N.W.2d at 23-24. Although the district court applied the *Linehan* factors, its ultimate conclusion was based on a misapplication of the law and a clearly erroneous factual finding.

As a threshold matter, we discern no error in the rejection of the evaluator’s ultimate conclusion by the district court. It is the district court’s role to weigh the *Linehan* factors and make relevant findings. *See id.* (“As the trier of fact, the district court will be in the best position to determine the weight to be attributed to each factor . . .”). The district court is also tasked with determining the credibility of experts. *Id.* Here, the district court acknowledged the evaluator’s testimony, weighed the *Linehan* factors, and set forth reasons why it diverged from the evaluator’s assessment of the same factors.

We also note that clear and convincing evidence supports many of the district court's *Linehan* findings. The district court found that Dentz's youth increased his risk of re-offense, and the finding is supported by the evaluator's report. The district court's findings regarding statistical and actuarial risks are likewise supported by clear and convincing evidence. Several assessments indicated that Dentz posed a high or greater-than-average risk of re-offense.¹ Dentz argues that the district court erred by "disregard[ing] the testifying expert witness and rel[ying] upon actuarial reports," but the district court was not bound to credit the evaluator's ultimate conclusion over other evidence. *See Ince*, 847 N.W.2d at 23-24.

But other findings by the district court warrant reversal and remand. The district court determined that Dentz is highly likely to engage in harmful sexual conduct in the future, in substantial part, based on his "history of harmful behavior." This finding was premised on the same erroneous application of the statutory presumption of harm. Because Dentz's prior conduct carried no statutory presumption of a substantial likelihood of serious harm, the district court erred in *presuming* that similar sexual conduct in the future would be "harmful sexual conduct."

The district court also premised its determination that it was highly likely that Dentz would engage in future harmful sexual conduct in part on a clearly erroneous finding that

¹ Dentz argues that the district court erred by finding a lack of protective factors counterbalancing risk factors. Although the evaluator did note the presence of numerous protective factors, we cannot determine that the potential error by the district court is prejudicial where the district court merely noted its "concern" over a lack of protective factors.

Dentz accessed child pornography while on supervised release in the summer of 2019. The parties agree that the record does not support this finding. The evidence instead showed that Dentz viewed other types of pornography. The district court specifically referenced this erroneous factual finding in support of its determination that “it is likely that, if given the opportunity, [Dentz] would locate unauthorized devices to obtain and use child pornography.”

The county suggests that this factual error is harmless because Dentz *did* possess child pornography in 2016 while on probation. But the district court’s finding that Dentz would access *more* child pornography was premised explicitly on the clearly erroneous finding of access to child pornography in 2019. The district court also relied on its erroneous finding when it considered whether the conditions of supervised release would be sufficient to safeguard against further criminal behavior.

We again reject Dentz’s argument that reversal without remand is appropriate. Although the district court made clearly erroneous findings and misapplied the law to determine that Dentz is highly likely to engage in harmful sexual conduct in the future, we cannot say that the county failed to produce evidence sufficient to support such a finding. Remand is therefore appropriate.

Accordingly, we reverse and remand for further proceedings consistent with this opinion.

Reversed and remanded.