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

**STATE OF MINNESOTA
IN COURT OF APPEALS
A21-1576**

In the Matter of the Civil Commitment of:

Walter Johann Happel.

**Filed May 16, 2022
Affirmed
Cochran, Judge**

Washington County District Court
File No. 82-PR-20-2924

Jessica Buberl, J. Buberl Law, Osceola, Wisconsin (for appellant)

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Considered and decided by Cochran, Presiding Judge; Johnson, Judge; and
Reyes, Judge.

NONPRECEDENTIAL OPINION

COCHRAN, Judge

Appellant challenges the district court's order civilly committing him as a sexually dangerous person (SDP) and as a sexual psychopathic personality (SPP). He argues that the district court erred by determining that he is an SDP and an SPP because the record does not support either determination. We affirm.

FACTS

In 2015, at the age of 63, appellant Walter Happel pleaded guilty to and was convicted of four criminal offenses against child victims spanning over a period of more than 30 years. Happel entered his pleas pursuant to a plea agreement involving three different court files. His convictions consisted of first-degree criminal sexual conduct, second- and fourth-degree intrafamilial sexual abuse, and surreptitious interference with the privacy of a minor. Consistent with the plea agreement, the district court sentenced Happel to serve 120 months in prison. The district court further specified that the sentence included a minimum imprisonment term of 80 months (less credit for time served) with the remaining sentence to be served on supervised release.

In February 2021, in anticipation of Happel's release from prison, respondent Washington County (the county) petitioned to civilly commit Happel to the Minnesota Sex Offender Program as an SDP and/or an SPP. The district court held a three-day hearing on the matter in July 2021. During the hearing, the county submitted numerous documentary exhibits, including criminal complaints, police reports, and presentence-investigation reports, which detailed Happel's criminal offenses and other misconduct. The district court also heard testimony from Happel, two court-appointed psychologists, Happel's adult foster son, and Happel's current wife. The following summarizes the testimony and other evidence presented during the hearing.

Criminal Offenses

A. Conviction for Interference with Privacy Against a Minor Under 18

Before his incarceration, Happel worked as a custodian in the St. Paul school district for 30 years. In 2014, police began investigating Happel after an 11-year-old student reported that Happel had looked over and under a bathroom stall while the student was using the toilet. The investigation revealed numerous incidents of misconduct by Happel against young male students at the school that occurred primarily between 2011 and 2014. Multiple students reported that Happel routinely went into the boys' bathroom while students were present, looked at students through gaps in bathroom stalls while they were using the toilet, and used the urinal next to students while looking at them. One student disclosed that Happel once stood at a urinal next to the student and exposed his penis to the student. Another student reported seeing a man looking at him through a vent in the wall above the toilet. Investigators discovered that Happel had reversed vents in two boys' bathrooms, which allowed him to secretly watch students use the bathroom. A student also reported that Happel had leaned against him with an erect penis in the school lunchroom and made it appear as if it were an accident. On a different occasion, Happel slapped the student on the buttocks. Investigators also learned that Happel had been giving students candy. The school reprimanded Happel for slapping the student on the buttocks, entering the boys' bathroom with students present, and giving students candy.

Investigators also discovered that Happel had a "secret room" in the school to which he had changed the lock. Happel kept a cot, a children's blanket, a stuffed animal, a computer, and a packet of sexual lubricant inside the room. Happel admitted to

investigators that he had masturbated in the “secret room” at least once. Based on this investigation of Happel’s conduct at the school, Happel was charged with six counts of surreptitious interference with the privacy of a minor, second- and fourth-degree criminal sexual conduct, and fifth-degree criminal sexual conduct. As part of the plea deal, Happel entered an *Alford* plea¹ to one count of surreptitious interference with the privacy of a minor and the other charges were dismissed.

B. Convictions of Second- and Fourth-Degree Intrafamilial Abuse

After the news broke regarding the 2014 investigation, Happel’s adult son from his first marriage, A.H., contacted police. A.H. reported that Happel had sexually abused him when he was a minor, and A.H. provided police with the names of other family members and acquaintances whom Happel had abused. One of those individuals was D.W., Happel’s nephew. D.W. told police that Happel had sexually abused him in the late 1970s to the early 1980s, when D.W. was eight to 12 years old. He reported several incidents in which Happel offered D.W. beer or cigarettes, played a pornographic movie, and fondled D.W.’s genitals over and under his clothing. One or both of Happel’s oldest sons, A.H. and W.H., were present during some of these incidents, and Happel would sexually abuse A.H. and W.H. as well. On one occasion, Happel took numerous photographs of the boys’ genitals. In another incident, Happel got on top of D.W. while D.W. was naked from the waist down. Happel then put his penis between D.W.’s thighs and ejaculated on D.W. Based on his

¹ A defendant entering an *Alford* plea maintains his innocence but admits that the state has sufficient evidence to convict him. *State v. Theis*, 742 N.W.2d 643, 647 (Minn. 2007) (citing *North Carolina v. Alford*, 400 U.S. 25, 38 (1970)).

sexual abuse of D.W., Happel pleaded guilty to second- and fourth-degree intrafamilial sexual abuse.

C. Conviction of First-Degree Criminal Sexual Conduct

A.H. also informed police that Happel had abused B.J.S., a boy who lived in their neighborhood. B.J.S. told police that Happel sexually abused him between 1986 and 1988, while B.J.S. was approximately seven to ten years old. He reported that Happel once told him that they needed to shower together and that Happel repeatedly hit B.J.S. with his penis while in the shower. On another occasion, while B.J.S. was sleeping over at Happel's house, Happel fondled B.J.S.'s penis and took numerous naked photos of B.J.S. Happel then performed oral sex on B.J.S., got on top of B.J.S., and made B.J.S. put his penis in Happel's anus. Based on Happel's sexual abuse of B.J.S., Happel was charged with first- and second-degree criminal sexual conduct. Happel pleaded guilty to and was convicted of one count of first-degree criminal sexual conduct. The second-degree criminal-sexual-conduct charge was dismissed pursuant to the plea agreement.

Other Evidence of Sexual Abuse

In addition to the above convicted offenses, the state presented evidence at the hearing that Happel sexually abused several other children in the 1970s and 1980s. Happel has not been criminally charged based on these reports. Happel's additional victims included Happel's two sons from his first marriage (A.H. and W.H.), two nieces, two other nephews, and a nonrelative boy. They ranged in age from four to 16 years old at the time of the abuse, and Happel sexually abused all but one of them on several occasions. For instance, A.H. reported that Happel repeatedly sexually abused him from age four to

14 or 15. These individuals disclosed that Happel's sexual abuse included the following: fondling children's genitals over and under their clothing; digital penetration of two minor females; attempted vaginal penetration; orchestrating sexual contact between minor males; orchestrating sexual contact between a minor male and female; photographing and videotaping naked minor males and female; and showing naked pictures and videos of children to other children. A.H. also reported that Happel's sexual abuse of him involved "penetration in both directions."

Happel's Testimony

During his testimony at the civil-commitment hearing, Happel denied sexually assaulting any children or engaging in any other sexual misconduct against children. When asked on cross-examination about his 2015 guilty pleas, he insisted that he had perjured himself regarding the factual bases for the guilty pleas to receive the benefit of the plea deal. During cross-examination, the county's attorney also called Happel's attention to several prior statements Happel had made to investigators and others in which he admitted to sexually abusing children or admitted to certain facts regarding his sexual abuse of children. In each instance, Happel either denied making the admission or said that he could not remember. Happel stated that he is not sexually attracted to children and denied ever telling investigators that he is.

Happel testified that he does not believe that he needs sex-offender treatment. He admitted that he had previously refused to do required sex-offender treatment while he was incarcerated at the Moose Lake correctional facility. He testified that he refused treatment because he "had not done anything wrong" and preferred the shorter program at another

facility. Because he refused to participate in treatment, Happel was required to serve an additional six months in prison. Happel also testified that he had not applied to or enrolled in a sex-offender treatment program at the time of the hearing. And he testified that he did not have a relapse-prevention plan in place if he were to be released because he believed he does not need one. Happel stated that if he were to be released, he would reside with his current wife in the same house in which he lived prior to his incarceration. Happel testified that, at the time of the hearing, he and his current wife had been married for 26 years.

Expert Reports and Testimony

The district court also received the reports and testimony of two court-appointed psychologists who assessed Happel—Dr. Andrea Lovett and Dr. James Alsdurf. Dr. Alsdurf was appointed at the request of Happel’s counsel.

Both examiners supported the county’s petition to commit Happel as an SDP and SPP. Dr. Lovett diagnosed Happel with pedophilic disorder, antisocial personality disorder, and other specified paraphilic disorder—hypersexuality and hebephilia. Dr. Alsdurf diagnosed Happel with pedophilic disorder and specified personality disorder with antisocial features. Based on their assessment of Happel, both examiners opined that Happel is “highly likely” to engage in future acts of harmful sexual conduct. Both also

opined that Happel has “an utter lack of power to control his sexual impulses” and is dangerous to others.

District Court’s Order

Following the hearing, the district court issued a detailed, 39-page order civilly committing Happel as an SDP and SPP. The district court determined, based on detailed factual findings and a thorough analysis of the law, that the county proved by clear and convincing evidence that Happel met the statutory requirements for commitment both as an SDP and SPP. In reaching its decision, the district court found that Happel’s testimony “ha[d] no credibility whatsoever” and accordingly attributed “absolutely no weight to [Happel’s] denials of his past criminal convictions or his denials of other reported sexual offenses or misconduct.”

Happel appeals.

DECISION

Happel argues that the district court erred by determining that he meets the criteria for SDP and SPP commitment. A person may be civilly committed as an SDP or SPP if the county proves the statutory criteria by clear and convincing evidence. Minn. Stat. § 253D.07, subd. 3 (2020). We review a district court’s factual findings on the elements of the civil-commitment statutes for clear error. *In re Civ. Commitment of Stone*, 711 N.W.2d 831, 836 (Minn. App. 2006), *rev. denied* (Minn. June 20, 2006). Following a review of all the evidence, we will not conclude that a fact-finder clearly erred unless we are “left with a definite and firm conviction that a mistake has been committed.” *In re Civ. Commitment of Kenney*, 963 N.W.2d 214, 221 (Minn. 2021) (quotation omitted). But

whether the evidence meets the statutory requirements for commitment is a question of law, which we review de novo. *In re Civ. Commitment of Crosby*, 824 N.W.2d 351, 356 (Minn. App. 2013), *rev. denied* (Minn. Mar. 27, 2013).

I. Clear and convincing evidence supports the district court’s determination that Happel is an SDP.

A person is sexually dangerous if 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.” Minn. Stat. § 253D.02, subd. 16(a) (2020). On appeal, Happel limits his argument to the district court’s determination of the third statutory criterion: whether he is likely to engage in acts of harmful sexual conduct. The Minnesota Supreme Court has interpreted this criterion to require a showing by clear and convincing evidence that the person is “highly likely” to engage in future harmful sexual conduct. *In re Civ. Commitment of Ince*, 847 N.W.2d 13, 20-22 (Minn. 2014).

To determine whether a person is highly likely to reoffend, a district court must conduct a “multi-factor analysis.” *Id.* at 23. The multi-factor analysis includes consideration of six factors, commonly known as the *Linehan* factors:

- (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.

Id. at 22 (quoting *In re Linehan*, 518 N.W.2d 609, 614 (Minn. 1994)). The multi-factor analysis may also include other relevant evidence and information, including actuarial-assessment evidence. *Id.* at 23-24. No single factor is determinative. *In re Civ. Commitment of Navratil*, 799 N.W.2d 643, 649 (Minn. App. 2011), *rev. denied* (Minn. Aug. 24, 2011). Rather, “[t]he district court is free to determine the weight to be attributed to any particular piece of evidence, including predictions of future short- or long-term recidivism rates, based on the record in an individual case.” *Ince*, 847 N.W.2d at 24.

Here, the district court concluded that the state established by clear and convincing evidence that Happel is highly likely to engage in acts of harmful sexual conduct. In a detailed written analysis, the district court considered the opinions of the examiners and the other evidence presented at the hearing. The district court's order includes detailed findings regarding each *Linehan* factor and other considerations relevant to Happel's risk of reoffending.

On appeal, Happel does not challenge any of the district court's findings of fact regarding its multi-factor analysis. Instead, he challenges only the district court's legal determination that the record contains clear and convincing evidence that he is highly likely to engage in acts of harmful sexual conduct. Specifically, Happel asserts that the evidence is not clear and convincing regarding that statutory requirement because the evidence demonstrates the following: he is approximately 70 years old and is retired from employment; he has had no recent violent behavior while incarcerated; he is of “average”

risk to reoffend according to an actuarial tool known as the Static-99R; if released, he would return to live with his wife of many years; he would be willing to do sex-offender treatment; he would be on supervised release until May 2024; and he would have Social Security and his pension as sources of income. We are not persuaded.

The record amply supports the district court's determination that Happel is highly likely to reoffend. The record demonstrates that Happel engaged in frequent sexual abuse of children in the 1970s and 1980s. Happel also reportedly engaged in extensive peeping on young students using the bathroom in his place of employment as recently as 2014 while he was over 60 years of age. He is untreated and has refused sex-offender treatment even though his refusal required him to spend more time in prison. And, despite his assertion on appeal that he is willing to participate in sex-offender treatment, he testified at the civil-commitment hearing that he does not believe he needs treatment and that his risk of reoffending is "zero." He also testified that he does not have a relapse-prevention plan in place because he does not need one.

If Happel were to be released, he would return to an environment similar to that in which he sexually offended. Happel testified that he plans to return to live with his current wife, to whom he has been married for over 26 years. While Happel appears to argue that these circumstances make him less likely to reoffend, the record demonstrates that Happel lived at the same address with his wife prior to his incarceration and offended against children while living there. The record also shows that Happel sexually abused children while married to his previous wife.

The court-appointed examiners, Dr. Lovett and Dr. Alsdurf, both expressed their belief that Happel is highly likely to engage in acts of harmful sexual conduct. In reaching that opinion, both emphasized the extent of Happel's sexual deviance—which Dr. Alsdurf described as “persistent and robust”—in addition to Happel's refusal to participate in sex-offender treatment, his apparent lack of remorse and empathy for his victims, and his history of denying, minimizing, and blaming others regarding his sexual misconduct. Dr. Lovett reported that individuals who sexually offend against children have a lifetime recidivism rate as high as 52%. Dr. Alsdurf opined that Happel “has no features that would mitigate base rate predictions.”

Although both examiners recognized that an offender's advanced age would normally reduce their risk of reoffending, both agreed that the research showing reduced rates of recidivism as sex offenders age is not as applicable to male offenders like Happel who sexually abuse children. Dr. Lovett testified that “males who prefer sexual conduct with prepubescent boys . . . are the most likely to continue offending into their later years.” Both examiners further testified that Happel's risk of reoffending is not mitigated by his age because he offended after age 60. This evidence supports the district court's determination that Happel's “age or demographics do not mitigate his risk to reoffend.”

Happel appears to argue that his score on an actuarial tool known as the Static-99R undermines the district court's determination that he is highly likely to engage in acts of harmful sexual conduct. Both examiners scored Happel as a +2 on the Static-99R, which places him in the “average” category in terms of his risk of recidivism. But, as the district court recognized, both examiners also opined that Happel's score on the Static-99R is

artificially low in light of the persistence of Happel's sexual misconduct and sexual deviance, his large number of victims, and his diverse victim pool. Both examiners attributed Happel's lower score to his age, and Dr. Lovett indicated that Happel's reduced score was also affected by "the extended period during which [Happel's] sexual offense behaviors remained largely undetected by law enforcement." Dr. Lovett and Dr. Alsdurf each noted that if age were not factored into the Static-99R analysis, Happel's score would be a +5, which falls into the "above average" risk category. Given this evidence, the district court did not err by declining to attribute significant weight to Happel's Static-99R score. *See Ince*, 847 N.W.2d at 24 ("The district court is free to determine the weight to be attributed to any particular piece of evidence, including predictions of future short- or long-term recidivism rates").

Based on our careful review of the record, we conclude that clear and convincing evidence supports the district court's determination that Happel is highly likely to engage in acts of harmful sexual conduct. The district court did not err by ordering Happel committed as an SDP.

II. Clear and convincing evidence supports the district court's determination that Happel meets the criteria for civil commitment as an SPP.

Happel also argues that the district court erred when it concluded that clear and convincing evidence supports his commitment as an SPP. SPP is defined as

the existence in any person of such conditions of emotional instability, or impulsiveness of behavior, or lack of customary standards of good judgment, or failure to appreciate the consequences of personal acts, or a combination of any of these conditions, which render the person irresponsible for personal conduct with respect to sexual matters, if the person has

evidenced, by a habitual course of misconduct in sexual matters, *an utter lack of power to control the person's sexual impulses and, as a result, is dangerous to other persons.*

Minn. Stat. § 253D.02, subd. 15 (2020) (emphasis added). On appeal, Happel challenges the district court's conclusions that he has an utter lack of power to control his sexual impulses and that he is dangerous to other people.

To determine whether a person has an utter lack of power over their sexual impulses, the district court generally considers the following factors from *In re Blodgett*:

the nature and frequency of the sexual assaults, the degree of violence involved, the relationship (or lack thereof) between the offender and the victims, the offender's attitude and mood, the offender's medical and family history, the results of psychological and psychiatric testing and evaluation, and such other factors that bear on the predatory sex impulse and the lack of power to control it.

510 N.W.2d 910, 915 (Minn. 1994). The district court may also consider additional factors such as the person's refusal of treatment opportunities, the lack of a relapse-prevention plan, the person's belief that a problem does not exist, the presence of grooming behaviors, and the person's failure to remove himself or herself from similar situations. *See In re Pirkel*, 531 N.W.2d 902, 907 (Minn. App. 1995), *rev. denied* (Minn. Aug. 30, 1995); *In re Irwin*, 529 N.W.2d 366, 375 (Minn. App. 1995), *rev. denied* (Minn. May 16, 1995); *In re Bieganowski*, 520 N.W.2d 525, 530 (Minn. App. 1994), *rev. denied* (Minn. Oct. 27, 1994). In addition, a person is “‘dangerous to others’ and subject to commitment as a[n] [SPP] when the person's pattern of sexual misconduct (1) creates a substantial likelihood of serious physical or emotional harm to others, and (2) is likely to recur because

of an utter lack of power to control sexual impulses.” *In re Kindschy*, 634 N.W.2d 723, 732 (Minn. App. 2001), *rev. denied* (Minn. Dec. 19, 2001).

In its evaluation of whether Happel has an utter lack of power to control his sexual impulses, the district court engaged in a lengthy discussion of the factors set forth in *Blodgett*, along with the additional factors from *Pirkl*, *Irwin*, and *Bieganowski*. In considering these factors, the district court made the following factual findings: Happel has four convictions for criminal sexual conduct occurring during a 30-year span; he has engaged in and/or has been accused of sexual misconduct against at least 14 children; his victims and accusers included family members, acquaintances, and students from the school where he was employed; he “used coercion, surprise, manipulation, grooming, and his position as an authority figure to accomplish his sexual offending,” and he attempted forced vaginal intercourse on one occasion; he categorically denied committing any sexual crimes even when confronted with evidence of his own previous admissions and has a substantial history of minimizing, rationalizing, and blaming others for his sexual misconduct; he has a broad victim pool that includes mostly males, but at least one female, ranging in age from four to 16 years old; he does not have any medical conditions that would limit his ability to reoffend; he has refused sex-offender treatment; he lacks a relapse-prevention plan; he insists that he has no risk of reoffending; and he has continuously failed to remove himself from situations that led to his reoffending. All of these findings are well-supported by the record, and they amount to clear and convincing evidence that Happel has an utter lack of power to control his sexual impulses.

The district court further determined that Happel is dangerous to others based on its conclusion that he is highly likely to engage in future harmful sexual conduct. Because the same analysis applies to the SPP dangerousness prediction as to the SDP requirement that an offender be highly likely to engage in harmful sexual conduct, our earlier conclusion that Happel is highly likely to reoffend indicates that he is also dangerous to others. *See Stone*, 711 N.W.2d at 840.

In challenging the district court's determination that he meets the SPP statutory requirements, Happel again notes that his risk of recidivism based on certain actuarial tools is "average" and that "[h]e will be 70 years old this year, is retired, and plans to reside with his wife of 26 years." But, as discussed with respect to the SDP statutory requirements, the district court did not err by attributing little weight to Happel's age and his Static-99R score or by finding that Happel's plan to return to live with his wife would place him in the same environment in which he was previously offending.

We therefore conclude that clear and convincing evidence supports the district court's determination that Happel has an utter lack of power to control his sexual impulses and is dangerous to others, and accordingly meets the SPP statutory requirements. The district court did not err by ordering Happel civilly committed as an SDP and SPP.

Affirmed.