STATE OF MINNESOTA
IN COURT OF APPEALS
A22-1220

In the Matter of the Civil Commitment of:
Roy Vincent Aguirre.

Filed February 6, 2023
Affirmed
Bjorkman, Judge

Crow Wing County District Court
File No. 18-PR-22-2701

Jean Gustafson, Brainerd, Minnesota (for appellant Roy Aguirre)

Donald F. Ryan, Crow Wing County Attorney, Rockwell J. Wells, Assistant County Attorney, Brainerd, Minnesota (for respondent Crow Wing County Social Services)

Considered and decided by Cochran, Presiding Judge; Bjorkman, Judge; and Reilly, Judge.

NONPRECEDENTIAL OPINION

BJORKMAN, Judge

Appellant challenges his recommitment as a person who poses a risk of harm due to a mental illness and as chemically dependent, arguing that the district court (1) clearly erred by finding he meets the criteria for recommitment due to mental illness, (2) erred by committing him as chemically dependent because it was not part of the initial commitment, (3) clearly erred by finding that commitment is the least-restrictive suitable disposition,

and (4) abused its discretion by conducting the recommitment hearing in his absence. We affirm.

FACTS

In February 2021, appellant Roy Aguirre was civilly committed as a person who poses a risk of harm due to mental illness. That August, he was provisionally discharged but his commitment was continued for 12 months. His provisional discharge was revoked in early May 2022.

Shortly thereafter, Aguirre was charged with assault and threatening violence following an altercation with his girlfriend and police that included brandishing a knife at officers. The district court appointed Charles Chmielewski, Ph.D., to conduct a competency evaluation. Dr. Chmielewski reviewed Aguirre's "considerable history" of mental illness and substance abuse, with past diagnoses of "either a psychotic disorder or a delusional disorder, in addition to alcohol and methamphetamine use disorder." And he noted that alcohol apparently "played a major role in [Aguirre's] most recent alleged offenses."

Dr. Chmielewski also conducted a brief interview with Aguirre during which Aguirre ranted incoherently, denied any mental illness, and became "increasingly enraged." Based on the information he obtained, Dr. Chmielewski concluded that Aguirre was not competent to stand trial. Although Aguirre's hostility made it difficult for Dr. Chmielewski to formulate a diagnosis, he "suggest[ed]" diagnoses of psychotic disorder (not otherwise specified), alcohol-use disorder, and antisocial personality traits (rule out). And he opined that in Aguirre's "current mental state there is a very substantial

risk of harm to others or to himself, especially if he was free to move about in the community, and/or free to use alcohol," and recommended civil commitment. Based on his report, the district court found Aguirre incompetent to stand trial.

Respondent Crow Wing County Social Services (the county) then conducted a commitment prescreening investigation. *See* Minn. Stat. § 253B.07, subd. 1 (2022) (requiring screening and report before commitment petition). As part of its investigation, the county sought to interview Aguirre, but he refused. It prepared a prescreening report detailing Aguirre's recent altercation, prior hospitalizations, and diagnoses, and recommended commitment because less-restrictive alternatives require voluntary participation or provide inadequate care.

The county then petitioned the district court to commit Aguirre as a person who poses a risk of harm due to a mental illness and as a chemically dependent person. After a remote hearing, the district court determined that Aguirre "continues to meet" the criteria for commitment as a person who poses a risk of harm due to mental illness and "meets" the criteria for commitment as a person who is chemically dependent and ordered Aguirre's recommitment. Aguirre appeals.

DECISION

On appeal from a civil-commitment order, we review a district court's factual findings for clear error. *In re Civ. Commitment of Kenney*, 963 N.W.2d 214, 223 (Minn. 2021). In doing so, we view the evidence in the light most favorable to the findings of fact, do not find our own facts, and do not weigh or reconcile conflicting evidence. *Id.* at 221-22.

But we review questions of law, including statutory interpretation, de novo. *In re Brown*, 640 N.W.2d 919, 922 (Minn. 2002).

I. The district court did not clearly err by finding that Aguirre meets the criteria for recommitment based on his mental illness.

Between 60 and 90 days after civilly committing a person, a district court must review the commitment to determine whether there is clear and convincing evidence that (1) the person "continues to have a mental illness, developmental disability, or chemical dependency"; (2) involuntary commitment is "necessary" for the protection of the person or others; and (3) "there is no alternative to involuntary commitment." Minn. Stat. § 253B.12, subds. 1(b), 4(a) (2022). The court need not find "a recent attempt or threat to physically harm self or others, or a recent failure to provide necessary food, clothing, shelter, or medical care," only that these circumstances are "likely" to occur unless the patient is recommitted. *Id.*, subd. 4(b) (2022). If so, the district court may continue the commitment for up to 12 months. Minn. Stat. § 253B.13, subd. 1(a) (2022). Where, as here, the 12-month continued commitment period has ended, the court may recommit the person only upon a new commitment petition and proof of the three criteria for continuing commitment. *Id.*, subd. 1(b) (2022).

Aguirre argues that the record cannot support the district court's findings as to the three criteria because the county employee who signed the commitment petition was not personally present for the hearing and did not testify as to the criteria. But he cites no authority imposing such a requirement. *Cf.* Minn. Stat. § 253B.08 (2022) (establishing hearing procedures but not requiring petitioner's presence or testimony); *see In re Civ.*

Commitment of Kropp, 895 N.W.2d 647, 653 (Minn. App. 2017) (declining to address an issue that was inadequately briefed), *rev. denied* (Minn. June 20, 2017). Nor did that person's absence result in procedural or evidentiary shortfalls. Counsel for both parties were present throughout the recommitment hearing. Dr. Chmielewski and Aguirre's case manager participated in the hearing. And while the lack of a transcript prevents us from reviewing their testimony,[1] the record contains the doctor's competency-evaluation report and the county's prepetition screening report, both of which provide ample evidence of Aguirre's mental illness and the likelihood of harm if he is not committed. Accordingly, we conclude the district court did not clearly err by finding that he meets the criteria for a mental-illness recommitment.

II. The district court did not err in committing Aguirre as chemically dependent.

An initial commitment based on chemical dependency requires clear and convincing evidence that (1) the person to be committed is engaged in "habitual and excessive use of alcohol, drugs, or other mind-altering substances"; (2) as a result, the person is "incapable of self-management or management of personal affairs" and has engaged in conduct that "poses a substantial likelihood of physical harm to self or others"; and (3) there is no suitable alternative to commitment. Minn. Stat. §§ 253B.02, subd. 2, .09, subd. 1(a)

[1] Aguirre did not order a transcript of the recommitment hearing, despite his burden to provide "a record sufficient to show alleged errors." *Collins v. Waconia Dodge, Inc.*, 793 N.W.2d 142, 146 (Minn. App. 2011), *rev. denied* (Minn. Mar. 15, 2011). But this omission does not prevent effective appellate review. We do not presume error on appeal. *In re Decision to Deny Petitions for a Contested Case Hearing*, 924 N.W.2d 638, 643 (Minn. App. 2019) (citing *Waters v. Fiebelkorn*, 13 N.W.2d 461, 464-65 (1944)). And we discern ample support for the district court's decision in the record.

(2022). For a chemical-dependency recommitment, a new petition is not required; the district court need only find that the three criteria for continued commitment are satisfied. Minn. Stat. §§ 253B.12, subd. 4, .13, subd. 1(a) (2022).

Aguirre argues that the district court erred by recommitting him based on chemical dependency because he was not initially committed for that reason. But he identifies no authority precluding a court from doing so. To the contrary, a recommitment following a 12-month continuation requires a "new petition" for civil commitment. Minn. Stat. § 253B.13, subd. 1(b). This means that the petition may assert and a court may consider new bases for commitment, provided the court applies the correct statutory framework. The district court did so here, making findings and conclusions addressing the criteria for an initial chemical-dependency commitment. The record supports the district court's findings on those criteria.

III. The district court made sufficient, supported findings that commitment is the least-restrictive suitable disposition.

Both initial and renewed commitments require consideration of whether there is a suitable, less-restrictive alternative. Minn. Stat. §§ 253B.09, subd. 1(a) (initial commitment), .12, subd. 4 (continued commitment), .13, subd. 1(b) (recommitment incorporating continued-commitment criteria). Alternatives to commitment may include "dismissal of [the] petition; voluntary outpatient care; voluntary admission to a treatment facility, state-operated treatment program, or community-based treatment program; appointment of a guardian or conservator; or release before commitment." Minn. Stat. § 253B.09, subd. 1(a).

Aguirre challenges the district court's finding that there is no suitable less-restrictive alternative to commitment, arguing that it failed to sufficiently explain why other dispositions are unsuitable. When renewing a commitment, the court must "specifically state" that it "considered and rejected" less-restrictive alternatives and its "[r]easons for rejecting each alternative." Minn. Stat. § 253B.12, subd. 7 (2022). The district court's order reveals that it considered various alternative dispositions—voluntary outpatient care; voluntary admission to a treatment facility, state-operated program, or community-based treatment program; appointment of a guardian or conservator; and release before commitment—and rejected all as unsuitable. Aguirre is correct that the district court did not specify a reason for rejecting each alternative. But that omission is not reversible error. As the county observes, most of the alternative dispositions would require Aguirre's voluntary participation. The district court's order notes the voluntary nature of those alternatives. And the unchallenged finding that Aguirre denies any kind of mental illness or substance-abuse problem explains and justifies the court's determination that the alternative dispositions are unsuitable. Similarly, the court's rejection of dispositional alternatives that amount to making treatment optional is explained and justified by its equally undisputed findings regarding Aguirre's profound mental illness and chemical dependency and the likelihood that those conditions, if left untreated, will lead to future harmful conduct.

Aguirre also asserts that the district court erred by failing to consider an advance directive as to his wishes in making this determination. A district court must consider written instruments like advance directives when determining whether to order the

involuntary administration of neuroleptic medication. Minn. Stat. § 253B.092, subd. 7(b) (2022); *In re Commitment of Froehlich*, 961 N.W.2d 248, 256 (Minn. App. 2021). But Aguirre identifies no authority requiring a court to do so when determining whether alternatives to commitment are suitable. More importantly, there is nothing in the record that indicates that Aguirre has an advance directive for the district court to consider.

IV. The district court did not abuse its discretion by conducting the hearing in Aguirre's absence.

A district court has "broad discretion" in matters of courtroom procedure and decorum. *State v. Romine*, 757 N.W.2d 884, 892 (Minn. App. 2008), *rev. denied* (Minn. Feb. 17, 2009). During a commitment hearing, the court "may exclude or excuse" the proposed committed person if they are "seriously disruptive." Minn. Stat. § 253B.08, subd. 5(b). When doing so, the court must specifically state on the record the behavior or other circumstances that justified proceeding in the person's absence. *Id.*

The district court's order reflects that it complied with this mandate in excluding Aguirre:

> Shortly after the [virtual] hearing commenced, [Aguirre] became highly agitated and had to be muted by the Court. He then engaged in further conduct which resulted in a determination by the Court that he could not meaningfully participate in the proceedings and he was moved to the waiting room until the proceedings were complete. [Counsel], remained in the virtual court room for the duration of the proceedings.

Aguirre does not dispute this account, which amply demonstrates that the court excluded him only after his behavior became problematic and the lesser restriction of muting proved

insufficient to address the problem. Accordingly, we conclude that the district court did not abuse its discretion by excluding Aguirre from the hearing.

Affirmed.