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

**STATE OF MINNESOTA
IN COURT OF APPEALS
A22-1414**

In the Matter of the Civil Commitment of:
Aaron Wayne White, Sr.

**Filed March 27, 2023
Affirmed
Segal, Chief Judge**

Cass County District Court
File No. 11-PR-21-1735

MacKenzie Guptil, Pine City, Minnesota (for appellant Aaron White, Sr.)

Keith Ellison, Attorney General, Angela Helseth Kiese, Assistant Attorney General,
St. Paul, Minnesota; and

Benjamin T. Lindstrom, Cass County Attorney, Walker, Minnesota (for respondent Cass
County Health, Human and Veteran Services)

Considered and decided by Johnson, Presiding Judge; Segal, Chief Judge; and
Bryan, Judge.

NONPRECEDENTIAL OPINION

SEGAL, Chief Judge

On appeal from his commitment as a sexually dangerous person (SDP) and a sexual
psychopathic personality (SPP), appellant Aaron Wayne White, Sr. argues that the record
does not support the district court's determination that he meets the criteria for commitment
as either an SDP or an SPP. We affirm.

FACTS

Respondent Cass County Health, Human and Veteran Services (the county) filed a petition in October 2021 to civilly commit White as an SDP and an SPP. The county brought this petition based on a referral from the Minnesota Department of Corrections (DOC) in anticipation of White completing a sentence for his third criminal-sexual-conduct conviction. During a three-day trial, the county presented evidence of White's sex offenses that resulted in three criminal-sexual-conduct convictions, along with evidence of other sexual offenses that were not prosecuted and expert testimony from the court-appointed examiners. The district court granted the county's petition, determining that White meets the criteria for commitment as both an SDP and an SPP. The following summarizes testimony and evidence presented at White's commitment trial.

Childhood and Juvenile Placements

White, born in 1978, was a victim and perpetrator of sexual abuse as a child. From ages five to seven, White's cousin forcibly anally penetrated him on multiple occasions. Before White turned 11, White's sister taught him to perform oral sex on her, White viewed his brother and his brother's girlfriend having sex, and he engaged in sexual penetration with his stepbrother. White also reported that sexual contact between children in his neighborhood was commonplace.

White's ex-stepmother, J.M.W., testified that she believed that her son (White's stepbrother), who is about two years younger than White, told her that White sexually abused him when both were children. White agreed at the commitment trial that he

engaged in anal penetration with his stepbrother, J.M.W.'s son, but stated that it was not forcible.

At age 11, White was admitted to Archdeacon Gilfillan Center residential treatment facility, where staff documented that White had a psychosexual disorder, noting that he was a “sexual offender and victim of abuse with family members and others.” Following 18 months at Gilfillan, White moved through a series of up to eight residential placements, including detention facilities; his final juvenile discharge occurred at age 16.

Allegations Involving C.M.C.

When White was 18 years old, he began a relationship with C.M.C. White and C.M.C. were homeless for most of their five years together. C.M.C. testified at the commitment trial that White had sexual relationships with other women and men while they were together and forced C.M.C. to have oral, vaginal, and anal sex many times during their relationship.¹ C.M.C. stated that White perpetrated many of these assaults against her while he was intoxicated. White denied physically or sexually abusing C.M.C.

White and C.M.C. had a son, Z.W., who was removed from their custody at 18 months of age. White's ex-stepmother, J.M.W., gained custody of Z.W. White and C.M.C. did not have parental rights to Z.W. following his placement with J.M.W., but J.M.W. allowed visits.

¹ White estimated at the commitment trial that he had had “roughly 320” sexual partners in his life, and that “[m]ost of them . . . were one-night stands or just a quickie.”

Allegations Involving V.M.R.

White was next in a relationship for approximately seven to eight years with V.M.R. White and V.M.R. have two joint children.² V.M.R. testified that White was physically and sexually abusive during their relationship. V.M.R. stated that White often abused her when he was intoxicated and that he also touched her dogs in a sexual manner. White admitted that he was physically abusive against V.M.R. but denied sexual violence.

Allegations Involving White's Sons Z.W. and A.W.

At the time of trial, White's son Z.W. was 21 years old and continued to live with J.M.W. Z.W. has a developmental disability and functions at a 9-year-old level.

Z.W. and J.M.W. testified that White sexually abused Z.W. Z.W. said that when he was between five and eight years old, he was staying at White's home overnight and woke up to White touching his penis. White also forced Z.W. to watch White touch Z.W.'s brothers. Several years later, Z.W. reported to J.M.W. that White would touch him while wearing gloves. J.M.W. said that as a result of this abuse, Z.W. "do[esn't] touch himself without wearing rubber gloves, and he said that's how his dad touched him." J.M.W. reported Z.W.'s statements to law enforcement.

As part of the investigation into Z.W.'s sexual-abuse allegations, law enforcement also interviewed A.W., one of White's children with V.M.R. A.W. stated that White "touches [his] privates." A.W. and Z.W. were both clinically evaluated for sexual abuse

² White claimed that he is the father of a third child with V.M.R., but V.M.R. denied that White is the father of this child.

and repeated their statements to the clinicians.³ The county attorney's office decided not to bring charges against White, determining that "no criminal offense can be proved beyond a reasonable doubt," and noting that White was in prison at the time of the investigation and had a lifetime conditional-release period. White denied sexually abusing A.W. and Z.W.

Criminal-Sexual-Conduct Convictions Involving Adult Victims B.T.H. and A.B.

White was charged in 2010 with criminal-sexual-conduct offenses against two different adult males, B.T.H. and A.B. The complaint related to B.T.H. alleged that, on an occasion in 2008 when White and B.T.H. were drinking in White's trailer, White held B.T.H. down, performed oral sex on him, and attempted to anally penetrate him. B.T.H. had difficulty fighting White because he has emphysema and chronic obstructive pulmonary disease, but he was eventually able to get away and run to a nearby house, where he arrived naked from the waist down.

The complaint related to A.B. alleged similar facts to that involving B.T.H. In 2009, White and A.B. were drinking in White's trailer. White held down A.B., whose "right arm and hand are handicapped from a birth defect," and anally penetrated him. White also forced A.B. to perform oral sex. A swab taken during the subsequent sexual-assault examination of A.B. indicated that White could not "be excluded from being a possible

³ Two years after these interviews, in 2013, A.W. again disclosed during therapy that White had touched him sexually. The therapist reported the disclosure to law enforcement, but they did not investigate further because A.W. had not provided any new or different information from the earlier report. Also in 2013, A.W. disclosed the abuse to a school counselor and the counselor made a report to child protection, but they screened out the report because the allegations had been previously assessed.

contributor to the minor DNA types obtained from the non-sperm cell fraction of the semen identified on the perineal swab,” but that 92.2% of the general population could be excluded.⁴

White entered an *Alford* plea to third-degree criminal sexual conduct in each case.⁵ White stated that he was so intoxicated that he did not remember what happened in either case. In January 2012, the district court sentenced White to 62 months for the conviction related to B.T.H. and 90 months for the conviction related to A.B.

Criminal-Sexual-Conduct Conviction Involving Child Victim E.V.G.

In 2016, while White was in prison for the above-described convictions, he was charged with ten counts of sex-related crimes⁶ for alleged conduct against a child, E.V.G. E.V.G. and her mother lived with White for several months between 2009 and 2011. In 2011, at age five, E.V.G. was removed from her mother’s custody and placed with a foster relative. The foster relative testified that, several months after the placement began, she observed E.V.G. engaging in behaviors indicative of sexual abuse in children. The foster

⁴ V.M.R. testified that, prior to the assaults of B.T.H. and A.B., she “caught [White] pushing [another adult male victim] down in the camper and forcing him down and sucking his penis.”

⁵ An *Alford* plea involves a guilty plea in which a defendant is allowed to maintain their innocence while admitting that the prosecution’s evidence would likely result in a verdict of guilt at trial. *State v. Goulette*, 258 N.W.2d 758, 760-61 (Minn. 1977) (discussing *North Carolina v. Alford*, 400 U.S. 25, 37-38 (1970)).

⁶ The specific charges were three counts of first-degree criminal sexual conduct, three counts of second-degree criminal sexual conduct, two counts of soliciting a child to engage in sexual conduct, and two counts of electronic distribution of sexual material to a child.

relative and a social worker placed E.V.G. in counseling. After several years of therapy and eventual residential treatment, E.V.G. disclosed that White had sexually abused her.

E.V.G. testified at the commitment trial that, during the time she and her mother lived with White, he touched her sexually 10 to 15 times. On the first occasion, White and E.V.G. were on a swing at a park and White touched E.V.G.'s vagina and attempted to vaginally penetrate her with his penis. Another time, at White's house, White placed his fingers in E.V.G.'s vagina and attempted to penetrate her with his penis. In several other incidents, White had E.V.G. and his son A.W. "play house" by showing them pornographic videos and "pushed it onto [them] to" engage in clothed, sexual touching while White watched. E.V.G. said that White often drank before the abuse. E.V.G. did not report the abuse right away because she thought White would hurt her or "take away [her] family." White agreed that E.V.G. and her mother lived with him, but denied touching E.V.G.

White agreed to a stipulated-evidence trial in the E.V.G. case in exchange for the state's agreement to seek a sentence on only one count of second-degree criminal sexual conduct. The district court found White guilty of three counts of first-degree criminal sexual conduct, three counts of second-degree criminal sexual conduct, and two counts of solicitation of a child to engage in sexual conduct. Based on the agreement between White and the state, the district court dismissed all but one count and sentenced White to 164 months in prison for second-degree criminal sexual conduct.

2017 Civil Commitment Petition

In February 2017, while the criminal case related to E.V.G. was pending, the county filed a petition to civilly commit White as an SDP and an SPP based on a referral from the

DOC SPP/SDP Screening Committee. Two court-appointed examiners evaluated White, and both submitted reports opining that White met the standard for commitment as an SDP and an SPP. The county, however, dismissed the 2017 commitment petition after White was sentenced to 164 months in prison for his conviction in the E.V.G. case.

Civil-Commitment Proceeding

The trial on the current commitment petition was held in May 2022. Witnesses at the trial included the two court-appointed examiners, Dr. Tyler Dority and Dr. Paul Reitman; White’s former girlfriends, C.M.C. and V.M.R.; White’s former stepmother, J.M.W.; White’s adult son, Z.W.; one of White’s child victims, E.V.G.; the foster relative of E.V.G.; and White.⁷ Doctors Dority and Reitman both examined White and submitted reports of their findings to the court. Both examiners concluded in their reports and testified that White met the criteria for commitment as an SDP and an SPP.

In its order civilly committing White as an SDP and an SPP, the district court found that White was “not a reliable witness,” that he “has often not told the truth in various settings,” and that “[w]here [White’s] testimony conflicts with other evidence, the Court finds that other evidence more credible.” The district court noted that “[t]his is true of both exhibits and witness testimony.” The district court also found the report and testimony of Dr. Dority to be credible and that “Dr. Dority’s testimony was particularly persuasive, measured and reasonable.”

⁷ The district court also received evidence documenting White’s non-sexual criminal convictions—including two for violent assaults—and discipline while in prison for physical altercations with other inmates.

DECISION

White challenges his civil commitment as an SDP and an SPP, arguing that the evidence is insufficient to satisfy the second and third criteria of the statutory standards for commitment as an SDP and an SPP.

To commit a person as an SDP or an SPP, a petitioner must prove by clear and convincing evidence that the person meets the applicable statutory definition. Minn. Stat. § 253D.07, subd. 3 (2022). On appeal from a district court’s decision to civilly commit an individual as an SDP or an SPP, we review the district court’s factual findings for clear error. *In re Civ. Commitment of Crosby*, 824 N.W.2d 351, 356 (Minn. App. 2013), *rev. denied* (Minn. Mar. 27, 2013). In doing so, we defer to the district court’s credibility determinations and view the record in the light most favorable to the district court’s decision. *In re Knops*, 536 N.W.2d 616, 620 (Minn. 1995); *see also In re Civ. Commitment of Kenney*, 963 N.W.2d 214, 221 (Minn. 2021) (“We will not conclude that a factfinder clearly erred unless, on the entire evidence, we are left with a definite and firm conviction that a mistake has been committed.” (quotation omitted)). We review *de novo*, however, “whether the record contains clear and convincing evidence to support the district court’s conclusion that [White] meets the standard for civil commitment.” *Crosby*, 824 N.W.2d at 356.

I. The evidence is sufficient to establish that White meets the criteria for commitment as an SDP.

A person is an SDP if that 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) (2022).

White argues that the district court erred in finding that he meets the standard for commitment as an SDP because the evidence is insufficient to demonstrate the second and third criteria of the SDP statute.

A. Sexual, Personality, or Other Mental Disorder or Dysfunction

The second criterion for commitment as an SDP is that the person “has manifested a sexual, personality, or other mental disorder or dysfunction.” Minn. Stat. § 253D.02, subd. 16(a)(2). Under the SDP statute, “it is not necessary to prove that the person has an inability to control the person’s sexual impulses.” *Id.*, subd. 16(b) (2022). However, the person’s disorder or dysfunction must “not allow them to adequately control their sexual impulses, making it highly likely that they will engage in harmful sexual acts in the future.” *In re Linehan*, 594 N.W.2d 867, 876 (Minn. 1999) (*Linehan IV*).

Here, the district court found that “Dr. Dority credibly testified that [White] presently has a number of disorders that fall under [this second statutory criterion], including: Sexual Sadism Disorder, in a controlled environment; Unspecified Paraphilic Disorder; Other Substance Use Disorder, severe, opioid, stimulant, inhalant, cannabis, alcohol; and Antisocial Personality Disorder, with severe narcissistic features.”

White acknowledges Dr. Dority’s diagnoses, but contends that the evidence is insufficient to establish that he has a qualifying dysfunction under the statute because Dr. Dority relied on nonadjudicated behavior to arrive at his diagnoses.⁸ White argues—without citing any statutes, caselaw, or other authority—that diagnoses drawn from juvenile and nonadjudicated behavior “are inherently suspect.” *See State, Dep’t of Labor & Indus. v. Wintz Parcel Drivers, Inc.*, 558 N.W.2d 480, 480 (Minn. 1997) (declining to consider an inadequately briefed question); *In re Civ. Commitment of Kropp*, 895 N.W.2d 647, 653 (Minn. App. 2017) (applying *Wintz* in a commitment matter), *rev. denied* (Minn. June 20, 2017). Here, however, even if that was true, the district court had the benefit of hearing firsthand testimony from a number of victims and other witnesses concerning White’s nonadjudicated behavior, testimony which the district court found credible. *Cf. In re Monson*, 478 N.W.2d 785, 789 (Minn. App. 1991) (stating, in terms of the lack-of-control criterion of the SPP statute, that the “statute does not address convictions; it addresses behavior,” and that appellant’s nonadjudicated acts of sexual abuse supported the criterion). Thus, the nonadjudicated behavior relied on by Dr. Dority was supported in significant part by firsthand witness testimony at the trial; testimony that was subject to cross-examination and impeachment by White.

Moreover, the district court found that “[t]he reliability of Dr. Dority’s diagnoses [was] bolstered by the consistency, with reasonable differences[,] of the other diagnoses

⁸ White makes this argument about both examiners. The district court’s order, however, emphasized the testimony and opinions of Dr. Dority and so we focus our analysis on his testimony.

given [White] over the years.” Dr. Reitman, for example, agreed that White’s diagnoses satisfy the criteria.⁹ The examiners appointed for the 2017 commitment petition also made similar diagnoses, concluding that White had paraphilic disorder, urophilia, and antisocial personality disorder, among other diagnoses. And in 2011, after White pleaded guilty to third-degree criminal sexual conduct against B.T.H. and A.B., the evaluator for White’s psychosexual assessment included sexual disorder, not otherwise specified, and antisocial personality disorder in his diagnostic impressions.¹⁰ The district court’s finding that White has a sexual, personality, or other mental disorder or dysfunction is thus supported by the evidence in the record.

White further argues, however, that he does not meet the second criterion because the county failed to demonstrate that he lacks the ability to control his sexual impulses as required under *Linehan IV*. 594 N.W.2d at 876. White bases his argument on the fact that he has not reoffended since being incarcerated for his most recent convictions. White, however, has not had the opportunity to reoffend out in the community because he remains incarcerated. And the SDP statute does not require that an individual be released before a

⁹ Dr. Reitman testified that White’s diagnoses include alcohol abuse; personality disorder, unspecified with narcissistic and passive-aggressive features; paraphilia not otherwise specified; paraphilic disorder urophilia; and sexual sadism disorder.

¹⁰ This is a small subset of the many evaluations that White has undergone that have resulted in similar and additional diagnoses. Other exams include: 1991 Gilfillan treatment review, which noted White’s presenting problems to include psychosexual disorders; 1992 PORT boys home psychological evaluation; 1994 Northwood Children’s Home discharge summary, which states that White “should be expected to complete a sex offender treatment program”; pre-2017-petition screening report; and various behavioral health assessments between 2012 and 2021 during White’s incarceration.

commitment petition can be brought. There are cases that have cited new offenses committed after a period of incarceration as evidence supporting an SDP commitment, but there is no requirement of such evidence and White cites no authority to the contrary. *See, e.g., In re Civ. Commitment of Ramey*, 648 N.W.2d 260, 264, 271 (Minn. App. 2002) (describing appellant’s offenses following incarceration and affirming appellant’s commitment as an SDP), *rev. denied* (Minn. Sept. 17, 2002).

Finally, as the county argues, even if there was a requirement that a person reoffend after attempts at rehabilitation, White would meet such a requirement. White committed multiple offenses in adulthood—and was accused of additional offenses which were not prosecuted—despite attending numerous treatment centers and disciplinary placements in his adolescence. And he did not complete any sex-offender treatment while incarcerated.

There is thus clear and convincing evidence that White “has manifested a sexual, personality, or other mental disorder or dysfunction” that does “not allow [him] to adequately control [his] sexual impulses.” Minn. Stat. § 253D.02, subd. 16(a)(2); *Linehan IV*, 594 N.W.2d at 876.

B. Highly Likely to Sexually Reoffend

White next challenges the district court’s finding that he meets the SDP statute’s third criterion: that the person facing commitment is highly likely “to engage in acts of harmful sexual conduct.” Minn. Stat. § 253D.02, subd. 16(a)(3); *see also In re Civ. Commitment of Ince*, 847 N.W.2d 13, 22 (Minn. 2014) (reaffirming that the word “likely” in the third criterion of the SDP statute is to be interpreted as meaning “highly likely”). White argues that the district court erred because White’s “pattern and frequency [of

offending] do not produce a narrative that equates to the lack of volitional control necessary to justify commitment as a sexually dangerous person.” He further argues that, because “neither examiner could effectively articulate what the population offense rate or re-offense rate is,” there is a risk that they overestimated White’s risk of recidivism. We are not persuaded.

The Minnesota Supreme Court has made clear that predicting dangerousness “is neither a purely clinical prediction nor simply a matter for statisticians. Rather, with the benefit of all the relevant and reliable evidence, the district court must make a good faith attempt to isolate the most important factors in predicting harmful sexual conduct.” *Ince*, 847 N.W.2d at 23 (quotations and citation omitted). The assessment of whether an individual is highly likely to reoffend involves a multi-factor analysis that may include both the results from various assessment tools and the factors set forth by the supreme court in *In re Linehan*, 518 N.W.2d 609 (Minn. 1994) (*Linehan I*). *Ince*, 847 N.W.2d at 22-24.

The factors set out in *Linehan I* include:

(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.

Linehan I, 518 N.W.2d at 614.

Here, the district court found that “Dr. Dority credibly testified that [White] is highly likely to engage in acts of harmful sexual conduct in the future.” The district court noted that this finding is supported by the assessment tools that Dr. Dority administered to White including the Static-99R tool, which showed that White was 3.77 times more likely than the average sex offender to recidivate. This score placed White in the “well above average risk” category. The Violence Risk Scale-Sex Offense version 2 (VRS-SO) tool placed White “in the 99.8 percentile among offenders in the normative samples”—also “well above average” for risk of recidivism. Finally, on the Hare Psychopathy Checklist, White fell “in the 91st percentile, which is indicative of a very high level of psychopathy.”

In addition to these assessment-tool results, the district court credited Dr. Dority’s analysis of the *Linehan I* factors. These include Dr. Dority’s opinion that the first factor—White’s age of 44—was neutral because, even though “studies have found that older sex offenders are at lower risk to reoffend than younger sex offenders,” White’s “pervasive history of criminality, sex offending, and failure to complete [sex-offender treatment] . . . likely neutralizes this as a mitigating factor.” As to the other factors, Dr. Dority opined that they weighed against White largely because he has a history of violent behavior, his plan for release would place him in the “*exact* environment in which he has used violence, including sexual violence, in the past,” and he “is essentially an untreated sex offender who has been terminated from at least two [sex-offender-treatment] programs.”

White argues that his risk of recidivating may have been overstated because neither examiner could articulate, as set out in his brief, “the base rate statistics for violent behavior among individuals of this person’s background.” Dr. Dority acknowledged in his

testimony that the base rate is “unknowable largely due to unreported offenses.” He explained, however, that a “recidivism meta-analysis” has identified those factors that are most indicative of sexual reoffending recidivism and that these are the factors upon which he relies. He testified that White meets “nearly all” of “the top 50 percent of that list,” including prior sex offenses, having dropped out from previous treatment opportunities, being diagnosed with a personality and antisocial personality disorder, having a negative relationship with his mother, and having one or more stranger victims.¹¹ Thus, Dr. Dority explained that, while he could not provide “[t]rue base-rate” sexual-recidivism numbers, he relied on data from a recidivism meta-analysis to identify those factors most highly correlated with sexual-offense recidivism.

Given the district court’s findings regarding assessment-tool results and the *Linehan I* factors, and the consistency of the court-appointed examiners’ diagnoses with each other and with previous experts who evaluated White’s risk, the evidence is sufficient to support the district court’s finding that White is highly likely to engage in acts of harmful sexual conduct. *See Ince*, 847 N.W.2d at 23-24 (“As the trier of fact, the district court will be in the best position to determine the weight to be attributed to each factor, as well as to evaluate the credibility of witnesses—a critical function in these cases that rely so heavily on the opinions of experts.”).

¹¹ Dr. Dority’s report also includes early onset of offending, male child victim, and being single as among the “static factors . . . most indicative of sexual offending recidivism.” The record supports that White meets these indicators as well.

We therefore discern no error by the district court in its determination that White meets the statutory criteria for commitment as an SDP.

II. The evidence is sufficient to establish that White meets the criteria for commitment as an SPP.

White also challenges his commitment as an SPP. A person is an SPP if that person has (1) “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”; (2) “a habitual course of misconduct in sexual matters”; (3) “an utter lack of power to control the person’s sexual impulses”; and (4) “as a result, is dangerous to other persons.” Minn. Stat. § 253D.02, subd. 15 (2022). On appeal, White disputes the district court’s determination that he meets the second and third criteria of the SPP statute.

A. Habitual Course of Misconduct in Sexual Matters

The district court found that White’s past conduct evidences a habitual course of misconduct in sexual matters, citing Dr. Dority’s testimony and report opining that White meets this criterion. The district court specifically found that White’s “course of conduct began when [he] was a child and involved compulsive and chronic sexual conduct, both consensual and nonconsensual . . . [and] continued into adulthood.” The district court further stated, “That [White’s] course of misconduct was habitual is demonstrated by the frequency of his offenses and the variety of victims. In addition, [White] has made

statements about the volume and frequency of his sexual partners and conduct that supports the habitual nature of his offending.”

White challenges the district court’s findings on two grounds. First, White argues that the district court’s determination that White’s conduct was habitual relies on witness testimony regarding uncharged offenses, and that the district court erred in crediting those witnesses. Second, White contends that White’s “offenses are not the patterned type of offenses covered by the SPP statute.” We are not convinced by either argument.

As to White’s first argument, this court “give[s] due deference to the district court as the best judge of the credibility of witnesses.” *Crosby*, 824 N.W.2d at 356. For example, White claims that the district court should not have found that White’s son Z.W. was credible, “given the concerns about his cognitive delays and aptitude.” However, the district court acknowledged that Z.W. has a developmental disability and was thus able to factor that into its assessment of Z.W.’s testimony. In addition, the district court noted that Z.W.’s testimony was consistent with that of other witnesses. Z.W., for example, testified that White’s sexual abuse occurred at a white house and a blue house and other witnesses corroborated that White lived in those houses at different times during Z.W.’s childhood.

White also claims that the district court erred in finding E.V.G., as well as White’s ex-partners V.M.R. and C.M.C., credible. White cites factors such as E.V.G.’s young age at the time of White’s abuse, V.M.R.’s prior drug use, and C.M.C.’s “bias.” But as the county notes, the district court “had the opportunity to consider [the testimony of these witnesses] in light of other evidence in the record when determining their credibility and the weight to give their testimony.” Additionally, White had the opportunity to—and did—

cross-examine these witnesses and attempt to impeach them on the very same grounds he now cites. The district court was thus able to consider these factors and nevertheless concluded that the testimony was credible. We therefore discern no basis to question the district court's credibility findings.

Regarding White's second argument, that his "offenses are not the patterned type of offenses covered by the SPP statute," the record supports the district court's determination that White has demonstrated the "habitual course of misconduct in sexual matters" contemplated by the SPP statute. Minn. Stat. § 253D.02, subd. 15; *see In re Civ. Commitment of Stone*, 711 N.W.2d 831, 837 (Minn. App. 2006) ("This factor in the SPP statute has been defined to require evidence of a pattern of similar conduct Courts applying the SPP statute have interpreted the use of the modifying adjective 'habitual' to entail a concept of similarity or pattern."), *rev. denied* (Minn. June 20, 2006).

The record shows that White perpetrated sexual offenses against numerous individuals from his childhood through the start of his prison sentence. Evidence was presented at the hearing showing that he perpetrated this abuse as a child against his stepbrother and other children in his neighborhood; as an adult against his own child and other relative and nonrelative children in his household; against his female romantic partners; and against at least three adult male acquaintances. *See In re Bieganowski*, 520 N.W.2d 525, 529 (Minn. App. 1994) (citing appellant's "multiple victims over an extended period of time" as supporting his "pattern of habitual sex offenses"), *rev. denied* (Minn. Oct. 27, 1994). And, as the district court noted, these offenses do have patterned similarities, as White "has a pattern of choosing vulnerable victims," including children,

and adults with physical limitations. The district court thus did not err in finding that the state established, by clear and convincing evidence, that White has engaged in a habitual course of sexual misconduct.

B. Utter Lack of Power to Control Sexual Impulses

Finally, White argues that the district court erred in determining that he has demonstrated an utter lack of power to control his sexual impulses, as required under the SPP statute. Minn. Stat. § 253D.02, subd. 15.

Minnesota courts have identified several factors to consider in determining whether a person has an “utter lack of power to control” their sexual impulses. These factors, known as the *Blodgett* factors, include:

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.

In re Blodgett, 510 N.W.2d 910, 915 (Minn. 1994). Other relevant factors include whether the person has refused treatment, the person’s belief that a problem does not exist, the presence of grooming behaviors, and the person’s failure to remove themselves from similar situations. See *In re Pirkkl*, 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); *Bieganowski*, 520 N.W.2d at 529-30.

White claims that the district court misapplied this caselaw because “[t]he overarching theme in ‘utter control’ cases is that individuals who suffer from an identifiable

utter lack of control of their impulses are characterized by quick and repetitive bursts of offending; often immediately after someone was released from incarceration.” As with his challenge to his commitment as an SDP, White contends that to satisfy the SPP utter-lack-of-control criterion, the individual must “recidivate after being subject to corrective reinforcement.” But, as with the SDP statute, that is not the law. *See Monson*, 478 N.W.2d at 789 (rejecting appellant’s argument that “speculation about his dangerousness is particularly troublesome because, in the absence of criminal convictions prior to the one for which he is now serving time, the potential rehabilitative and deterrent effects of incarceration have not been given a chance”). Moreover, the district court found and the record supports that many of White’s sexual offenses were characterized by quick and repetitive bursts of offending.

White maintains that the district court’s finding that White offended “over an extended period of time” is inconsistent with a determination that White exhibited an utter lack of control. However, in the context of this case, the district court’s finding merely reflects the significant number of years that White has been offending and number of victims involved, not that he has ever exhibited an ability to control his sexual impulses.

White also argues that he fails to meet the utter-lack-of-control criterion because the district court found that he had engaged in grooming behavior by “showing E.V.G. and his son pornographic videos as part of his efforts to teach them to ‘play house.’” The district court, however, found that he engaged in a number of other offenses that were impulsive, unplanned, and did not involve any grooming behavior. And the mere fact that an offense may have involved some grooming activity does not negate a finding of utter lack of

control. *See, e.g., In re Preston*, 629 N.W.2d 104, 111 (Minn. App. 2001) (stating that “[t]hough grooming and planning behavior can show the ability to control the sexual impulse, where the grooming behavior itself is uncontrollable, the impulse is likewise not controllable” (footnote omitted)); *Bieganowski*, 520 N.W.2d at 530 (stating that “[a]lthough the ‘grooming’ process requires time, thus eliminating any ‘suddenness’ regarding the sexual activity, . . . appellant’s failure to remove himself from situations that provide the opportunity for similar offenses, and his failure to avoid precursors that trigger his impulsive behavior, . . . demonstrate . . . lack of control”). White’s argument is also unpersuasive given the many other factors that support White’s utter lack of control.¹²

In sum, we conclude that the district court adequately analyzed the applicable statutory factors set out in *Blodgett*, *Pirkl*, *Irwin*, and *Bieganowski* and that the findings related to those factors are supported by the testimony of both Dr. Dority and Dr. Reitman, as well as the other evidence in the record.

Affirmed.

¹² For example, the district court referenced in its findings White’s family history of substance abuse and that many of his assaults occurred when he was intoxicated. The evidence supports that, in addition to not making progress in sex-offender treatment, he has not progressed in chemical-dependency treatment. This treatment failure is particularly relevant to White’s utter lack of power to control his sexual impulses. At trial, White stated that he did not consider his drinking problematic until he was charged with sexual assault and denied his previous statement that he engaged in “extreme chemical abuse” in his past.