

*This opinion is nonprecedential except as provided by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

**STATE OF MINNESOTA
IN COURT OF APPEALS
A22-1629**

In the Matter of the Civil Commitment of:
Randy Lee Morrow.

**Filed April 10, 2023
Affirmed
Frisch, Judge**

Freeborn County District Court
File No. 24-PR-22-190

Daniel T. Donnelly, Donnelly Law Office, Austin, Minnesota (for appellant Randy Morrow)

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

David J. Walker, Freeborn County Attorney, Albert Lea, Minnesota (for respondent Freeborn County Human Services)

Considered and decided by Bjorkman, Presiding Judge; Larkin, Judge; and Frisch, Judge.

NONPRECEDENTIAL OPINION

FRISCH, Judge

Appellant challenges the district court's findings that (1) there was clear and convincing evidence to support appellant's civil commitment as a sexually dangerous person and a sexual psychopathic personality; and (2) there was not clear and convincing

evidence that a less-restrictive treatment program was appropriate. Because the record supports the district court's determinations, we affirm.

FACTS

The district court granted a petition filed by respondent Freeborn County Human Services (the county) to civilly commit appellant Randy Lee Morrow as a sexually dangerous person (SDP) and a sexual psychopathic personality (SPP). The following facts were established through testimony at the commitment hearing.

In 1990, Morrow sexually abused a friend of his daughter, but that abuse went unreported. In 1991, Morrow entered guilty pleas for incidents involving three different victims. Morrow was charged with one count of first-degree criminal sexual conduct and five counts of second-degree criminal sexual conduct and pleaded guilty to one count of second-degree criminal sexual conduct for incidents involving his daughter's best friend—a juvenile female. Morrow was charged with and pleaded guilty to one count of second-degree criminal sexual conduct for an incident involving another one of his daughter's friends—a juvenile female. Morrow was also charged with one count of second-degree criminal sexual conduct for an incident involving his daycare provider's daughter—another friend of his daughter and a juvenile female. Morrow entered an *Alford* plea to that charge and denied sexual contact at the commitment hearing.¹

¹ An *Alford* plea allows a defendant to plead guilty while maintaining innocence of the charged offense because there is sufficient evidence for a jury to find the defendant guilty at trial. *State v. Goulette*, 258 N.W.2d 758, 760-61 (Minn. 1977) (discussing *North Carolina v. Alford*, 400 U.S. 25, 37 (1970)).

The district court stayed Morrow's sentence so that he could attend an inpatient treatment program at Alpha Human Services, but his sentence was executed approximately one year later when there was no funding for him to attend treatment at Alpha. In prison, he was evaluated for treatment but was not accepted because he refused to disclose details of the incidents. Morrow appealed the execution of his sentence, and we affirmed. *State v. Morrow*, 492 N.W.2d 539 (Minn. App. 1992). Morrow then requested to be transferred to a different facility, but he refused treatment there as well. A different county filed a civil-commitment petition, which was continued to enable Morrow to participate in an alternative treatment program while residing at a halfway house. Morrow attended treatment for several months, did not complete the program, and was ultimately discharged from the program after refusing to engage with treatment. Morrow testified that the reason he was discharged was because he ran out of money to pay for treatment.

In 1996, Morrow was convicted of fourth-degree criminal sexual conduct for incidents involving his neighbor—a juvenile male. Morrow was sentenced to 36 months in prison. Morrow appealed, and we affirmed. *State v. Morrow*, No. C4-96-1702, 1997 WL 309453 (Minn. App. June 10, 1997), *rev. denied* (Minn. Oct. 14, 1997). Around this time, Morrow was convicted of failure to register. Morrow attempted to appeal, but his appeal was dismissed as untimely. Morrow also received a disciplinary sanction for failing to participate in and complete a sex-offender treatment program, and the discipline was ultimately upheld on appeal. *State ex rel. Morrow v. LaFleur*, 590 N.W.2d 787 (Minn. 1999), *overruled by Johnson v. Fabian*, 735 N.W.2d 295, 301 (Minn. 2007).

In 2013, Morrow entered an *Alford* plea to first-degree criminal sexual conduct for incidents involving his daughter's friend—a juvenile female. Morrow was also charged with failure to register, which was dismissed as part of the plea agreement. Around this time, Morrow asked his daughter's friend—a juvenile female—how he could take her away from her family and, on another occasion, kissed her and asked her to be his girlfriend. The victim did not report this to the police despite awareness that police were investigating Morrow because she “had dealt with past trauma, and . . . wasn't ready to deal with it.”

While in prison, it was recommended that Morrow participate in the Minnesota Sex Offender Program (MSOP). Morrow did not want to pursue treatment because he wanted to finish a computer class. After he completed the computer class, Morrow continued to refuse treatment on the advice of his attorney because he maintained his innocence. Morrow again was disciplined because he refused and failed treatment, resulting in extended incarceration. Morrow appealed, and we affirmed. *Morrow v. Roy*, No. A17-0169, 2017 WL 3013423 (Minn. App. July 17, 2017), *rev. denied* (Minn. Sept. 27, 2017). In 2020, Morrow declined to participate in an SDP/SPP interview based on advice from his attorneys.

In February 2022, the county filed a petition to civilly commit Morrow as an SDP and SPP. At the commitment hearing, the district court heard testimony from Morrow, two victims, a detective who investigated the 2013 criminal-sexual-conduct charge and expressed concern about the potential release of Morrow into the community before Morrow's end-of-confinement review hearing, the prepetition expert examiner and two court-appointed expert examiners, an intensive supervised release (ISR) agent assigned to

Morrow's release plan, the Alpha Emergence Behavioral Health clinical director, and Morrow's friend.² The district court also received 21 exhibits.

The district court granted the county's petition and ordered Morrow to be indeterminately committed. Morrow appeals.

DECISION

Morrow argues that the district court erred in determining that he meets the statutory criteria for commitment as an SDP and an SPP. Morrow also argues that the district court erred in concluding that Morrow did not establish by clear and convincing evidence that a less-restrictive treatment program is available and appropriate.

We review de novo whether the record contains clear and convincing evidence to support commitment. *In re Thulin*, 660 N.W.2d 140, 144 (Minn. App. 2003). But we do not set aside findings of fact unless they are clearly erroneous. *In re McGaughey*, 536 N.W.2d 621, 623 (Minn. 1995). Clearly erroneous means "manifestly contrary to the weight of the evidence or not reasonably supported by the evidence as a whole." *In re Civ. Commitment of Kenney*, 963 N.W.2d 214, 221 (Minn. 2021) (quotation omitted). "[W]e view the evidence in a light favorable to the findings" and will not reweigh the evidence or reconcile conflicting evidence as if trying a case de novo. *Id.* at 221-22. Rather, "due regard shall be given to the opportunity of the trial court to judge the credibility of the witness," and when "the findings of fact rest almost entirely on expert testimony, the trial

² Alpha Emergence Behavioral Health appears to be the result of a merger between Alpha Human Services and another company. We refer to both entities as "Alpha."

court's evaluation of credibility is of particular significance.” *In re Knops*, 536 N.W.2d 616, 620 (Minn. 1995).

Morrow argues that evidence is clear and convincing only if it is “unequivocal and uncontradicted, and intrinsically probable and credible,” citing *Deli v. University of Minnesota*, 511 N.W.2d 46 (Minn. App. 1994), *rev. denied* (Minn. Mar. 23, 1994). We disagree. First, Morrow misstates *Deli*. *Deli* states that “[i]n order to prove a claim by clear and convincing evidence, a party’s evidence *should* be unequivocal and uncontradicted, and intrinsically probable and credible.” 511 N.W.2d at 52 (emphasis added). Second, more recent Minnesota Supreme Court caselaw provides that proof by clear and convincing evidence is met when “the truth of the facts asserted is highly probable.” *Vermillion State Bank v. Tennis Sanitation, LLC*, 969 N.W.2d 610, 626 (Minn. 2022) (quotation omitted). Third, a district court may find that evidence is clear and convincing even when the record contains contradictory evidence. *See In re Civ. Commitment of Crosby*, 824 N.W.2d 351, 359-61 (Minn. App. 2013) (holding that clear and convincing evidence supported the district court’s finding where there was competing expert testimony), *rev. denied* (Minn. Mar. 27, 2013). The fact-finder is charged with the responsibility of considering all of the evidence presented and determining the weight and credibility to be afforded to that evidence. *See Kenney*, 963 N.W.2d at 222 (“[T]he factfinder has the primary responsibility of determining the fact issues and the advantage of observing the witnesses in view of all the circumstances surrounding the entire proceeding.” (quotation omitted)). We disagree that the existence of conflicting evidence

precluded the district court from determining that there was clear and convincing evidence supporting commitment of Morrow as an SDP and an SPP.

Against this backdrop, we analyze Morrow’s challenge to the district court’s findings and conclusions.

I. The district court did not err in concluding that Morrow meets the criteria for commitment as an SDP and an SPP.

Morrow specifically argues that the county did not establish by clear and convincing evidence that he is an SDP or an SPP because (1) in December 2020, independent counsel to the Minnesota Department of Corrections stated that Morrow did not have an applicable diagnosis and questioned whether he was highly likely to reoffend, and (2) the Alpha clinical director testified that Morrow was a good candidate for a less-restrictive treatment program than that available under a civil commitment.³ But, as set forth above, the mere existence of this evidence did not require the district court to accept the evidence at face value, and the record reflects that the district court properly concluded that there was clear and convincing evidence supporting the commitment of Morrow as an SDP and an SPP.

An SDP is a person who (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 [highly] likely to engage in acts of harmful sexual conduct.” Minn. Stat. § 253D.02, subd. 16 (2022); *see also In re Civ. Commitment of Ince*, 847 N.W.2d 13, 20-

³ We note that the Alpha director’s testimony regarding a less-restrictive treatment program speaks to the availability and appropriateness of such a program, and not the statutory criteria for commitment as an SDP or an SPP. And the Alpha director’s evaluation was completed for purposes of intake evaluation, not as part of an evaluation of whether Morrow should be civilly committed.

22 (Minn. 2014) (reaffirming that “likely” under the statutory definition of SDP requires evidence that a person is “highly likely” to engage in acts of harmful sexual conduct). The district court found that Morrow engaged in a harmful course of conduct, that all three experts credibly opined that Morrow suffers from disorders or dysfunctions within the meaning of the statute, and that credible opinions from all three experts regarding analysis of static risk factors, dynamic needs factors, and protective factors supported the conclusion that Morrow was highly likely to reoffend. These findings were supported by the record and were therefore not clearly erroneous. And to the extent that Morrow argues that the district court erred as a matter of law in determining that this evidence was clear and convincing, our independent review of the record leads us to the same conclusion as the district court.

An SPP is a person who (1) has “a habitual course of misconduct in sexual matters”; (2) has conditions of “emotional instability,” “impulsiveness of behavior,” “lack of customary standards of good judgment,” “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”; (3) has “an utter lack of power to control [their] sexual impulses”; and (4) “as a result, is dangerous to other persons.” Minn. Stat. § 253D.02, subd. 15 (2022). The district court found that Morrow has a habitual course of misconduct in sexual matters, that Morrow possesses all four statutory conditions which render him irresponsible in his personal conduct in sexual matters, that all three experts opined and credibly testified to Morrow’s conditions, that Morrow has an utter lack of control based on factors set forth in caselaw, that the experts

credibly opined and testified to that lack of control, and that, based in part on the *Linehan* factors,⁴ Morrow was a dangerous person as a result of his inability to control those impulses.⁵ These findings are supported by the record. The district court's conclusion that there was clear and convincing evidence that Morrow met the statutory criteria for commitment as an SDP and an SPP was proper.

II. The district court did not err in concluding that Morrow did not establish by clear and convincing evidence that a less-restrictive treatment program is available and appropriate.

Morrow argues that the district court erred in determining that he did not establish by clear and convincing evidence that a less-restrictive treatment plan is available and appropriate because he was accepted into an alternative treatment program, Alpha, and that it would be the most appropriate provider for him. We disagree.

Once the district court determines that clear and convincing evidence supports commitment as an SDP or an SPP, the district court “shall commit the person to a secure treatment facility unless the person establishes by clear and convincing evidence that a less

⁴ See *In re Linehan*, 518 N.W.2d 609, 614 (Minn. 1994) (setting forth six factors courts should consider in predicting whether a person who has been found to lack power to control their sexual impulses is a danger to the public).

⁵ The district court made explicit findings that Morrow was a danger to others in its analysis on the SDP criterion, and that the court-appointed experts credibly testified and opined that Morrow is dangerous “as required by the *SDP* statute.” We note that danger to others is a criterion under the statutory definition of an *SPP*. Minn. Stat. § 253D.02, subd. 15. Morrow does not raise this discrepancy as error on appeal. Upon our review of the findings as a whole, we are satisfied that those findings support the district court's conclusion that Morrow is likely to reoffend because he lacks control and therefore is a danger to others. Moreover, the district court specifically found that “[the court-appointed experts] credibly testified that Morrow does not have the ability to control his sexual impulses if he has an available victim and circumstances conducive to sexual assault.”

restrictive treatment program is available, is willing to accept the respondent under commitment, and is consistent with the person's treatment needs and the requirements of public safety." Minn. Stat. § 253D.07, subd. 3 (2022). "[T]he burden of proving that a less-restrictive program is available is on the patient." *In re Robb*, 622 N.W.2d 564, 574 (Minn. App. 2001), *rev. denied* (Minn. Apr. 17, 2001). "Although there is no statutory definition for a less restrictive treatment program, the district court must consider a proposed less restrictive alternative in light of the objectives of commitment: the patient's treatment needs and the requirements of public safety." *Ince*, 847 N.W.2d at 26 (quotation omitted).

The district court specifically found that Alpha, even if available to Morrow, was not an appropriate program because it lacked the intensity and security to meet Morrow's needs and public-safety considerations. The district court also found that all three experts credibly testified that Morrow should be committed to MSOP because Morrow needed treatment in a secure setting. The district court credited testimony from the prepetition expert that they "[did] not believe that Morrow actually wants treatment or to manage his sexual interest in children because he likes having that interest." The district court also found that Morrow does not have enough restraint to keep himself from reoffending and refrain from access to children, that he had not developed sufficient skills or a support system, and that his history of termination from treatment and subsequent offenses shows that ISR was insufficient to protect from further offenses. The district court also noted all three experts' concerns about the possibility of Morrow absconding if placed in community or residential treatment.

These findings are supported by the record. The court-appointed experts testified that Morrow needed intense treatment in a secure setting, and that allowing him access to the community would be a risk. All three experts testified that MSOP (or the DHS sex-offender program), was the only appropriate treatment option for Morrow. The prepetition expert testified that they believed that “[Morrow] has not wanted to be in treatment because I don’t think he wants people to try to take away that attraction to kids . . . that’s his exclusive attraction. Most of us would not want our exclusive sexual attraction to be removed or criticized.”

The court-appointed experts testified to Morrow’s inability to control his impulses if given an opportunity to offend. They also testified about concerns about Morrow’s support system and lack of skills. And the record contains evidence showing a history of terminated treatment and subsequent offenses. The ISR agent testified, “If someone did not want to comply with supervision or wanted to avoid detention, [the GPS bracelet] is a plastic bracelet that can be cut with a knife or scissors and they can just cut and run.” The ISR agent testified that the person running would get a head start, but relevant officials would be alerted and searching for them shortly thereafter. Finally, all three experts testified that they believed or were concerned that Morrow was planning to abscond.⁶

⁶ The evidence suggesting that Morrow was planning to abscond includes testimony that Morrow had moved to Mexico in 2008 without his family, learned Spanish, and conducted his internet business while residing there. The evidence also includes communications with a former inmate (sometimes in Spanish) who lived in Mexico about the cost of living and property in that country.

Morrow offered evidence in support of the appropriateness and availability of treatment. Morrow testified that he believed Alpha was the most appropriate treatment option for him, that he had funding to pay for a bed for approximately four years, and that he did not plan to abscond to Mexico. And the Alpha director testified that Morrow would be an appropriate candidate for treatment there *if* he was not deemed appropriate for civil commitment. The district court specifically discredited Morrow's explanations about his communication with a former inmate who lived in Mexico about the former inmate's life there. And the district court credited the expert opinions about Morrow's treatment needs and the needs of the public and found that Alpha was not an appropriate or sufficient treatment option for Morrow.

We specifically acknowledge the thorough, detailed order issued by the district court. The order demonstrates the district court's care in assessing all of the evidence submitted in this matter, details clear findings of fact, and sets forth conclusions consistent with its findings of credited evidence. We conclude that the district court did not err in determining that there was clear and convincing evidence supporting the commitment of Morrow as an SDP and an SPP, nor did it err in determining that Morrow did not provide clear and convincing evidence that Alpha was an appropriate treatment option.

Affirmed.