

*This opinion is nonprecedential except as provided by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
A23-0032**

In the Matter of the Civil Commitment of: Christopher Michael Kapol.

**Filed July 3, 2023
Affirmed
Reyes, Judge**

Stearns County District Court
File No. 73-PR-22-1282

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Considered and decided by Ross, Presiding Judge; Bjorkman, Judge; and Reyes,
Judge.

NONPRECEDENTIAL OPINION

REYES, Judge

Appellant argues that the district court erred by determining that (1) he met the statutory criteria as a sexual psychopathic personality (SPP) and a sexually dangerous person (SDP) when the only examiner who testified and filed a report stated that he satisfied neither definition and (2) he failed to present clear and convincing evidence of the availability of a less-restrictive placement. We affirm.

FACTS

In July 2022, respondent Stearns County Human Services petitioned for civil commitment of appellant Christopher Michael Kapol as an SPP and an SDP. Minn. Stat. §§ 253D.02, subds.15, .16 (2020). Four months later, the district court indeterminately committed appellant to the Minnesota Commissioner of Human Services for treatment in the Minnesota Sex Offender Program (MSOP), as a person who is an SDP and SPP.

Prior sexual misconduct history

Appellant has a long history of sexual misconduct. In May 2005, the state of Minnesota charged appellant, then 12 years old, with two counts of first-degree criminal sexual conduct against a three-year-old whom he was babysitting. The victim disclosed to her mother that appellant touched her vaginal area, penetrated her vagina with his finger and performed oral-penile penetration. Appellant later admitted that he tried to put his penis in the victim's vagina. Appellant admitted the allegations. The district court adjudicated appellant as delinquent for first-degree criminal sexual conduct, placed him on indeterminate probation, and ordered him to complete treatment at Mille Lacs Academy.

In October 2005, Mille Lacs Academy reported to the St. Cloud Police Department that appellant had admitted to staff on multiple occasions that he had sexually abused his five-year-old cousin in May 2005. An officer met with appellant who admitted that, while babysitting his cousin, he forcibly placed his penis in her mouth, on her vagina, and on her buttocks. Appellant sexually assaulted his cousin several times and tried to tie her to a table once. He admitted to two counts of first-degree criminal sexual conduct, and the

district court adjudicated him as a delinquent. During his disposition hearing, the district court found that appellant had a high risk to reoffend. As a result, it ordered him to continue treatment at Mille Lacs Academy, register as a predatory offender, abstain from substance use, submit to random testing, have no contact with victim, have no unsupervised contact with minors, attend school, follow rules at home, pay restitution, and remain law abiding.

In May 2006, the district court adjudicated appellant as delinquent for fourth-degree criminal sexual conduct against a 13-year-old girl knowing or having reason to know that the victim was “mentally impaired, mentally incapacitated, or physically helpless” and who was the daughter of his father’s girlfriend. The offense took place a year before and appellant admitted that, while the victim slept, he “stuck his penis into her butt and sucked on her breast.”¹

In November 2009, appellant admitted to fourth-degree and fifth-degree criminal sexual conduct. On the day of the offense, the victim went to appellant’s residence to visit his sister. Appellant and his male friend arrived at the residence intoxicated. A short time later, appellant “cornered the victim in the kitchen and began kissing her lips, cheeks, neck and upper chest area.” The victim told him to stop but he refused. Instead, appellant “trapped her in a bedroom by wedging a knife into the door, held her down . . . on the bed and kissed her” in various places, “touched her breasts and buttocks, and tried to reach into her pants.” The victim repeatedly told appellant “no,” yelled for help, and tried to get

¹ As of 2010, appellant continued to report having fantasies about this victim. In his predisposition report, appellant also admitted to performing anal sex on one other victim and told his cousin to “make out” with him.

away. The district court stayed a 24-month commitment to the Commissioner of Corrections until his 21st birthday contingent upon a successful completion of a sex-offender treatment program at Minnesota Correctional Facility (MCF)-Red Wing. It also ordered that appellant complete any recommended aftercare and comply with probation conditions. While incarcerated, appellant blamed the victim for his incarceration and had plans to physically harm and kill her, including kidnapping, raping, and disposing of her body in a specific location. Appellant also reported having thoughts of acting violently towards the female staff at the facility, including telling his case manager that he wanted to have sex with the case manager's children.

In January 2014, appellant, now an adult, pleaded guilty to felony domestic assault against his then-girlfriend in June 2013. Appellant "pushed his pregnant girlfriend's face against his, squeezed her cheeks together, and covered her nose and mouth with his other hand." The victim reported not being able to breathe for ten to 20 seconds. He then pulled a blanket over her head and pulled it tight to her face. Later in the evening, appellant tried "to put dish soap in her mouth, pushed her into the side of the couch and bent her backwards over it, pushing her shoulders down and holding her there for approximately one minute." The district court sentenced appellant to a 21-month stayed prison sentence and five years of supervised probation. Appellant later violated this probation by forcing sexual intercourse with the victim.

In August 2018, appellant pleaded guilty to third-degree criminal sexual conduct for an offense that occurred in April 2014. During the offense, appellant forced the victim to have sexual intercourse with him when he pushed the victim down, pushed her legs apart,

and penetrated her. The district court sentenced appellant to 27 months in prison. Following the sentence, appellant was accepted into the MSOP at the Moose Lake Correctional Facility. In February 2021, appellant was transferred to the Sex Offender Treatment Program (SOTP) at MCF-Lino Lakes.

Prior unadjudicated sexual misconduct.

Appellant also admitted to the following sexual misconduct:

- 1) Appellant placed his penis in his brother's anus when his brother was four or five years old.
- 2) Appellant tried to unbutton his sister's friend's pants while she slept.
- 3) Between 1999 and 2004, appellant had sexual contact with his cousin, who was between the ages of six and twelve, about fifteen times. This included making out and touching her vaginal area which he reported were all consensual.
- 4) Appellant forced the mother of one of his children to have sexual intercourse without consent.
- 5) In a 2019 treatment session, appellant disclosed that he could possibly have had 30 extra victims.
- 6) In October 2019, he participated in a sex-offender assessment and disclosed he had previously engaged in seeking out a person to rape, raping a stranger, using a weapon during a sexual assault, and forcing the victim to engage in sexual activity. The assessment also showed that appellant minimized his thoughts about committing rape and endorsed sexual harassment, frottage, voyeurism, strangling or blocking a person's nose and mouth during sexual activity, and engaging in sexual activity without consent.

Commitment hearing

The district court held a commitment hearing on September 14, 2022. Before the hearing, it appointed Dr. Linda Marshall, Ph.D., as the examiner. As the court examiner, Dr. Marshall completed a psychological evaluation of appellant's psychological status regarding commitment to determine whether he met the criteria for commitment as an SPP or SDP on September 9, 2022, and testified at trial.² Dr. Marshall's report stated:

Based upon a thorough review of [appellant's] records and an interview with him there appears to be sufficient criteria to commit him as a sexually dangerous person and sexual psychopathic personality. However, upon closer examination more specifically this interview and recent treatment records[,] it is now felt that [appellant] does not meet the threshold for SPP or SDP.

At trial, Dr. Marshall opined that he “definitely” met the criteria for SDP, “but not everything with [] SPP.” The district court expressed that it was “very unclear how and why Dr. Marshall came to this conclusion despite her report indicating that [appellant] meets the criteria for commitment as both as an SDP and SPP.” The district court asked Dr. Marshall to clarify her position. Dr. Marshall responded:

I am not supporting commitment for SDP or SPP. . . . [A]nd the reason I'm not supporting it is [because] . . . he does meet the criteria maybe for SDP, but as I stated in my report, I think he has gained significant knowledge in treatment, he has insight, and I felt that was noteworthy.

While the district court found Dr. Marshall's testimony to be credible, it did not agree with “all her opinions and legal conclusions.” The district court determined that clear

² Dr. Marshall conducted her interview with appellant via zoom on August 19, 2022.

and convincing evidence supported that appellant met the criteria for SPP and SDP and committed appellant to a secure treatment facility. This appeal follows.

DECISION

I. The district court did not err by determining that appellant met the criteria for commitment as an SPP and SDP.

Appellant argues that the district court erred by adjudicating him an SPP and SDP when the only examiner in the case testified that appellant did not meet the standard for SPP or SDP. We are not persuaded.

“[W]e review legal issues de novo, including whether the record contains clear and convincing evidence to support the district court’s conclusion that [appellant] meets the standard for civil commitment.” *In re Civ. Commitment of Crosby*, 824 N.W.2d 351, 356 (Minn. App. 2013) (affirming commitment as SPP and SDP), *rev. denied* (Minn. Mar. 27, 2013). The clear-error standard “is a review of the record to confirm that evidence exists to support the decision.” *In re Civ. Commitment of Kenney*, 963 N.W.2d 214, 222 (Minn. 2021). We give due deference to the district court as the best judge of the credibility of witnesses. *See id.* at 223. “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.” *In re Civ. Commitment of Ince*, 847 N.W.2d 13, 23-24 (Minn. 2014). If a district court determines that clear and convincing evidence supports commitment as an SPP or an SDP, the district court must commit the person to a secure treatment facility. Minn.

Stat. § 253D.07, subd. 3 (2020). Because appellant challenges the district court's determination that he met the criteria for SPP and SDP, we address both statutes in turn.

A. The record supports the district court's determination for SPP.

"A person may be committed as an SPP based on clear and convincing proof that [they] (1) ha[ve] engaged in a habitual course of misconduct in sexual matters; (2) ha[ve] an utter lack of power to control their sexual impulses; and (3) [are], therefore, dangerous to others." *In re Kindschy*, 634 N.W.2d 723, 732 (Minn. App. 2001), *rev. denied* (Minn. Dec. 19, 2001) (citing Minn. Stat. § 253D.02, subd. 15). Moreover, a person "who has uncontrollably committed numerous sexual assaults involving vaginal penetration, oral sexual contact, and the use of physical restraint on eight juvenile females meets the standard for indeterminate commitment as a[n] [SPP]." *In re Preston*, 629 N.W.2d 104, 106 (Minn. App. 2001).

The district court also considers the following factors in determining whether a person has an utter lack of power to control sexual impulses: (1) "the nature and frequency of the sexual assaults," (2) "the degree of violence involved," (3) "the relationship (or lack thereof) between the offender and the victims," (4) "the offender's attitude and mood," (5) "the offender's medical and family history," (6) "the results of psychological and psychiatric testing and evaluation," (7) and any "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).

Here, the record supports the district court's determination that appellant met the criteria for SPP. First, appellant has engaged in a habitual course of sexual assault,

consisting of five adjudications or criminal convictions of criminal sexual misconduct over the course of nine years along with uncharged disclosed sexual misconduct. He also reported possibly having 30 more victims. His victims included males and females, adults and children, peers and younger children. Appellant has shown a pattern of sexually assaulting people over whom he has had an advantage, either by virtue of age, strength, or authority.

Second, the record supports that appellant has shown an utter lack of power to control sexual impulses. Appellant's sexually offending behavior has been ongoing from childhood through young adulthood. Dr. Marshall's report noted that "during [appellant's] offending, he [showed] an utter lack of power to control his offending behaviors" despite being on probation and having interventions. His five sexual adjudications or criminal convictions show his lack of power to control his sexual impulse as well.

The *Blodgett* factors also support the district court's determination. First, the nature and frequency of the sexual assaults was continuous for nine years. As mentioned above, appellant has five sex-related offenses and reported that he may have possibly 30 more victims. Dr. Marshall found that appellant exhibited a pattern of "using force and violence to obtain sexual gratification." The record shows that appellant tried to tie a five-year-old victim to a table, forced a victim into a bedroom with him and prevented the victim from leaving. He also sexually penetrated his girlfriend without consent and disclosed wanting to harm and kill a prior victim.

Appellant's relationships with his victims have ranged from a babysitter to romantic or familial relationships. He has "historically struggled to express empathy for his victims

and take responsibility for his behavior” and admitted recently that his sexual assaults were coping mechanisms for his challenging family history with his father being absent, having a mother who struggled with chemical-dependency issues, and being sexually abused as a child.

Appellant’s psychological testing reveals a “well above average risk of sexual reoffending.” The MnSOST-4 test places him at a “moderate risk of having another sexual offense conviction within a four-year period.”³ And the Static-99R test shows a “well above average risk of being charged or convicted of another sexual offense.”

As a result, ample evidence in the record supports the district court’s determination that appellant met the criteria for SPP.

B. The record supports the district court’s determination for SDP.

Minnesota law defines an SDP as a person who (1) “has engaged in a course of harmful sexual conduct” within the meaning of Minn. Stat. § 253D.02, subd. 8(a) (Supp. 2021); (2) “has manifested a sexual, personality, or other mental disorder or dysfunction”; and (3) “is likely to engage in harmful sexual conduct” as defined in subdivision 8(a). *Kindschy*, 634 N.W.2d at 730 (citing Minn. Stat. § 253D.02, subd. 16).

“Harmful sexual conduct” is “sexual conduct that creates a substantial likelihood of serious physical or emotional harm to another.” Minn. Stat. § 253D.02 subd. 8(a). “An examination of whether an offender engaged in a course of harmful sexual conduct takes into account both conduct for which the offender was convicted and conduct that did not

³ Appellant was assessed and scored on several standard statistical-probability tools designed to predict recidivism in sex offenders.

result in a conviction.” *In re Civil Commitment of Stone*, 711 N.W.2d 831, 837 (Minn. App. 2006), *rev. denied* (Minn. Jun. 20, 2006) (citation omitted). “[T]he incidents that establish the course [of conduct] will have occurred over a period of time and need not be recent.” *Id.* (citation omitted).

As for the likelihood that appellant would engage in future dangerous behavior, a district court should consider the following factors: (1) “the person’s relevant demographic characteristics”; (2) “the person’s history of violent behavior”; (3) “the base rate statistics for violent behavior among individuals of this person’s background”; (4) “the sources of stress in the environment”; (5) “the similarity of the present or future context to those contexts in which the person has used violence in the past”; and (6) “the person’s record with respect to sex therapy programs.” *Matter of Linehan*, 518 N.W. 2d 609, 614 (Minn. 1994). These factors support the district court’s determination that appellant is likely to engage in future dangerous behavior.

First, the district court found clear and convincing evidence that appellant has engaged in harmful sexual misconduct from the age of 12 to the age of 21. The record shows that his victim’s ages ranged from as young as three years old to young adults. Appellant has engaged in sexual conduct against his family members, including his brother and his female cousins. Additionally, he engaged in sexual conduct with young children he babysat, who lived in his home or visited. Appellant’s adjudications of first-degree criminal sexual conduct and fourth-degree criminal sexual conduct also create a rebuttable presumption that his conduct created a substantial likelihood that his victims suffered serious physical or emotional harm. Minn. Stat. § 253D.02 subd. 8(b) (Supp. 2021).

Appellant did not rebut or dispute the statutory presumption. Additionally, Dr. Marshall concluded that appellant has engaged in a course of harmful sexual conduct.

Second, the district court found that appellant has exhibited sexual, personality, and other mental disorders. The record shows that appellant has been diagnosed with oppositional defiant disorder, depressive disorder, attention-deficit/hyperactivity disorder (ADHD), parent/child relational problems, cyclothymic disorder, post-traumatic-stress disorder (PTSD), history of child abuse, reading disorder, written language disorder, conduct disorder, sexual abuse as a child, adjustment disorder, sexual abuse of children and adolescents, cannabis-use disorder, alcohol-use disorder, paraphilia, antisocial personality disorder, bipolar disorder, and anxiety disorder.

Third, the district court found that appellant is prone to engage in future acts of harmful sexual conduct. The record shows that appellant is a 30-year-old male who has a long history of impulsivity, emotional dysregulation, sexual deviance, and aggressive behaviors. He has an extensive history of violent behavior and has been adjudicated or convicted of five sexual offenses between 2005 and 2018. The MnSOST-4 showed a “moderate risk for having another sexual offense conviction within a four-year period” and the Static-99R showed a “well above average risk of being charged with or convicted of another sexual offense.” Additionally, appellant has reoffended while being under supervision and treatment and when released to the community.

Appellant argues that, because Dr. Marshall testified that appellant did not meet the criteria for commitment, and the district court had nothing to weigh Dr. Marshall’s opinion against, it should have followed her recommendation. His argument is misguided.

Dr. Marshall's testimony and report were not the only evidence received at the commitment hearing. The district court also considered appellant's prior evaluations, sex-offender-treatment records, and records from appellant's prior convictions and adjudications. Nevertheless, the district court carefully weighed the evidence Dr. Marshall presented along with all the other evidence.

The district court first reviewed Dr. Marshall's report. In her report she stated, "there appears to be sufficient criteria to commit him" but then later reported "upon closer examination it is now felt that [appellant] does not meet the threshold for SPP." Dr. Marshall explained that, while appellant does have a course of sexual offending that spans several years, "he has now developed insight and understanding of the dynamics of his offending, demonstrated accountability for his sexual offending behaviors, done well in sex offender treatment, and has some protective factors." The district court also considered Dr. Marshall's testimony that, appellant definitely met the criteria for SDP but not everything with SPP. The district court even asked Dr. Marshall to clarify her position because it seemed "unclear" how "Dr. Marshall came to this conclusion despite her report indicating that [appellant] meets the criteria for commitment as both as an SDP and SPP." Dr. Marshall explained that appellant had "gained significant knowledge in treatment."

While the district court found Dr. Marshall's testimony credible, it did not agree with all her opinions and legal conclusions. We have stated that "when evidence as to the existence of a psychopathic personality is in conflict, the question is one of fact to be determined by the [district] court upon all the evidence." *In re Martenies*, 350 N.W.2d 470, 472 (Minn. App. 1984), *rev. denied* (Minn. Sep. 12, 1984). The district court here

was in the best position to evaluate the credibility of Dr. Marshall and decide what weight to accord evidence on this issue. *See Ince*, 847 N.W.2d at 23-24. The record therefore supports the district court's determination that appellant met the criteria for SDP when Dr. Marshall opined to a different conclusion.

II. The district court did not err by determining that appellant failed to demonstrate by clear and convincing evidence that a less-restrictive alternative to a secure treatment met his treatment needs and the requirements of public safety.

Appellant argues that, even if the district court did not err by determining that appellant met the criteria for commitment as an SPP and SDP, he provided clear and convincing evidence that a less-restrictive alternative was available at the time of his commitment. We are not convinced.

In applying the clear-error standard of review, appellate courts (1) view the evidence in the light most favorable to the findings; (2) do not reweigh the evidence; (3) do not find their own facts; and (4) do not reconcile conflicting evidence. *Kenney*, 963 N.W.2d at 221-22. "When the record reasonably supports the findings at issue on appeal, it is immaterial that the record might also provide a reasonable basis for inferences and findings to the contrary." *Id.* at. 223 (quotation omitted).

A person opposing commitment does not have the right to be placed in a less-restrictive treatment program. *Kindschy*, 634 N.W.2d at 731. Rather, they must prove by clear and convincing evidence that a program is available, willing to accept them, and will meet their treatment needs and the public's need for safety. Minn. Stat. § 253D.07, subd. 3. We will not reverse a district court's finding on the availability of a less-restrictive

treatment program unless it is clearly erroneous. *In re Thulin*, 660 N.W.2d 140, 144 (Minn. App. 2003).

Here, the district court agreed with appellant that there “may be a less restrictive program than commitment, such [as] an intensive outpatient sex offender treatment program” but determined that appellant failed to provide alternatives to commitment that are available or willing to accept him. Appellant testified that he would be willing to participate in the Emergence program which consists of one-on-one individual therapy over the phone either once a week or every two weeks. He also mentioned having a relapse-prevention plan and planned to get a job with his brother. But Dr. Marshall noted that appellant needs ongoing sex-offender treatment and safeguards to protect the community if he is released. Dr. Marshall’s report also mentioned that appellant could continue sex-offender treatment at CORE, a sex-offender treatment program, but did not know for certain. However, the district court did not receive any more information about the CORE program, how it would meet appellant’s or the public’s needs, or whether the program would even accept appellant. The record therefore supports the district court’s determination that appellant has not proved by clear and convincing evidence that a less-restrictive program is available or willing to accept him.

Affirmed.