

*This opinion is nonprecedential except as provided by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
A23-1506**

In the Matter of the Civil Commitment of:
Christopher Cody Johnson a/k/a Natasha Johnson (“Tasha”).

**Filed February 26, 2024
Affirmed
Larkin, Judge**

Renville County District Court
File No. 65-PR-21-39

Krystal M. Lynne, Stermer & Sellner, Chtd., Montevideo, Minnesota (for appellant)

Keith Ellison, Attorney General, Lisa Jones, Assistant Attorney General, St. Paul, Minnesota; and

Kelsie Stahl, Renville County Attorney, Olivia, Minnesota (for respondent county)

Considered and decided by Larkin, Presiding Judge; Bjorkman, Judge; and
Halbrooks, Judge.*

NONPRECEDENTIAL OPINION

LARKIN, Judge

Appellant challenges her commitment as a sexually dangerous person. We affirm.

FACTS

In October 2022, respondent Renville County Human Services (petitioner) petitioned to commit appellant Christopher Cody Johnson a/k/a Natasha Johnson (“Tasha”)

* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

as a sexually dangerous person (SDP) and sexual psychopathic personality (SPP).¹ Before the commitment hearing, Johnson stipulated that she meets the statutory definition of an SDP, and petitioner dismissed the SPP portion of the petition. Johnson also stipulated to the admission of documents supporting her commitment.

The district court held a hearing on the sole remaining issue: whether there was a less-restrictive treatment option available other than commitment to the Minnesota Sex Offender Program (MSOP) facilities at Moose Lake and St. Peter. After considering the evidence, the court committed Johnson to MSOP-Moose Lake as an SDP for an indeterminate period. The court made the following findings in support of Johnson's commitment.

At the time of the commitment in 2023, Johnson was 32 years old. In 2008, Johnson was adjudicated delinquent after being found guilty of first- and second-degree criminal sexual conduct for sexually assaulting a 15-year-old female. Johnson completed sex-offender programming and was discharged from probation in June 2009.

In 2010, Johnson sexually assaulted a 17-year-old female. Johnson was charged with first-degree criminal sexual conduct and ultimately pleaded guilty to an amended charge of fifth-degree criminal sexual conduct. The district court sentenced Johnson to 365 days in jail, with 245 days stayed, and placed her on probation for two years. The court prohibited Johnson from accessing pornography and ordered her to complete sex-

¹ Johnson is a transgender female who prefers she/her pronouns.

offender programming and cooperate with probation. Johnson entered outpatient sex-offender treatment.

In November 2011, the district court found that Johnson violated probation by accessing pornography. In January 2013, the court found that Johnson violated probation by failing to complete sex-offender treatment. The court extended Johnson's probation for one year and again ordered her to complete sex-offender treatment. In February 2013, the court found that Johnson violated probation by failing to maintain contact and cooperate with probation. The court once again ordered Johnson to complete sex-offender treatment.

In May 2013, Johnson was charged with failing to register as a predatory offender, and she ultimately pleaded guilty to the charge. In November 2013, while the predatory-registration charge was pending, Johnson sexually assaulted a 17-year-old female.

In January 2014, the district court placed Johnson on probation for the predatory-registration offense. In June 2014, Johnson admitted that she had violated probation, and the district court revoked her probation and committed her to the custody of the Minnesota Commissioner of Corrections (COC).

Johnson ultimately pleaded guilty to a third-degree criminal-sexual-conduct charge stemming from the November 2013 sexual assault, and the district court committed her to the custody of the COC for 41 months in January 2015. Johnson began serving this sentence in August 2015.

During a sexual-history polygraph, Johnson admitted that between the ages of 18 and 23, she had numerous sexual partners and estimated that five to ten of them were 15-16

years old and one may have been 14 years old. Johnson also admitted that as a juvenile, she sexually assaulted additional victims, including two nine- or ten-year-old children.

In September 2016, Johnson was released from prison on intensive-supervised-release (ISR). In January 2017, an ISR agent alleged that Johnson violated ISR by failing to complete sex-offender treatment, viewing pornography, and accessing the internet. The hearings and release unit (HRU) revoked Johnson's ISR and returned her to prison for 130 days.

Johnson was admitted to the Minnesota Correctional Facility (MCF) at Lino Lakes, and in May 2017, Johnson was again released on ISR. In September 2017, an ISR agent alleged that Johnson violated ISR by having an unapproved visitor and by possessing pornography, internet-capable devices, and a cell phone. Johnson was returned to prison in September 2017. Later, she was once again released on ISR.

In June 2018, Johnson was allowed to enter CORE, a community-based sex-offender program, for a sixth time. Johnson "admitted she was complacent in sex offender treatment before" and "thought she had had eight or nine treatment exposures." In January 2019, Johnson was terminated from CORE for possessing and accessing pornography. CORE noted that Johnson had been terminated from the program twice in 2017 for similar behavior.

In January 2019, an ISR agent alleged that Johnson violated ISR by being terminated from sex-offender treatment, accessing the internet, visiting chat rooms, possessing pornography, and failing to cooperate with ISR. The HRU found that Johnson

violated ISR and revoked her ISR for 240 days. Johnson was admitted to MCF-Lino Lakes. In September 2019, Johnson was released on ISR.

In December 2019, an ISR agent alleged that Johnson violated ISR by having contact with a 16-year-old female and by possessing a weapon. The HRU found that Johnson violated ISR by having contact with a minor, and the HRU revoked Johnson's ISR and returned her to prison at MCF-Lino Lakes. Johnson was again released on ISR in June 2020.

In August 2020, an ISR agent alleged that Johnson violated ISR by accessing online social networks and having contact with minors. The agent noted it had been nine years since Johnson was referred for sex-offender treatment and that she had yet to complete any program. The HRU revoked Johnson's ISR and returned her to prison for 365 days. Johnson was admitted to MCF-Stillwater. She stated that she would not complete sex-offender treatment at a male facility because of safety concerns.

In October 2020, MCF-Lino Lakes accepted Johnson into its sex-offender treatment program. In February 2021, Johnson made a harassment report, but a subsequent investigation showed that her report was false. Johnson was cited for lying, admitted the violation, and was placed in segregation for seven days. Johnson's participation in the sex-offender program was terminated based on her admitted violation. In April 2021, Johnson agreed to return to the sex-offender program at MCF-Lino Lakes.

In May 2021, Johnson met with a psychologist. She denied committing the offenses underlying two of her convictions, and she stated that sex-offender treatment in the community was a waste of time and money and that she had doubts that programming at

MCF-Lino Lakes would be better. Also in May 2021, Johnson was cited for possessing an altered razor, admitted to that violation, and received another seven days in segregation. Johnson was terminated from sex-offender programming based on the violation. She appealed her termination, and her appeal was denied. Johnson did not reapply to the sex-offender program at MCF-Lino Lakes until February 23, 2023.

As part of the commitment proceedings, the district court appointed two examiners, Dr. Marshall and Dr. Vaccarella. Both testified in support of Johnson's stipulation that she is an SDP and opined that she was competent to enter into the stipulation. Dr. Marshall stated that Johnson "manifested an inability to adequately control her sexual behavior" and was "highly likely to engage in future acts of harmful sexual conduct." Dr. Marshall further opined that Johnson "needs continued sex offender specific treatment with the structure and support of a secure treatment facility" and that MSOP was "the only program available that can meet [Johnson's] treatment needs and the requirements of public safety."

Dr. Vaccarella likewise contended that Johnson's disorders do not allow her "to adequately control her sexual impulses" and that Johnson was "highly likely to engage in future acts of harmful sexual conduct." Dr. Vaccarella opined that Johnson required "intensive sex offense specific treatment in a secure (locked) institutional setting" but that treatment at MCF-Lino Lakes could meet Johnson's needs and protect the public. However, Dr. Vaccarella stated that MSOP was the only program available to Johnson because the MCF-Lino Lakes sex-offender program's admission criteria did not "allow for a person under civil commitment to be admitted to the program."

The district court concluded that MSOP was the appropriate setting for Johnson to receive the necessary treatment and that there was no evidence that a less-restrictive environment would meet Johnson's needs and the needs of the public. The district court found that MCF-Lino Lakes could provide the needed treatment and satisfy public-safety concerns, but that the MCF-Lino Lakes sex-offender treatment program was not available to Johnson.

Johnson moved for a new trial, amended findings, and to vacate the order for commitment, arguing that the county did not submit all of the exhibits to which she had stipulated. She asserted that "approximately 1,377 pages were removed from the exhibits without [her] knowledge." She also challenged several of the district court's findings. Lastly, she requested a new trial on the following grounds: (1) the evidence supported a conclusion that a less-restrictive treatment option was available, (2) her right to due process was violated because she was denied treatment at MCF-Lino Lakes based on the commitment proceedings, and (3) sex-offender treatment could be accomplished in a less-restrictive setting.

The district court denied Johnson's motion, reasoning that, although petitioner did not submit all the exhibits to which Johnson had stipulated, the court did not receive any evidence that was not disclosed to Johnson before the commitment hearing and that Johnson was not prejudiced. The court declined to amend its findings and rejected Johnson's constitutional arguments.

Johnson appeals.

DECISION

I.

Johnson contends that the district court erred by denying her request for a new trial. We review a district court's denial of a motion for a new trial under Minn. R. Civ. P. 59.01 for an abuse of discretion. *Dostal v. Curran*, 679 N.W.2d 192, 194 (Minn. App. 2004), *rev. denied* (Minn. July 20, 2004). “[P]rejudice is the primary consideration in determining whether to grant a new trial.” *Torchwood Props., LLC v. McKinnon*, 784 N.W.2d 416, 419 (Minn. App. 2010) (quotation omitted). A new trial is required only if the alleged error had a reasonable likelihood of affecting the trial's outcome. *See Becker v. Mayo Found.*, 737 N.W.2d 200, 218 (Minn. 2007) (“To require a new trial, the wrongfully excluded evidence must have had a reasonable likelihood of affecting the jury's verdict.”).

Johnson's request for a new trial was based on petitioner's failure to submit all of the documents contemplated by the parties' stipulation. Prior to the commitment hearing, petitioner submitted exhibits 1-27 through “MNDES”² and offered those documents into evidence. The district court asked Johnson's attorney for “any comments,” and counsel informed the court, “I believe we have all copies or the complete copies of the exhibits. So, as long as those are the copies that were provided to us, we have no objection” The court asked petitioner if that was the case, and petitioner stated: “That is the case. In

² MNDES is the Minnesota Digital Exhibit System, “a way to share digital exhibits with the court and the other parties in a case for evidentiary hearings or trials without the need for physical copies.” Minn. Judicial Branch, *Help Topics, Evidence & Exhibits, Minnesota Digital Exhibit System (MNDES)*, <https://www.mncourts.gov/Help-Topics/Evidence-and-Exhibits.aspx> [<https://perma.cc/R7CB-TDNX>].

fact, our office provided . . . more exhibits than what were actually submitted to the [c]ourt.”

The district court proceeded to generally describe on the record the contents of the exhibits, noting that the individual exhibits contained multiple documents. Petitioner stated that exhibit 10 included approximately 3,000 pages of documents. Johnson’s attorney agreed, informing the district court that exhibit 10 contained “the entirety of the [department of corrections’] [r]ecords.” The district court asked Johnson’s counsel, “[A]ny objection then, or any other objection?” Counsel responded, “No, Your Honor.” The district court received exhibits 1-27.

Next, petitioner informed the district court that Johnson had agreed to “admit that there is sufficient evidence to find that she meets the statutory criteria as [an SDP],” and based on that stipulation, petitioner would dismiss the allegation that Johnson is also an SPP. Johnson waived her right to “object to exhibits” and made the following admissions: (1) she had engaged in a course of harmful sexual conduct, (2) there was a substantial likelihood of physical or emotional harm caused to the victims by her harmful sexual conduct, (3) the evidence would show that she had manifested a sexual personality or other mental disorder, (4) the evidence supported a finding that she lacked adequate control of her sexual impulses, and (5) without treatment, it was highly likely that she would engage in acts of harmful sexual conduct in the future. Johnson also provided the court with a signed stipulation reflecting those admissions and her waiver. The hearing proceeded on the sole remaining issue: whether a less-restrictive treatment alternative was available to Johnson.

The record shows that, when Johnson stipulated to the admission of exhibits 1-27, she was fully aware that the documents in those exhibits did not include all of the documents that petitioner had provided to Johnson before the commitment hearing. Yet Johnson did not object to the admission of exhibits 1-27. Generally, to preserve issues for appeal, including evidentiary rulings, counsel must make a timely objection, and failure to do so precludes our review. *State v. Rossberg*, 851 N.W.2d 609, 617-18 (Minn. 2014); *In re Gonzalez*, 456 N.W.2d 724, 727 (Minn. App. 1990). A party may not raise an evidentiary objection for the first time in a motion for a new trial. *Poppler v. O'Connor*, 235 N.W.2d 617, 619 n.1 (Minn. 1975); *Helm v. El Rehbein & Son, Inc.*, 257 N.W.2d 584, 587 n.2 (Minn. 1977). We therefore question whether Johnson's evidentiary issue is properly before us. But we need not answer that question because even if the issue were preserved for appeal, it would fail on the merits because Johnson has not shown prejudice.

To obtain relief on appeal, a party must show both error and prejudice. *Kallio v. Ford Motor Co.*, 407 N.W.2d 92, 98 (Minn. 1987); *Midway Ctr. Assocs. v. Midway Ctr., Inc.*, 237 N.W.2d 76, 78 (Minn. 1975); *see also* Minn. R. Civ. P. 61 (requiring that harmless error be ignored). In district court and on appeal, petitioner explained that it removed only duplicative and inconsequential documents from exhibits 1-27. Johnson responded, in district court and on appeal, that she cannot show prejudice because she "does not know" which documents were actually submitted in exhibits 1-27. When this court asked Johnson's counsel at oral argument why counsel did not examine exhibits 1-27 to determine whether any substantive information had been removed, she claimed that she could not do so because the record was sealed.

In response, petitioner confirmed that Johnson may not have had access to the exhibits after they were submitted, due to a technical issue. However, petitioner explained that Johnson nonetheless should have known exactly which documents were and were not included in exhibits 1-27 because petitioner provided Johnson an amended document index that set forth every document included in exhibits 1-27, as originally provided to Johnson, and specifically noted which documents within each exhibit were submitted to the district court.

When this court asked Johnson's attorney, at oral argument, whether she had received the amended document index and therefore had the ability to determine exactly which documents were contained in the exhibits, she responded, "I know I received a list; I don't think . . . I received any sort of list that said . . . we are not submitting pages this, this, this, and this."

Johnson has not shown that she had no way of knowing which documents were contained in exhibits 1-27 as submitted to the district court and, therefore, no way of determining whether she was prejudiced as a result of petitioner submitting fewer documents than anticipated. Because the sole issue at trial was the availability of a less-restrictive treatment program, only the omission of documents favorable to Johnson regarding that issue could have been prejudicial. We fail to see why Johnson could not have used the amended document index to ascertain whether such documents had been omitted.³ We also fail to see why Johnson could not have simply asked the district court

³ Our review indicates that the amended document index enabled a determination regarding the documents that were submitted to the district court.

to confirm its receipt of any documents that she thought were important regarding the availability of a less-restrictive option. *See* Minn. Stat. § 253D.07, subd. 3 (2022) (placing the burden of establishing a less-restrictive treatment option upon the person subject to commitment).

In sum, assuming without deciding that the evidentiary issue is properly before us, we conclude that Johnson is not entitled to relief from this court because she has not shown that she was prejudiced by petitioner's failure to submit all of the documents contemplated by the parties' stipulation. And in the absence of such a showing, there is no basis for this court to conclude that the district court abused its discretion by denying Johnson's request for a new trial. *See Becker*, 737 N.W.2d at 218 (stating that a new trial is not required unless the wrongfully excluded evidence had a reasonable likelihood of affecting the outcome).

II.

Johnson contends that the district court's factual findings are erroneous. We review a district court's factual findings for clear error. *In re Knops*, 536 N.W.2d 616, 620 (Minn. 1995). In doing so, we review 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). "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).

When 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. *Id.* at 221-22. “Where the findings of fact rest almost entirely on expert testimony, the [district] court’s evaluation of credibility is of particular significance.” *Knops*, 536 N.W.2d at 620.

“We review the district court’s denial of a motion for amended or additional findings for an abuse of discretion.” *In re Guardianship of Guaman*, 879 N.W.2d 668, 672 (Minn. App. 2016); *see* Minn. R. Civ. P. 52.02 (permitting a motion for amended or additional findings).

Because Johnson stipulated that she meets the statutory criteria for commitment as an SDP, findings on that issue cannot be prejudicial and do not provide a basis for relief. We therefore limit our review of the challenged findings to those that are relevant to the contested issue: whether there was a less-restrictive treatment alternative available to Johnson.

Johnson argues that the district court should have made a finding that she was denied sex-offender programming at MCF-Lino Lakes because of the pending commitment proceeding. Johnson requested an amended finding on that point, and the district court denied her request. Johnson does not argue that she was harmed by the absence of such a finding. She merely argues that the district court clearly erred by failing to make the finding. Because Johnson does not show prejudice stemming from the absence of the requested finding, she is not entitled to relief.

Johnson also challenges finding 207, which states: “Dr. Marshall testified [that] [MSOP] is the only program available that can meet [Johnson’s] treatment needs and the requirements of public safety.” Johnson assigns error to that finding because during

cross-examination, Dr. Marshall admitted that the sex-offender treatment program at MCF-Lino Lakes could meet Johnson’s treatment needs. However, as explained in section III of this opinion, the record does not clearly and convincingly show that the MCF-Lino Lakes sex-offender treatment program is available and willing to accept Johnson. Thus, the finding that MSOP is the only “available” program is not clearly erroneous.

In sum, Johnson has not established a clearly erroneous and prejudicial finding of fact entitling her to relief from this court.

III.

Johnson contends that the district court erred by finding that no less-restrictive treatment program was available to her. If the district court finds that a person meets the criteria for commitment as an SDP, the person shall be committed to a “secure treatment facility” unless the person shows by clear and convincing evidence that (1) “a less restrictive treatment program is available,” (2) the program “*is willing to accept the [person] under commitment,*” and (3) the program “is consistent with the person’s treatment needs and the requirements of public safety.” Minn. Stat. § 253D.07, subd. 3 (emphasis added).

We review a district court’s finding regarding the availability of a less-restrictive program for clear error. *See In re Civ. Commitment of Ince*, 847 N.W.2d 13, 25-26 (Minn. 2014) (analyzing whether the evidence supported the district court’s finding on the availability of a less-restrictive alternative to MSOP); *Rasmussen v. Two Harbors Fish Co.*, 832 N.W.2d 790, 797 (Minn. 2013) (“[W]e review the district court’s factual findings for

clear error.”). In doing so, we review the record to confirm that evidence exists to support the decision. *Kenney*, 963 N.W.2d at 222.

Johnson argues that the sex-offender treatment program at MCF-Lino Lakes is a less-restrictive treatment program because it has a fixed duration. She further argues that Dr. Vaccarella testified that treatment at Lino Lakes could meet Johnson’s treatment needs and protect the public. Thus, Johnson argues that the district court clearly erred by finding that no less-restrictive treatment program was available to her.

We need not decide whether the sex-offender treatment program at MCF-Lino Lakes is a “less restrictive treatment program” within the meaning of Minn. Stat. § 253D.07, subd. 3, because a director of that program testified that the program does not accept committed individuals. Indeed, Johnson concedes that the MCF-Lino Lakes sex-offender treatment program “cannot admit any individuals who are under a civil commitment.” Thus, it is clear that the sex-offender treatment program at MCF-Lino Lakes is not available to Johnson while she is under a commitment as an SDP.

In addition, Johnson does not cite, and we are not aware of, any authority that would enable the district court—pursuant to its SDP commitment order—to re-imprison Johnson at MCF-Lino Lakes for the purpose of receiving treatment at its sex-offender program. Decisions regarding where to house a prisoner and what treatment to provide the prisoner are entrusted to the COC. *See* Minn. Stat. §§ 241.01, subd. 3a(b) (providing that the COC has the power and duty “[t]o determine the place of confinement of committed persons in a correctional facility or other facility of the Department of Corrections”); 244.03 (providing that the COC “must develop, implement, and provide, as

appropriate[,] . . . sexual offender treatment programming”) (2022). We discern no authority for the district court to place Johnson in the sex-offender treatment program at MCF-Lino Lakes pursuant to the SDP commitment against the wishes of the COC.

In sum, the record does not establish that any other sex-offender treatment program, much less a less-restrictive program, was both available and willing to accept Johnson under civil commitment. Although Johnson asserts that these circumstances resulted in a violation of her right to due process, her argument is unpersuasive. *See State, Dep’t of Lab. & 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).

IV.

Johnson contends that the commitment process improperly circumvented her right to treatment in prison. Specifically, she complains that she was denied sex-offender treatment at MCF-Lino Lakes as a result of the civil-commitment process.

Johnson asserts that “the big issue” in this appeal is “whether a prisoner can be deprived of access to sex offender treatment while in prison.” As we understand Johnson’s argument, she complains that, but for the civil-commitment action, she would have been able to re-enroll in treatment at MCF-Lino Lakes.

Caselaw establishes that a petition for commitment as an SDP may be pursued even though the proposed patient is under commitment to the COC with remaining time to serve. *See In re Civ. Commitment of Nielsen*, 863 N.W.2d 399, 403 (Minn. App. 2015) (stating

that a county attorney may petition for commitment of a proposed patient as an SDP and SPP “even when the proposed patient is serving a life sentence with an indeterminate release date, as long as the county attorney determines that there is good cause to do so”), *rev. denied* (Minn. Apr. 14, 2015). Because the commitment proceeding in this case was properly initiated and, as a result of that proceeding, Johnson is no longer in prison, there is no occasion to determine whether Johnson was denied a “right” to treatment at MCF-Lino Lakes prior to or as a result of that proceeding. Again, Johnson suggests a due process violation, but her argument is not persuasive. *See Wintz Parcel Drivers, Inc.*, 558 N.W.2d at 480; *Kropp*, 895 N.W.2d at 653.

V.

Johnson contends that the commitment process circumvented her right to due process because her prison term does not expire until February 2027, sex-offender treatment at MCF-Lino Lakes would be sufficient to meet her needs, and she could complete treatment at MCF-Lino Lakes before her prison term expires. She therefore argues that she could receive adequate rehabilitation at MCF-Lino Lakes and that “the state’s compelling interest can be met without sentencing her to a likely lifetime sentence at MSOP.”

Johnson complains that “the current language of the statute doesn’t allow for other appropriate options, such as staying the commitment while an individual is in prison and still has time on their sentence to allow them to receive treatment” or ordering that “an individual shall stay in prison while completing treatment as long as there is still time to serve on their sentence.” In sum, Johnson argues that “[b]ecause other realistic and viable

options exist to meet the [s]tate's compelling interests, the statute as it exists is not narrowly tailored."

Given Johnson's consistent history of treatment failure—including at MCF-Lino Lakes—there is little reason to believe that she would complete treatment at MCF-Lino Lakes if she had the opportunity to do so. Regardless, the Minnesota Supreme Court has held that "civil commitment under the Sexually Dangerous Person Act does not violate substantive due process under the United States and Minnesota Constitutions." *In re Linehan*, 594 N.W.2d 867, 868 (Minn. 1999). Johnson's substantive-due-process claim is inconsistent with the supreme court's determination that the SDP act does not violate substantive due process, and she has not met her heavy burden to show that the act is unconstitutional on the grounds she has provided. *Miller Brewing Co. v. State*, 284 N.W.2d 353, 356 (Minn. 1979) ("A statute will not be declared unconstitutional unless the party challenging it demonstrates beyond a reasonable doubt that the statute violates some constitutional provision.").

Affirmed.