

*This opinion is nonprecedential except as provided by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
A24-0268**

In the Matter of the Civil Commitment of: Daniel Albert Yungbauer.

**Filed July 29, 2024
Affirmed
Reyes, Judge**

Wadena County District Court
File No. 80-PR-23-285

Daniel T. Donnelly, Donnelly Law Office, Austin, Minnesota (for appellant Daniel Albert Yungbauer)

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

Kyra Ladd, Wadena County Attorney, Wadena, Minnesota (for respondent Wadena County)

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

NONPRECEDENTIAL OPINION

REYES, Judge

Appellant challenges his indeterminate civil commitment to the Minnesota Sex Offender Program (MSOP), arguing that the record lacks clear and convincing evidence (1) that he meets the definition of a sexually dangerous person (SDP) or (2) that he has a sexual psychopathic personality (SPP). Alternatively, appellant argues that (3) he provided

sufficient evidence to demonstrate that commitment is not the least-restrictive alternative for him. We affirm.

FACTS

In May 2023, respondent Wadena County petitioned for the civil commitment of appellant Daniel Albert Yungbauer, who was then in custody for a conviction of first-degree criminal sexual conduct. The county claimed that appellant met the statutory requirements for both an SDP under Minn. Stat. § 253D.02, subd. 16 (2022), and a person with an SPP under Minn. Stat. § 253D.02, subd. 15 (2022), and that he should be indeterminately committed to MSOP because no alternative to involuntary commitment existed.¹

The district court appointed Dr. Paul Reitman as the first court-appointed examiner and granted appellant's request to appoint Dr. Tyler Dority as the second court-appointed examiner. Both filed examiner's reports opining that appellant met the standard for an SDP and a person with an SPP, and that he should be committed indeterminately to MSOP.

The district court held a three-day commitment hearing in October 2023 and heard testimony from Dr. Reitman; Dr. Dority; appellant's mother; two of appellant's cousins; and appellant. The district court received 27 stipulated exhibits into evidence, including but not limited to, appellant's prior criminal-case records and assessments, Mille Lacs

¹ After filing the petition and before the commitment hearing, the county moved for an order under Minn. Stat. § 253B.07, subd. 7 (2022), to hold appellant at MSOP until the district court determined whether commitment was appropriate. The district court granted the county's motion, and appellant has been at MSOP since May 2023.

Academy² records, MSOP records, the examiners' reports, foster-care-home records, and other treatment records.³ In December 2023, the district court determined that clear and convincing evidence supported that appellant (1) met the definition of an SDP; (2) was a person with an SPP; and (3) failed to establish a less-restrictive alternative to commitment and ordered that he be indeterminately committed to MSOP.

This appeal follows.

DECISION

Appellant argues that the district court erred by determining that the county proved by clear and convincing evidence that (1) he meets the criteria for civil commitment as an SDP or (2) he is a person with an SPP. Appellant alternatively argues that (3) he proved by clear and convincing evidence that a less-restrictive alternative to commitment is available and appropriate. We are not persuaded.

I. Clear and convincing evidence supports the district court's determination that appellant meets the criteria of an SDP under Minn. Stat. § 253D.02, subd. 16.

Appellant argues that the county failed to provide clear and convincing evidence to commit him as an SDP because the district court and the court examiners relied on alleged conduct for which he was not convicted, and the examiners' testimony was not neutral or credible. We disagree.

The Minnesota Commitment and Treatment Act: Sexually Dangerous Persons and Sexual Psychopathic Personalities, Minn. Stat. §§ 253D.01-.36 (2022 & Supp. 2023)

² Appellant completed a residential juvenile-sex-offender treatment program at Mille Lacs Academy.

³ Appellant currently suffers from, and receives treatment for, a brain tumor.

governs the civil commitment and treatment of sex offenders. Before civilly committing a person as an SDP or a person with an SPP, a district court must find “by clear and convincing evidence that the proposed patient is a person who poses a risk of harm due to mental illness.” Minn. Stat. § 253B.09, subd. 1(a) (2022). Under that standard, appellate courts review a district court’s factual findings for clear error “to determine whether they are supported by the record as a whole,” *In re Ince*, 847 N.W.2d 13, 22 (Minn. 2014), and defer to a district court’s credibility determinations, *In re Stone*, 711 N.W.2d 831, 839 (Minn. App. 2006), *rev. denied* (Minn. June 20, 2006). When applying the clear-error standard of review, appellate courts view the evidence in the light most favorable to the findings, do not reweigh the evidence, do not find facts, and do not reconcile conflicting evidence. *In re Kenney*, 963 N.W.2d 214, 221-22 (Minn. 2021). Further, appellate courts “need not go into an extended discussion of the evidence to prove or demonstrate the correctness of the findings of the trial court.” *Id.* at 222. Appellate courts review de novo whether the facts “satisfy the statutory standard for civil commitment.” *Stone*, 711 N.W.2d at 836.

An SDP is a person who (1) “has engaged in a course of harmful sexual conduct as defined in [Minn. Stat. § 253D.02, subd. 8],” (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 as defined in [Minn. Stat. § 253D.02, subd. 8].” Minn. Stat. § 253D.02, subd. 16(a). A person does not need to be unable to “control [their] sexual impulses” to be an SDP. *Id.*, subd. 16(b).

Here, appellant appears to challenge only the district court’s findings on the first requirement of the SDP definition—that he “has engaged in a course of harmful sexual conduct,” focusing specifically on whether he engaged in “harmful sexual conduct.” “Harmful sexual conduct” is defined as “sexual conduct that creates a substantial likelihood of serious physical or emotional harm to another.” Minn. Stat. § 253D.02, subd. 8(a). Conduct described in certain criminal statutes is presumed to be “harmful sexual conduct,” but that presumption is rebuttable. *Id.*, subd. 8(b).

The district court identified appellant’s “harmful sexual conduct” as:

- The Wadena County juvenile court issued an order of delinquency in April 2012 based on one count of second-degree criminal sexual conduct under Minn. Stat. § 609.343, subd. 1(a) (2010), involving appellant’s younger, 12-year-old nonverbal sister. Although appellant did not enter a guilty plea, the juvenile court took a factual basis and appellant admitted to “raping” her when he was 16, and choosing her because “she was nonverbal and would be unable to report the incident.” Appellant’s other younger sister caught him committing this offense.
- While officers investigated appellant’s offense against his nonverbal sister in 2011, the sister who caught him reported that he had attempted to get on top of her six or seven years earlier. Appellant later admitted to having intercourse with this sister when he was 12 and she was ten, and telling her not to tell anyone. Appellant also reported engaging in “sexual exploration” in “at least two separate incidents” with this sister when he was 11 or 12.

- In October 2015, appellant pleaded guilty to one count of first-degree criminal sexual conduct under Minn. Stat. § 609.342, subd. 1(a) (2012). Appellant admitted that, when he was 19, he forced his nine-year-old cousin to perform oral sex on him while he was babysitting her.
- In February 2017, the Rochester Police Department investigated a delayed report made by appellant's other nine-year-old cousin that, when she was five and appellant was 17, he touched her bare "[vagina], boobs, and butt," put his penis inside her, and made her put her mouth on his penis. She reported that this happened more than once and that appellant threatened to kill her if she told anyone.⁴

We agree with the district court that the record clearly and convincingly establishes that appellant's behavior constitutes harmful sexual conduct. First, appellant's two charged offenses concerning his nonverbal sister and his cousin are presumably harmful sexual conduct under Minn. Stat. § 253D.02, subd. 8(b), and appellant has not presented evidence to rebut the presumption. Appellant does not deny committing the offense against his nonverbal sister. Although appellant denied admitting to his offense against his cousin during the commitment hearing, he had previously pleaded guilty and otherwise admitted

⁴ Although the district court did not rely on another conviction to make its determination to commit appellant, we note that, in early 2017, while serving his sentence for his offense against his cousin, appellant was also charged with felony fifth-degree criminal sexual conduct after his cellmate reported that appellant had made continuous unwanted advances toward him, had attempted to touch the cellmate's genitalia on several occasions, and had touched the cellmate's genitalia over his clothing on more than one occasion. Appellant ultimately pleaded guilty to one count of gross-misdemeanor fifth-degree assault under Minn. Stat. § 609.224 (2016).

to the offense. The cousin also testified regarding the offense at the commitment hearing, and the district court found her testimony to be credible.

Second, appellant's uncharged conduct concerning his other sister and cousin also qualifies as harmful sexual conduct. Contrary to appellant's argument, a district court may consider *allegations* of sexual misconduct and is not restricted to considering convictions alone when determining whether a defendant has engaged in a "course of harmful sexual conduct." *Stone*, 711 N.W.2d at 837; *see also In re Civ. Commitment of Ramey*, 648 N.W.2d 260, 268 (Minn. App. 2002) ("[T]he course of conduct need not consist solely of convictions, but may also include conduct amounting to harmful sexual conduct, of which the offender was not convicted."), *rev. denied* (Minn. Sept. 17, 2002). The district court is "in the best position to determine the weight to be attributed to each factor [and] to evaluate the credibility of witnesses-a critical function in these cases that rely so heavily" on expert opinions. *Ince*, 847 N.W.2d at 23-24. Although appellant denied having sexual intercourse with his other sister during his interview with Dr. Reitman and during the commitment hearing, he had previously admitted to it when he was a juvenile. He also denied sexually assaulting his other cousin, but she testified to the contrary at the commitment hearing, and the district court found her testimony to be credible.

Moreover, Dr. Dority testified that appellant's sexual assaults likely caused his other sister and cousin serious physical and emotional harm because their bodies were not "developed physically to the degree to be able to engage in penetration and it would almost certainly cause physical harm, pain at the least." Dr. Dority also testified that appellant's assaults likely resulted in both victims suffering harmful psychological effects and trauma,

especially due to their young age and the fact that appellant was a relative. The cousin testified that she experienced physical pain and felt scared and confused during appellant's assault. The district court properly relied on both appellant's convictions and uncharged conduct as evidence of "harmful sexual conduct," as did Dr. Reitman and Dr. Dority when forming their professional opinions.

Appellant also argues that Dr. Reitman and Dr. Dority's testimony was inconsistent regarding whether he showed "grooming" behavior with his victims, further undermining the examiners' credibility. But the record supports that the examiners used the term "grooming" in two different manners. Dr. Reitman only briefly mentioned "grooming" in reference to appellant's consistent relationship with his victims and that he would degrade, humiliate, frighten, or scare them into submission. Dr. Dority appears to have referred to this same pattern of conduct as appellant's "offending style," not "grooming." Further, the remainder of the examiners' reports and testimony is consistent, and we defer to the district court's credibility determinations. *Stone*, 711 N.W.2d at 839.

Considering the record as a whole, we conclude that the district court appropriately determined that clear and convincing evidence supports that appellant meets the criteria of an SDP under Minn. Stat. § 253D.02, subd. 16.

II. Clear and convincing evidence supports the district court's determination that appellant is a person with an SPP under Minn. Stat. § 253D.02, subd. 15.

Appellant next argues that, because the county's evidence fails to clearly and convincingly establish that he is an SDP, it also fails to support that he has an SPP.

Appellant maintains that he lacked “the benefit of an objective assessment” from Dr. Reitman and Dr. Dority and that their testimony was not credible. We are not convinced.

An SPP is the existence in a person of

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, if the person has evidenced, by a habitual course of misconduct in sexual matters, an utter lack of power to control the person’s sexual impulses and, as a result, is dangerous to other persons.

Minn. Stat. § 253D.02, subd. 15.

Appellant appears to challenge the district court’s determination that he engaged in “a habitual course of misconduct in sexual matters” and that he utterly lacks the “power to control [his] sexual impulses.” The district court determined that appellant met these requirements after crediting the examiners’ testimony. As noted above, the district court did not err by relying on the examiners’ testimony because it is in the best position to determine a witness’s credibility. *Ince*, 847 N.W.2d at 23-24. Both examiners based their professional opinions on a review of appellant’s record, their independent interviews with him, and assessments they completed to analyze his risk for reoffense. The record supports their testimony and reports.

Regarding whether appellant engaged in “a habitual course of misconduct in sexual matters,” under the SPP statute, “‘habitual’ . . . entail[s] a concept of similarity or pattern.” *Stone*, 711 N.W.2d at 837. Most of appellant’s victims were younger family members, and his offenses are characterized by impulsive and opportunistic behavior. The record

supports Dr. Reitman and Dr. Dority's testimony that appellant engaged in a habitual course of sexual misconduct because his offenses reflected a consistent pattern of conduct.

Finally, factors that a district court may rely upon to establish a person's "utter lack of power," 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).

Both the examiner reports and the district court's order analyzed the *Blodgett* factors, and appellant does not challenge the specifics of their analyses. Instead, appellant distinguishes *In re Pirkl*, 531 N.W.2d 902, 907 (Minn. App. 1995), *rev. denied* (Minn. Aug. 30, 1995), in which this court stated that "[r]efusal of treatment and lack of a relapse prevention plan can show an utter lack of control." Appellant maintains that he "does not show a high likelihood of reoffense because his alleged treatment failures were not all of his own making" and relies on the district court's revocation of his probation in 2016 after "a set of relatively minor probation violations" as support.

Contrary to appellant's argument, the record shows that, in 2016, the district court explicitly warned appellant that his probation was contingent upon his absolute compliance with his probation conditions. Nevertheless, appellant almost immediately violated probation. Further, although appellant told Dr. Reitman that he was denied treatment, he admitted that the denial was based on his own refusal to acknowledge his past harmful

sexual conduct. Appellant continues to deny his past harmful sexual conduct and has not developed a relapse prevention plan, and therefore his reliance on *Pirkkl* is unpersuasive.⁵

We conclude that the district court appropriately determined that clear and convincing evidence supports that appellant meets the criteria of a person with an SPP under Minn. Stat. § 253D.02, subd. 15.

III. Appellant failed to establish by clear and convincing evidence that “a less restrictive treatment program” under Minn. Stat. § 253D.07, subd. 3, is available and appropriate for him.

Appellant also argues that, even assuming he qualifies as an SDP or person with an SPP, he presented clear and convincing evidence that a less restrictive alternative to commitment existed and that Dr. Dority and Dr. Reitman’s testimony on the matter was not credible. We are not persuaded.

Minn. Stat. § 253D.07, subd. 3 (2022), provides that:

If the court finds by clear and convincing evidence that the respondent is [an SDP] or a person with [an SPP], the court shall commit the person to a secure treatment facility unless the person establishes by clear and convincing evidence that a less 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.

⁵ Appellant also appears to argue that his case is different from *In re Bieganowski*, 520 N.W.2d 525 (Minn. App. 1994), *rev. denied* (Minn. Oct. 27, 1994), because he has not exhibited grooming behavior, and therefore the county failed to show appellant’s “utter lack of power to control [his] sexual impulses.” But “grooming behavior” is not the only factor a district court may rely upon to establish a person’s “utter lack of power,” and here the record otherwise supports the district court’s determination.

Appellant bears the burden of establishing that a less-restrictive alternative to commitment exists. *Ince*, 847 N.W.2d at 25.

Appellant failed to present any information regarding a treatment program that was available and willing to accept him. Appellant did not develop a relapse-prevention plan, testified that he is no longer able to identify his triggers for offending, and his plan for alternative treatment was, in part, to live in a trailer owned by his family that was several miles from the family home, where his mother, his nonverbal sister, and three children ages 15, nine, and eight live. His plan to avoid reoffending was to isolate himself from others. The district court determined that MSOP was appellant's "only option for treatment" based on Dr. Reitman and Dr. Dority's credible testimony that intensive supervised release would not be appropriate to address his needs or his high risk to reoffend. Dr. Dority testified that appellant's "plan" indicated a lack of awareness of his triggers for reoffending and would not be effective.

We conclude that the district court properly determined that appellant failed to establish a less-restrictive alternative to commitment by clear and convincing evidence.

Affirmed.