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

**STATE OF MINNESOTA  
IN COURT OF APPEALS  
A24-0471**

In the Matter of the Civil Commitment of: Joshua Lee Winsky.

**Filed September 16, 2024  
Affirmed  
Ede, Judge**

Olmsted County District Court  
File No. 55-PR-22-1314

Gerald S. Weinrich, Rochester, Minnesota (for appellant Joshua Lee Winsky)

Mark Ostrem, Olmsted County Attorney, Michael E. Davis, Senior Assistant County Attorney, Rochester, Minnesota (for respondent Olmsted County Health, Housing, and Human Services)

Keith Ellison, Attorney General, Brandon Boese, Assistant Attorney General, St. Paul, Minnesota (for respondent commissioner of human services)

Considered and decided by Ede, Presiding Judge; Cochran, Judge; and Wheelock, Judge.

**NONPRECEDENTIAL OPINION**

**EDE, Judge**

In this appeal following remand, appellant challenges the district court's order adjudicating him as a sexually dangerous person (SDP). Appellant argues: (1) that, in determining that he met the statutory criteria for civil commitment, the district court clearly erred by finding that he is likely to engage in acts of harmful sexual conduct; (2) that the court clearly erred in finding that no less-restrictive treatment program was available and

willing to accept him, and that the court erred in committing him to a secure treatment facility despite his completion of sex-offender treatment; and (3) that the court abused its discretion by receiving into evidence a treatment report that was not disclosed to appellant or his counsel before the evidentiary hearing on remand. We affirm.

## **FACTS**

### ***Petition for Civil Commitment***

In February 2022, a social worker with respondent Olmsted County Health, Housing, and Human Services petitioned for the civil commitment of appellant Joshua Lee Winsky as an SDP. The petition alleged the following about Winsky’s juvenile sexual criminal history, his attempts at sex-offender treatment, his many probation violations, and the events that led to the commitment petition.

Winsky first became involved in the criminal justice system in January 2006, when he was 16 years old. The State of Minnesota charged Winsky with third-degree criminal sexual conduct for engaging “in penile-vaginal penetration with a familiar female aged 13, while she was intoxicated.” A district court adjudicated Winsky delinquent of the charged offense.

In August 2006, the state charged Winsky with two counts of third-degree criminal sexual conduct and one count of fifth-degree criminal sexual conduct. These charges arose from an incident in which Winsky, aged 16, “forced penile-vaginal penetration with a familiar female aged 14, at her residence.” A district court adjudicated Winsky delinquent of third-degree criminal sexual conduct and dismissed the remaining charges.

Around the same time, the state charged Winsky with third-, fourth-, and fifth-degree criminal sexual conduct for forcing a minor female to engage in penile-vaginal penetration when he was 16 or 17 years old. A district court adjudicated Winsky delinquent of third-degree criminal sexual conduct and designated Winsky an extended jurisdiction juvenile (EJJ). After Winsky violated the conditions of his EJJ probation, the district court revoked that probation and placed Winsky on adult probation. Winsky violated his adult probation and was incarcerated.

In January 2007, the state charged Winsky with two counts of third-degree criminal sexual conduct and one count of fourth-degree criminal sexual conduct for forcing a 14-year-old female to engage in penile-vaginal penetration when he was 17 years old. A district court adjudicated Winsky delinquent of one of the third-degree criminal-sexual-conduct charges and designated Winsky an EJJ. After Winsky again violated the conditions of his EJJ probation, the district court revoked that probation and placed Winsky on adult probation. Winsky later violated the conditions of his adult probation and was incarcerated. Winsky's probation violations have stemmed from his having direct contact with minors, using social media to contact minors, and spending time where children were gathered.

In addition to the above, the commitment petition also detailed other behavior that Winsky engaged in that had not resulted in criminal charges. In 2011, a 21-year-old Winsky reported that he had sexual contact with a lower-functioning 15-year-old female. Winsky had several telephone conversations with this female, which led to various probation violations.

From 2008 to 2018, Winsky participated in various sex-offender treatment programs. In 2008, Winsky completed treatment at a juvenile correctional facility. But from 2009 to 2014, Winsky was either discharged or terminated from treatment for various violations, including having contact with minor girls. In 2016, Winsky reentered a treatment program, which he completed in 2018.

In August 2021, a corrections agent received an anonymous tip, which led to the underlying petition for civil commitment. The corrections agent was informed that Winsky had been spending time with a minor at stock-car races. The minor's father denied any unsupervised contact between his 15-year-old daughter and Winsky.

In October 2021, a corrections agent again spoke with the 15-year-old's father, "who had learned of a significant relationship between the 15-year-old" and Winsky. The corrections agent instructed Winsky to stop contacting the 15-year-old, and Winsky informed the agent that he had discontinued contact with her on social media and his phone. The next day, the agent received screenshots of Winsky trying to contact the 15-year-old after he had been instructed not to contact her. According to the social worker who petitioned for commitment, the screenshots showed that Winsky had been following the 15-year-old to various locations. A district court granted the 15-year-old's family a harassment restraining order against Winsky.

Winsky was arrested for violating the terms of his probation by contacting the 15-year-old. He later admitted "that he wanted to have sexual contact" with her and acknowledged "being alone with her on several occasions, letting her sit on his lap, and giving her a kiss on the cheek." Although Winsky reported that he planned to wait for the

15-year-old to turn 18 before pursuing their relationship further, he also conceded that he had arguments with her because she would not be intimate with him.

After considering Winsky's demographics, history, and statistics, the social worker who submitted the petition requested that the district court find that Winsky met the statutory criteria for adjudication as an SDP "in need of involuntary civil commitment."

### ***Court-Appointed Examinations***

The district court appointed three examiners to evaluate Winsky: Dr. Reitman; Dr. Kenning; and Dr. Thompson. Each examiner submitted a written report to the district court after completing an examination of Winsky.

In his preliminary report, Dr. Reitman stated that he did not support the civil-commitment petition. He reasoned that the majority of Winsky's sex crimes were committed when he was an adolescent and that adolescent sex crimes were not a good predictor of future recidivism. Dr. Reitman said that Winsky had taken "full responsibility," that Winsky felt "remorse and regret, [and that Winsky understood] the impact he had on his victims[.]" The doctor also commented that Winsky had been partially treated and was very amenable to further treatment. Based on these factors, Dr. Reitman opined that Winsky's risk of reoffending was moderate, recommended a stay of commitment, and alternatively recommended dismissing the petition if a stay was unavailable because the doctor did not determine that Winsky met the statutory criteria for adjudication as an SDP.

In his final report, Dr. Reitman analyzed the three statutory factors that govern whether a person qualifies for adjudication as an SDP. Those factors require that a person

“(1) has engaged in a course of harmful sexual conduct as defined in subdivision 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 subdivision 8.” Minn. Stat. § 253D.02, subd. 16 (2022). The doctor reported that Winsky had not engaged in a course of sexual misconduct, that Winsky had “demonstrated that he can cope and make cognitive and behavioral changes[,]” and that it was not highly likely that Winsky would “engage in sexual recidivism because he ha[d] made ‘heartfelt’ changes.”

Dr. Kenning, however, disagreed. In her report, the doctor concluded that Winsky met the statutory criteria for an SDP. Dr. Kenning determined that Winsky had “engaged in a course of sexual conduct” because Winsky had several “admitted adolescent sexual victims.” Dr. Kenning found that Winsky met the criteria for several mental-health disorders and stated that these disorders “have impeded [Winsky’s] ability to control his sexual impulses.” Moreover, because of these disorders, Dr. Kenning considered Winsky “highly likely to engage in harmful sexual conduct in the future.”

Dr. Kenning noted that Winsky’s recidivism “risk has increased in the past year as a result of his self-focused and opportunistic behavior.” The doctor also wrote that Winsky “has both a deviant sexual attraction and strong antisocial traits[,]” which are “two of the strongest predictors of sexual offense recidivism.” Winsky also “has a number of psychological risk factors that propel him toward reoffense[,]” including “his sexual preoccupation/hypersexuality, his resistance to rules and supervision[,] and his poor coping abilities.”

Dr. Thompson likewise concluded that Winsky met the statutory criteria for adjudication as an SDP. Dr. Thompson opined that there was “sufficient evidence to conclude that . . . Winsky ha[d] engaged in a history of sexual misconduct that ha[d] a substantial likelihood of serious physical and emotional harm to the victims of his offenses.” The doctor stated that Winsky possessed a sexual, personality, or mental disorder and observed that Winsky “has difficulty exercising restraint, and chronically makes ill-informed decisions that are ultimately not in his or others’ best interests.” Dr. Thompson also said that Winsky meets the criteria for antisocial personality disorder and that “individuals with any diagnosed personality disorder [generally] have great difficulty dealing with other people.” In Dr. Thompson’s view, Winsky was likely to engage in harmful sexual conduct again. The doctor pointed to Winsky’s impulsive behavior as indicating an “absence of proper evaluation of circumstances prior to action.”

During their interview, Dr. Thompson spoke with Winsky about his juvenile sexual criminal record. Winsky admitted to Dr. Thompson that he had used coercive tactics for over a month with one of his victims, including by telling her that he loved her, that she was the only girl he was talking to, and that he was not going to leave her.

### ***Trial Proceedings and January 2023 Order***

In December 2022, the matter proceeded to trial. The district court heard testimony from Dr. Reitman, Dr. Kenning, Dr. Thompson, Winsky, and several other witnesses.

Dr. Reitman testified first and reiterated that he believed a stay of commitment would be the best outcome for Winsky. The district court explained, however, that a stay of commitment was not an available option because Winsky was “no longer on intensive

supervision as a probationary matter” and “nobody from the Department of Corrections [could] supervise him.” Following that explanation, Dr. Reitman acknowledged that Winsky met the criteria for adjudication as an SDP on several issues but maintained that Winsky was eligible for a stay. Dr. Reitman stated that, if a stay was impossible, Winsky could not be in the community without supervision. The doctor also testified that Winsky still had problems with impulse control and that Winsky had been engaging in “extremely concerning” behaviors.

Consistent with her report, Dr. Kenning testified that Winsky met the criteria for adjudication as an SDP. She noted that, as soon as Winsky’s supervision level lowered, “he started to get attracted to [the] 15-year-old” that he had met at the stock-car races. The doctor also said that, although Winsky had never been discharged from treatment for any sexual violations, most of his violations were for contacting people he was prohibited from associating with.

Dr. Thompson testified that he did not believe Winsky had “exhibited a lot of maturity” and that he believed that Winsky was “somewhat impulsive.” The doctor also opined that he believed that Winsky met the criteria for adjudication as an SDP.

The district court received testimony from a program manager at Dodge-Fillmore-Olmsted (DFO) Community Corrections, who described a conversation with Winsky about the 15-year-old. The program manager said that Winsky “acknowledged that he was alone with her; that he wanted to be sexual; and it was essentially her boundaries . . . that led [the program manager] to believe that no crime had been committed.” But the program manager

believed that Winsky “would have been sexual with that 15-year-old if she would have participated in that behavior.”

In his testimony, Winsky admitted that he met the girl at the racetrack and that they began corresponding. He claimed that he learned the girl was 15 years old about two weeks after he met her and that he immediately told his probation officer. Winsky acknowledged that, at times, he had been alone with the 15-year-old, although he insisted that those instances had not been intentional. Despite his denial of sexual interest in the girl, Winsky conceded that he had told his supervised-release agent that he noticed the 15-year-old “had bigger boobs and a bigger butt than” the 30-year-old woman he was seeing. Winsky also admitted that the girl had attributes “that were attractive sexually” but stated that he was not sexually attracted to her. He agreed, however, that he had been harassing the 15-year-old.

In January 2023, the district court filed findings of fact, conclusions of law, an order for judgment, and a judgment. The district court concluded that Winsky met the statutory criteria for adjudication as an SDP. Because the district court found that Winsky was an SDP, the court explained that it needed to commit him to a secure treatment facility, like the Minnesota Sex Offender Program (MSOP), unless Winsky could establish by clear and convincing evidence that a less-restrictive treatment program was available. The district court concluded that Winsky did not “prove by clear and convincing evidence that any less restrictive treatment program [was] available to meet both his treatment needs and the requirements of public safety.” Although the district court ordered that Winsky be committed to a secure treatment facility, the court found that Winsky “should be placed at

the Minnesota Security Hospital in St. Peter with Community Preparation Services” because Winsky had previously completed treatment.

***First Appeal, Remand Proceedings, and January 2024 Order***

Winsky appealed and the Commissioner of the Minnesota Department of Human Services cross-appealed. Winsky challenged his adjudication as an SDP. *See In re Civ. Commitment of Winsky*, No. A23-0431, 2023 WL 5055002, at \*1 (Minn. App. Aug. 1, 2023). The commissioner challenged the district court’s determination that Winsky should be placed at a nonsecure facility with Community Preparation Services. *Id.* We determined that “[t]he district court’s directive to the commissioner—to commit appellant to a nonsecure facility—[was] inconsistent with appellant’s failure to prove the availability of any nonsecure facility to which to commit him.” *Id.* Because we concluded that “the district court’s placement decision [was] defective, and because it [was] unclear whether that decision improperly affected the district court’s decision to adjudicate appellant an SDP,” we reversed and remanded. *Id.* at \*2. We instructed the district court to reevaluate its decision to adjudicate Winsky as an SDP and directed that, “[i]f the district court confirm[ed] its adjudication of appellant as an SDP,” it was to commit Winsky to a secure treatment facility unless he satisfied the provisions of Minnesota Statutes section 253D.07, subdivision 3 (2022). *Id.* We also specified that the district court had the discretion to decide whether to reopen the record. *Id.*

On remand, the district court held a hearing and allowed Winsky to submit evidence of a less-restrictive alternative to MSOP. At the start of the hearing, the district court confirmed its decision to adjudicate Winsky as an SDP.

During the hearing, Winsky's attorney proposed that the district court send Winsky to a specific community-based treatment program. The district court received testimony from a mental-health therapist who worked at the proposed program. The therapist explained that the program provided "outpatient mental health [services] . . . geared toward working with people with problematic sexual disorders." She said that, when the program is considering whether to accept a new patient, an individual must complete an intake evaluation. Staff meet with the individual and discuss why that person is seeking to participate in the program. The program then conducts an "admit meeting" with the individual and develops a treatment plan based on the individual's needs. The therapist testified, however, that there were no openings at the program at that time. She also could not say when an opening would be available. Nor was the therapist able to definitively say that the program would accept Winsky; instead, she stated that Winsky would have to meet all the criteria for admittance before he could enter the program. And when asked if the process could be conducted remotely, the therapist testified that she "would be willing to give it a try if that was an option."

The director of Fillmore County Social Services also provided testimony in support of Winsky's plan for outpatient treatment at the community-based treatment program he proposed. The director said that she believed the plan would meet Winsky's needs for supervision, counseling, and treatment, as well as satisfy the requirements of public safety. But she also acknowledged that she did not have information about Winsky's behavioral incidents since he entered MSOP and that she was unaware of the specific details of Winsky's parole violation that landed him back in prison.

Olmsted County offered into evidence an October 31, 2023 quarterly progress report from MSOP. Winsky’s counsel objected, asserting that Olmsted County had not provided them with the report prior to the hearing. The district court received the exhibit over counsel’s objection because “it sound[ed] like . . . information that [the court was] going to want to have.” The report summarized information about Winsky’s treatment progress, including information related to behavioral-expectation and incident reports.

In January 2024, the district court filed findings of fact, conclusions of law, and an order. The district court did not make further findings on remand as to whether Winsky met the statutory criteria for adjudication as an SDP but reiterated its finding that Winsky met those criteria and incorporated by reference its factual findings from the January 2023 order.<sup>1</sup> The district court determined that Winsky did not prove by clear and convincing evidence that a less-restrictive placement was available to meet his treatment needs and the requirements of public safety. The district court found that it was unclear from the witness testimony when an opening would be available at the proposed community-based treatment program, that the therapist had never met with Winsky, that Winsky had not been accepted into the program, and that—because a preadmission interview had not been conducted—the program had not determined whether Winsky would be eligible for admission. And the district court ordered Winsky committed to a secure treatment facility.

Winsky appeals.

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<sup>1</sup> Appropriately detailed, relevant findings about each of the statutory SDP criteria are important to permit meaningful appellate review. *See, e.g., In re Civ. Commitment of Spicer*, 853 N.W.2d 803, 810-12 (Minn. App. 2014).

## DECISION

Winsky challenges the district court's order adjudicating him as an SDP. Winsky maintains: (1) that, in determining that he met the statutory criteria for civil commitment, the district court clearly erred by finding that he is likely to engage in acts of harmful sexual conduct; (2) that the court clearly erred in finding that no less-restrictive treatment program was available and willing to accept him, and that the court erred in committing him to a secure treatment facility despite his completion of sex-offender treatment; and (3) that the court abused its discretion by receiving into evidence a treatment report that was not disclosed to him or his counsel before the evidentiary hearing on remand. Winsky's arguments do not persuade us to reverse.

To commit a person to a secure treatment facility as an SDP, the petitioner must prove by clear and convincing evidence that the person meets certain statutory criteria. Minn. Stat. § 253D.07, subd. 3. As noted above, an SDP is statutorily defined as 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 likely to engage in acts of harmful sexual conduct." Minn. Stat. § 253D.02, subd. 16. The third requirement is met if a person is "highly likely" to engage in acts of harmful sexual conduct again. *In re Civ. Commitment of Ince*, 847 N.W.2d 13, 20-22 (Minn. 2014). If a district court determines that the statutory commitment criteria have been proven,

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 [person] under commitment, and is consistent

with the person's treatment needs and the requirements of public safety.

Minn. Stat. § 253D.07, subd. 3.

On appeal from a civil-commitment order, “[w]e review the district court’s factual findings under a clear-error standard.” *In re Civ. Commitment of Stone*, 711 N.W.2d 831, 836 (Minn. App. 2006), *rev. denied* (Minn. June 20, 2006); *see also Ince*, 847 N.W.2d at 22 (“We review the district court’s factual findings under a clear error standard to determine whether they are supported by the record as a whole.”). When reviewing factual findings for clear error, appellate courts (1) view the evidence in the light most favorable to the findings, (2) do not find their own facts, (3) do not reweigh the evidence, (4) do not reconcile conflicting evidence, and (5) “need not go into an extended discussion of the evidence to prove or demonstrate the correctness of the findings of the [district] court.” *In re Civ. Commitment of Kenney*, 963 N.W.2d 214, 221-22 (Minn. 2021) (quotation omitted). Instead, “an appellate court’s duty is fully performed after it has fairly considered all the evidence and has determined that the evidence reasonably supports the decision.” *Id.* at 222 (quotation omitted). But whether the evidence meets the statutory requirements for commitment is a question of law, which this court reviews *de novo*. *In re Civ. Commitment of Crosby*, 824 N.W.2d 351, 356 (Minn. App. 2013), *rev. denied* (Minn. Mar. 27, 2013).

Below, we address each of Winsky’s contentions in turn.

**I. In determining that Winsky met the statutory criteria for civil commitment, the district court did not clearly err by finding that he is likely to engage in acts of harmful sexual conduct.**

Although Winsky generally asserts that the district court's determination that he meets the statutory criteria for adjudication as an SDP is not supported by the evidence, his only specific challenge on this point is to the court's finding that he is likely to engage in acts of harmful sexual conduct.

The factors used to evaluate the likelihood of future harmful sexual conduct . . . [are] as follows:

(a) the person's relevant demographic characteristics (e.g., age, education, etc.); (b) the person's history of violent behavior (paying particular attention to recency, severity, and frequency of violent acts); (c) the base rate statistics for violent behavior among individuals of this person's background (e.g., data showing the rate at which rapists recidivate, the correlation between age and criminal sexual activity, etc.); (d) the sources of stress in the environment (cognitive and affective factors which indicate that the person may be predisposed to cope with stress in a violent or nonviolent manner); (e) the similarity of the present or future context to those contexts in which the person has used violence in the past; and (f) the person's record with respect to sex therapy programs.

*Ince*, 847 N.W.2d at 22 (quoting *In re Linehan*, 518 N.W.2d 609, 614 (Minn. 1994)); see also *Spicer*, 853 N.W.2d at 807 (stating that the foregoing are "commonly known as the *Linehan* factors"). "The multi-factor analysis also must include any other type of relevant and reliable evidence, including evidence derived from actuarial risk assessments and structured clinical assessments." *Spicer*, 853 N.W.2d at 808. "The relative weight provided

to each *Linehan* factor and other evidence should be determined on a case-by-case basis by the district court.” *Ince*, 847 N.W.2d at 16.

Based on our careful review of the record, we conclude that the district court’s SDP determination—including its finding that Winsky is highly likely to engage in acts of harmful sexual conduct in the future—is reasonably supported by the evidence that the court received. Both Dr. Kenning and Dr. Thompson reported that Winsky was highly likely to engage in acts of harmful sexual conduct. Dr. Kenning opined that, “as a result of his disorders[, Winsky] is considered highly likely to engage in harmful sexual conduct in the future.” The doctor also noted that Winsky’s “risk has increased in the past year as a result of his self-focused and opportunistic behavior.” Dr. Kenning observed that Winsky “has both a deviant sexual attraction and strong antisocial traits[,]” which are “two of the strongest predictors of sexual offense recidivism.” And the doctor stated that Winsky “has a number of psychological risk factors that propel him toward reoffense[,]” including “his sexual preoccupation/hypersexuality, his resistance to rules and supervision[,] and his poor coping abilities.” Dr. Thompson likewise believed that Winsky was highly likely to engage in harmful sexual conduct, pointing to Winsky’s impulsive behavior, which the doctor identified as an “absence of proper evaluation of circumstances prior to action.”

Dr. Kenning and Dr. Thompson also both analyzed the *Linehan* factors and came to similar conclusions. As to the first factor—demographic characteristics—both examiners opined that Winsky’s age increased his risk of reoffense. For the second factor—history of violent behavior—both examiners detailed the physical force that Winsky employed to accomplish his sexually assaultive behavior. On the third factor—base rate statistics for

violent behavior—Dr. Kenning and Dr. Thompson explained that several assessments evaluated Winsky’s risk of recidivism as high or elevated. For the fourth factor—sources of stress in the environment—both examiners noted that Winsky’s sexual assaults resulted from opportunistic behaviors rather than from stress. As to the fifth factor—similarity between the present or future context to contexts in which someone has used violence in the past—Dr. Kenning noted that Winsky’s “behavior in the past year indicates he has not yet internalized the barriers to reoffending so that he can function adaptively in the community without the external support of supervision.” And Dr. Thompson observed that Winsky may have been grooming the 15-year-old from the racetrack. Lastly, for the sixth factor—record with sex therapy programs—both examiners cited Winsky’s several terminations from sex-offender treatment. Dr. Kenning reported that Winsky “completed sex offense specific treatment in 2018 after ten years and at least seven previous” attempts. Dr. Thompson similarly stated that Winsky had been terminated from sex-offender treatment at least five times and, although he did complete treatment, his behavior toward the 15-year-old girl he had met at the stock-car races “puts into question his commitment to practicing relapse prevention strategies or making sound decisions based on his best interest.” Dr. Thompson also testified that Winsky had not applied the principles he was taught in treatment. This evidence reasonably supports the district court’s decision that Winsky is highly likely to engage in acts of harmful sexual conduct again. *See Kenney*, 963 N.W.2d at 222.

For the following two reasons, the record also defeats Winsky's contentions that, because he completed treatment, he is unlikely to reoffend and that the district court identified no behaviors supporting its determination that he is highly likely to reoffend.

First, as soon as he completed treatment and his level of supervision was lowered, Winsky began contact with the 15-year-old. Even after he learned her age and was instructed not to contact her, Winsky continued to communicate with the girl. He acknowledged that he was harassing the 15-year-old and described his own conduct as "creepy." Winsky also told a supervised-release agent and the program manager at DFO Community Corrections that he wanted to—and tried to—have sex with the girl. He was involved with the 15-year-old for two-and-a-half months and admitted that, although he knew that what he was doing was wrong, he used "cognitive distortions to justify his behaviors." Winsky conceded that he had fallen in love with the girl and reported that he "did not have the control to block her." After the 15-year-old decided that she was no longer interested in seeing him, Winsky would "obsessively call and text" her to find out where she was—even following her "to see if she was where she said she was." He acknowledged telling his supervised-release agent that the girl had attributes "that were attractive sexually." Winsky used coercive tactics—like those he had employed with his previous victims—in his dealings with the 15-year-old. For example, Winsky "committed himself to her" and said he wanted to wait until the girl turned 18 years old, but he nonetheless argued with her about not being intimate with him, and he threatened her by saying that he would be with other women.

Second, the commitment petition summarized Winsky’s many probation violations, which included direct contact with minors, using social media to contact minors, and spending time where children gathered. Even Dr. Reitman—who initially did not believe that Winsky met the statutory criteria for adjudication as an SDP—testified that Winsky still had problems with impulse control and that it was clear Winsky was engaging in “extremely concerning” behaviors.

Because the record reasonably supports the district court’s finding that Winsky is highly likely to engage in acts of harmful sexual conduct in the future and its determination that he meets the statutory criteria for adjudication as an SDP, we discern no clear error here.<sup>2</sup> *See Kenney*, 963 N.W.2d at 222.

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<sup>2</sup> On appeal, Winsky also seeks to discredit the psychological assessments on which the district court relied, suggesting that many of the “testing modalities” have been “questioned or flatly rejected in intervening years.” But Winsky fails to cite binding authority that supports his proposition. ““An assignment of error based on mere assertion and not supported by any argument or authorities in appellant’s brief is waived and will not be considered on appeal unless prejudicial error is obvious on mere inspection.”” *In re Robb*, 622 N.W.2d 564, 574 (Minn. App. 2001) (quoting *Schoepke v. Alexander Smith & Sons Carpet Co.*, 187 N.W.2d 133, 135 (Minn. 1971)), *rev. denied* (Minn. Apr. 17, 2001). Because this issue was not adequately briefed and no prejudicial error is obvious on mere inspection, we will not consider it further. *See id.* And we would not reverse even if we were to consider this argument further because our clear-error standard of review requires that we view the evidence in the light most favorable to the district court’s findings and precludes us from finding our own facts, reweighing the evidence, and reconciling conflicting aspects of the record. *See Kenney*, 963 N.W.2d at 221-22.

**II. The district court did not clearly err in finding that no less-restrictive treatment program was available and willing to accept Winsky, and the court did not err in committing him to a secure treatment facility despite his completion of sex-offender treatment.**

Winsky contends that the district court clearly erred in finding that no less-restrictive treatment program was available and willing to accept him. He also asserts that, because he previously had completed sex-offender treatment, the district court erred in committing him to a secure treatment facility.

We conclude that the district court did not clearly err in finding that no less-restrictive treatment program was available and willing to accept Winsky. The district court found that Winsky “would need to seek admission and acceptance [into] the [proposed community-based treatment] program when an opening [was] available.” But it was “unclear from the testimony when such an opening would be available.” The district court also found that Winsky had “not been accepted into this program, and because a preadmission interview [had] not been conducted, [it had] not yet determined whether [Winsky] would be eligible for admission to [the proposed community-based treatment program].” These findings are reasonably supported by the record.

The mental-health therapist testified that there were no openings at the proposed program, and she could not say when an opening would be available. The therapist also explained that Winsky would have to meet all the criteria for admittance into the program before the program was available. She had not conducted an intake evaluation of Winsky and was therefore unable to state whether the program would accept him. Nor could she testify with certainty that the intake process could be conducted remotely. Given the above,

although we acknowledge that the record suggests that the proposed program could meet Winsky's treatment needs,<sup>3</sup> we conclude that the evidence reasonably supports the district court's finding that Winsky failed to establish by clear and convincing evidence that a less-restrictive treatment program was available and willing to accept him. Thus, the district court did not clearly err in making those determinations. *See Kenney*, 963 N.W.2d at 222.

Because we discern no clear error in the district court's findings that Winsky met the statutory criteria for adjudication as an SDP and that no less-restrictive treatment program was available and willing to accept him, we also conclude that the district court did not err in committing him to a secure treatment facility, notwithstanding that he completed sex-offender treatment. Minnesota Statutes section 253D.07, subdivision 3, required Winsky's commitment to a secure treatment facility upon the district court's determinations that he met the statutory commitment criteria and that no less-restrictive treatment program was available and willing to accept him. Moreover, despite Winsky's history with sex-offender treatment, the record amply supports the district court's decision to commit Winsky to complete treatment in a secure facility. Even after he completed a treatment program, Winsky still engaged in inappropriate behavior with the 15-year-old. Dr. Thompson testified that Winsky was "going to have to do treatment" because "[a]ftercare isn't sufficient." And two employees from DFO Community Corrections

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<sup>3</sup> Under Minnesota Statutes section 253D.07, subdivision 3, to avoid statutorily mandated commitment to a secure treatment facility, Winsky was required to establish by clear and convincing evidence not only that a less-restrictive treatment program fit his treatment needs and the requirements of public safety, but also that the program was available and willing to accept him.

expressed their concerns that the treatment program in which Winsky had participated had no impact on him.

Applying our de novo review to whether the evidence before the district court meets the statutory requirements for commitment, we conclude that the court did not err in ordering Winsky committed to a secure treatment facility. *See Crosby*, 824 N.W.2d at 356.

### **III. The district court did not abuse its discretion by receiving the MSOP treatment report.**

Lastly, Winsky argues that the district court erred when it admitted the MSOP treatment report at the evidentiary hearing on remand.

“The decision of whether to admit or exclude evidence is within the district court’s discretion and will be reversed only if the court has clearly abused its discretion.” *In re Civ. Commitment of Ramey*, 648 N.W.2d 260, 270 (Minn. App. 2002), *rev. denied* (Minn. Sept. 17, 2002). “Entitlement to a new trial on the grounds of improper evidentiary rulings rests upon the complaining party’s ability to demonstrate prejudicial error.” *Robb*, 622 N.W.2d at 574 (quotation omitted).

Minnesota Statutes section 253B.08, subdivision 7 (2022), provides that a district court “shall admit all relevant evidence at the [commitment] hearing.” But Minnesota Commitment and Treatment Act Rule 13(b) states that “each party shall disclose to the other party or parties as soon as possible in advance of the hearing which of the respondent’s<sup>4</sup> medical records the party intends to introduce at the hearing.” The

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<sup>4</sup> In the interest of clarity, we note that, while Winsky is the appellant before this court, he was the respondent to the civil-commitment petition before the district court.

Committee Comment to rule 13(b) explains that “[t]he disclosures should be made as soon as possible after receiving the records.” Minn. Spec. R. Commit. & Treat. Act 13(b) 2015 comm. cmt.

Without citing any supporting authority, Winsky asserts that the district court abused its discretion by receiving the treatment report because the report was not disclosed to him or his counsel prior to the hearing. But Winsky has not established that Olmsted County failed to disclose the treatment report as soon as possible. And even if Olmsted County did not submit the report at the earliest opportunity, Minnesota Commitment and Treatment Act Rule 13(b) neither bars the admission of late-disclosed material nor provides a remedy for untimely disclosures. *See* Minn. Spec. R. Commit. & Treat. Act 13(b). And Minnesota Statutes section 253B.08, subdivision 7, otherwise requires the district court to “admit all relevant evidence at the hearing.” We therefore conclude that the district court did not abuse its discretion by admitting the treatment report at the evidentiary hearing on remand.<sup>5</sup> *See Ramey*, 648 N.W.2d at 270.

**Affirmed.**

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<sup>5</sup> Even assuming without deciding that the district court abused its discretion by admitting the report, we conclude that such assumed error was harmless. Winsky contends that he was prejudiced by the introduction of the report because he “was not afforded [a] reasonable opportunity to respond.” But the record establishes that the district court allowed Winsky’s attorney time to review the report and to question Winsky about it at the hearing. Thus, even if the district court’s decision to receive the report into evidence was an improper evidentiary ruling, Winsky is not entitled to a new trial because he cannot demonstrate prejudicial error. *See Robb*, 622 N.W.2d at 574.