

*This opinion is nonprecedential except as provided by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
A24-0568**

In the Matter of the Civil Commitment of: Elakie Fale.

**Filed September 9, 2024
Affirmed
Harris, Judge**

Benton County District Court
File No. 05-PR-23-1107

Rosalind R. Sullivan, Sullivan Law, PLLC, Minneapolis, Minnesota (for appellant Elakie Fale)

Karl Schmidt, Benton County Attorney, William V. Faerber, Assistant County Attorney, Foley, Minnesota (for respondent Benton County)

Considered and decided by Harris, Presiding Judge; Bratvold, Judge; and Cleary, Judge.*

NONPRECEDENTIAL OPINION

HARRIS, Judge

After being found incompetent to proceed on various criminal charges, appellant was adjudicated as a person with mental illness and dangerous to the public (MI&D) under Minnesota Statutes section 253B.18 (2022). Appellant (1) challenges the district court's determination that he engaged in overt acts capable of causing or attempting to cause

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

serious physical harm to another and (2) argues that the district court erred by not considering lesser restrictive alternatives for treatment. We affirm.

FACTS

In July 2023, Benton County Human Services petitioned the district court to rule appellant Elakie Fale MI&D under Minnesota Statute section 253B.18.

The petition alleged that, in May 2021, Benton County charged Fale with two counts of possession of a firearm by an ineligible person after police found him with two shotguns that were stolen from a store in Stearns County two days prior. Stearns County then charged him with first-degree burglary for the two stolen shotguns. Fale was found incompetent to proceed to trial after an evaluation under Minn. R. Crim. P. 20.01.

One year later, Benton County charged Fale with two counts of second-degree assault with a dangerous weapon after he was seen in a surveillance video pushing the victim twice and stabbing him in the back. In February 2023, Benton County again charged Fale with second-degree assault with a dangerous weapon for using a knife to threaten a front desk worker at a hotel. Three months later, Fale was found incompetent to proceed on all pending criminal charges after another rule 20.01 evaluation.

In June 2023, Stearns County charged Fale with one count of threats of violence and two counts of fifth-degree assault. At the time of this incident, Fale was in the behavioral unit at St. Cloud Hospital. Fale requested a transfer to a different facility, but St. Cloud Hospital rejected his request because other facilities did not have available beds. One morning, Fale attempted to grab a nurse's keycard, but that nurse prevented him from doing so. Fale then grabbed and dug his fingernails into the nurse's arm, leaving several nail

marks. Shortly after that incident, Fale told the nurse that he could “make one phone call and get [them] all killed.” Ten days later, Fale’s primary treating psychiatrist reported that Fale threatened to kill him, that he repeatedly shoved and followed him with clenched fists, and that he threw a punch and placed him in a headlock, twisting his head and neck. Multiple staff members had to restrain Fale. Stearns County charged Fale with threats of violence and two counts of fifth-degree assault.

A commitment trial was held in January 2024. The parties stipulated to admitting the criminal complaints into evidence. The district court heard testimony from Fale’s treating psychiatrists, the rule-20 evaluator, a second examiner, and Fale’s mother.

Fale’s psychiatrist testified that he treated Fale at the St. Cloud Hospital for approximately eight years and saw him in connection with ten to 12 psychiatric hospitalizations since 2015. He testified that Fale suffered from a paranoid-delusional disorder, along with a personality disorder and chemical dependency. The psychiatrist was involved in filing a *Jarvis*¹ motion for Fale and explained that he felt the *Jarvis* motion was necessary because there was a consistent pattern of Fale being noncompliant with or refusing medications, and there was concern about Fale’s underlying mental illness and potential for dangerousness if not treated.

Fale was evaluated on four occasions for purposes of rule 20.01 competency proceedings. He testified that Fale’s mental illness and trouble with law enforcement

¹ *Jarvis* refers to *Jarvis v. Levine*, 418 N.W.2d 139, 150 (Minn. 1988), in which the Minnesota Supreme Court held that health-care professionals must obtain court approval before treating a patient with neuroleptic medications without the patient’s consent.

began around age 17 when he began using drugs, particularly methamphetamine. The evaluator stated that Fale reported hearing voices and suffering from delusions, which could have resulted from his methamphetamine use, personality disorder, or from schizophrenia.

A second examiner also evaluated Fale and testified that he had a pattern of doing well on medications initially, but that he would stop taking his medication and regress and go back into “the pattern where he has been acting out and come to the attention of authorities.” He also testified that Fale had a higher-than-average risk of violent recidivism, particularly if he refused medications.

An additional psychiatrist testified that he diagnosed Fale with a substance-induced psychosis that generally manifests from methamphetamine use. He agreed with the second examiner that there was a strong likelihood that Fale would discontinue his medications and relapse on methamphetamine once released.

After trial, the district court adjudicated Fale as MI&D and ordered that he be transferred from the St. Cloud Hospital to the Benton County Jail until a bed became available at the Minnesota Security Hospital. This appeal follows.

DECISION

I. The district court did not err by concluding that Fale engaged in overt acts causing or attempting to cause serious physical harm to another.

Fale challenges the sufficiency of the evidence supporting the district court’s order indeterminately committing him as a person with mental illness who is dangerous to the public. Fale does not contest the district court’s finding that he has a mental illness. Fale

denies that he presents a clear danger to the safety of others, that he committed or attempted to commit an overt act of harm, and that there is a substantial likelihood that he will engage in acts capable of inflicting serious physical harm. Fale asserts that the trial evidence was insufficient to contradict his denials and argues that the district court erred by determining that he engaged in overt acts causing or attempting to cause harm under Minnesota Statutes section 253B.02, subdivision 17(2) (2022).²

Before ordering commitment to a treatment facility, a district court must find clear and convincing evidence that a person is MI&D. Minn. Stat. § 253B.18, subd.1(a). A “person who has a mental illness and is dangerous to the public” is a person:

(1) who has an organic disorder of the brain or a substantial psychiatric disorder of thought, mood, perception, orientation, or memory that grossly impairs judgment, behavior, capacity to recognize reality, or to reason or understand, and is manifested by instances of grossly disturbed behavior or faulty perceptions; and

(2) who as a result of that impairment presents a clear danger to the safety of others as demonstrated by the facts that (i) the person has engaged in an overt act causing or attempting to cause serious physical harm to another and (ii) there is a substantial likelihood that the person will engage in acts capable of inflicting serious physical harm on another.

Minn. Stat. § 253B.02, subd. 17 (2022).

² Fale also argues that the district court erroneously admitted hearsay evidence and that the presiding judge failed to recuse himself in this matter. First, rule 15 of the Commitment and Treatment Rules Act provides that, in commitment proceedings, all evidence may be admitted if reliable and relevant. Minn. Spec. R. Commit. & Treat. Act; *see In re Civ. Commitment of Williams*, 735 N.W.2d 727, 730-31 (Minn. App. 2007) (affirming the district court’s admission of hearsay evidence because it was relevant and reliable). Second, Fale cites no caselaw or statutory authority to support his argument that the district court judge should have recused himself in this case because he also presided over another criminal matter. We decline to reach this issue because it was inadequately briefed. *In re Commitment of Kropp*, 895 N.W.2d 647, 653 (Minn. App. 2017).

“Dangerousness may be demonstrated by past conduct together with a determination the person is likely to engage in future violent conduct.” *In re Lufsky*, 388 N.W.2d 763, 766 (Minn. App. 1986). Moreover, trial courts may consider the person’s entire history in determining whether they pose a danger to others. *In re Welfare of Hofmaster*, 434 N.W.2d 279, 281 (Minn. App. 1989).

Whether the evidence is sufficient to support a finding that an overt act has occurred is a legal question subject to de novo review. *In re Knops*, 536 N.W.2d 616, 620 (Minn. 1995).

Here, the district court found that Fale engaged in three qualifying overt acts: (1) the May 2022 stabbing; (2) Fale’s assault on a behavioral health unit nurse; and (3) Fale’s assault on the psychiatrist in the behavioral health unit. In its conclusions of law, the district court stated:

The stabbing in May 2022, the assault on the Behavioral Health Unit nurse on June 16, 2023, the assault on [the psychiatrist] in the Behavioral Health Unit of the St. Cloud Hospital on June 26, 2023, and the repeated threats to kill [the psychiatrist] and harm hospital staff all constitute overt acts on the part of [Fale]. Therefore, this Court finds by clear and convincing evidence that [Fale] has engaged in multiple overt acts causing or attempting to cause serious physical harm to another.

Additionally, it found “that there is a substantial likelihood that [Fale] will engage in acts capable of inflicting serious physical harm to another if not hospitalized in a secure setting.” The district court found that Fale does not believe he is mentally ill, has a long-standing history of refusing to take his medications and often resumes using methamphetamine when outside of a secure hospital setting. Relying on testimony and

other evidence, the district court found by clear and convincing evidence that there was a substantial likelihood that Fale would engage in future dangerous acts.

May 2022 Stabbing

Fale first argues that the stabbing incident that occurred in May 2022 cannot be considered an overt act because he pleaded not guilty and had not been found guilty.³ Fale is incorrect. “Conviction of a crime is not a prerequisite to commitment as mentally ill and dangerous to the public.” *In re Jasmer*, 447 N.W.2d 192, 195 (Minn. 1989). And a person need not intend to cause harm or actually cause harm for their conduct to constitute an overt act. *Id.* at 195-96. Here, the record is robust with support for the finding that the May 2022 stabbing was an overt act causing or attempting to cause serious physical harm to another. While there is not a criminal conviction in this matter because a trial has not occurred due to Fale being found incompetent, Fale’s mother credibly testified that the stabbing occurred, why it occurred, and that Fale was the person who stabbed the victim. The second examiner and the psychiatrist both testified that Fale repeatedly confirmed with them that he stabbed the victim in this matter.

There is clear and convincing evidence in the record to support the district court’s determination that the May 2022 stabbing was an overt act causing or attempting to cause serious physical harm to another.

³ In 2022, Fale was charged with second-degree assault after he was seen on surveillance video pushing another person multiple times before stabbing him in the back. The stabbing resulted in the victim having a laceration approximately one inch in length and a quarter inch in width in the victim’s mid-back near his spine. A knife was found five to ten feet from Fale when he was arrested.

Assault on a Behavioral Health Unit Nurse

Fale next argues that the district court erred when it found that he engaged in an overt act when he assaulted a nurse while in the behavioral health unit at St. Cloud Hospital. Fale appears to argue that digging his fingernails into her skin was not “volitional” so much as it was “responsive” to the nurse preventing him from grabbing her keycard.

In support of his argument, Fale argues that his actions are similar to *In re Kottke*, 433 N.W.2d 881 (Minn. 1988). There, Kottke struck a security guard with his fist, leaving red marks on his face, and struck another man on the back, causing him to fall and sprain his thumb. *Id.* at 882. A doctor testified that Kottke “simply struck out in a rather ineffectual way and then immediately retreated and became his usual mild-mannered self.” *Id.* at 883. The Minnesota Supreme Court concluded that Kottke’s conduct, though intolerable, did not rise to the level of an overt act causing or intending to cause serious harm. *Id.* at 884.

Fale’s comparison to *Kottke* is not persuasive. The assault on the nurse occurred against the backdrop of Fale’s history of criminal charges and escalating behavior on the behavioral health unit. Additionally, approximately 15 minutes after attempting to grab the keycard, Fale allegedly verbally threatened the nurse, causing fear.

Assault on Behavioral Health Unit Psychiatrist

There is clear and convincing evidence supporting the district court’s determination that Fale engaged in an overt act causing or attempting to cause serious harm to another. This evidence includes Fale’s assault on the psychiatrist in the behavioral health unit, who suffered a sore neck and an abrasion. The psychiatrist testified that Fale was the most

dangerous patient he had seen in his 30 years at the St. Cloud Hospital. He also testified to installing home security devices because of Fale's repeated threats to kill him once released from the hospital.

Fale contends, however, that the district court erred because it did not consider surrounding circumstances and reasons to question the psychiatrist's credibility, such as the deterioration in the doctor-patient relationship and the facts leading up to the assault. Fale asserts that he was called a derogatory name by another patient at St. Cloud Hospital, that another patient threatened to punch him in the face, and that he was suffering from untreated dental pain. Fale's arguments are unavailing. The district court relied on the psychiatrist's testimony about the assault and his experience as Fale's treating physician, and there is nothing in the record demonstrating the district court erred because of this reliance. And while Fale may not agree with the psychiatrist, that is not enough to support a claim that he lacks credibility.

There is also clear and convincing evidence supporting the district court's determination that there is a substantial likelihood that Fale would engage in additional acts capable of inflicting serious physical harm to another if not hospitalized in a secure setting. The district court relied on testimony from two psychiatrists and a forensic examiner in finding that he lacked insight into his own mental illness and had a history of not remaining medication compliant and using methamphetamine once released from the hospital setting. The district court found by clear and convincing evidence that there is a substantial likelihood that Fale would engage in future dangerous acts.

In conclusion, there is clear and convincing evidence supporting the district court's determination that Fale engaged in an overt act causing serious harm and that there was a substantial likelihood that he will engage in acts capable of inflicting serious harm to others in the future.

II. The district court did not err by refusing to consider lesser restrictive alternatives for treatment.

Fale next argues that less restrictive treatment programs or facilities were available, such as a community-based treatment facility, but that these options were not sufficiently explored. He asserts that the district court did not consider long-lasting injectable neuroleptic medications, which would have increased his medication compliance and thus reduced the need for a more restrictive setting.

Upon a finding that an individual is MI&D, the district court shall commit the person to a secure treatment facility or to a less restrictive state-operated treatment program or facility willing to accept the patient under commitment. The court shall commit the patient to a secure treatment facility unless the patient or others establish by clear and convincing evidence that a less restrictive state-operated treatment program or facility is available that is consistent with the patient's needs and the requirements of public safety. Minn. Stat. § 253B.18, subd. 1. Once a patient is initially committed, however, the treatment facility must file a report with the district court within 60 days, and the district court must hold a hearing to make a final determination as to whether the patient should remain committed. *Id.*, subd. 2. If the court finds "that the patient continues to be a person who has a mental illness and is dangerous to the public, then the court shall order commitment of the

proposed patient for an indeterminate period of time.” *Id.*, subd. 3. The district court’s decision as to the least restrictive alternative will not be reversed unless clearly erroneous. *In re Dirks*, 530 N.W.2d 207, 211-12 (Minn. App. 1995).

Fale’s assertion is premature because the district court did not commit Fale indeterminately as MI&D. The district court found Fale to be MI&D but ordered that he be transferred from the St. Cloud Hospital to the Benton County Jail until a bed becomes available for treatment at the Minnesota Security Hospital in St. Peter. At the time this appeal was commenced, the district court was waiting for the treatment facility’s final report. Because the district court has not made a final determination as to whether Fale should be committed indeterminately as MI&D, it was not clearly erroneous for the court to not consider less restrictive alternatives.

In conclusion, Fale’s assertion is not properly before us because the district court has not yet made a final determination as to whether Fale should be committed indefinitely as MI&D.

Affirmed.