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

**STATE OF MINNESOTA
IN COURT OF APPEALS
A24-1362**

In the Matter of the Civil Commitment of: Bruce Ray Fairbanks.

**Filed February 10, 2025
Affirmed; motion denied
Ross, Judge**

Koochiching County District Court
File No. 36-PR-23-192

Joshua P. Nuckols, Joshua Nuckols Law, Pine City, Minnesota (for appellant Bruce Ray Fairbanks)

Keith Ellison, Attorney General, James Austad, Assistant Attorney General, St. Paul, Minnesota; and

Jeffrey S. Naglosky, Koochiching County Attorney, International Falls, Minnesota (for respondent Koochiching County Attorney)

Considered and decided by Ross, Presiding Judge; Harris, Judge; and Jesson, Judge.*

NONPRECEDENTIAL OPINION

ROSS, Judge

Bruce Fairbanks has engaged in sexual misconduct for more than three decades. Before he was imprisoned in 1997, he used a knife to puncture and collapse the lung of a girl who refused his advances, and he raped a store attendant. Incarcerated, he knocked out

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

and tried to sexually assault a woman, exposed his genitals to at least a dozen female guards usually while masturbating, and stalked and sexually harassed a different female guard. Fairbanks now appeals from his civil commitment as a sexually dangerous person and sexual psychopathic personality, arguing, among other things, that the district court's commitment order failed to show that he engaged in a course of sexual misconduct. Because clear and convincing evidence and adequate findings support Fairbanks's commitment, we affirm.

FACTS

Bruce Fairbanks was sexually abused as a child and witnessed substantial domestic violence between his parents. He dropped out of school and was frequently involved in the juvenile justice system.

Fairbanks engaged in various serious crimes as an adult. In 1988 he broke into a woman's home, entered her bedroom, grabbed her throat, and repeatedly stabbed her with a screwdriver. During his escape, Fairbanks stabbed the woman's daughter in the head.

In 1992 on supervised release after the 1988 assault, he approached a girl who was walking alone and asked if she wanted a drink. After she rejected Fairbanks and told him that she was carrying pepper spray, he told her, "Mace me then." The girl sprayed Fairbanks in the face, and he became irate and began stabbing the ground. Fairbanks nevertheless urged his companions to ask the girl out for him. Her sister tried to protect her by telling Fairbanks that "she's just a young girl" and ushering her into their house. Fairbanks entered the house and attacked the girl by stabbing her in the chest with a knife, collapsing her lung. He was convicted of assault resulting in serious bodily harm.

In 1997 and again on supervised release from prison, Fairbanks encountered a 21-year-old woman who was working as the lone late-night clerk at a gas station. Fairbanks covered his face with a hooded sweatshirt, approached the clerk from behind, and forced her into the back room. He turned off the light and told the woman to undress, threatening her with a screwdriver. He forced her out of the building and raped her between snowbanks. He threateningly warned her not to tell police.

Fairbanks has been imprisoned since his conviction of first-degree criminal sexual conduct after the 1997 offense. His criminal conduct has continued.

In 2000 and incarcerated at Lino Lakes, Fairbanks crept up behind a female prison guard and knocked her out with a blow to her head. The assault was partially captured in video footage from a surveillance camera. Fairbanks dragged the guard's unconscious body down a flight of stairs away from camera view. After a minute and a half out of sight, the guard reappeared in the video footage, bleeding heavily from her head and face and bracing herself against the wall using one hand while pulling up her pants with the other. Fairbanks then also entered the frame, adjusting his pants. He menaced the guard with a makeshift blade and forced her to move with him as a hostage toward a set of locked doors where he threatened to kill her, attempting to negotiate his escape. Investigators later found blood on the guard's panties and on Fairbanks's underwear. The guard suffered multiple lacerations to her head and face, facial numbness, nausea, confusion, dizziness, and headaches. Her injuries permanently disabled her. The state charged Fairbanks with attempted criminal sexual conduct, kidnapping, and assault, but he was convicted only of kidnapping and assault.

During Fairbanks's incarceration at various prisons for more than two decades, he has been often disciplined because of his sexual conduct directed toward female guards. On at least twelve different occasions, prison authorities have cited Fairbanks for exposing his penis to different female guards or masturbating in their view. One of these exhibitionisms occurred in February 2023, *after* he was notified that the state was seeking to have him civilly committed for his sexual conduct.

Prison officials have also documented Fairbanks's inappropriate comments to and about female guards. In one of these incidents, Fairbanks sent a female guard a message asking, "Do you agree that we are in love with each other? Considering we have been looking into each other's eyes for several months now?" One line erased from the message asked, "Is the love mutual, and are you pregnant?" The female guard became fearful of working in the same unit as Fairbanks because of his apparent fixation and his following her. Fairbanks later sent a message to the same guard after he was moved to a different prison:

May you please apologize to me for flirting with me and exhibiting your intimate parts to me by wearing your uniform pants skin tight. You were the only female officer . . . who always made direct eye contact in a flirtatious manner towards me You were also the only female officer who always wore her uniform pants skin tight to the point your intimate parts and your underwear lines were displayed in a unit with about 280 male offenders and around me. Please respond within 5-working days.

Koochiching County petitioned the district court to order Fairbanks committed as a sexually dangerous person (SDP) and a sexual psychopathic personality (SPP), citing an independent review of Fairbanks's record by Dr. Elizabeth Barbo. The district court

conducted a civil-commitment bench trial. Two court-appointed examiners—Drs. Paul Reitman and Lisa Keller—testified and provided reports. Both testified that Fairbanks met the criteria for SDP and SPP commitment. Fairbanks refused to testify when the state called him as a witness.

The district court made extensive findings and concluded that Fairbanks met the statutory requirements to be committed, crediting the experts’ testimony, their reports, or the official record, for each of the commitment elements. The district court indeterminately committed Fairbanks as an SDP and SPP.

Fairbanks appeals.

DECISION

Fairbanks urges us to reverse the district court’s order of his civil commitment. Fairbanks argues that the district court’s findings lack a sufficient factual basis to conclude that he engaged in a course of harmful sexual conduct as required for commitment as an SDP. He argues too that, because he has not engaged in a course of harmful sexual conduct, the district court could not then conclude that he engaged in a habitual course of sexual misconduct as required for SPP commitment. And Fairbanks contends that the district court failed to make sufficiently particularized findings of fact to commit him. The arguments are wholly unconvincing.

I

We are not persuaded by Fairbanks’s argument that the district court’s findings do not provide the factual basis necessary to conclude that he is an SDP. An appeal from civil commitment leads us to examine the district court’s findings of fact for clear error,

reviewing the record in the light most favorable to those findings and giving due deference to the district court as the best judge of witness credibility. *In re Civ. Commitment of Spicer*, 853 N.W.2d 803, 807 (Minn. App. 2014); *In re Civ. Commitment of Crosby*, 824 N.W.2d 351, 356 (Minn. App. 2013), *rev. denied* (Minn. Mar. 27, 2013). And we review *de novo* whether the statutory standards for commitment have been met by clear and convincing evidence. *In re Thulin*, 660 N.W.2d 140, 144 (Minn. App. 2003). Fairbanks’s quest to overturn his SDP commitment fails under this standard.

We simply reject Fairbanks’s assertion that the district court failed to show he engaged in a course of harmful sexual conduct. An SDP commitment requires clear and convincing evidence that the committee “has engaged in a course of harmful sexual conduct.” Minn. Stat. §§ 253D.02, subd. 16(a)(1), 253D.07, subd. 3 (2024). “‘Harmful sexual conduct’ means sexual conduct that creates a substantial likelihood of serious physical or emotional harm to another.” Minn. Stat. § 253D.02, subd. 8(a) (2024). The district court found that Drs. Reitman and Keller both credibly opined that Fairbanks had engaged in a course of harmful sexual conduct. It concluded that Fairbanks’s convicted offenses in 1992, 1997, and 2000 alone constitute a course of harmful sexual conduct, and “his sexually motivated assaults, exposures to female corrections officers, and stalking of at least one correctional officer add to his course of harmful sexual conduct.” The district court’s rationale is sound.

Fairbanks concedes that his criminal-sexual-conduct conviction in 1997 qualifies as harmful sexual conduct under the SDP statute but argues that the district court erroneously relied on this conviction to read sexual motivations into his other criminal convictions. But

as we have previously reasoned, the civil-commitment proceeding does not rest on an “isolated snapshot” of a person. *Crosby*, 824 N.W.2d at 358. It instead considers whether a committee’s “relevant sexual history and recent sexual conduct exposes a developing story that will, if unaltered, likely culminate in harmful sexual conduct.” *Id.* The district court may therefore consider sexual motivations of Fairbanks’s other crimes comprehensively within the context of Fairbanks’s pattern of sexual behavior. The record supports the district court’s findings that Fairbanks’s attacks on women in 1992 and 2000 were sexually motivated. Regarding Fairbanks’s 1992 assault, the district court found that Fairbanks retaliated with extreme violence against a young woman who refused his sexual advances. This finding is supported by the facts of this offense and by Dr. Reitman’s report, which acknowledges tones of serious sexual aggression in the attack. And regarding Fairbank’s 2000 attack on the prison guard, the district court’s conclusion that there is no legitimate, nonsexual reason that Fairbanks’s pants would have been undone is also supported by the record and the reports of Drs. Reitman and Keller. Both doctors include this offense as a sex offense. The district court’s findings of sexual motivations for Fairbanks’s exposure and masturbation incidents are also supported by the record, which evidences an unbroken storyline of a man who uses violence and intimidation against women to sexually gratify himself.

Fairbanks takes issue with the district court’s consideration of his attempted criminal-sexual-conduct charge from 2000 and his other infractions in prison to establish a course of harmful sexual conduct because they did not result in convictions. But we have held that “[a]n examination of whether an offender engaged in a course of harmful sexual

conduct takes into account both conduct for which the offender was convicted and conduct that did not result in a conviction.” *In re Civ. Commitment of Stone*, 711 N.W.2d 831, 837 (Minn. App. 2006), *rev. denied* (Minn. June 20, 2006). We see no error in the district court’s inclusion of Fairbanks’s offenses that did not result in criminal-sexual-conduct convictions when assessing whether Fairbanks engaged in a course of sexual misconduct. The record supports the finding that those offenses constitute clear and convincing evidence of harmful sexual conduct under the SDP statute.

We are not persuaded otherwise by Fairbanks’s contention that the district court failed to properly find that his sexual conduct toward female prison guards was “harmful.” The statute provides that harmful conduct is that which “creates a substantial likelihood of serious physical or emotional harm to another.” Minn. Stat. § 253D.02, subd. 8(a). The district court need not find that Fairbanks’s victims actually suffered serious harm, only that serious harm is the “substantially likel[y]” result of his behavior. *See Stone*, 711 N.W.2d at 837. The district court properly relied on Drs. Reitman and Keller in analyzing the “harm” element, crediting both doctors on their expertise, reports, and testimony about the harm sexual-assault victims tend to suffer. Dr. Reitman testified that the prison guards would face emotional harm and Dr. Keller opined that these victims would face *serious* emotional harm from contending with Fairbanks’s actions in their workplace. And the district court aptly recognized the statutory presumption of harm to the victims involved in Fairbanks’s 1992, 1997, and 2000 convictions. *See* Minn. Stat. § 253D.02, subd. 8(b)–(c) (2024). The district court did not erroneously conclude that Fairbanks’s conduct created a substantial likelihood of serious emotional harm to his victims.

Fairbanks's related arguments need little discussion. The district court had no statutory duty to analyze each of his prison-exposure and masturbation incidents individually. And because we generally do not consider arguments not raised before and decided by the district court, *see Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988), we need not address his contention that the district court errantly relied on his refusal to testify to draw an adverse inference that his actions were sexually motivated. Before he refused to testify, Fairbanks acknowledged that the refusal could result in the adverse inference. And in any event, the inference is unnecessary to support the district court's finding on that issue because there is substantial record evidence already supporting the court's determination. We turn to the district court's SPP decision.

II

Fairbanks argues that the district court failed to find that he had engaged in a habitual course of sexual misconduct under the SPP statute. To support an SPP commitment, the state must prove by clear and convincing evidence that the committee has evidenced a "habitual course of misconduct in sexual matters." Minn. Stat. §§ 253D.02, subd. 15, 253D.07, subd. 3 (2024). Fairbanks argues specifically that, because the district court failed to properly conclude that he engaged in a course of harmful sexual conduct under the SDP statute—an argument we have already rejected—his conduct could not have established this similar element in the SPP statute given what he calls its higher "volitional threshold." Fairbanks does not adequately explain his assertion that this element of the SPP statute is a higher standard than the similar element under the SDP statute. The district court credited the testimony of Drs. Reitman and Keller as well as Dr. Barbo's pre-petition

report when it concluded that the state had satisfied the SPP element. We see no error and, given the lack of reasoned argument, do not look closer into the district court's analysis.

III

Fairbanks maintains finally that the district court's findings were insufficient and relied too heavily on restating the experts' testimony in support of its findings, which Fairbanks argues were merely conclusory. We have held that a district court order is insufficient when it does not "permit meaningful appellate review" by "not identify[ing] the facts that the district court has determined to be true and the facts on which the district court's decision is based." *Spicer*, 853 N.W.2d at 811. The district court's order is well written and thorough, properly detailing its fact findings and the reasons for its decision. The district court made express findings on particularly salient issues, such as the incidents that make up Fairbanks's course of conduct. It did not merely restate claims by prefacing them with language such as "the petition claims" or "the expert testified." The district court engaged in a painstaking independent analysis of a standard sexual-recidivism assessment by evaluating each of the ten criteria to reconcile the experts' slightly different results. The district court disagreed with the experts' opinions or implications that Fairbanks's 1988 offense was sexually motivated. It carefully distinguished the weight it gave to the experts' opinions: "Dr. Reitman's most salient opinions as to the facts this Court must find to support commitment as SDP and SPP were persuasive and further, were supported by the overwhelming totality of the evidence in this case" and "Dr. Keller[']s testimony] was extremely credible and presented in a matter-of-fact way. The Court found her testimony insightful and helpful" And for each statutory element, the district court assigned

specific credibility to the experts' analyses. It also thoroughly applied the *Linehan* factors and adequately weighed the related evidence. *See In re Linehan*, 518 N.W.2d 609, 614 (Minn. 1994). The district court's order reflects a thorough, independent analysis of the record, risk-assessment tools, and legal authority, and it provides us an ample basis for review.

We add that we received a motion to strike a citation of supplemental authority while this case has been pending in this court and that we took the motion under advisement. But the motion seeks to strike correspondence that was never filed in this court. We therefore deny the motion as unnecessary.

Affirmed; motion denied.