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

**STATE OF MINNESOTA
IN COURT OF APPEALS
A25-0338**

In the Matter of the Civil Commitment of: Luke Adam Frank.

**Filed August 4, 2025
Affirmed
Connolly, Judge**

Chippewa County District Court
File No. 12-PR-23-611

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Keith Ellison, Attorney General, Angela Helseth Kiese, Assistant Attorney General, St. Paul, Minnesota (for respondent commissioner of human services)

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Considered and decided by Connolly, Presiding Judge; Ross, Judge; and Wheelock, Judge.

NONPRECEDENTIAL OPINION

CONNOLLY, Judge

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

clear and convincing evidence that a less-restrictive alternative to commitment is available and appropriate. We affirm.

FACTS

Appellant Luke Adam Frank was born in May 1989, and is now 36 years old. When appellant was 16 years old, he sexually abused his eight-year-old cousin, M.G. Appellant was charged with one count of first-degree criminal sexual conduct and two counts of second-degree criminal sexual conduct; he later pleaded guilty to second-degree criminal sexual conduct and was placed on probation.

In late 2007, when appellant was 18 years old and still on probation for his offense against M.G., appellant sexually abused 14-year-old J.P., who was considered learning disabled. Appellant was charged with, and pleaded guilty to, third-degree criminal sexual conduct. The district court sentenced appellant to a stayed sentence of 36 months in prison and placed him on probation for five years.

In October 2020, a coworker of appellant's then girlfriend, M.B., reported to law enforcement that she became concerned after overhearing M.B. comment that she had been sleeping on the couch because appellant wanted to sleep alone with her 11-year-old daughter, I.B. After I.B. and her 12-year-old sister, R.P., were removed from the home and placed in foster care, they reported to their child-care provider that they had been sexually abused by appellant. I.B. told the child-care provider that when she slept in the basement with appellant, he took off her clothes and touched her private area with his hands and penis. According to I.B., appellant said that he wanted I.B. to take over her "mom's spot."

Both R.P. and I.B. were interviewed by law enforcement. R.P. disclosed that, when appellant would take her on trips in his semi-truck, he would rub her nipples over her clothes and watch her in the shower while he was shaving. I.B. disclosed that appellant sexually abused her for over a year in two different houses as well as in his semi-truck. I.B. reported that, during the abuse, appellant would touch her privates, and she would touch his “nuts” with her hand; that appellant simulated sexual intercourse with I.B. on top of him and that, when they were done, there was “white stuff” on her private area; that she was too scared to say “no”; and that appellant told her not to tell anyone about the abuse.

Appellant was charged with three counts of first-degree criminal sexual conduct and one count of second-degree criminal sexual conduct for his conduct related to I.B. R.P. later made additional disclosures related to appellant’s abuse. R.P. reported that appellant penetrated her vagina with a finger; licked her vagina; penetrated her vagina with his penis, which hurt; put his hand over her mouth and said, “shh,” during the abuse; and told her not to tell her mom.

Following R.P.’s additional disclosures, appellant was charged by amended complaint with three counts of first-degree criminal sexual conduct and one count of second-degree criminal sexual conduct related to R.P. A few days later, appellant was charged with failing to register as a predatory offender. Appellant later pleaded guilty to the failure-to-register charge, as well as two counts of gross misdemeanor fifth-degree criminal sexual conduct—one count each related to both I.B. and R.P. He was then sentenced in June 2022, to two consecutive 365-day jail sentences for the fifth-degree criminal-sexual-conduct offenses, and a year and a day for the failing-to-register offense.

During his incarceration on his failure-to-register offense, appellant was deemed appropriate for sex-offender treatment in MSOP but was not in prison long enough to complete treatment. Respondent Chippewa County later retained an independent expert, Dr. Sara Vaccarella, to review appellant's records and provide an opinion on whether appellant satisfied the criteria for civil commitment as an SDP and as a person with an SPP. Although Dr. Vaccarella opined that appellant met the criteria for commitment as an SDP, and that he was a person with an SPP, she recommended proceeding on an SDP petition only. Dr. Vaccarella also recommended that appellant "be offered the opportunity to complete treatment prior to a petition being filed, or prior to a civil commitment being ordered, if such an option exists."

In May 2024, respondent filed a petition seeking a determination that appellant meets the criteria for civil commitment as an SDP and as a person with an SPP. Dr. Linda Marshall was appointed as the first examiner and, at appellant's request, Dr. Michael Thompson was appointed as the second examiner. A trial was then held on respondent's commitment petition at which respondent called appellant, M.B., I.B., R.P., Dr. Marshall, and Dr. Thompson. Appellant called his cousin, Dr. Vaccarella, his former probation officer, his pastor, a friend, and a clinician at MSOP.

Both I.B. and R.P. testified extensively about the sexual abuse they endured from appellant. And both Dr. Marshall and Dr. Thompson testified that that appellant satisfied the criteria for civil commitment as an SDP and as a person with an SPP.

Dr. Vaccarella testified that she recommended committing appellant as an SDP. She also testified that she did not find appellant to be a person with an SPP because she only

found him to meet three of the four statutory conditions for SPP commitment. But she acknowledged that she was unaware that “the law only requires” that an individual satisfy one of the four statutory conditions to qualify as a person with an SPP. *See* Minn. Stat. § 253D.02, subd. 15 (2024). And she acknowledged that, if the law only required that appellant meet one or more of the SPP conditions, he is a person with an SPP. Dr. Vaccarella further testified that, although she recommended that appellant be provided with the opportunity to do sex-offender treatment before civil commitment, she was unaware that appellant was no longer under the supervision of the department of corrections.

The district court determined that appellant “satisfied the requirements for commitment” as an SDP and as a person with an SPP. The district court also determined that MSOP is “an appropriate treatment program for [appellant], and there are no less restrictive alternatives that meet [appellant’s] needs and the requirements of public safety.” The district court, therefore, indeterminately committed appellant to MSOP as an SDP and as a person with an SPP. This appeal follows.

DECISION

The Minnesota Commitment and Treatment Act: Sexually Dangerous Persons and Sexual Psychopathic Personalities, Minn. Stat. §§ 253D.01-.36 (2024), 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) (2024). Under that standard, this court reviews a district court’s factual findings for clear error “to determine whether they are supported by the record as a

whole,” *In re Civ. Commitment of Ince*, 847 N.W.2d 13, 22 (Minn. 2014), and defers to a district court’s credibility determinations, *In re Civ. Commitment of Stone*, 711 N.W.2d 831, 839 (Minn. App. 2006), *rev. denied* (Minn. June 20, 2006). When applying the clear-error standard of review, we 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 Civ. Commitment of Kenney*, 963 N.W.2d 214, 221-22 (Minn. 2021). Further, we “need not go into an extended discussion of the evidence to prove or demonstrate the correctness of the findings of the [district] court.” *Id.* at 222 (quotation omitted). We review de novo whether the facts “satisfy the statutory standard for civil commitment.” *Stone*, 711 N.W.2d at 836.

I. The district court did not clearly err in finding that clear and convincing evidence supports appellant’s commitment as an SDP.

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). “Harmful sexual conduct” is “sexual conduct that creates a substantial likelihood of serious physical or emotional harm to another.” *Id.*, subd. 8(a).

A. Course of harmful sexual conduct

The district court determined that appellant “has engaged in a course of harmful sexual conduct for purposes of the SDP law,” which “includes his conviction offenses, including his offenses against [I.B.] and [R.P.]” The district court also determined that

these offenses “have occurred over a prolonged period,” and have “included fondling, simulated sexual intercourse, masturbation, and penetration. In addition, he has used threats related to his sexual abuse,” which “poses a substantial likelihood of serious physical or emotional harm.”

Appellant challenges the district court’s determination that he engaged in a course of harmful sexual conduct by arguing that his fifth-degree criminal-sexual-conduct offenses against I.B. and R.P. are not “within the harmful sexual conduct definition” contained in section 253D.02, subdivision 8. But 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. In other words, “the 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.” *In re Civ. Commitment of Ramey*, 648 N.W.2d 260, 268 (Minn. App. 2002), *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.

Here, the fifth-degree criminal-sexual-conduct offenses against I.B. and R.P. arose from allegations of first-degree criminal sexual conduct. Such conduct can be considered in determining whether appellant engaged in a course of harmful sexual conduct. *See Stone*, 711 N.W.2d at 837. Both I.B. and R.P. testified at length about the sexual abuse they endured by appellant and the resulting harm they suffered. Although appellant

challenges I.B. and R.P.'s credibility, and maintains that he engaged in inappropriate touching of their breasts, as evidenced by his guilty plea to fifth-degree criminal sexual conduct, the district court specifically found I.B. and R.P.'s testimony to be credible and did not find appellant's testimony on the issue to be credible. It is well settled that we defer to this credibility determination, as well as the district court's credibility determinations regarding the experts' testimony that appellant engaged in a course of harmful sexual conduct. *See id.* at 839. As such, the district court did not err in considering the allegations made by I.B. and R.P. in determining that appellant engaged in a course of harmful sexual conduct.

Appellant also argues that the district court erred in finding that he engaged in a course of harmful sexual conduct because there was "a significant break in time between the inappropriate events." Indeed, the district court found, and the record reflects, that appellant pleaded guilty to (1) second-degree criminal sexual conduct in 2006, for conduct against M.G.; (2) third-degree criminal sexual conduct in 2008, for conduct against J.P.; and (3) two counts of fifth-degree criminal sexual conduct in 2022, for offenses against I.B. and R.P. Although there was a gap in time between the second offense and the conduct related to the third and fourth offenses, such a period of time during which appellant may not have committed any offenses does not preclude a finding of a course of harmful sexual conduct. *See Stone*, 711 N.W.2d at 838. Both Dr. Marshall and Dr. Thompson testified that, based on appellant's conduct related to his offenses, appellant engaged in a course of harmful sexual conduct for SDP purposes. The district court specifically credited this testimony, and we defer to that credibility determination. *See id.* at 839. The district court

did not clearly err in determining that appellant engaged in a course of harmful sexual conduct.

B. Sexual, personality, or other mental disorder

Next, appellant challenges the district court's determination that he "currently suffers from a sexual, personality or other such mental disorder," claiming that the "sexual personality disorder presented by the examiners was paraphilic disorder not otherwise specified," and that "[t]his diagnosis is suspect in that it is not within the eight categories of paraphilia." And he argues that his "not otherwise specified" diagnosis "carries an absence of professionally recognized diagnosis" and "does not rise to the level of clear and convincing evidence that [he] currently suffers from a sexual personality or other such mental disorder."

We are not persuaded. Appellant cites no authority for his position that the experts' diagnoses does not satisfy the SDP criteria for the manifestation of a "sexual, personality, or other mental disorder or dysfunction" under section 253D.02, subdivision 16(a). And the supreme court has said that a person's disorder or dysfunction must "not allow them to adequately control their sexual impulses, making it highly likely that they will engage in harmful sexual acts in the future." *In re Linehan*, 594 N.W.2d 867, 876 (Minn. 1999).

Here, the district court found that there is "clear and convincing evidence that [appellant] has sexual, personality, or other mental disorders as required for SDP commitment," and that, "as a result of these disorders, [appellant] lacks adequate control over his sexually harmful behavior." The district court's findings are supported by the record. Dr. Marshall diagnosed appellant with sexual disorder of Unspecified Paraphilic

Disorder (non-consent), Unspecified Depressive Disorder, and Unspecified Personality Disorder, and opined that her paraphilic disorder diagnosis is based on appellant's recurrent intense fantasies, urges, or behaviors of sexual assault of underage females who could not consent. She also diagnosed appellant with an Unspecified Personality Disorder due to his maladaptive personality traits and noted that he has a history of a variety of other diagnoses.

Similarly, Dr. Thompson diagnosed appellant with Unspecified Paraphilic Disorder. He also opined that other diagnoses may be applicable, but the paraphilic disorder diagnosis appears directly related to appellant's risk. And although Dr. Thompson testified that he did not diagnose a personality disorder, he stated that he did not disagree with Dr. Marshall's personality disorder diagnosis. Rather, he testified that it is difficult to make such a diagnosis solely on records, and that he did not do enough "digging" on the issue.

The district court found that the experts have the "experience, education, and training that gives them a basis to have an opinion about [appellant's] current mental disorders," and based its decision on the experts' opinions. It was within the district court's purview to rely on the experts' opinions regarding whether appellant has sexual, personality, or other mental disorders as required by the SDP statute. *See Ince*, 847 N.W.2d at 23-24 (stating that 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). Accordingly, the district court did not err in determining that appellant satisfies this requirement for commitment as an SDP.

C. *Highly likely to reoffend sexually*

The third element of the SDP statute requires that appellant be “likely to engage in acts of harmful sexual conduct.” Minn. Stat. § 253D.02, subd. 16(a). In assessing this factor, the supreme court has identified the following factors, known as the *Linehan* factors, as relevant when determining the danger an offender poses to the public:

(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.

In re Linehan, 518 N.W.2d 609, 614 (Minn. 1994). These factors apply in both SDP and SPP cases. *In re Linehan*, 557 N.W.2d 171, 189 (Minn. 1996), *vacated and remanded on other grounds sub nom.*, *Linehan v. Minnesota*, 522 U.S. 1011 (1997).

The district court here analyzed the *Linehan* factors as they related to both appellant’s civil commitment as an SDP and as a person with an SPP. Without specifying which *Linehan* factor he is challenging, appellant generally argues that the record does not support a finding that he is highly likely to reoffend. To support his position, appellant contends that the district court failed to consider Dr. Vaccarella’s opinions related to appellant’s maturation process, as well as other witness testimony that purportedly rebuts the district court’s finding that appellant is likely to reoffend.

Appellant's argument asks us to reweigh the evidence, which we cannot do. *See Kenney*, 963 N.W.2d at 221. The district court here thoroughly analyzed the *Linehan* factors and made detailed findings with respect to each factor. In making these findings, the district court relied on the evidence presented by respondent and determined that this evidence credibly showed that appellant is highly likely to reoffend. Although appellant refers to testimony that may support his position that he is unlikely to reoffend, the district court specifically found this testimony to not be credible and we defer to that determination. *See Stone*, 711 N.W.2d at 839. Therefore, in light of the record as a whole, the district court did not err in determining that respondent proved by clear and convincing evidence that appellant meets the criteria for civil commitment as an SDP.

II. The district court did not clearly err in finding that clear and convincing evidence supports appellant's commitment as a person with an SPP.

An SPP is the existence 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.

Similar to his arguments related to his commitment as an SDP, appellant argues that the district court erred in finding that he is a person with an SPP because his "behavior does not demonstrate a longstanding pattern of sexual misbehavior," and instead shows "a

significant break in time between the inappropriate events.” He contends that this “break in time does not support the finding of a habitual course of misconduct in sexual matters.”

Appellant’s argument is unavailing. 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. Here, the district court found that appellant’s “offenses occurred over several years and were consistent across time against a range of victims in various circumstances and unimpeded by external resources that were in place to orient him to change. He reoffended even after completing sex offender treatment.” Thus, the district court determined that appellant “has engaged in a habitual course of misconduct in sexual matters.”

The district court’s findings are supported by the record. Again, the record reflects that, between 2006, and 2022, appellant was convicted of four criminal-sexual-conduct offenses. Although there was a gap between some of appellant’s offenses, Dr. Thompson opined that this gap does not negate the habitual-course requirement, but confirms the habitual nature of appellant’s behavior and lack of control over his sexual impulses. Specifically, Dr. Thompson testified that appellant

is an individual who . . . despite treatment and legal sanctions, the habitual nature of his sexual behavior is such that a ten year span went by and he still went ahead and committed additional sexual offenses. So to me, the . . . course component is actually enhanced by significant break of . . . time between the . . . periods of time in which he offended.

Dr. Marshall agreed that appellant’s “sexual misconduct was habitual and was a course.”

The district court found the experts’ testimony credible, and we defer to that determination.

See id. at 839. As such, the district court did not clearly err in determining that appellant has engaged in a habitual course of misconduct in sexual matters.

Appellant also argues that, because Dr. Vaccarella “did not recommend that a commitment go forward on the claim that [a]ppellant was” a person with an SPP, her opinions “raise serious question[s] as to the appropriateness” of the district court’s findings. But, as with the rest of appellant’s arguments, this argument attacks the district court’s credibility determinations and the weight the district court gave to the evidence presented. Under the clear-error standard of review, we do not reweigh the evidence and do not reconcile conflicting evidence. *See Kenney*, 963 N.W.2d at 221-22. The district court made over 500 findings of fact, demonstrating the thoroughness of the district court’s order, and appellant has not shown that any of the district court’s findings are clearly erroneous or otherwise unsupportive of the district court’s decision. Accordingly, the district court did not err in determining that appellant is a person with an SPP.

III. The district court did not clearly err in finding that civil commitment is appropriate because there are no less restrictive alternatives that meet appellant’s needs and the requirements of public safety.

Appellant challenges the district court’s decision that, even assuming that he qualifies as an SDP or person with an SPP, appellant failed to present clear and convincing evidence that a less restrictive alternative existed. Minnesota law 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.

Minn. Stat. § 253D.07, subd. 3. Appellant bears the burden of establishing that a less-restrictive alternative to commitment exists. *Ince*, 847 N.W.2d at 25.

Appellant argues that he “did present a plan for a less restrictive and more appropriate treatment plan” than civil commitment, which includes outpatient treatment. To support his position, appellant asserts that he “does not risk public safety,” and that he has experience as an “over the road truck driver” who possesses a commercial driver’s license “that would quickly lead to a trucking job.” Appellant claims that this “employment would provide funds to meet the expenses of treatment,” and that he has “a place to live and a support network in his cousin, his pastor and a friend.”

We disagree. The district court considered appellant’s position and rejected it, determining that, “because [appellant] is highly likely to re-offend sexually without intensive sex offender treatment and has an utter lack of power to control his sexual impulses, it is inappropriate to place [appellant] in the community.” In making this determination, the district court noted that appellant “will be under no form of supervision if released into the community, and while his dedication to post-incarceration treatment is laudable, it is too little, too late.” The district court also recognized that the “financial requirements for self-financed sex offender treatment would be substantial,” and that appellant “has not developed sufficient skills or a support system so that he can be safely released to the community.” And the district court found that, although appellant has “completed sex offender treatment in the past, he reoffended after treatment, so . . . treatment completion is not a protective factor for him.” Thus, the district court determined

that MSOP “is an appropriate treatment program for [appellant], and there are no less restrictive alternatives that meet [appellant’s] needs and the requirements of public safety.”

The district court’s findings are supported by the record. Both Dr. Marshall and Dr. Thompson testified that outpatient sex offender treatment is insufficient for appellant and would not be safe for him or the community because he does not have enough restraint to keep himself from reoffending and refraining from all access to children. In fact, Dr. Thompson testified that appellant “requires intensive sexual offender treatment with . . . a hammer over his head,” and that such treatment needs to be “under the direction or supervision of the Court. Otherwise I don’t believe that he’ll engage in it.”

Moreover, both experts testified that the only viable treatment option for appellant is MSOP. And, as respondent points out, appellant failed to “produce clear and convincing evidence that any outpatient sex offender treatment program would accept him under civil commitment.” Rather, appellant testified that he has not gone through any kind of admissions process at any program and has only left messages and sent a letter. Although appellant disagrees with the weight given to the experts’ opinions by the district court, and argues that his conduct should not be viewed as posing a danger to the public because the fifth-degree criminal-sexual-conduct offenses do “not present such a level of danger that would cause the need for secure, involuntary in-patient care,” appellant’s attempts to minimize his offenses against I.B. and R.P. conflict with the district court’s credibility determinations. Again, we defer to this credibility determination and the weight to be given to the evidence presented at trial. Therefore, on this record, the district court did not err in

determining that appellant failed to establish a less-restrictive alternative to commitment by clear and convincing evidence.

Affirmed.