STATE OF MINNESOTA
IN COURT OF APPEALS
A24-0102

In the Matter of the Civil Commitment of: Nathaniel Lee Betzler.

Filed July 1, 2024
Affirmed
Smith, Tracy M., Judge

Stearns County District Court
File No. 73-PR-19-7551

Tucker L. Isaacson, Bradshaw & Bryant, PLLC, Waite Park, Minnesota (for appellant Nathaniel Lee Betzler)

Janelle P. Kendall, Stearns County Attorney, Nathan S. Crowe, Assistant County Attorney, St. Cloud, Minnesota (for respondent Stearns County Human Services)

Considered and decided by Bjorkman, Presiding Judge; Smith, Tracy M., Judge; and Slieter, Judge.

NONPRECEDENTIAL OPINION

SMITH, TRACY M., Judge

On appeal from his commitment as a sexually dangerous person (SDP) and as a sexual psychopathic personality (SPP), appellant Nathaniel Lee Betzler argues that the district court erred by determining that (1) Betzler meets the definitions of an SDP and an SPP and (2) no less restrictive alternative to commitment exists. We affirm.

FACTS

In August 2022, respondent Stearns County Human Services petitioned for civil commitment of Betzler as an SDP and an SPP. Following a commitment hearing, the

district court granted the county's petition and indeterminately committed Betzler to the care of the Minnesota Commissioner of Human Services for treatment in the Minnesota Sex Offender Program (MSOP) as an SDP and an SPP.

Betzler's history of criminal-sexual-conduct offenses began when he was a juvenile. In 1990, when he was 13 years old, Betzler committed fourth-degree criminal sexual conduct against a seven-year-old relative. Betzler put Vaseline on his penis and placed his penis on his relative's upper leg. His relative stated that it hurt. Betzler also asked his relative to "do the wild thing" and asked if she would let him put his penis in her "butt," but she did not let him. The district court adjudicated Betzler delinquent, placed him on probation, and ordered him to participate in sexual-offender treatment.

In 1997, Betzler committed fifth-degree criminal sexual conduct and pleaded guilty to a gross misdemeanor. At a party, after an intoxicated guest went to sleep, Betzler removed her pants and underwear and sexually assaulted her. He was convicted, sentenced to one year in jail with all but 45 days stayed, and required to complete sexual-offender treatment. Betzler later violated his probation requirements, including by failing to complete sexual-offender treatment, and the district court revoked the stay and ordered the remaining 320 days of jail time executed.

Between 1998 and 2002, Betzler was not in compliance with his requirement to register as a sex offender, although he was not prosecuted for his noncompliance.

In 2005, Betzler committed third-degree criminal sexual conduct and pleaded guilty to the charged conduct. After a wedding, Betzler and his friends offered a woman a ride home in a van. The van traveled through a remote area that the woman was unfamiliar with,

and Betzler told the woman that he had a gun. Betzler sexually assaulted the woman in the van. The district court sentenced him to 96 months in prison but stayed the execution of his sentence and placed him on probation. Betzler's conditions of probation included that he complete sexual-offender treatment, that he have no contact with women under age 18, and that he not use pornography.

In 2010, Betzler violated his conditions of probation by failing to complete sexual-offender treatment after he was terminated from the program he was attending. He served 180 days in jail for this violation.

That same year, after being released from jail, Betzler again violated his conditions of probation. He had a 16-year-old girl staying with him at his apartment and had pornographic photos of her on his cellphone. Based on these violations, his stay was revoked and the district court executed his 96-month sentence. Betzler was also criminally charged for that conduct, and he was convicted of possession of child pornography and sentenced to 50 months in prison. He was ordered to be on conditional release for ten years following his incarceration and was required to register as a predatory offender for life. This offense is Betzler's most recent conviction.

In 2011, while serving his prison sentence, Betzler was admitted to MSOP at the Minnesota Department of Corrections (DOC) location. Although he made progress in the treatment program, he was discharged from the program in 2013 for fighting with his roommate. He was readmitted to MSOP at the DOC location in 2014. He once again made progress in treatment. In 2016, he was released from prison on probation, and therefore discharged from MSOP.

Betzler was placed on intensive supervised release (ISR). His conditions of supervised release included that he complete sexual-offender treatment, that he inform his ISR supervisor of his activities, and that he not possess dangerous weapons. In 2017, Betzler took a day of sick leave without notifying his probation agents. A coworker alleged that Betzler sexually assaulted her on that day, although she later stated that their interaction had been consensual. Betzler was arrested based on the alleged assault and was discharged from his sexual-offender treatment program based on his unavailability. Betzler was returned to incarceration for 100 days for violating his conditions of release, based on his failure to notify his agents of his sick leave, his failure to complete sexual-offender treatment, and his possession of a pocketknife in his residence.

Betzler resumed sexual-offender treatment when he was released on ISR. In 2019, the sexual-offender treatment program discharged Betzler for lack of progress, causing Betzler to fail to complete sexual-offender treatment. He also had alcohol in his residence, which was prohibited under his conditions of release. Based on these violations of his conditions of release, Betzler was returned to incarceration.

Betzler was released to the Alpha Emergence sexual-offender treatment program (Alpha) on January 25, 2021. One condition of his release was that he submit to GPS monitoring. Also, Alpha had directed Betzler to have no visitors. On January 30, Betzler persuaded Alpha staff into letting him go to a last-minute medical appointment, at which he persuaded the medical staff to remove his GPS bracelet and at which a visitor, his wife, was present. Betzler met with ISR agents to discuss this infraction of his conditions of ISR.

In December 2021, ISR agents searched Betzler's residence and found pornographic DVDs that he admitted he used for masturbation purposes. Betzler was disciplined for this infraction of his conditions of ISR.

For two weeks in January 2022, Betzler disabled the monitoring software on his cellphone. In February 2022, after the monitoring software had been re-enabled, Betzler engaged in online searches for sexually explicit videos and admitted to viewing sexually explicit videos that he had found. He was arrested for this violation of his conditions of ISR but was released on ISR to the Alpha program. In June 2022, Betzler again accessed sexually explicit photos on his cellphone and was disciplined for his violation of his terms of release.

Betzler also reported unadjudicated sexual misconduct, including committing sexual assaults when he was a juvenile, coercing multiple women into engaging in sexual intercourse with him, having sexual thoughts about minors, and having fantasies of forcing sex on another person.

Prior to the commitment hearing, three experts evaluated Betzler, and each authored a report of their opinion. Before the county filed its petition to commit Betzler, it engaged Amber Lindeman, Psy.D., to review Betzler's records and determine whether he meets the statutory criteria for commitment as an SDP or SPP. Dr. Lindeman reviewed police records, psychosexual evaluations, actuarial risk assessment scores, and records from the DOC. She opined that Betzler meets the criteria for commitment as an SDP and an SPP.

Linda Marshall, Ph.D., was appointed as an examiner by the district court and completed a psychological evaluation of Betzler. Dr. Marshall reviewed Betzler's records

and interviewed him. She opined that Betzler meets the criteria for commitment as an SDP and an SPP. She wrote that Betzler "needs continued sex offender specific treatment and the structure and support of a secure treatment facility that offers cognitive behavioral therapy and relapse prevention with phases leading to community reintegration and eventual release."

Upon Betzler's request, Tyler Dority, Ph.D., a licensed psychologist, was also appointed as an examiner by the district court and completed a psychological evaluation of Betzler. Dr. Dority reviewed Betzler's records and interviewed him. He opined that Betzler meets the criteria for commitment as an SDP and an SPP.

At the commitment hearing, Dr. Marshall and Dr. Dority testified, as did Betzler, Betzler's wife, two of Betzler's ISR supervisors, and the executive director of Alpha. The executive director of Alpha testified that Alpha was transitioning from providing inpatient services to providing outpatient services only. She testified that Betzler would be welcome back into the Alpha program, that the level of services provided in their intensive outpatient program was the same as the level of services formerly provided in their inpatient program, and that Alpha would help Betzler locate 24-hour supervised housing at a partner facility. She testified that the partner facilities were supervised but were not secure and that a patient could leave the facility.

In her testimony, Dr. Marshall opined that Betzler needed treatment in a secure setting. She also stated that she did not believe that the Alpha program had the level of security and structure necessary to treat Betzler. In his testimony, Dr. Dority opined that Betzler needed treatment in a setting "that has a significant amount of external controls"

and that that setting could be found at MSOP. In Betzler's testimony, he acknowledged that viewing pornography was part of his "offending cycle" and that his offending cycle culminates in him "acting out or offending."

The district court determined that Betzler was an SDP and an SPP and committed him indefinitely to the Minnesota Commissioner of Human Services for treatment in MSOP. Betzler filed a posttrial motion for a new trial, judgment notwithstanding the verdict, and new findings. He argued that Alpha was an appropriate less restrictive alternative than MSOP. The district court denied his motion.

Betzler appeals.

DECISION

I. The district court did not err by determining that Betzler meets the definitions of an SDP and an SPP.

Betzler argues that the district court erred by determining that he meets the definitions of an SDP and an SPP. To commit a person as an SDP or SPP, the petitioner must prove by clear and convincing evidence that the person meets the statutory definition of the term. Minn. Stat. § 253D.07, subd. 3 (2022). An appellate court reviewing a district court's commitment decision examines the factual findings for clear error. *In re Civ. Commitment of Stone*, 711 N.W.2d 831, 836 (Minn. App. 2006), *rev. denied* (Minn. June 20, 2006). When applying the clear-error standard of review, an appellate court (1) views the evidence in the light most favorable to the district court's findings, (2) does not reweigh the evidence, (3) does not engage in fact-finding, (4) does 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). Appellate courts review de novo whether the record contains clear and convincing evidence to support the district court's conclusion that the person meets the standard for civil commitment. *In re Civ. Commitment of Crosby*, 824 N.W.2d 351, 356 (Minn. App. 2013) (affirming commitment as SDP and SPP), *rev. denied* (Minn. Mar. 27, 2013).

A. SDP

Minnesota Statutes section 253D.02 (2022 & Supp. 2023) defines an SDP as "a person who: (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(a). "Harmful sexual conduct" is "sexual conduct that creates a substantial likelihood of serious physical or emotional harm to another." *Id.*, subd. 8(a). Betzler challenges the district court's determinations with respect to the first and third prongs.

In arguing that he has not engaged in a course of harmful sexual conduct under the first prong, Betzler focuses on the 12-year span between his most recent adjudicated sexual offense in 2010 and the county's petition for his commitment. While he acknowledges a 20-year history of offending up until 2010, he argues that, since that time, his conduct has not constituted harmful sexual conduct. Instead, he contends, he has only engaged in technical violations of ISR.

The incidents that establish a course of harmful sexual conduct can occur "over a period of time and need not be recent." *Stone*, 711 N.W.2d at 837. In addition, "the existence of a period in which a person has not committed sex offenses does not preclude a determination that he engaged in a course of sexual misconduct." *Id.* at 838. 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." *Id.* at 837.

With these principles in mind, and following *Kenney*'s guidance on the standard for reviewing a district court's findings of fact, we conclude that the record supports the finding that Betzler engaged in a course of harmful sexual conduct. The record includes adjudicated and unadjudicated sexual conduct that spanned at least 20 years. It is true that, as of the time of the petition, Betzler had not committed a sexual offense generating a conviction for 12 years. But, as Betzler acknowledges, about half of that time was spent in incarceration. During the other half, he was living in the community. But, during that time, Betzler engaged in conduct including possessing sexually explicit materials and searching for pornographic materials on his cellphone, even though he acknowledges that pornography use is part of his offending cycle. In her testimony, Dr. Marshall explained that Betzler's use of pornography is "the start of a cycle and as it goes along the more pornography he looks at it leads to eventually some type of assault usually." Betzler also engaged in attempts to avoid supervision, including disabling monitoring software to obtain unsupervised access to the internet. Considering Betzler's entire history, we discern no clear error in the district court's finding of a course of harmful sexual conduct.

Turning to the third prong, caselaw has established a multi-factor test to determine whether an individual is likely to engage in acts of harmful sexual conduct in the future. *In re Linehan*, 518 N.W.2d 609, 614 (Minn. 1994). These factors are: (a) the individual's demographics, (b) the individual's history of violent behavior, (c) the base rate statistics for violent behavior among other people of the individual's background, (d) the sources of stress in the individual's environment, (e) the similarity of the present or future context to the contexts in which the individual has used violence in the past, and (f) the individual's record in sex-therapy programs. *Id.*

Betzler argues that the district court erred by finding that he is likely to reoffend because his recent history includes only technical violations and not sexual offenses and because continued ISR will preclude any reoffense. We are not persuaded. The district court made findings specific to each of the *Linehan* factors outlined above. Regarding demographics, the district court considered Betzler's age of 46, his family history, and his "long history of sexual offenses as both a juvenile and an adult." Regarding history of violent behavior, the district court considered the fact that Betzler's offenses have involved manipulation and threatening behavior and that he continued to engage in sexual misconduct while under supervision. Regarding base rate statistics, the district court considered Betzler's scores on actuarial assessments that placed him at an above average risk of committing another sexual or violent sex offense. Regarding stress in the environment, the district court considered Betzler's history of noncompliance with rules and family conflict. Regarding present or future context, the district court considered Betzler's reoffenses while under supervision and in the community. Regarding record with

sex-therapy programs, the district court considered Betzler's failure to successfully complete a sex-treatment program. The district court also relied on the examiners' opinions, which it found credible, that, based on their assessments and the *Linehan* factors, Betzler is highly likely to engage in future acts of harmful sexual conduct. We discern no error in these findings.

The district court specifically addressed Betzler's argument that the evidence does not establish a likelihood of future harmful sexual conduct because he has not committed any adjudicated offenses since 2010. The district court recognized that Betzler has not had a conviction since that time, but it concluded that Betzler's 20-year history of violent behavior and his violations of treatment and supervision rules, including around pornography, support the conclusion that Betzler is likely to engage in additional harmful sexual conduct absent intervention. We are not persuaded that this conclusion was error.

Regarding Betzler's argument that ISR would prevent any future harmful sexual conduct, we are not persuaded. Betzler was not compliant with ISR rules. Among other things, he continued to view pornography in the past while on ISR, even though he admits that viewing pornography is part of his offense cycle. We are not persuaded that continued ISR compels the determination that Betzler is not likely to engage in acts of harmful sexual conduct.

Because the record supports the district court's factual findings and contains clear and convincing evidence to support the district court's conclusions on the first and third prongs, the district court did not err by concluding that Betzler meets the definition of an SDP.

B. SPP

Minnesota Statutes section 253D.02 defines an SPP as

> the existence in any person of such conditions of emotional instability, or impulsiveness of behavior, or lack of customary standards of good judgment, or failure to appreciate the consequences of personal acts, or a combination of any of these conditions, which render the person irresponsible for personal conduct with respect to sexual matters, if the person has evidenced, by a habitual course of misconduct in sexual matters, an utter lack of power to control the person's sexual impulses and, as a result, is dangerous to other persons.

Minn. Stat. § 253D.02, subd. 15. "A person may be committed as [an SPP] on clear and convincing proof that [they] (1) ha[ve] engaged in a habitual course of misconduct in sexual matters; (2) ha[ve] an utter lack of power to control [their] sexual impulses; and (3) [are], therefore, dangerous to others." *In re Kindschy*, 634 N.W.2d 723, 732 (Minn. App. 2001) (citing Minn. Stat. § 253B.02, subd. 18b (2000), now located at Minn. Stat.§ 253D.02, subd. 15), *rev. denied* (Minn. Dec. 19, 2001). Betzler challenges the district court's determinations with respect to all three prongs.

Betzler argues that the prongs are not met because he has not committed a sex offense since 2010, has been on ISR since 2010, understands that he needs more treatment, and did not reach the level of psychopathy on one test score. He contends that he could not have gone 13 years without committing a new offense if he had an utter lack of power to control his sexual impulses. We are not persuaded that the district court erred.

The district court addressed each of the three prongs identified by caselaw. Regarding the first prong, habitual course of misconduct in sexual matters requires "evidence of a pattern of similar conduct." *Stone*, 711 N.W.2d at 837. The district court

relied on Betzler's 20-year history of adjudicated and unadjudicated offenses during which he followed a pattern of coercing and manipulating vulnerable children and adults in order to sexually assault them.

Regarding the second prong, an utter lack of power to control sexual impulses is determined using a multi-factor test. The factors are

> [1] the nature and frequency of the sexual assaults, [2] the degree of violence involved, [3] the relationship (or lack thereof) between the offender and the victims, [4] the offender's attitude and mood, [5] the offender's medical and family history, [6] the results of psychological and psychiatric testing and evaluation, and [7] such other factors that bear on the predatory sex impulse and the lack of power to control it.

In re Blodgett, 510 N.W.2d 910, 915 (Minn. 1994).

The district court evaluated the evidence with respect to each of these factors. Summarizing its detailed findings, the district court concluded that the record established an utter lack of power to control sexual impulses. The district court cited Betzler's "sexually offending behavior" from "childhood through adulthood with victims of different ages and relationships," expert opinions, and Betzler's continuing to offend despite supervision and multiple treatment programs.

We are not persuaded by Betzler's argument that the district court erred. With respect to the first factor, as Betzler points out, he has not had a sex offense since 2010. But that factor weighs not just the frequency of sexual assaults but also their nature, and the record supports the district court's determination that Betzler's sexual assaults were of a severe nature in which he took advantage of victims in vulnerable positions. With respect to the sixth factor, although Betzler argues that he did not fall into the category of

"psychopath" based on part of Dr. Marshall's testing, we are not persuaded that that fact undermines the district court's determination that Dr. Marshall's opinion, based on her full assessment, was credible and reliable. We discern no error in the district court's determination that the second prong of the definition of an SPP is met.

The record also supports the district court's determination that the third prong is met because Betzler is a danger to the public based on his risk of reoffending. Betzler testified that viewing pornography was part of his cycle of offending. Despite committing his first offense in 1990, Betzler admitted that he has never completed sex-offender treatment. In addition, Dr. Dority noted that Betzler has a "tendency to say what he believes assessors want to hear and to verbalize treatment language while the behavioral evidence is incongruent with his narrative."

Because the record supports the district court's factual findings and contains clear and convincing evidence to support the district court's conclusions on all three prongs, the district court did not err by concluding that Betzler meets the definition of an SPP.

II. The district court did not err by determining that Alpha would meet neither Betzler's needs nor the needs of public safety.

Betzler argues that Alpha is a less restrictive alternative that would meet his needs and the public's need for safety. We review a district court's determination of the least restrictive alternative for clear error. *In re Thulin*, 660 N.W.2d 140, 144 (Minn. App. 2003). Again, we apply the standard articulated in *Kenney* when reviewing for clear error. 963 N.W.2d at 221-22.

If the district court determines that a person is an SDP or SPP, Minnesota law requires the district court to 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.

The district court determined that Alpha would meet neither Betzler's needs nor the needs of public safety. Appellant argues that this determination was error for two reasons: first, he contends that continued ISR will preclude future violations because ISR has a high success rate and, second, he asserts that the testimony from the executive director of Alpha establishes that Alpha would be immediately available and would meet his treatment needs and the needs of public safety.

We discern no error in the district court's determination that Betzler failed to establish the existence of a less restrictive alternative. The district court based its conclusion on several findings. It found that Betzler "has violated conditions of release and program rules while in Alpha, the very program to which he seeks to return." It also found that Alpha was restructuring to provide only outpatient services and that "there was no definitive information available about where Mr. Betzler would be housed and how his security would be monitored." And the district court credited the testimony of Dr. Marshall and Dr. Dority that Betzler required treatment in a secure facility. All of these findings have support in the record. Viewing the record in the light most favorable to the district

court's findings, the district court did not clearly err by determining that Betzler requires treatment at MSOP, both for his needs and the needs of public safety.[1]

Affirmed.

[1] Betzler also argues that commitment to MSOP violates his constitutional rights. Betzler did not raise this argument to the district court. Generally, appellate courts will not consider matters not argued to and considered by the district court. *Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988). This general rule applies to constitutional questions. *In re Welfare of C.L.L.*, 310 N.W.2d 555, 557 (Minn. 1981). Because Betzler did not raise this argument to the district court, we do not address it.