STATE OF MINNESOTA
IN COURT OF APPEALS
A24-0772

In the Matter of the Civil Commitment of:
Brendon Alan Tempel.

Filed October 28, 2024
Affirmed in part and remanded
Segal, Chief Judge

Dodge County District Court
File No. 20-PR-24-255

Anthony J. Moosbrugger, Moosbrugger Law Office PA, Kasson, Minnesota (for appellant Brendon Tempel)

Paul Kiltinen, Dodge County Attorney, Crysta L. Parkin, Assistant County Attorney, Mantorville, Minnesota (for respondent Minnesota Prairie County Alliance)

Considered and decided by Segal, Chief Judge; Connolly, Judge; and Frisch, Judge.

NONPRECEDENTIAL OPINION

SEGAL, Chief Judge

On appeal from his civil commitment on the grounds that he poses a risk of harm due to mental illness and is a person with chemical dependency, appellant argues that the district court erred in determining that he poses a substantial likelihood of physical harm to himself or others and failed to make adequate findings whether commitment is the least restrictive means to meet appellant's treatment needs. Because we conclude that there is clear and convincing evidence in the record to support the district court's finding that appellant poses a substantial likelihood of physical harm to himself or others, we affirm

that determination, but remand for additional findings on the issue of whether there is a less restrictive alternative to commitment.

FACTS

Respondent Minnesota Prairie County Alliance (the county) filed a petition seeking to civilly commit appellant Brendon Alan Tempel as a person who poses a risk of harm due to mental illness and who is chemically dependent. At the time the petition was filed on April 17, 2024, Tempel had been hospitalized for three days and was subject to an emergency medical hold.

According to a screening report prepared by the county, law enforcement was dispatched to Tempel's house on April 13, 2024, based on a report that "Tempel was highly intoxicated, making suicidal threats, and driving at a high rate of speed." The police report from the incident indicated that Tempel was intoxicated while driving a four-wheeler with his fiancée's 15-year-old daughter as a passenger. Tempel's fiancée told law enforcement that Tempel had earlier stated, "I'm going to put this house in a trust, shoot you and myself," but that Tempel later indicated that he only wanted to shoot himself. There was a firearm in the house at the time of this incident that Tempel had borrowed recently from his father. Law enforcement administered a preliminary breath test, which indicated an alcohol concentration of 0.269.

Tempel was transported by ambulance to a hospital for evaluation, where he was admitted in the early morning hours of April 14. He was placed on a 72-hour hold later that evening after he requested to leave the hospital. The screening report states that Tempel "admit[ted] to a long history of suicidal ideation" and that Tempel expressed the

belief "that alcohol would probably kill him." The screening team ultimately recommended that Tempel be involuntarily committed to a treatment facility.

At the commitment hearing, Tempel acknowledged that he had an alcohol addiction and that he could not manage it on his own. He also acknowledged that he had been evaluated for alcohol use in January 2024 and that the evaluator recommended that Tempel attend inpatient treatment, but he did not follow through on any of the recommendations or obtain treatment. He testified that he was now ready to follow through with treatment recommendations, had been referred to an intensive outpatient treatment program that was supported by his primary treatment team at the Mayo Clinic, and would participate fully in that program if allowed. Tempel also testified that the outpatient program would allow him to continue his employment at least part-time, which was important for the financial support of his family. Finally, Tempel testified about his mental health and the incident that led to his hospitalization, acknowledging that there was a borrowed shotgun in his house on the date of "the incident" and that he had "mental health concerns," but he denied that he intended to use the shotgun to end his life.

The district court also heard testimony from Dr. Jesse Burson and Dr. Travis Tomford. Dr. Burson testified that he was part of the psychiatric consulting team that was asked to provide recommendations during Tempel's hospital stay and that he met with Tempel the day after Tempel was admitted.[1] Dr. Burson testified that it was the

[1] Dr. Burson explained that Tempel was kept in a medicine unit of the hospital, not the psychiatric unit, because of the concerns over Tempel's physical reactions to alcohol withdrawal. Dr. Burson was thus not a member of Tempel's primary-care team.

recommendation of his team that Tempel participate in "inpatient chemical dependency treatment as [the consulting team] believe[d] that he require[d] a higher level of care and a higher level of treatment." Dr. Burson explained that it was his team's opinion that it would be in Tempel's best interest "to receive significant alcohol use disorder treatment, as well as treatment for ongoing depression," and the team had concerns over "the lack of [Tempel's] action in moving towards those things, despite there being a longstanding history of and awareness that these things need to be addressed." Dr. Burson acknowledged, however, that intensive outpatient treatment "could be a reasonable option, though it would not follow [his] recommendations."

Dr. Tomford, the court-appointed examiner, testified that Tempel met the statutory criteria for civil commitment both on the grounds of mental illness and chemical dependency, but he opined that a stay of commitment for intensive outpatient treatment would be appropriate as the least restrictive alternative that would meet Tempel's treatment needs. Dr. Tomford based his recommendation both on Tempel's stated preference and his belief that Tempel "exhibit[ed] fair insight into his need for treatment" and "expressed a desire for intensive outpatient placement for what [Dr. Tomford] view[ed as] reasonable reasons." Dr. Tomford further explained that he believed a stay of commitment with intensive outpatient treatment would be sufficient because it could be combined with ongoing supervision and the understanding that any noncompliance would likely result in immediate revocation and inpatient treatment.

At the close of the hearing, the county "request[ed] that a full commitment be ordered and that Mr. Tempel not receive a stay of commitment." The county

acknowledged that the district court had heard testimony in support of a stay, but argued that the county "disagree[d] due to [Tempel's previous] failure to follow through with recommendations and the longstanding history here." In response, Tempel's attorney stated that "Mr. Tempel [was] acknowledging he has a chemical addiction and a mental illness in regards to this commitment proceeding" but was "asking that the Court issue a stay of commitment" to allow Tempel to participate in an intensive outpatient treatment program because "[t]he best approach is to move forward with that program."

Following the commitment hearing, the district court issued an order civilly committing Tempel both as a person who poses a risk of harm due to mental illness and as a person with chemical dependency. The district court did not order a stay of the commitment. Tempel appeals; the county did not file a brief.

DECISION

An individual may be civilly committed under the Minnesota Commitment and Treatment Act (MCTA), Minn. Stat. §§ 253B.01-.24 (2022 & Supp. 2023), if the district court finds by clear and convincing evidence that the individual "poses a risk of harm due to mental illness" or "is a person who has a . . . chemical dependency" and there is no "suitable alternative" to commitment. Minn. Stat. § 253B.09, subd. 1(a). If a district court orders commitment, it must commit the individual "to the least restrictive treatment program . . . which can meet the patient's treatment needs." *Id.* In making its commitment decision, the court must consider alternative programs as well as the patient's treatment preferences. *Id.*, subd. 1(b).

On appeal from a district court's order of commitment, this court reviews whether the district court complied with the MCTA and whether its findings of fact support the commitment. *In re Knops*, 536 N.W.2d 616, 620 (Minn. 1995). The court views the evidence in the light most favorable to the district court's decision and will not set aside findings of fact unless they are clearly erroneous. *Id.*; *see In re Civ. Commitment of Kenney*, 963 N.W.2d 214, 221-22 (Minn. 2021) (discussing, in detail, appellate review of a district court's findings of fact under the clear-error standard).

I. The record supports the district court's determination that Tempel poses a substantial likelihood of physical harm to himself or others.

Tempel was committed due to mental illness and chemical dependency. Under the MCTA, the statutory criteria for both bases for commitment require a determination that the individual "poses a substantial likelihood of physical harm to self or others." Minn. Stat. § 253B.02, subds. 2, 17a(a). The district court determined that Tempel "poses a substantial likelihood of physical harm to himself and/or others based upon his threats of suicide and homicide with a gun while highly intoxicated." Tempel argues that the determination must be reversed because it is based on "pure speculation and [is] not supported by the district court's findings or the record." Tempel also argues that the determination must be reversed because the district court relied on inadmissible hearsay in making this determination. We are not persuaded.

The statutory definitions of a "person who poses a risk of harm due to mental illness" and a "chemically dependent person" both explicitly state that a determination that the individual "poses a substantial likelihood of physical harm to self or others" may be

based on "a recent attempt or threat to physically harm self or others." Minn. Stat. § 253B.02, subds. 2, 17a(a)(3). The record here contains ample evidence to support that Tempel recently threatened to harm himself or others. Indeed, Tempel himself admitted that he had made suicidal or homicidal statements, although he said he only made such statements when intoxicated. In addition, Dr. Tomford noted in his forensic-examination report that Tempel had not only recently made "suicidal and homicidal statements," but that Tempel's medical records "note he has a long history of suicidal thoughts that he has described at times as 'uncontrollable' with worsening ideas of harming himself." Dr. Tomford also opined at the commitment hearing that Tempel posed a substantial likelihood of harm to himself or others, "[w]hen his mental illness is poorly managed."

Tempel appears to argue that he never intended to follow through on his threats of harm and that he, therefore, does not pose a substantial likelihood of harm to himself or others. But as noted above, the MCTA explicitly permits a district court to determine that an individual poses a substantial likelihood of harm based on "a recent . . . threat to physically harm self or others." *Id.* The record here supports that such a threat was made and the district court, as the finder of fact, acted within its purview when it determined that the threat was an actual threat that posed a substantial likelihood of harm. *See Costello v. Johnson*, 121 N.W.2d 70, 76 (Minn. 1963) (noting that a district court as finder of fact is not required to believe even uncontradicted testimony if there are reasonable grounds to doubt its credibility). Indeed, Tempel's fiancée was alarmed enough by his threat that she called 911 for law-enforcement assistance.

As to Tempel's contention that the district court relied on inadmissible hearsay evidence in making its determination, we first note that this court has rejected the argument that hearsay is inadmissible in a commitment proceeding. *In re Civ. Commitment of Williams*, 735 N.W.2d 727, 730-32 (Minn. App. 2007) (holding that, despite Williams's objection to the admission of hearsay evidence, the evidence was admissible if otherwise shown to be trustworthy), *rev. denied* (Minn. Sept. 26, 2007).

Second, Tempel did not object at the commitment hearing to the admission of any of the testimony he now challenges. Generally, we will not consider issues on appeal that were not presented to, and considered by, the district court. *Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988); *see In re Commitment of Hand*, 878 N.W.2d 503, 508 (Minn. App. 2016) (citing this aspect of *Thiele* in a civil-commitment appeal), *rev. denied* (Minn. June 21, 2016).

Finally, it does not appear that the district court actually relied on any hearsay in making its determination. Tempel challenges two specific statements: (1) testimony from Dr. Burson that another doctor who evaluated Tempel expressed concern to Dr. Burson that Tempel had not been forthcoming about his substance-use history and (2) an allegation in a police report that Tempel was driving a four-wheeler with a minor child while under the influence of alcohol. But the district court did not rely on these statements as a basis for its factual findings.

Rather, the district court's order states that Dr. Burson testified that another doctor expressed concerns over Tempel's truthfulness during an evaluation and that Tempel acknowledged during his testimony the allegations about his actions driving the four-

wheeler with the child while intoxicated. The district court did not make a finding that Tempel was untruthful during the evaluation or that he in fact drove the four-wheeler recklessly with the child—the district court merely summarized testimony on these issues.

The district court also did not rely on either allegation in its determination that Tempel poses a substantial likelihood of harm to himself or others. As noted above, the district court determined that Tempel posed a substantial likelihood of harm based on his recent threats to harm himself and others. And this determination, as discussed above, is well-supported in the record.

II. We remand for additional findings on the issue of whether commitment is the least restrictive means to address Tempel's treatment needs.

Tempel next argues that the district court erred in determining that commitment is the least restrictive means available to address his treatment needs. He argues that the conclusory finding made by the district court is "wholly inadequate" to support civil commitment. We agree with Tempel's argument to the extent that additional findings are needed to permit meaningful appellate review of this issue.

As previously stated, if a district court orders commitment, it must commit the individual "to the least restrictive treatment program . . . which can meet the patient's treatment needs." Minn. Stat. § 253B.09, subd. 1(a). In making its commitment decision, the court must consider alternative programs as well as the patient's treatment preferences. *Id.*, subd. 1(b). The statute also provides that the district "court shall find the facts specifically," and that, "[i]f commitment is ordered, the findings shall also identify less

restrictive alternatives considered and rejected by the court and reasons for rejecting each alternative." *Id.*, subd. 2(a), (b).

Here, the district court made a finding that states: "Based upon the medical records and testimony received, commitment to the Commissioner of Human Services is the least restrictive alternative as [Tempel] displays psychiatric symptoms with severe substance abuse, specifically with alcohol use." There is also a conclusion of law that states: "The least restrictive alternative which meets [Tempel's] treatment needs is judicial commitment to the Commissioner of Human Services." The district court reached this conclusion without making any findings that might explain why it was discounting Dr. Tomford's opinion that a stay of commitment with intensive outpatient treatment would be the least restrictive alternative.

In *In re Danielson*, this court explained: "The consideration of less restrictive alternatives is a matter of great significance." 398 N.W.2d 32, 37 (Minn. App. 1986) (quoting *In re Moll*, 347 N.W.2d 67, 70 (Minn. App. 1984)). The opinion further noted: "The drafters of the [MCTA] clearly intended to require specificity in the findings of the trial courts, and we have often stressed the need for findings on each of the statutory requisites with a clear recitation of the evidence relied upon in reaching the court's conclusions." *Id.*

Here, the district court's order fails to provide such specificity or offer a reason for rejecting any less restrictive alternatives. *Cf. In re King*, 476 N.W.2d 190, 193-94 (Minn. App. 1991) (noting that appellate review was "hampered in part by the scant trial court findings" but ultimately determining that the district court's findings, which included that

"[o]ther placements" were considered but rejected were sufficient and supported by the record).

Tempel requested that he be permitted to seek intensive outpatient treatment; he also identified a specific program for which he had received a referral and would accept him as a patient. In addition, multiple medical professionals, including Dr. Tomford and Tempel's primary treatment team, agreed that a stay of commitment for intensive outpatient treatment would be appropriate to address Tempel's treatment needs. Dr. Burson recommended inpatient treatment but even he acknowledged that intensive outpatient treatment "could be a reasonable option."

On this record, we remand for additional findings on whether there are less restrictive alternatives available to meet Tempel's treatment needs. On remand, the district court may, in its discretion, reopen the record to allow for the submission of additional evidence. We express no opinion on the ultimate issue of whether there are less restrictive alternatives available but, in light of the evidence presented, additional findings are needed to allow for appellate review of this issue. Minn. Stat. § 253B.09, subd. 1(b).

Affirmed in part and remanded.