

IN THE SUPREME COURT

STATE OF NORTH DAKOTA

Supreme Court No. 20120176
Burleigh Co. No. 10-R-0272

In the Matter of Stanton Quilt

Lloyd C. Suhr, Assistant

State's Attorney,

Petitioner and Appellee,

v.

Stanton Quilt,

Respondent and Appellant.

APPELLANT'S BRIEF

An Appeal from a South Central District Court's Order
for Continued Commitment of a Sexually Dangerous Individual
Held on February 6, 2012 and Filed on February 28, 2012,
From a Discharge Hearing, the Honorable Sonna M. Anderson, Presiding.

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Question Presented for Review

I.

Whether the trial court erred in concluding that there was clear and convincing evidence that the respondent/appellant has a congenital or acquired condition that is manifested by a sexual disorder, personality disorder, or other mental disorder or dysfunction.

II.

Whether the trial court erred in concluding that there was clear and convincing evidence that the respondent/appellant is likely to engage in further acts of sexually predatory conduct which would constitute a danger to the physical or mental health of others.

III.

Whether the trial court erred in concluding that there was clear and convincing evidence that the respondent/appellant has serious difficulty in controlling his behavior.

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1

I. Statement of the Case

2 This is an appeal from a South Central Judicial District Court's Order for
Continued Commitment of Sexually Dangerous Individual by a Discharge Hearing
held on February 6, 2012 and filed on February 28, 2012 October 29, 2010, the
Honorable Sonna A. Anderson, presiding, which is taken under Section 25-03.3-19
of the North Dakota Century Code.

3 This appeal is also brought under Rule 4 of the North Dakota Rules of
Appellate Procedure. The Notice of Appeal and Request for Transcript were served
to opposing counsel and filed with the District Court on March 26, 2012. Register
of Actions [ROA] 64-66. Appendix [App.] 101-103.

4 On October 20, 2011, the Stanton Quilt filed a formal his Application to
Request a Discharge Hearing. ROA 37. App. 4.

5 On October 20, 2011, the petitioner filed its SDI Annual Re-evaluation. ROA
38. App. 6.

6 On November 8, 2011, the respondent requested the district court to appoint
an independent qualified expert examiner for his annual review and discharge
hearing. ROA 39-41, App. 34-39. On November 10, 2011, the district court granted
respondent's order. ROA 43. App. 40.

7. On January 13, 2012, the petitioner requested the district court to reschedule
the hearing. ROA 44. App. 42.

8. A second date for the Discharge Hearing was set on January 13, 2012. ROA
45. App. 43.

9. On January 10, 2012, Stanton filed his expert's evaluation. ROA 46, 60.

App. 44.

10 On February 6, 2012, a Discharge Hearing was held. Transcript [Tr.] 1-132. The petitioner introduced two exhibits. P1-P2. ROA 57-58. Tr. at 5, 63. The respondent introduced two exhibits. Exhibits R1-R2. ROA 59-60. Tr. 5, 63.

11 On November 19, 2010, the district court filed its Memorandum and Order. ROA 55, App. 90. The petitioner filed the Notice of Entry of Order on March 28, 2012. ROA 62. App. 99. The Notice was served the same date. ROA 63. App. 100.

12 On March 26, 2012, the respondent served his Notice of Appeal and Request for Transcript. ROA 64-65. App. 101-103. The Clerk of the District Court for Burleigh County filed the Notice of Filing the Notice of Appeal on March 28, 2012. ROA 67. App. 104. The Clerk's Certificate on Appeal was filed on April 26, 2012. ROA 68. App. 105. Finally, the Transcript of Hearing was served by the court reporter on all parties on February 2, 2011.

13 **II. Statement of the Facts**

14 On February 6, 2012, a Discharge Hearing was held In the Matter of Stanton Quilt Tr. 1-98. Four witnesses testified. Dr. Robert Lisota testified on behalf of the petitioner. Tr. 6-63. Dr. Stacey Benson testified on Stanton Quilt's behalf. Tr. 64-108. Mr. James McIntyre testified on Stanton Quilt's behalf. Tr. 109-113. Finally Stanton Quilt testified on his on behalf. Tr. 113-117.

15 The qualifications of both experts were stipulated establishing their qualifications and both assessments/evaluations were entered into evidence without objection. Tr. 4-6 , Tr. 5, 63.

16 As to the first element, that is, whether Stanton Quilt engaged in sexually predatory conduct, Dr. Lisota testified that Stanton Quilt had met the first element when the doctor reviewed the criminal judgments that were submitted to the court. Tr. 6-7.

17 Regarding the second element, whether Stanton Quilt has a congenital or acquired condition, the doctor stated that Stanton Quilt has a sexual diagnosis of pedophilia (Tr. 9-16, App. 7, 12), alcohol dependence (Tr. 16-17), as well as an antisocial personality disorder. Tr. 1, 7-30.

18 Addressing the third element, the doctor expressed an opinion that Stanton Quilt would likely engage in further predatory conduct. Tr. 30-42. Dr. Lisota based his opinion upon previously scored risk assessment tools, i.e., the Static-99R and the MnSOST-R and the PCL-R. Tr. 31-42.

19 As to the fourth element, Dr. Lisota that would “experience serious difficulty if released to the community at this time.” He was not ready for release at this time. Tr. 41-42.

20 On direct examination, after establishing her qualifications, risk assessment tools used to make her evaluation and specific information regarding Stanton Quilt’s assessment, Dr. Benson commenced her testimony. Tr. 64-67.

21 As to the first element, that is, whether Stanton Quilt engaged in sexually predatory conduct, Dr. Benson testified that Stanton Quilt had met the first element when the doctor reviewed the criminal judgments that were submitted to the court. Tr. 77.

22 Regarding the second element, whether Stanton Quilt has a congenital or

acquired condition, the Dr. Benson disagreed with Dr. Lisota and concluded that Stanton Quilt did not have a diagnosis did have a diagnosis of antisocial personality disorder (Tr. 67-69), of pedophilia (Tr. 69-76), and alcohol dependence. Tr. 74.

23 Addressing the third element, Dr. Benson expressed an opinion that Stanton Quilt was not likely to engage in further predatory conduct. Tr. 76. Dr. Benson based her opinion upon her risk assessment tools, i.e., the new MnSOST III, the Static-99R, the Hare Psychopathy Checklist (Hare-PCL) and the Structured Risk Assessment Forensic Version (SRAFV) Tr. 78-86.

24 On February 28, 2012, made its Memorandum and Order. ROA 61. App. 90. The Memorandum and Order were filed the same day. *Id.*

25 **III. Jurisdiction**

26 The district court had jurisdiction under N.D. Const. Art. VI, §8, and N.D.C.C. §27-05-06(1) and N.D.C.C. 25-03.3-02. The appeal from the district court was filed under N.D.R.App.P.4(b). This Court has jurisdiction under N.D. Const, Art. VI, §6, N.D.C.C. §29-01-12, N.D.C.C. §29-28-06 and N.D.C.C. §25-03.3-19.

27 **IV. Scope of Review**

28 **North Dakota Supreme Court's Scope of Review
of this Appeal is Limited and the Standard is
Governed by N.D.C.C. 25-03.3-29 and Rule 52(A) of the
North Dakota Rules of Civil Procedure.**

29 Pursuant to 25-03.3-19, this Court is "limited to a review of the procedures, findings, and conclusions of the lower court." N.D.Cent.Code § 25-03.3-19 (2009). The standard of review for appeals from commitments of sexually dangerous individuals is a modified clearly erroneous standard. *In Re D.V.A.*, 2004 ND 57, ¶7, 676 N.W.2d 776. "We affirm the trial court's order of committal unless it is induced

by an erroneous view of the law or we are firmly convinced the Court's decision is not supported by clear and convincing evidence." *Id.*

30 The "clear and convincing evidence" standard is more than just a standard imposed by the North Dakota statute. That standard is, in fact, mandated by the due process clauses of the Fourth and Fourteenth Amendments to the United States Constitution. ***Addington v. Texas***, 441 U.S. 418 (1979). North Dakota has defined "clear and convincing evidence" as "evidence leading to a firm belief or conviction that the allegations are true." ***In Re Korner***, 325 N.W.2d 217, 220 (N.D. 1982) citing ***Zundel v. Zundel***, 278 N.W.2d 123, 130 (N.D. 1979).

31 To satisfy due process, the "clear and convincing evidence" standard is a subjective sliding standard which considers (1) the importance of the private interests affected by the proceedings; (2) the risk of error created by the State's chosen procedure; and (3) the countervailing governmental interest use of the challenged procedure. ***Santosky v. Kramer***, 455 U.S. 745, 754-757 (1982). The Court has said that the minimum standard of proof tolerated by the due process requirements reflects not only the weight of the public and private interests affected, but also a societal judgment about how the risk of error should be distributed between the litigants. ***Santosky, supra***. In fact, in ***Santosky***, the Court said the "clear and convincing evidence standard" is supposed to convey to the fact finder the level of subjective certainty about his factual conclusions necessary to satisfy due process. ***Santosky, supra***, 455 U.S. at 768, 770.

32

V. Argument

33

A. Sexually Predatory Conduct

34 The lower court ruled that Stanton had committed a sexually predatory act. App. 91. Since this first element is proved by his history of convictions, as they met the statutory definition, Stanton Quilt concedes this point.

35

B. A Congenital or Acquired Condition that is Manifested by a Sexual Disorder, a Personality Disorder, or other Mental Disorder or Dysfunction.

36 The lower court compared and contrasted the two experts' opinions. App. 93-95. The court concluded by clear and convincing evidence that Stanton had "a congenital or acquired condition manifested by a personality, sexual or mental disorder. App. 95

37 Stanton, in his last appeal, he conceded this point. This year, however, the lower court erred in that there was no clear and convincing evidence that a congenital or acquired condition manifested by a personality, sexual or mental disorder.

38 The difference this year is that Dr. Benson was now satisfied that this was a case of the dog wagging the tail and not the tail wagging the dog. By this, Dr. Benson means that every one of his convictions was seeking either alcohol or drugs or was conducted while he was either high or drunk. App. 52. Keep in mind, that Stanton began using alcohol at age ten and at 13 he was already experiencing blackouts. Id.

39 Dr. Benson states that you simply cannot find any of the diagnoses that Dr. Lisota found. In fact, Dr. Benson's Axis I is alcohol dependence with physiological

dependence, in a controlled environment, cannabis abuse, polysubstance abuse, physical abuse of a child, sexual abuse of a child. For her Axis II diagnosis, Dr. Benson ruled out antisocial personality disorder. App. 74.

40 Dr. Benson observed that you cannot find any of these diagnoses if there is a substantial interference in the diagnoses as a result of drug and alcohol. Tr. 67-76. Dr. Benson stated that under the Diagnostic and Statistical Manual of Mental Disorders, Fourth Edition, Text Revision (DSM-IV-TR) that you cannot make a diagnosis such that Dr. Lisota made because of Stanton's alcohol induced behavior.

41 The DSM states that

When antisocial behavior in an adult is associated with a **Substance-Related Disorder**, the diagnosis of Antisocial Personality Disorder is not made unless signs of Antisocial Personality Disorder were also present in childhood and have continued into adulthood. When substance abuse and antisocial behavior both began in childhood and have continued into adulthood, both a Substance-Related disorder and Antisocial Personality should be diagnosed if the criteria for both are met, even though some antisocial acts maybe a consequence of the Substance-Related Disorder (e.g., illegal selling of drugs or thefts to obtain money for drugs).

Diagnostic and Statistical Manual of Mental Disorders, Fourth Edition, Text Revision 2000. See also Tr. 90-98.

42 Dr. Lisota is clearly wrong in his diagnosis because he has failed to follow the parameters of the DSM IV Tr. It is even more so, in that, psychologists who previously evaluated Stanton came also came to the same conclusions as did Dr. Benson. Tr. 45-49. There is simply no clear and convincing evidence that a congenital or acquired condition manifested by a personality, sexual or mental disorder exists to meet the second element.

43

C. Further Acts of Sexually, Predatory Conduct

44 The lower court erred when it found that there was clear and convincing evidence that Stanton was likely to re-offend. App. 96. The court recites several instances of acts and several references to the screening tools. App. 95-96.

45 Everything the lower court cites, the Axis I and II diagnoses, the screening tools, such as MnSOST-R, MnSOST-III, Static 99, the Static99-R, the Stable 2007, and the PCL-R are skewed. Each and every diagnosis and screening tool used by Dr. Lisota to predict Stanton's future acts is fraught in error. Each diagnosis made screening tool used is based upon Stanton's acts while he was under the use of drugs and/or alcohol which undermines Dr. Lisota's predictors. There was no clear and convincing evidence that Stanton was likely to re-offend.

46

D. Serious Difficulty Controlling Behavior

47 There was no clear and convincing evidence that Stanton had difficulty in controlling his behavior that calls for continued inpatient treatment. The facts are and it was conclusively shown that the times that Stanton Quilt committed sexually predatory acts were times when he was drinking heavily. Without the alcohol, S.A. can control his behavior. He should be given a chance to show what that he can control his behavior.

48 Dr. Lisota stated that, [a]nd I believe that he will indeed experience serious difficulty if released to the community at this time. The lower court mischaracterized Dr. Lisota's testimony on this subject. The court stated that:

Dr. Lisota addressed whether Mr. Quilt was able to control his behavior. Mr. Quilt had only been in this treatment setting for nine months when Dr. Lisota examined him. At on point during this time, Mr. Quilt was denied advancement to Stage II of the sex offender

treatment program. Mr. Quilt went through a short period of angry and impulsive behavior after that denial. In Dr. Lisota' professional opinion, Mr. Quilt does have "serious" difficulty controlling his behavior, even in the confined setting of the State Hospital and that this difficulty would be enhanced in a less restrictive setting. Dr. Lisota believes that Mr. Quilt is making good progress in his treatment, but that he has not yet progressed enough to change his status as sexually dangerous individual.

The court agrees with Dr. Lisota.

App. 97.

49 Stanton has no idea where the court got the idea that there was "short period of angry and impulsive behavior after that denial." See above ¶ 49. This was merely a discussion Stanton about frustration he had with another peer. Tr. 58-59.

50 Stanton has developed a plan. He will have a sponsor in place for his alcohol treatment. Tr. 109-113. He has been in contact with the person running Sex addict anonymous Tr. 114. Stanton has a place to stay. Id.

51 Stanton will be on supervised probation if released from the State Hospital. Id. This supervised probation will include GPS monitoring. Id. He will be on a drug treatment program for his alcohol treatment, Antabuse. Tr. 115-16. There is no evidence that Stanton is unable to control his behavior, either in the state hospital or on the street, especially on the street because there are safeguards that can be put in place at the time of his release.

52 **E. Conclusion**

53 For the reasons stated above, Stanton Quilt respectfully requests this court reverse the lower court's order for continued treatment. If this court finds that he should be released, but in a restrictive mode, then Stanton requests this court to remand this case back the lower court to fashion a release which will serve

