

**IN THE SUPREME COURT
STATE OF NORTH DAKOTA**

In the Matter of)
Sandy Lee Mangelsen)
)
)
)
Haley L. Wamstad,)
Grand Forks County)
Assistant State's Attorney)
)
Petitioner/Appellee,)
)
vs.)
)
Sandy Lee Mangelsen,)
)
Respondent/Appellee.)

Supreme Court No. 20160052

District Court No. 18-2012-MH-00150

ON APPEAL FROM ORDER FOR CONTINUING COMMITMENT
ISSUED DECEMBER 7, 2015 FROM THE DISTRICT COURT
FOR THE NORTHEAST CENTRAL JUDICIAL DISTRICT
GRAND FORKS COUNTY, NORTH DAKOTA
THE HONORABLE JUDGE JON J. JENSEN, PRESIDING

BRIEF OF APPELLEE

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STATEMENT OF THE ISSUE

- I. **Whether the district court's order for continuing commitment was clearly erroneous?**

STATEMENT OF THE CASE

[¶1] On November 5, 2012, a Petition for the Commitment of a Sexually Dangerous Person was filed. Petition for Commitment of Sexually Dangerous Person, November 5, 2012. Subsequent to a paper review and a preliminary hearing, there was a finding of probable cause and a full evidentiary hearing scheduled for and held on January 4, 2013. (Appellant's App. at 5.) Subsequent to that hearing, the Honorable Judge Karen Braaten ordered Mangelsen be committed as a sexually dangerous individual. Memorandum Decision and Order for Commitment of Respondent as Sexually Dangerous Individual, April 24, 2013.

[¶2] On January 21, 2015, Mangelsen filed a request for discharge from his commitment. Request for Annual Review, January 21, 2015. On November 6, 2015, a hearing was held. (Appellant's App. at 8.) On December 7, 2015, the Honorable Judge Jon J. Jensen issued a Memorandum Decision and Order for Continuing Commitment. Memorandum Decision and Order for Continuing Commitment, December 7, 2015.

[¶3] Mangelsen filed notice of appeal on February 4, 2016.

STATEMENT OF THE FACTS

[¶4] On August 5, 2005, Mr. Mangelsen touched the breast of a 13-year-old girl, touched the inside of the thigh, and held the hand of a 14-year-old girl with whom he was riding ATVs. SDI Annual Re-Evaluation, pp. 2-9, May 11, 2015. Mr. Mangelsen was an adult at the time of this offense. Id. He was subsequently convicted of the offense of Sexual Contact with a Child (less than 16) on January 11, 2006. Id. During the investigation for this offense, it was also alleged that Mr. Mangelsen made harassing phone calls to his ex-girlfriend, had entered a house without permission, and used the bathroom where an adult female was showering, touched the genital area of a 9-year-old girl over her clothing, and attempted to kiss her. Id. No charges were pressed for these allegations. Id.

[¶5] On March 31, 2007, Mr. Mangelsen kissed and touched the buttock of a 14-year-old girl. Id. Mr. Mangelsen, then age 20, was aware of the child's age at the time of the contact. Id. Mr. Mangelsen was subsequently convicted of Gross Sexual Imposition as a result of this offense. Id. He was sentenced to 60 months of incarceration with 24 months suspended. Id.

[¶6] Mangelsen was scheduled to be released on November 6, 2012. On November 5, 2012, the State of North Dakota (Appellee) filed a Petition for the Commitment of a Sexually Dangerous Person. (Appellant's App. at 3.) On November 9, 2012, a preliminary hearing was held where an evaluation and a "paper review" were received into evidence. (Appellant's App. at 4.) The district court found there was probable cause to hold Mangelsen until the full evidentiary hearing scheduled on January 4, 2013. Findings of Fact, Conclusions of Law, and Order on Preliminary Hearing,

November 20, 2012.

[¶7] On January 4, 2013, a full evidentiary hearing was held. (Appellant's App. at 5.) Testimony was received from Dr. Robert Lisota who was called by the State, as well as from Dr. Troy Ertelt called by Mangelsen. Subsequent to that hearing, the Honorable Judge Karen Braaten issued an order for Mangelsen to be committed to the care, custody, and control of the Executive Director of the North Dakota Department of Human Services. Mangelsen was placed at the North Dakota State Hospital (NDSH). Memorandum Decision and Order for Commitment of Respondent as Sexually Dangerous Individual, April 24, 2013.

[¶8] While at the NDSH, Mangelsen continued to commit crimes, was convicted of Simple Assault on NDSH personnel as Class C Felonies, and sentenced to eighteen (18) months at the North Dakota State Penitentiary. SDI Annual Re-evaluation, pp. 20-21. Mangelsen was paroled and returned to NDSH in October of 2014. SDI Annual Re-evaluation, p. 24. Mangelsen initially filed a request for a review of his commitment on February 21, 2014, which was delayed due to his incarceration. Order Denying Request for Annual Review Hearing, February 27, 2014. Following his return to NDSH, Mangelsen filed a request for review of his commitment on January 21, 2015. Request for Annual Review, January 21, 2015. Ultimately a hearing was held on November 6, 2015. (Appellant's App. at 8.) Dr. Jennifer Krance testified for the State. Dr. Krance testified ultimately that Mangelsen had engaged in sexually predatory conduct, that he had a congenital or acquired condition that was manifested by a sexual disorder, personality disorder, or other mental disorder or dysfunction, and that the disorder or dysfunction made Mangelsen likely to engage in further acts of sexually

predatory conduct. Review Hrg. Tr. pp. 29-74. Further, Dr. Krance testified that Mangelsen has serious difficulty controlling his behavior and could be distinguished from a typical sexual offender. Review Hrg. Tr. pp. 74-82. In addition to her testimony, Dr. Krance had prepared a report, which was offered. SDI Annual Re-evaluation, May 11, 2015. Dr. Krance testified that her report, prepared on May 11, 2015, was developed using template form, but was individualized to Mangelsen. Review Hrg Tr. pp. 24-27. The report is 66 pages in length. SDI Annual Re-evaluation, May 11, 2015. Dr. Krance testified that a report is individualized to each patient in many ways. Review Hrg. Tr. p. 24. Dr. Krance testified that reports are individualized by including any interview information if the individual agrees to an interview, relevant background history of the individual, individualized information about the actuarial risk assessments and any change year to year, individualized information for the Psychopathy Checklist Revised, biographical information of the individual, individualized document review, ward documents, individualized treatment notes, and an individualized evaluation for the diagnosis. Review Hrg. Tr. pp. 24-25. Dr. Krance testified that they individualize the report by looking at what diagnosis is relevant to the individual, whether the nexus applies to that particular individual, and whether that particular individual will have the serious difficulty element by looking at ward notes, behavior on the unit, progress in treatment, and the individual's ability to incorporate treatment into their current standing. Review Hrg. Tr. p. 25. Further, Dr. Krance testified that dynamic risk factors are looked at and are specific to each individual. Id. Finally, Dr. Krance testified that the in addition to all the above-mentioned ways in which the report is individualized, the determination of whether or not an individual fits the category of a sexually dangerous individual in

need of further commitment is individualized and the report reflects that individualization. Review Hrg. Tr. pp. 25-26.

[¶9] Dr. Troy Ertelt testified for Mangelsen. In addition, Dr. Ertelt had developed a report for the hearing and it was offered and received into evidence. Report of Examination, May 29, 2015. Prior to the testimony of Dr. Ertelt, Mangelsen conceded that he had previously engaged in sexually predatory conduct and that his convictions provided clear and convincing evidence of sexually predatory conduct. Review Hrg. Tr. p. 5. Mangelsen also conceded that the second prong for continued commitment was met, that Mangelsen had a congenital or acquired condition that is manifested by a sexual disorder, personality disorder, or other mental disorder or dysfunction. Review Hrg. Tr. p. 5. Dr. Ertelt testified that he disagreed with the diagnosis of Other Specified Paraphilic Disorder (Polymorphous Perverse) and Antisocial Personality Disorder. Review Hrg. Tr. pp. 170-176. Dr. Ertelt testified that Mangelsen had a Mild Intellectual Disability and Other Specified Disruptive, Impulse-Control and Conduct Disorder. Review Hrg. Tr. p. 170. Finally, with respect to the third prong, Dr. Ertelt testified that Mangelsen's actuarial testing did not support a conclusion that Mangelsen was likely to engage in further acts of sexually predatory conduct. Review Hrg. Tr. pp. 179-201. Dr. Ertelt conceded that Mangelsen had demonstrated behavior indicating difficulty controlling his behavior but that it was diminishing, unrelated to sexual impulse, and could be mitigated by treatment. Review Hrg. Tr. pp. 202-203, 218-219.

[¶10] Written closings were filed on November 25, 2015. Respondent's Brief in Support of Release, November 25, 2015; Petitioner's Closing Argument, November 25, 2015. The Honorable Judge Jon J. Jensen issued an order on December 7, 2015 for

continuing commitment. Memorandum Decision and Order for Continuing Commitment, December 7, 2015.

[¶11] Mangelsen appeals the district court's finding claiming that it was clearly erroneous.

LAW AND ARGUMENT

I. The district court's order for continuing commitment was not clearly erroneous.

[¶12] Civil commitments of sexually dangerous individuals are reviewed under a modified clearly erroneous standard. In re E.W.F., 2008 ND 130, ¶ 8, 751 N.W.2d 686. A district court's order shall be affirmed unless it is induced by an erroneous view of the law, or the North Dakota Supreme Court is firmly convinced the order is not supported by clear and convincing evidence. Id. This Court has indicated that it gives trial court's credibility determination of expert testimony and the weight to be given to their testimony great deference. Matter of Wolff, 2011 ND 76, ¶5, 796 N.W.2d 644.

[¶13] Pursuant to N.D.C.C. § 25-03.3-01(8), the State must prove, by clear and convincing evidence, three elements before an individual may be committed: 1) the individual engaged in sexually predatory conduct, 2) the individual has a congenital or acquired condition that is manifested by a sexual disorder, a personality disorder, or other mental disorder or dysfunction; and, 3) that disorder or dysfunction makes the individual likely to engage in further acts of sexually predatory conduct which constitute a danger to the physical or mental health or safety of others. N.D.C.C. § 25-03.3-01(8). Further, the United States Supreme Court has held that substantive due process rights require an individual facing commitment be shown to have serious difficulty controlling his behavior, thereby distinguishing the sexually dangerous individual from the dangerous but typical recidivist convicted in an ordinary criminal case. In re E.W.F., 2008 ND 130, ¶10, 751 N.W.2d 686.

[¶14] In the case at hand, Mangelsen argues that the district court erred in finding that the State established by clear and convincing evidence that Mangelsen was a

sexually dangerous individual in need of continuing commitment when the district court relied on a report by Dr. Krance that Mangelsen argued is a “cut and paste evaluation”. In fact, the entire substance of Mangelsen’s appellate argument is cutting and pasting 12 different paragraphs to demonstrate that similar, not identical, language is used from evaluation to evaluation when reciting the respondent/patient’s diagnosis and nexus to reoffending. See Appellant Brief pp. 9-14. This 5 page illustration was previously conceded to and explained in great detail by the State’s own witness, Dr. Krance at the review hearing. See Review Hrg. Tr. pp. 23-27. Dr. Krance specifically explained that there is language in the template form used, but that language is reviewed and individualized to each patient. Id. Dr. Krance provided a specific illustration of this by referring to the last paragraph of page 38 of her report and indicated the paragraph may look similar to other evaluations because it describes information regarding Antisocial Personality Disorder that creates a nexus to their likelihood to engage in further acts of sexually predatory conduct. Id. at 26-27. The testimony taken from Dr. Krance is the exact same information Mangelsen cut and pasted for 5 pages.

[¶15] N.D.C.C. § 25-03.3-18 does not require a written evaluation be filed at discharge or annual review hearing. N.D.C.C. § 25-03.3-18, In re E.W.F., 2008 ND 130, ¶10, 751 N.W.2d 686. In this case, the State took detailed testimony from Dr. Krance regarding the need for Mangelsen to continue to be committed. Dr. Krance testified that all three prongs were satisfied and also testified that Mangelsen has serious difficulty controlling his behavior. Dr. Krance’s 66 page written report was also offered by the State. Attorney for Mangelsen objected, filed exhibits demonstrating his objection (excerpts of which now make up the argument section of his appellate brief), and made

his argument to the district court regarding this issue. Mangelsen's argument related to the quality or weight of the report. The district court was able to consider Mangelsen's objection and give the written report by Dr. Krance whatever weight the district court found appropriate. Further, the district court was able to hear Dr. Krance's live testimony, beyond just her written report. The district court also heard the testimony of Dr. Ertelt. The district court specifically noted that Mangelsen's objection was not a foundation objection but rather an objection relating to the weight and the credibility of the report and witness. Review Hrg. Tr. pp. 22-23. This Court has previously indicated that it will not reweigh expert testimony. That is exactly what Mangelsen asks this Court to do. Mangelsen does not argue that it was clearly erroneous to find Mangelsen a sexually dangerous individual requiring continued commitment, but rather argues that it was clearly erroneous to find him a sexually dangerous individual requiring continued commitment by relying on Dr. Krance's report that was a "cut and paste evaluation". A written report is not even required in this case. The State submitted one and the district court gave it whatever weight it found to be appropriate in this case. Mangelsen offers no case law support for his argument, nor does he argue substantively that Mangelsen is not a sexually dangerous individual in need of continued commitment, other than to minimize his sexual convictions, which have been categorized by our legislature as some of the most serious criminal offenses an offender can commit in our state.

[¶16] The district court took testimony from two experts, reviewed both expert reports, and received numerous exhibits. The district court had an opportunity to weigh the evidence and the expert testimony. The first two prongs of the statute were stipulated to by both parties. The district court found, based on extensive testimony and evidentiary

support, that the third prong was met and additionally that Mangelsen had serious difficulty controlling his behavior distinguishing him from the “average sexual offender”. The district court issued a comprehensive order detailing the basis for his opinion, that Mangelsen was a sexually dangerous individual requiring continued commitment. Mangelsen has failed to identify how any of the district court’s findings were clearly erroneous or induced by an erroneous view of the law. Simply accepting into evidence and relying on a report, in part, that has some form language similar from patient to patient or respondent to respondent does not make the decision clearly erroneous. Mangelsen asks this Court to require an “original evaluation”. The statute does not require an “original evaluation,” nor does it require a written evaluation at an annual hearing be filed. It appears Mangelsen is asking this Court to find that the district court’s decision was clearly erroneous simply because he disagrees with the statutory requirements. That is an argument for the legislature. The district court’s decision, finding that Mangelsen was a sexually dangerous individual requiring continued commitment, based on testimony and exhibits that fulfilled the statutory requirements to meet such a burden, was not clearly erroneous. Therefore, the district court’s decision must be affirmed.

CONCLUSION

[¶17] For the above-stated reasons, Mangelsen's appeal should be denied.

DATED this 14 day of June, 2016.



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AFFIDAVIT OF SERVICE
BY E-MAIL
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The undersigned, being of legal age, being first duly sworn deposes and says that on the 14 day of June, 2016, she served true copies of the following documents:

BRIEF OF APPELLEE

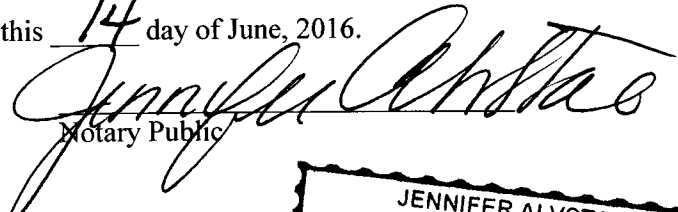
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States Attorney's Office

Subscribed and sworn to before me this 14 day of June, 2016.



Notary Public

jh

