

IN THE SUPREME COURT

STATE OF NORTH DAKOTA

In the Interests of R.A.S.)	
)	
State of North Dakota,)	
)	
Petitioner and Appellee,)	
)	
vs.)	Supreme Ct. No. 20190016
)	Dist. Ct. No. 09-04-R-187
R.A.S.,)	
)	
Respondent-Appellant.)	

APPELLEE’S BRIEF

Appeal from the Findings of Fact, Conclusions of Law, and Order Denying Discharge issued January 15, 2019, by the Honorable Steven Marquart, Cass County District Court, East Central Judicial District

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[¶ 2] **TABLE OF AUTHORITIES**

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State Cases:

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Kansas v. Crane, 534 U.S. 407 (2002) ¶ 17, 18

In re G.R.H. 2006 ND 56, 711 N.W.2d 587 ¶ 18

Interests of Johnson, 2016 ND 29, 876 N.W.2d 25 ¶ 21

Statutes:

N.D.C.C. § 25-03.3-01(8) ¶ 17

[¶ 3] **JURISDICTONAL STATEMENT**

[¶ 4] The State agrees with the Respondent's Jurisdictional Statement.

[¶ 5] STATEMENT OF ISSUE

[¶ 6] Whether the Respondent remains a Sexually Dangerous Individual, requiring continued civil commitment.

[¶ 7] STATEMENT OF CASE

[¶ 8] The State agrees with the Respondent's Statement of the Case.

[¶ 9] STATEMENT OF FACTS

[¶ 10] The State agrees with the Respondent's Statement of Facts with the exceptions that the Order was issued January 15, 2019, not September 17, 2018; and the Notice of Appeal was filed January 16, 2019, not September 23, 2018.

[¶ 11] STANDARD OF REVIEW

[¶ 12] The State agrees with the Respondent's Standard of Review which is laid out in ¶8 of Respondent's brief.

[¶ 13] **LAW AND ARGUMENT**

[¶ 14] **The Respondent remains a Sexually Dangerous Individual, requiring continued civil commitment.**

[¶ 15] In this case the district court found that it was undisputed that the Respondent: (1) engaged in sexually predatory conduct, and (2) is diagnosed with a congenital or acquired condition that is manifested by a sexual disorder, a personality disorder, or other mental disorder or dysfunction. (Appendix at 12 & 13).

[¶ 16] The district court found testimony by Dr. Travis compelling in that the Respondent is likely to engage in further acts of sexually predatory conduct. The district court noted Respondent's scores on two actuarial assessment tools were above-average for the risk of reoffending. Respondent's two diagnoses, coupled with risk assessment scores, have shown by clear and convincing evidence that the Respondent is likely to engage in further acts of sexually predatory conduct. (App. at 13).

[¶ 17] Finally, the district court found that the Respondent has serious difficulty controlling behavior. In addition to the three prongs set forth in Section 25-03.3-01(8), "there must also be proof that the committed individual has serious difficulty controlling his behavior to satisfy substantive due process requirements." In the Matter of E.W.F., 2008 ND 130, ¶ 10, 751 N.W.2d 686 (citing Kansas v. Crane, 534 U.S. 407, 413 (2002)). The substantive due process requirement of Crane

is not a “fourth prong” of N.D.C.C. § 25-03.3-01(8); rather, the constitutional requirement is part of the definition of a sexually dangerous individual. Id.

[¶ 18] To justify commitment, this difficulty must be severe enough to distinguish a sex offender from other dangerous but typical recidivating offenders in the ordinary criminal case. Kansas v. Crane, 534 U.S. 407, 413 (2002); See also In re G.R.H. 2006 ND 56, ¶ 9, 711 N.W.2d 587, 594 (Emphasis added). Respondent has continuously shown that he has difficulty controlling his behavior, far more than the average offender. Since 1987, Respondent has been documented 14 times for sexual misbehavior, with the most recent documentation being an admission by Respondent that he had masturbated while thinking about his past sexual misbehaviors in 2016. (T. at 25).

[¶ 19] Additionally, the district court cites Respondent has been diagnosed with (1) an exhibitionist disorder, which is the exposure of genitals to physically mature females, (2) a personality disorder with antisocial and schizotypal personality features, (3) a paraphilic disorder, and (4) bipolar one disorder with mood incongruent psychotic features. (App. at. 13). The district court determined that the Respondent’s refusal to take his prescribed mood stabilizing medication, Olanzapine, without medical approval shows an inability to control his actions. Dr. Travis testified that Respondent has discontinued his medication in the past and has linked Respondent’s sexually aggressive, manic episodes to the discontinuation of his medication. (T. at 14). These diagnoses and Respondent’s complete disregard

to take his medication make Respondent likely to engage in further acts of sexually predatory conduct, if released at this time.

[¶ 20] Respondent did not exercise his right to an independent psychological evaluation nor did Respondent offer any testimony regarding whether he has serious difficulty controlling his behavior. Rather, Respondent stipulated to Dr. Travis's expertise and the evaluation he performed. In E.W.F., this Court held that it was not improper for the district court to draw a negative inference from the Respondent's failure to call his independent expert psychologist. Matter of E.W.F., 2008 ND at ¶ 16. Therefore, it was not improper for the district court to draw a negative inference in this case from Respondent's failure to dispute the convincing evidence from the State.

[¶ 21] This Court defers to the district court's determination that an individual has serious difficulty controlling behavior when it is supported by specific findings. Interest of Johnson, 2016 ND 29, 876 N.W.2d 25, 27-28. Here, the district court has made sufficiently detailed findings that R.A.S. has serious difficulty controlling his behavior. The record supports the district court's finding that R.A.S. has serious difficulty controlling his behavior under a clear and convincing evidentiary standard.

[¶ 22] CONCLUSION

[¶ 23] Based on the forgoing reasons the State submits that the Respondent's request for relief should be denied.

[¶ 24] Respectfully submitted this 29th day of May, 2019.

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[¶ 25] CERTIFICATE OF SERVICE

[¶ 26] A true and correct copy of the foregoing document was sent by e-mail on the 29th day of May, 2019, to Tyler J. Morrow at tyler@kpmwlaw.com.

Leah J. Viste