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**ISSUES PRESENTED FOR REVIEW**

- I. Whether the district court abused its discretion when it granted the State’s Motion for Continuance of the January 29, 2019 Discharge Hearing.....¶ 9
- II. Whether the district court erred in finding by clear and convincing evidence that Hoff continues to have serious difficulty controlling his behavior.....¶ 13

## STATEMENT OF THE FACTS

[¶1] This court has previously found the following regarding Robert R. Hoff's (hereinafter referred to as Hoff) background:

In 1990, when he was 16 years old, Hoff was charged with gross sexual imposition resulting from an incident involving a 10-year-old girl, and he was sent to Home on the Range. The record contains evidence of other sex crimes where the victims declined to press charges. Hoff has also been convicted of four counts of delivering alcohol to minors and criminal trespass stemming from incidents involving his ex-girlfriend. In 2004, Hoff was convicted of gross sexual imposition, and he was given a suspended sentence and placed on probation. Hoff's probation was later revoked after he violated several conditions of probation, including that he not have unsupervised contact with minors. Hoff has been committed to the North Dakota State Hospital in Jamestown as a sexually dangerous individual since 2006.

*Interest of Hoff*, 2013 ND 68, ¶ 2, 830 N.W.2d 608.

Hoff was diagnosed with antisocial personality disorder with a high degree of psychopathy, providing a basis for finding he would engage in future acts of sexually predatory conduct and would experience serious difficulty controlling his behavior. The district court determined Hoff remained a sexually dangerous individual in 2009 and 2012. Hoff petitioned for discharge again in 2013, which was denied on September 18, 2013.

*Interest of Hoff*, 2014 ND 63, ¶ 2, 844 N.W.2d 866.

In 2014, Hoff petitioned for discharge, and that petition was denied. R. Doc Id. #214. In November 2015, Hoff again petitioned for discharge. R. Doc Id. #228. That petition was also denied and affirmed by this Court in *In Interest of Hoff*, 2018 ND 127.

[¶2] Regarding the current matter, Hoff petitioned for discharge in October 2018. R. Doc Id. #302. A discharge hearing on Hoff's petition was originally scheduled for January 29, 2019. R. Doc Id. #304. However, the State requested a

continuance because the State Hospital had not completed the State evaluation. Appellant App. 14. The State showed that the State Hospital did get notice of Hoff's upcoming evaluation and review hearing, and that they were included in the October scheduling emails. Transcript of January 29, 2019, hearing (hereinafter Tr. I at \_\_\_ ) at p. 3. The State Hospital responded that there had been miscommunication between their assistant and the doctor who was scheduled to complete Hoff's evaluation. Tr. I at p. 3. Dr. Travis, originally from Florida, was testifying at another hearing in Illinois. Also, Hoff's independent evaluator, Dr. Mugge, was not available to testify either. Tr. I at p. 4. In response, the Court granted a Continuance and stated, "So, obviously, without the doctor here and then no eval done by the State, it's obviously good cause to continue the hearing." Tr. I at p. 7. The new hearing was set for February 21, 2019. R. Doc Id. #317. At the February 2019 discharge hearing, both Dr. Travis and Dr. Mugge testified, and their reports were submitted in evidence.

[¶3] Beginning with Dr. Travis' written evaluation, he wrote:

Although Mr. Hoff has aged into a lower-risk group when considering age ranges on the Static age-at-release items, his high number of dynamic risk factors and treatment needs on the Stable 2007 support that he has not matured or mellowed to a degree typically seen in men his age. His Antisocial Personality Disorder shows no signs of remitting as often occurs in men with this disorder in the fifth decade of life. Finally, he now has two convictions or adjudications for sexual offenses.

Mr. Hoff meets the *DSM-5* criteria for diagnosis of the following mental disorders: Antisocial Personality Disorder, with Narcissistic Traits. Mr. Hoff's mental disorder drives how he responds to interpersonal stressors. His personality disorder drives his violations of others' boundaries to assuage his feelings of rejection by women, to accumulate additional rejection, and then to assert power and control over them. He is prone to take what he wants from them

sexually. This is reflected not only in past documented behavior, but also in instruments assessing his risk to sexually reoffend, which is Well Above Average.

In my professional opinion, because of Mr. Hoff's mental disorders and assessed risk (see Issue of Risk above), he remains likely to engage in acts of predatory sexual conduct. His condition *has not* changed since the most recent periodic reexamination such that he is no longer a sexually dangerous individual.

Mr. Hoff has made some progress in completing treatment objectives at the NDSH. However, his lack of impulse control clearly demonstrates he has not sufficiently implemented any treatment knowledge he has gained to adequately disinhibit his sexual urges. Although in the highly restricted environment of the NDSH he has not sexually assaulted any females, his ongoing harassment and stalking of females in the restricted environment demonstrates his ongoing lack of behavioral control.

Considering everything reviewed for this re-examination, which was conducted using procedures relied upon by experts in the field of evaluating persons who committed sexual offenses and who are subject to civil commitment as Sexually Dangerous Individuals, it is my professional opinion that Mr. Hoff is "likely to engage in further acts of sexually predatory conduct" as defined by N.D.C.C 25-03.3.

Appellant App. 55-58.

[¶4] Dr. Travis further explained his opinion during his direct examination stating:

The antisocial personality disorder is one in which a person violates boundaries, breaks rules without remorse, without consideration for other people ... his antisocial personality disorder has been manifested by continually breaking rules and laws, violating people's boundaries, putting people at risk, lack of remorse, irresponsibility in that he blames everyone else and he does not take any accountability for his own offending behaviors. Some irritability and aggressiveness and a lot of deceitfulness. So those are the features that are prominent and continue to be—many of them continue to be on display in his antisocial personality disorder.

Appellant App. 75. Dr. Travis also testified that Hoff's narcissistic traits contribute to his lack of empathy, interpersonal exploitation, arrogance, and sense of

entitlement. Transcript of February 21, 2019, hearing (hereinafter Tr. II at \_\_\_) at p. 16. Dr. Travis was then asked if he had considered also diagnosing him with another disorder. He responded, “Yes, I considered other paraphilic—other specific paraphilic disorder, sexual coercion of nonconsenting females.” Tr. II at 19. He explained that his opinion reflected Hoff’s history of establishing control and instilling fear. Tr. II at 19.

[¶5] In answering questions about the combined testing results, Dr. Travis explained:

They show me that he is in the highest risk group as far as propensity or likelihood to commit another sexual offense and the highest risk group when they look at just the nomenclature or when they are describing what those five risk levels are, they talk about the highest risk groups as being the highest eight percent in risk of all the sex offenders upon whom these instruments were normed. Tr. II at 28.

[¶6] In addition, Dr. Travis describes another reason for his belief that Hoff will have serious difficulty controlling his behavior is because he has violated probation at least twice in the past. Tr. II at 23. Lastly, Dr. Travis explained why he determined Hoff will have serious difficulty controlling his behavior:

Rejection plays a big part in his offending. When he’s rejected, when people tell him no, that escalates behavior ... So he’s doing a lot of things at the hospital that gets females there to reject him, and I think it continues to fuel whatever he’s got going on as far as fantasies and angry sex and any of those kinds of things regarding his sexual control of females. Tr. II at 32.

[¶7] Dr. Mugge, Hoff’s independent evaluator, came to very similar conclusions regarding Mr. Hoff’s progress. Appellee App. 14. For instance, Dr. Mugge states:

While these gains should be recognized, it is the opinion of the undersigned that this perceived progress is insufficient to effectively reduce his risk below “likely to engage.” A review of progress notes and group summaries revealed his difficulty identifying patterns of



behavior; his defensiveness when challenged or confronted; and his continued difficulty to accept responsibility for his behaviors (blaming other for his misbehavior, “harboring feelings of resentment” towards peers he perceived to have “wrongly accused him of actions,” and perceiving these false allegations to be the result of his peers’ “jealousy that he can talk to women.” He expressed a negative view of females (as revealed by the statement, “Women should be seen and not heard” when confronted by his tendency to attribute his daughter’s success to the result of his son’s efforts; refer to former girlfriends as “garbage” and “squatters;” and resulting in ongoing boundary issues with female staff members.

Appellee App. 14. Additionally, Dr. Mugge’s evaluation notes Hoff’s failure to accept responsibility and modify his behavior within a controlled environment:

Given his continued failure to accept responsibility for (and subsequently modify) his behavior within the structured environment of NDSH, this writer believes that Mr. Hoff will continue to experience significant difficulty controlling or managing his behavior in a less restrictive environment. Until he makes more effort to recognize his behavior as inappropriate, assume responsibility for his actions, and solidify (and commit to) realistic plans to improve his behavior, he will continue to pose a high risk for sexually reoffending. As a result of these findings, it is the opinion of the undersigned that Mr. Hoff currently meets criteria as a Sexually Dangerous Individual. Appellee App. 14.

[¶8] There was no evidence presented that was contrary to Dr. Travis’ and Dr. Mugge’s opinions. On February 22, 2019, the district court made its detailed Findings of Fact and Order Denying Discharge. Appellant App. 62. Putting the doctors’ testimony and reports together whether Hoff would have serious difficulty controlling his sexual behavior, the district court concluded:

Lastly, the Court also finds the Respondent would have serious difficulty controlling his sexual behavior if he were released from the State Hospital. The testimony and both evaluators included in their reports, that the Respondent has made progress in his treatment at the State Hospital over the review period. However, while progress in treatment can be a protective factor that may impact risk

of sexual recidivism, both evaluators found that the progress was insufficient to effectively reduce his risk below “likely to engage”. Both evaluators note the progress in treatment by Mr. Hoff is tempered by his failure to accept responsibility for his actions; and his lack of impulse control, along with inappropriate statements and actions to female staff in the highly restricted environment of the State Hospital. As such, the Respondent has not progressed in treatment to lessen his degree of risk and has demonstrated he continues to have difficulty following the rules, which combined with his history, causes the Court to find him to have serious difficulty controlling his behavior if he were released from the State Hospital. As such, the Court finds by clear and convincing evidence that the Respondent continues to be a sexually dangerous individual under N.D.C.C. § 25-03.3.

Appellant App. 65.

## LAW AND ARGUMENT

### **I. THE DISTRICT COURT DID NOT ABUSE ITS DISCRETION WHEN IT GRANTED THE STATE’S MOTION FOR CONTINUANCE OF THE JANUARY 29, 2019 DISCHARGE HEARING.**

[¶9] Hoff’s first issue on appeal is whether the district court committed reversible error when it granted the State’s Motion for Continuance of the January 29, 2019 Discharge Hearing. The basis for Hoff’s argument is N.D.C.C. 25-03.3-13 which states “Within sixty days after the finding of probable cause, the court shall conduct a commitment proceeding.” However, that statute only applies to initial commitment proceedings. N.D.C.C. 25-03.3-18 is the statute governing annual reviews and this statute does not have any kind of time line associated with the review or discharge hearing.

[¶10] Additionally, this Court has determined that even the sixty-day time line for initial commitment proceedings can be extended upon a showing of good cause.

The Supreme Court of North Dakota explained in *In re M.D.*, 2012 ND 261, ¶ 12, 825 N.W.2d 838:

A motion for continuance may be granted for good cause. N.D.C.C. § 25-03.3-13 (60-day limit for commitment proceeding after a finding of probable cause may be extended for good cause). The district court has discretion to grant a continuance. This Court will not reverse a district court's decision absent an abuse of discretion. A court abuses its discretion if it acts arbitrarily, unreasonably, or unconscionably. (internal citations and quotation marks omitted).

In this case, the district court did not abuse its discretion when it granted the State's motion for continuance. The State moved for a continuance because the State Hospital had not yet completed Hoff's evaluation. In addition, Dr. Travis was unable to testify on January 29, 2019, because he was in Illinois for another hearing.

[¶11] Furthermore, the State explained that the State Hospital did get notice of Hoff's upcoming evaluation and review hearing, and that they were included in the October scheduling emails. The State further explained that it never actually subpoenas the State Hospital. The State Hospital explained that there was a miscommunication between their assistant and the doctor who was scheduled to complete Hoff's evaluation. Likewise, Hoff's independent evaluator, Dr. Mugge, was not available to testify at the hearing on January 29, 2019.

[¶12] Taking all of that into consideration, the district court granted the State's motion for continuance, stating, "So, obviously, without the doctor here and then no eval done by the State, it's obviously good cause to continue the hearing." Under these circumstances, the district court's decision was not arbitrary, unreasonable, or unconscionable. Accordingly, the district court did not abuse its discretion by granting the State's request for a continuance.

**II. THE DISTRICT COURT DID NOT ERROR IN FINDING BY CLEAR AND CONVINCING EVIDENCE THAT HOFF CONTINUES TO HAVE DIFFICULTY CONTROLLING HIS BEHAVIOR.**

[¶13] Hoff's second issue on appeal is whether he will have serious difficulty controlling his behavior. A district court's order denying a petition for discharge will be affirmed "unless it is induced by an erroneous view of the law or we are firmly convinced it is not supported by clear and convincing evidence." *Interest of Voisine*, 2016 ND 254. ¶6, 888 N.W. 2d 781. Great deference will also be given to the district court's credibility determination of expert witnesses and the weight to give the evaluator's testimony.

[¶14] In this case, the district court's order is unquestionably supported by clear and convincing evidence. Both evaluators reach the same conclusions in their evaluations. Dr. Travis is very detailed and clear in his evaluation as to why he believes Hoff will have serious difficulty controlling his behavior. Dr. Travis includes several factors such as how his personality disorder drives how he responds to interpersonal stressors. He is prone to take what he wants from women, sexually, which is documented by his past behavior, as well as by risk assessment testing. Even though Hoff has made some progress in completing treatment objectives, he has clearly not implemented any of this treatment knowledge into fighting his daily urges. And, in the highly restricted environment of the State Hospital, he has continued to display stalking and harassing behavior towards female staff. Hoff has demonstrated an overall lack of behavioral control. All of this evidence shows that Hoff would have serious difficulty controlling his

behavior, and Hoff is “likely to engage” in further acts of sexually predatory conduct. There is absolutely no evidence to the contrary.

[¶15] The district court’s order is not induced by an erroneous view of the law. Dr. Travis as part of his opinion details the law regarding this issue and it is clear that he understands the analysis for the opinion he is giving.

[¶16] From the district court’s findings, it is apparent that the district court’s decision was not induced by an erroneous view of the law. Prior to finding that Hoff continues to meet criterion for a sexually dangerous individual, the district court is required to find:

(1) the individual has 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) the individual’s condition makes them likely to engage in further acts of sexually predatory conduct which constitute a danger to the physical or mental health or safety of others. In addition, substantive due process requires proof that that individual has serious difficulty controlling his behavior.

*Interest of Johnson*, 2015 ND 71, ¶ 5, 861N.W.2d 484. (internal citations and quotation marks omitted). The district court follows this outline exactly when making its order and its findings are detailed regarding each prong and constitutional requirement. The testimony of Dr. Travis and his evaluation follow the same legal analysis and steps, as does Dr. Mugge’s evaluation.

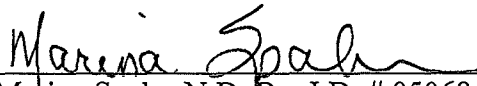
## CONCLUSION

[¶17] The district court did not abuse its discretion when it granted the State’s Motion for Continuance of the January 29, 2019 Discharge Hearing, and the district court did not error in finding by clear and convincing evidence that Hoff continues

to be a sexually dangerous individual pursuant to N.D.C.C. 25-03.3. Therefore, the Court should affirm the order of the district court.

RESPECTFULLY SUBMITTED:

Dated this 13th day of June 2019.

  
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IN THE SUPREME COURT

STATE OF NORTH DAKOTA

State of North Dakota, )  
 )  
 Plaintiff-Appellee, )  
 )  
 -vs- )  
 )  
 Robert R. Hoff, ) Supreme Ct. No. 20190066  
 )  
 Defendant-Appellant, ) District Ct. No. 08-05-R-00363

STATE OF NORTH DAKOTA )  
 ) ss  
 COUNTY OF BURLEIGH )

Amanda Hastig, being first duly sworn, depose and say that I am a United States citizen over 21 years old, and on the 13 day of June, 2019, I served the following:

1. Brief of Petitioner-Appellee
2. Appendix of Petitioner-Appellee
3. Affidavit of Service

on the following electronic transmission to the listed email address of:

Kent M Morrow  
Attorney at Law  
morrow@midconetwork.com

which address is the last known email address of the addressee.

Amanda Hastig  
Amanda Hastig

Subscribed and sworn to before me this 13 day of June, 2019.

Jeanne Schnellbach  
Notary Public,  
Burleigh County, North Dakota

