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SUPERIOR COURT OF NEW JERSEY APPELLATE DIVISION DOCKET NO. A-2213-21

IN THE MATTER OF THE
CIVIL COMMITMENT OF
R.M.T., SVP-375-04.

Submitted March 22, 2023 – Decided July 3, 2023

Before Judges Enright and Bishop-Thompson.

On appeal from the Superior Court of New Jersey, Law
Division, Essex County, Docket No. SVP-375-04.

Joseph E. Krakora, Public Defender, attorney for
appellant R.M.T. (Patrick Madden, Assistant Deputy
Public Defender, on the brief).

Matthew J. Platkin, Attorney General, attorney for
respondent State of New Jersey (Melissa H. Raksa,
Assistant Attorney General, of counsel; Stephen
Slocum, Deputy Attorney General, on the brief).

PER CURIAM

Appellant R.M.T. appeals from the March 16, 2022 Law Division order
which found him to be a sexually violent predator and continued his conditional
discharge from the Special Treatment Unit (STU) pursuant to the Sexually

Violent Predator Act (SVPA), N.J.S.A. 30:4-27.24 to - 27.38.1.¹ Having reviewed the record, we affirm.

I.

We derive the facts from the record. A judge committed R.M.T. to the STU in 2004 pursuant to the SVPA. Judges have continued R.M.T.'s commitment since that time, following annual review hearings. The events that culminated in his commitment, included an adjudication for committing acts which, if committed by an adult, would have constituted sexual assault against his two juvenile sisters. Later, R.M.T. admitted to sexually assaulting twenty-nine other children, both boys and girls, as well as committing sexual acts with two family pets. The facts are recounted in our 2007 decision that affirmed his continued commitment and need not be repeated in detail here. In re Civ. Commitment of R.M.T., No. A-5768-05 (App. Div. Feb. 5, 2007) (slip op. at 3-7). We affirmed R.M.T.'s continued civil commitment in 2010. In re Civ. Commitment of R.M.T., No. A-0024-10 (App. Div. Dec. 29, 2010) (slip op. at 1).

¹ We use initials to refer to appellant because records pertaining to civil commitment proceedings under the SVPA are deemed confidential under N.J.S.A. 30:4-27.27(c) and are excluded from public access pursuant to Rule 1:38-3(f)(2).

In May 2017, R.M.T. was conditionally discharged from the STU. Since 2019, R.M.T. has been married and has lived with his wife. In 2020, R.M.T. was no longer subject to electronic monitoring and his "call-ins" to the Community Resource Team (CRT) were reduced from weekly to biweekly.

Judge Keith Bachmann conducted R.M.T.'s most recent review hearing on March 16, 2022. R.M.T. relied on the report and testimony of psychologist Dr. Christopher P. Lorah in support of his application to remove the conditional discharge. The State relied on the report and testimony of psychologist Dr. Christine Zavalis.

The court accepted Dr. Lorah as an expert in psychology, particularly sex offender risk assessment. Dr. Lorah based his report and testimony on a reevaluation of R.M.T, a clinical interview, and a review of his medical and STU records. Dr. Lorah diagnosed R.M.T. with Pedophilia, sexually attracted to both males and females, non-exclusive type; Alcohol Use Disorder, mild, in sustained full remission; and Bipolar II Disorder, with anxious features.

Dr. Lorah testified R.M.T. had been compliant with parole supervision, and the treatment requirements of his conditional discharge in attending a substance abuse, Alcoholics Anonymous (AA), and sex offender specific treatment. Lorah opined R.M.T. had a stable home situation since his marriage

in 2019, demonstrated employment stability, and had family and community support. In addition, R.M.T. has had a "significant" treatment effect both with the STU and maintaining healthy relationships.

Dr. Lorah testified that a 2017 investigation by the parole department revealed R.M.T. viewed adult pornography on his phone for approximately one month shortly after he was placed on conditional discharge. However, since that incident, R.M.T. has complied with the instruction not to view pornographic websites.

Dr. Lorah opined, "Based on [R.M.T.'s] compliance with all aspects of his supervision in addition to the quality of his support network, stipulations of a conditional discharge [were] no longer necessary to lower his risk below the highly likely level." Lorah further opined, "Removing his conditional discharge will not jeopardize community safety and he will remain 'less than highly likely' [to reoffend] without court or parole supervision."

The court also accepted Dr. Zavalis as an expert in psychology and a member of the Treatment Progress Review Committee in the STU. Dr. Zavalis based her opinion on R.M.T.'s STU file, communication with the STU CRT, R.M.T.'s treatment provider, and an interview with R.M.T. similar to Dr. Lorah, Dr. Zavalis diagnosed R.M.T. with: Pedophilic Disorder, sexually attracted to

both males and females, non-exclusive type; other Specified Paraphilic Disorder, hebephilia, voyeurism, zoophilia, non-consent; Alcohol Use Disorder, mild to moderate, in sustained full remission; and Bipolar II Disorder, provisional.

Dr. Zavalis also testified that since R.M.T. was discharged from the STU, he has been compliant with the terms of his conditional discharge. Like Dr. Lorah, she found R.M.T. was "actively engaged" in outpatient treatment and AA, maintained full-time employment, and developed a positive and supporting social network consisting of family, coworkers, group members, STU members and his wife. She also noted that during COVID-19, R.M.T. was briefly unemployed but demonstrated good coping and problem-solving skills.

Dr. Zavalis also testified regarding R.M.T.'s violation of the May 25, 2017 order that limited access to computers, prohibited access to social networking or pornographic sites, and granted parole the right to monitor his usage. Zavalis found the sexual content "concerning" because the images involved teens or "step-daughter [and] step-father." Further, Zavalis testified the content was excessively viewed over the course of one month before it was discovered, which suggested hypersexuality and sexualized coping.

Dr. Zavalis also testified to one area of "ongoing concern" — the regular contact R.M.T. was permitted with his niece and nephew, which was consistently supervised as part of his conditional discharge. Zavalis stated if the discharge conditions were eliminated, R.M.T. would have unsupervised contact with minors. Another area of concern was the maintenance of appropriate boundaries within his family, specifically, the uncertainty of R.M.T.'s ability to self-intervene and the reliance on his social support network when a high-risk situation arose without the "external controls of the court-ordered conditions."

Dr. Zavalis opined "based on [R.M.T.'s] history and overall risk profile, the continuation of a gradual de-escalation of restraints is most appropriate" under psychological standards. Further, Zavalis "supported the reduction of CRT contacts from biweekly to monthly and Kintock² therapy sessions from weekly to biweekly, while the other conditions remain in place." Dr. Zavalis explained the clinical importance of maintaining the conditional discharge: "The support and supervision provided by [p]arole [officers], the CRT, and his

² We discern from the record R.M.T. participates in Kintock, a non-residential community-based program that provides critical reentry services to facilitate parolees' successful reintegration back into the community.

therap[y] remain important for his continued success in the community and to ensure public safety by intervening if needed."

Following the hearing on March 16, 2022, in a written opinion accompanied by an order, the judge denied R.M.T.'s application to terminate his conditional discharge. The judge found by clear and convincing evidence that R.M.T. had been convicted of a sexually violent offense and continued to suffer from "mental conditions or abnormalities that rendered him highly likely to commit a sexually violent offense if released to the community without condition." The judge also found both Dr. Zavalis and the State "agree[d] that [R.M.T.'s] conditions of release should be modified and that the intensity of his supervision should be lessened." Accordingly, the judge reduced R.M.T.'s obligation to report to CRT to once a month, reduced his obligation to attend therapy sessions at Kintock from weekly to bi-weekly, but kept all other conditions of the conditional discharge intact.

II.

On appeal, R.M.T. argues the State failed to show by clear and convincing evidence that he was highly likely to re-offend in the foreseeable future. This argument lacks merit.

The governing law is clear. An involuntary civil commitment under the SVPA can follow an offender's service of a custodial sentence, or other criminal disposition, when he "suffers from a mental abnormality or personality disorder that makes the person likely to engage in acts of sexual violence if not confined in a secure facility for control, care and treatment." N.J.S.A. 30:4-27.26; see also In re Civ. Commitment of A.Y., 458 N.J. Super. 147, 154 (App. Div. 2019).

As defined by the statute, a "mental abnormality" consists of "a mental condition that affects a person's emotional, cognitive or volitional capacity in a manner that predisposes that person to commit acts of sexual violence." N.J.S.A. 30:4-27.26. The mental abnormality or personality disorder "must affect an individual's ability to control his or her sexually harmful conduct." In re Commitment of W.Z., 173 N.J. 109, 127 (2002). A showing of "an impaired . . . ability to control sexually dangerous behavior" will suffice to prove a mental abnormality. Id. at 126-7; In re Civ. Commitment of R.F., 217 N.J. 152, 186 (2014).

At a commitment hearing, the State has the burden of proving under the SVPA that the offender poses a threat:

to the health and safety of others because of the likelihood of his or her engaging in sexually violent acts [T]he State must prove that threat by demonstrating that the individual has serious difficulty

in controlling sexually harmful behavior such that it is highly likely that he or she will not control his or her sexually violent behavior and will reoffend.

[W.Z., 173 N.J. at 132.]

The court must address the offender's "present serious difficulty with control over dangerous sexual behavior." Id. at 132-33 (emphasis omitted).

In this appeal, our review of the judge's decision is "extremely narrow." R.F., 217 N.J. at 174 (quoting In re D.C., 146 N.J. 31, 58 (1996)). "The judges who hear SVPA cases generally are 'specialists' and 'their expertise in the subject' is entitled to 'special deference.'" Ibid. (quoting In re Civ. Commitment of T.J.N., 390 N.J. Super. 218, 226 (App. Div. 2007)). On appeal, we will not disturb the judge's decision unless there was a clear abuse of discretion, and "it is our responsibility to canvass the record, inclusive of the expert testimony, to determine whether the findings made by the . . . judge were clearly erroneous." In re Civ. Commitment of W.X.C., 407 N.J. Super. 619, 630 (App. Div. 2009), aff'd, 204 N.J. 179 (2010) (citation omitted). Thus, "[s]o long as the trial court's findings are supported by 'sufficient credible evidence present in the record,' those findings should not be disturbed." R.F., 217 N.J. at 175 (citations omitted); see also In re Commitment of J.M.B., 197 N.J. 563, 597 (2009).

R.M.T. argues the judge erred in his presumption that R.M.T. needed to continue to participate in parole monitoring and outpatient sex offender treatment given Dr. Lorah's testimony that R.M.T. had been "under conditions well beyond what was necessary to prevent a future act of sexual violence." .

We see no merit in R.M.T.'s argument. The judge supported his decision to modify some terms of the conditional discharge and to keep some intact. The judge stated "[t]he very people whom [R.M.T.] suggest would be able to supervise him should he be around his young niece and nephew are . . . the same people who should have seen what was going on for years with [R.M.T.] and his sisters."

In considering the opposing expert opinions, the judge acknowledged his respect for Dr. Lorah but disagreed with his opinion that R.M.T. "no longer presented a risk to reoffend if released without conditions." As stated, we owe particular deference to the judge's credibility determinations. See State v. Locurto, 157 N.J. 463, 474 (1999).

The judge then relied primarily on Dr. Zavalis's opinion that "some" conditions remained necessary: monthly CRT reporting; biweekly Kintock treatment; parole; continuing participation in AA; abstain from drug and alcohol use; curfew; Megan's Law registration; gainful employment; avoid places where

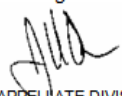
children are present absent preapproval by parole; and no contact with minors. The judge credited Dr. Zavalis's expert testimony as to R.M.T.'s high risk of re-offending if he were no longer subject to the requirements of a conditional discharge.

The judge's conclusions are amply supported by the evidence presented at the commitment hearing and consistent with the law governing SVPA proceedings. Based on our review of the record, we are satisfied the judge appropriately considered the credible evidence in the record and determined that R.M.T. should remain subject to some aspects of the conditional discharge. Therefore, we find no abuse of the judge's discretion in ordering R.M.T.'s continued conditional discharge under the SVPA.

To the extent we have not addressed any other argument raised by R.M.T. in this appeal, it is because we find any such argument to have insufficient merit to warrant discussion in a written opinion. R. 2:11-3(e)(1)(E).

Affirmed.

I hereby certify that the foregoing
is a true copy of the original on
file in my office.


CLERK OF THE APPELLATE DIVISION