

NORTH DAKOTA SUPREME COURT

State of North Dakota v. Kelly Tanner

2017 ND 153 (N.D. 2017) · No. No. 20160231 · Decided June 29, 2017

SUMMARY

The North Dakota Supreme Court affirmed the denial of Kelly Tanner’s petition for discharge from civil commitment as a sexually dangerous individual. The court held that the district court’s findings that Tanner was likely to engage in further sexually predatory conduct and had serious difficulty controlling his behavior were supported by clear and convincing evidence and were not based on an erroneous view of the law.

CASE DETAILS

COURT	North Dakota Supreme Court
WRITING FOR THE COURT	Kapsner, Justice; Carol Ronning Kapsner; Lisa Fair; Gerald W. VandeWalle; Daniel J. Crothers; Lisa McEvers; Dale V. Sandstrom, Surrogate Judge
JURISDICTION	North Dakota
DECIDED	June 29, 2017
DOCKET	No. 20160231
DISPOSITION	affirmed
PROCEDURAL POSTURE	Kelly Tanner appealed from a district court order finding he remained a sexually dangerous individual and denying his petition for discharge from civil commitment.
STANDARD OF REVIEW	Civil commitments of sexually dangerous individuals are reviewed under a modified clearly erroneous standard. An order denying discharge is affirmed unless it was induced by an erroneous view of the law or the reviewing court is firmly convinced it is not supported by clear and convincing evidence. The trial court receives great deference on expert credibility determinations and the weight of testimony.
PRECEDENTIAL VALUE	Published North Dakota Supreme Court opinion; precedential.
PARTIES	Kelly Tanner v. State of North Dakota

TOPICS

substantive due process

health law

appellate procedure

standard of review

PRACTICE AREAS

civil commitment

constitutional law

mental health law

appellate procedure

QUESTIONS PRESENTED

1. Whether the district court's finding that Tanner remained a sexually dangerous individual was supported by clear and convincing evidence.
2. Whether the State proved that Tanner was likely to engage in further acts of sexually predatory conduct.
3. Whether the evidence supported the required substantive-due-process finding that Tanner had serious difficulty controlling his behavior.

HOLDINGS

1. The district court properly denied Tanner's petition for discharge because the record supported the finding that he remained a sexually dangerous individual and the decision was not induced by an erroneous view of the law.
2. The State proved by clear and convincing evidence that Tanner was likely to engage in further acts of sexually predatory conduct.
3. Substantive due process requires proof, in addition to the statutory elements, that the committed individual has serious difficulty controlling his behavior; the record supported that finding here.

KEY QUOTATIONS

“In addition to the three statutory requirements, to satisfy substantive due process, the State must also prove the committed individual has serious difficulty controlling his behavior.” (§ 5)

“means the individual’s propensity towards sexual violence is of such a degree as to pose a threat to others.” (§ 6)

“We conclude the district court’s denial of Tanner’s petition for discharge is supported by the record and is not induced by an erroneous view of the law.” (§ 11)

FACTUAL BACKGROUND

Tanner was convicted of sexual assault in 2008 and later convicted of failing to register as a sex offender. Before his release from incarceration, the State sought his civil commitment as a sexually dangerous individual, and the district court ordered commitment. After two earlier discharge petitions were denied, Tanner filed a third petition in 2015. At the resulting hearing, the State's expert testified that Tanner remained likely to commit sexually predatory acts, while an independent expert recommended release; the district court credited the State's expert and relied in part on Tanner's repeated sexually inappropriate conduct and other behavioral writeups while hospitalized.

PROCEDURAL HISTORY

Tanner was civilly committed as a sexually dangerous individual after the State petitioned for commitment in 2010. This Court affirmed the initial commitment in 2012. After the district court denied Tanner's third petition for discharge following an evidentiary hearing with testimony from two doctors, Tanner appealed; the North Dakota Supreme Court affirmed.

DISPOSITION

affirmed

CASES CITED

- Matter of Midgett, 2009 ND 106, ¶ 5, 766 N.W.2d 717
- Matter of Wolff, 2011 ND 76, ¶ 5, 796 N.W.2d 644
- Matter of Hehn, 2015 ND 218, ¶ 5, 868 N.W.2d 551
- Matter of Rubey, 2011 ND 165, ¶ 5, 801 N.W.2d 702
- Interest of Thill, 2014 ND 89, ¶ 17, 845 N.W.2d 330
- Kansas v. Crane, 534 U.S. 407 (2002)
- Interest of Johnson, 2015 ND 71, ¶ 9, 861 N.W.2d 484
- Interest of Tanner, 2012 ND 127, 821 N.W.2d 385

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