

NORTH DAKOTA SUPREME COURT

Cass County State's Attorney v. O.H.W.

775 N.W.2d 73 (N.D. 2009) · Decided November 17, 2009

SUMMARY

The North Dakota Supreme Court affirmed the denial of O.H.W.’s petition for discharge from commitment as a sexually dangerous individual. The court held that an alleged ethical conflict involving the State’s psychologist affected the weight of the psychologist’s testimony, not its admissibility. The court also concluded that clear and convincing evidence supported the finding that O.H.W. remained sexually dangerous and that any error in taking judicial notice of hospital personnel shortages was harmless.

CASE DETAILS

COURT	North Dakota Supreme Court
WRITING FOR THE COURT	Crothers, Justice; Gerald W. Vande Walle, C.J.; Mary Muehlen Maring, J.; Carol Ronning Kapsner, J.; Dale V. Sandstrom, J.
JURISDICTION	North Dakota
DECIDED	November 17, 2009
DISPOSITION	affirmed
PROCEDURAL POSTURE	O.H.W. appealed the district court's order finding that he remained a sexually dangerous individual and denying his petition for discharge from the North Dakota State Hospital.
STANDARD OF REVIEW	The admission of expert testimony is reviewed for abuse of discretion. The denial of a petition for discharge from commitment as a sexually dangerous individual is reviewed under a modified clearly erroneous standard; the decision will be affirmed unless induced by an erroneous view of the law or unsupported by clear and convincing evidence. Judicial-notice error is reviewed for harmlessness under N.D.R.Civ.P. 61.
PRECEDENTIAL VALUE	Published North Dakota Supreme Court opinion; precedential
PARTIES	O.H.W. v. Cass County State's Attorney

TOPICS

- expert testimony
- evidence
- judicial notice
- standard of review
- appellate procedure

PRACTICE AREAS

evidence

civil commitment

mental health law

appellate procedure

QUESTIONS PRESENTED

1. Whether the district court abused its discretion by admitting Dr. Coombs's report and testimony despite his dual role as O.H.W.'s treating and evaluating psychologist.
2. Whether the State proved by clear and convincing evidence that O.H.W. remained a sexually dangerous individual.
3. Whether the district court committed reversible error by taking judicial notice of the well-publicized nature of personnel shortages at the State Hospital without first giving O.H.W. an opportunity to be heard.

HOLDINGS

1. A possible ethical violation or conflict arising from a psychologist's dual treating and evaluating roles affects the weight of the psychologist's opinion, not its admissibility, when the testimony otherwise satisfies the requirements for expert opinion evidence.
2. The district court properly denied O.H.W.'s petition for discharge because the State proved by clear and convincing evidence that he remained a sexually dangerous individual.
3. The district court erred by failing to provide the opportunity to be heard required before taking judicial notice, but the error was harmless because the noticed fact was unnecessary to the decision and did not affect O.H.W.'s substantial rights.

KEY QUOTATIONS

“This definition prevents a contest over percentage points and the results of other actuarial tools, and allows experts to use the fullness of their education, experience and resources available to them in order to determine if an individual poses a threat to society.” (775 N.W.2d 76, ¶ 7)

“The district court did not abuse its discretion by admitting Dr. Coombs’ report and testimony because possible ethical violations by testifying psychologists go to the weight of the testimony and not to its admissibility.” (775 N.W.2d 77-78, ¶ 16)

“We will affirm the district court’s denial “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.”” (775 N.W.2d 78, ¶ 17)

FACTUAL BACKGROUND

O.H.W. was committed in 2005 based on multiple sexual offenses and was diagnosed with pedophilia and antisocial personality disorder. In 2008, he petitioned for discharge and was evaluated by Dr. Lincoln Coombs, a State-designated psychologist who had treated him for one or two months, and by Dr. Robert Riedel, whom O.H.W. selected. At the discharge hearing, only Dr. Coombs's report and testimony were presented; Coombs opined that pedophilia should be discontinued but that antisocial personality disorder, high risk-assessment scores, continued aggression, poor treatment progress, and other conduct indicated a high risk of reoffending.

PROCEDURAL HISTORY

O.H.W. was committed to the North Dakota State Hospital in 2005 as a sexually dangerous individual. He petitioned for discharge in 2008. Following a discharge hearing at which the State presented the report and testimony of psychologist Dr. Lincoln Coombs, the district court denied the petition, denied O.H.W.'s motion to strike the report and testimony, and found by clear and convincing evidence that he remained a sexually dangerous individual. The North Dakota Supreme Court affirmed.

DISPOSITION

affirmed

CASES CITED

- Interest of M.B.K., 2002 ND 25, ¶ 18, 639 N.W.2d 473
- Matter of G.R.H., 2008 ND 222, ¶ 7, 758 N.W.2d 719
- Kansas v. Crane, 534 U.S. 407, 413 (2002)
- Matter of A.M., 2009 ND 104, ¶ 10, 766 N.W.2d 437
- Weber v. Weber, 512 N.W.2d 723, 728 (N.D. 1994)
- Anderson v. A.P.I. Co., 1997 ND 6, ¶ 9, 559 N.W.2d 204
- State v. Fontaine, 382 N.W.2d 374, 377 (N.D. 1986)
- State v. Steinbach, 1998 ND 18, ¶ 12, 575 N.W.2d 193
- Nesvig v. Nesvig, 2006 ND 66, ¶ 12, 712 N.W.2d 299
- Kronberger v. Zins, 463 N.W.2d 656, 659 (N.D. 1990)