

Burdens of Proof in Federal Civil Commitment Proceedings

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Federal Civil Commitment Order Requires Findings of Dangerousness and No Suitable Arrangement for State Custody

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In *United States v. Malmstrom*, 2022 WL 3371271 (8th Cir. 2022), the U.S. Court of Appeals for the Eighth Circuit upheld a decision by the U.S. District Court to civilly commit Eric Malmstrom under 42 U.S.C. § 4246 (1997), finding that the government proved by clear and convincing evidence that Mr. Malmstrom was dangerous, and that the government met its burden to prove that there were no suitable arrangements in state custody.

Facts of the Case

Mr. Malmstrom was ordered to be civilly committed in federal custody under 18 U.S.C. § 4246 (1997) following his release from prison. The federal statute authorizes “indefinite hospitalization for a person due for release but who, as a result of a mental illness, poses a significant danger to the general public” (*Malmstrom*, p 1, quoting *United States v. Thomas*, 949 F.3d 1120 (8th Cir. 2020), p 1123 and *United States v. S.A.*, 129 F.3d 995 (8th Cir. 1997), p 998). A certificate is required stating that the person’s release would “create a substantial risk of bodily injury to other people or serious property damage” (*Malmstrom*, p 1, citing *S.A.*, p 998). As articulated in *Thomas*, at a civil commitment hearing, the government must establish by clear and convincing evidence that the person for whom commitment is sought has a mental disease or defect; that the person

will be dangerous if released into the community; and that there exists a direct causal link between the mental disease or defect and the person’s dangerousness. To be civilly committed under the federal statute, the government must also establish that no “suitable arrangements for state custody and care” are available (*Malmstrom*, p 1, citing *S.A.*, p 998).

The district court judge had adopted the report and recommendations of a magistrate judge for the District of Minnesota. In the report and recommendation, the district court noted that, under the federal civil commitment statute, the government has the burden to prove dangerousness by clear and convincing evidence and found sufficient evidence that the government met its burden. Under the federal civil commitment statute, the government must also prove that no suitable arrangements for state custody were available, thus necessitating federal custody. The district court found sufficient evidence that the government met its burden on custody. Mr. Malmstrom appealed the decision of the district court to the Eighth Circuit Court of Appeals.

Ruling and Reasoning

The U.S. Court of Appeals for the Eighth Circuit upheld the rulings of the district court. On appeal, Mr. Malmstrom first argued that the facts in evidence failed to demonstrate his dangerousness by clear and convincing evidence. He argued that, following prior controlling case law in *United States v. Chairse*, 18 F. Supp. 2d 1021 (D. Minn. 1998), the district court was required to find that a majority of seven factors set out in the case supported a finding of dangerousness. Because the district court found only three factors, Mr. Malmstrom argued that this was insufficient.

The court disagreed with Mr. Malmstrom as to the interpretation of *Chairse* and also whether there was sufficient evidence to support his finding of dangerousness. The court said that, under *Chairse*, the court is not limited to the factors set out in the case. Citing *United States v. Dalasta*, 3 F.4th 1121 (8th Cir. 2021), the district court is permitted to consider “any activity that evidences a genuine possibility of future harm to persons or property” (*Dalasta*, p 1125). The district court had considered Mr. Malmstrom’s prior criminal history, which took place from 1999 to 2019 and included multiple occurrences of threatening and assaultive conduct. The court also pointed out that the district court considered Mr. Malmstrom’s history of mental illness. Mr. Malmstrom had been diagnosed with schizophrenia. The district court found it relevant that Mr. Malmstrom denied having a

mental illness, had a history of nonadherence to recommended treatment, and had “tendencies toward violent behavior when off his medication” (*Malmstrom*, p 2). In addition, although Mr. Malmstrom asserted that he had been compliant with his medication since early 2020, the district court noted that he had “consistently refused medication for much of his past” (*Malmstrom*, p 2). Accordingly, the Eighth Circuit Court of Appeals ruled that the district court did not err in finding Mr. Malmstrom to be dangerous by clear and convincing evidence.

Mr. Malmstrom also argued that the district court erred by finding that the government met its burden to prove that there existed no suitable arrangements for him to be committed to state custody. He argued that under prior case law, the government had the burden to prove unavailability of custody by clear and convincing evidence. The circuit court disagreed with Mr. Malmstrom. The court said the burden on unavailability of custody is not the high burden asserted by Mr. Malmstrom. Following *United States v. Wigren*, 641 F.3d 944 (8th Cir. 2011), the court said that the government’s burden as to the unavailability of custody is met when a director certifies that no such state arrangements exist. In Mr. Malmstrom’s case, the court found that the director had made such a certification and Mr. Malmstrom did not challenge the sufficiency of the certification. The court concluded that the district court did not err in finding that the government met its burden of proof on unavailability of state custody. The court affirmed the judgment of the district court.

Discussion

This case discusses the criteria for federal civil commitment under 18 U.S.C. § 4246 and clarifies the government’s burdens of proof as to dangerousness and unavailability of state custody. Although forensic mental health professionals are unlikely to have a significant role in the availability of custody prong, they are commonly called to perform assessments and testify as to the person’s risk of future dangerousness. This case makes clear that district courts can consider many factors in determining the person’s dangerousness, including historic and clinical factors associated with increased risk of violence beyond evidence of the person’s recent behaviors.

This case also recalls *United States v. Dalasta*, another Eighth Circuit case. Kevin Allen Dalasta challenged a finding of his dangerousness and resulting commitment to the custody of the Attorney

General under 18 U.S.C. § 4246. The question in *Dalasta* was whether it was error for the trial court to place more weight upon the testimony of one expert witness rather than another. Both Eighth Circuit cases, *Malmstrom* and *Dalasta*, remind us that court rulings on a person’s dangerousness may be challenged on appeal and the forensic evaluations scrutinized.

In *Dalasta*, one doctor’s opinion that Mr. Dalasta would not be dangerous if released (based upon the assumption that he would live with his parents and not have access to guns) simply did not pass a common sense test because Mr. Dalasta had expressed an adamant desire to live on his own and possess firearms if released.

Although the Eighth Circuit has acknowledged the possibility of “the government’s home-field advantage” (*Thomas*, p 1124) regarding cases where the state experts are provided more time with the clients, the factfinder ultimately has wide discretion to assess and make judgements about expert testimony.

Parent of an Emancipated Adult with Mental Illness Does Not Have a Duty to Control or Supervise That Adult

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Mental Illness Does Not Create a Special Relationship Duty, or a Gratuitous Assumption of a Duty to Supervise an Emancipated Adult Child with Mental Illness Involved in a Criminally Violent Act

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Key words: special relationships; third-party liability; duty to control; creating risk of harm; duty to supervise; negligence