STATE OF MINNESOTA
IN COURT OF APPEALS
A11-1972
A12-228

Minnesota Department of Human Services,
Respondent,

vs.

Jerome Daniels,
Appellant.

Filed September 17, 2012
Affirmed
Willis, Judge[*]

Ramsey County District Court
File No. 62C907004684

Lori Swanson, Attorney General, Matthew D. Schwandt, Assistant Attorney General, St. Paul, Minnesota (for respondent)

Jordan S. Kushner, Minneapolis, Minnesota (for appellant)

Considered and decided by Rodenberg, Presiding Judge; Cleary, Judge; and Willis, Judge.

U N P U B L I S H E D O P I N I O N

WILLIS, Judge

These consolidated appeals arise out of an action initiated by respondent to seek reimbursement from appellant for the costs of appellant's care in the Minnesota Sex

[*] Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

Offender Program (MSOP). Appellant challenges the district court's grant of summary judgment to respondent, asserting that the confiscation of non-exempt assets for the cost of his care violates his constitutional rights to equal protection, to due process, against excessive fines, and against unreasonable search and seizure because the evidence of his assets was obtained through an unlawful search. Appellant also challenges the district court's order awarding interest on exempt retirement funds, asserting that he is entitled to judgment interest, rather than escrow-account interest. We affirm.

FACTS

In June 2002, a district court committed appellant Jerome Daniels to the MSOP as a sexual psychopathic personality (SPP) and a sexually dangerous person (SDP). This court affirmed Daniels's commitment. *In re Civil Commitment of Daniels*, No. A03-623 (Minn. App. Nov. 18, 2003), *review denied* (Minn. Jan. 20, 2004).

In May 2007, respondent Minnesota Department of Human Services filed a complaint against Daniels seeking injunctive relief and recovery of the cost of his care. The department alleged that Daniels had refused to disclose his financial assets and failed to pay $496,500.30 for the cost of his care, as required by Minn. Stat. § 246.52 (2010). The department also moved for an emergency temporary restraining order and applied for a preliminary attachment order to protect its ability to recover funds from Daniels. The department requested that the district court enjoin Daniels from "depositing, cashing, assigning, transferring, disposing or altering in any way" a $268,035.41 bank draft payable to Daniels or his company, Vic N. More Inc., and funds in several other accounts. The district court granted both motions and directed Daniels to deliver the

$268,035.41 bank draft to the district court to hold in escrow. The district court later converted the temporary restraining order and preliminary attachment order into a temporary injunction.

In January 2008, the department moved for summary judgment, and the district court entered judgment against Daniels. The district court determined that there were no genuine issues of material fact, concluding that Daniels's rights to equal protection and due process were not violated and that requiring him to pay the cost of his care did not violate the Eighth Amendment. The district court further determined to be moot Daniels's argument that the department should not be permitted to benefit from evidence of his assets that was obtained as the result of an illegal search and seizure. Finally, the district court concluded that Daniels was entitled to have $50,086.59—the full amount of his IRA funds—returned to him because they are exempt from attachment or garnishment under Minn. Stat. § 550.37, subd. 24 (2010). Daniels appealed from the summary judgment.

Following a request from Daniels for interest on his IRA funds, the district court determined that Daniels was "entitled to the interest that he would have earned had the draft been deposited in accordance with the Court's Order," in the amount of $522.36. Daniels appealed from the interest judgment, and this court consolidated his appeals.

D E C I S I O N

A motion for summary judgment shall be granted "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that either party is entitled

to a judgment as a matter of law." Minn. R. Civ. P. 56.03. A genuine issue of fact exists if reasonable persons might draw different conclusions based on the evidence. *DLH, Inc. v. Russ*, 566 N.W.2d 60, 70 (Minn. 1997). "[T]he party resisting summary judgment must do more than rest on mere averments" and must provide concrete evidence of genuine and material fact issues for the elements necessary to prove its claim. *Id.* at 71. This court reviews de novo whether the district court erred in its application of the law and whether there were any genuine issues of material fact when the evidence is viewed in the light most favorable to the nonmoving party. *STAR Ctrs., Inc. v. Faegre & Benson, L.L.P.*, 644 N.W.2d 72, 76-77 (Minn. 2002).

The Minnesota Commissioner of Human Services "may recover . . . the cost of any care provided in a state facility," including the MSOP. Minn. Stat. § 246.51, subd. 3 (2010). The "client" is required to provide the commissioner with information about his ability to pay for his care. *Id.*, subd. 1a (2010). If the client fails to provide this information to the commissioner, then he is liable for the full cost of his care and the commissioner may institute a civil action to recover the amount owed. *Id.*; Minn. Stat. § 246.52.

Here, Daniels refused to provide the commissioner with any financial information. As a result, the commissioner determined that he was liable for the full cost of his care, in the amount of $497,545.29. Daniels does not dispute that he did not appeal that decision or contest the total amount due. Instead, Daniels argues that he should not be required to pay anything for the cost of his care, asserting that the statute violates his constitutional rights to equal protection and due process, and imposes an excessive fine in violation of

the Eighth Amendment. He further argues that the commissioner should not be able to use evidence of his financial assets because they were obtained as the result of an unconstitutional search and seizure.

I. The district court did not err by concluding that the department's taking of Daniels's assets for the cost of his care does not violate equal-protection rights.

Daniels argues that the district court erred when it concluded that his constitutional right to equal protection was not violated by the department's taking of his assets for the cost of his care. The United States and Minnesota Constitutions guarantee citizens equal protection of the laws. U.S. Const. amend. XIV, § 1; Minn. Const. art. I, § 2. "An essential element of an equal protection claim is that the persons claiming disparate treatment must be similarly situated to those to whom they compare themselves." *State v. Richmond*, 730 N.W.2d 62, 71 (Minn. App. 2007) (quotation omitted), *review denied* (Minn. June 19, 2007). Unless an equal-protection claim involves a suspect class or a fundamental right, state and federal courts apply rational-basis review. *Greene v. Comm'r of Minn. Dep't of Human Servs.*, 755 N.W.2d 713, 725 (Minn. 2008).

Daniels contends that a person who has been committed to the MSOP is treated differently from a similarly situated prison inmate. This court considered a similar issue in *In re Conservatorship of Bauer*, 451 N.W.2d 347 (Minn. App. 1990), and concluded that prisoners and mentally ill and dangerous residents of the state hospital are not similarly situated. In *Bauer*, the appellant, who had been committed to the Minnesota State Hospital (MSH), challenged the constitutionality of the statute that required him to reimburse the state for the cost of his care. 451 N.W.2d at 349. This court applied a

three-part analysis and concluded that: (1) all individuals committed to the MSH received the same care; (2) "there is a genuine distinction between the services and care offered patients at MSH and that offered inmates at the state prisons" because while individuals who are committed as mentally ill and dangerous and criminals are all "confined, in part, for the protection of society," residents of MSH who are mentally ill and dangerous also receive treatment; and (3) the services that residents of MSH receive are designed to achieve "a state of mental or physical health" and so are primarily beneficial to the individual rather than to the public in general. *Id.*

Daniels argues that *Bauer* is distinguishable from this case because there is no significant distinction between the treatment he receives and the treatment that prisoners receive. He contends that the "MSOP is a preventative detention facility designed to keep people deemed sexually dangerous away from the public without any meaningful efforts to help those whom are confined." In support of this argument, Daniels cites his own experience and the March 2011 conclusion in an Office of the Legislative Auditor (OLA) report that "[t]he amount of treatment delivered at MSOP facilities is lower than at any other adult inpatient sex offender treatment program in the state." But the OLA report compares the MSOP to other sex-offender treatment facilities in Minnesota, not to prison inmates. While the report recommends that the MSOP provide more treatment to sex offenders, it acknowledges that MSOP residents currently receive treatment.

In addition, while Daniels argues that his treatment has been inadequate, he does not dispute that he receives treatment as part of the program. *Cf. In re Martenies*, 350 N.W.2d 470, 472 (Minn. App. 1984), *review denied* (Minn. Sept. 12, 1984) ("[A] person

may not assert his right to treatment until he is actually deprived of that treatment."). The record establishes that Daniels receives treatment in the MSOP but has failed to advance in the program, at least in part due to his own behavior. *See In re Blodgett*, 510 N.W.2d 910, 916 (Minn. 1994) (stating that it is "incongruous that a sexual offender should be able to prove he is untreatable by refusing treatment"). While Daniels also argues that the fact that no person has completed the MSOP establishes that the treatment is inadequate, he has not offered any evidence to support this argument. *See id.* (rejecting the argument that "confinement is equivalent to life-long preventive detention" because "it is not clear that treatment for the psychopathic personality never works"). Thus, Daniels's argument that this case is distinguishable from *Bauer* is unavailing, and we agree with the *Bauer* court that "there is a genuine distinction between" a person who has been committed to the MSOP and a prison inmate.

Accordingly, the district court did not err by concluding that Daniels's constitutional right to equal protection was not violated.

II. The district court did not err by concluding that the department's taking of Daniels's assets for the cost of his care does not violate due-process rights.

Daniels contends that the district court erred by concluding that the taking of his assets did not violate his constitutional right to due process. He argues that he was deprived of substantive due process because his assets were taken for the costs of his care without providing him with meaningful or useful treatment.

The United States and Minnesota Constitutions guarantee due process of law. U.S. Const. amend. XIV, § 1; Minn. Const. art. I, § 7. "[S]ubstantive due process

protects individuals from certain arbitrary, wrongful government actions regardless of the fairness of the procedures used to implement them." *In re Linehan*, 594 N.W.2d 867, 872 (Minn. 1999) (*Linehan IV*). This court previously upheld the constitutionality of the statute requiring reimbursement for cost of care for persons committed as mentally ill or mentally ill and dangerous. *Bauer*, 451 N.W.2d at 349-50 (concluding that "it is a rational exercise of legislative authority to require all residents of MSH to reimburse the state for the cost of their care"). In addition, the Minnesota Supreme Court has rejected a due-process challenge to both the SDP and the SPP statutes. *Blodgett*, 510 N.W.2d at 916; *In re Linehan*, 557 N.W.2d 171, 184-86 (Minn. 1996) (*Linehan III*), *vacated on other grounds*, 522 U.S. 1011, 118 S. Ct. 596 (1997), *aff'd on remand*, 594 N.W.2d at 867. In *Blodgett*, the supreme court stated that "[s]o long as civil commitment is programmed to provide treatment and periodic review, due process is provided. Minnesota's commitment system provides for periodic review and reevaluation of the need for continued confinement." 510 N.W.2d at 916.

Here, while Daniels argues that his treatment is not meaningful or useful, he acknowledges that he receives treatment. Although Daniels raises valid concerns about the amount and quality of the treatment that is available to him, the record establishes that his lack of progress in the program is due at least in part to his own unwillingness to participate. *See Blodgett*, 510 N.W.2d at 916. We conclude that the district court did not err by determining that Daniels's due-process rights were not violated.

III. The district court did not err by concluding that the department's taking of Daniels's assets for the cost of his care does not violate the Eighth Amendment.

Daniels argues that the department's taking of his assets acts as an excessive fine. The Eighth Amendment of the United States Constitution provides that "[e]xcessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted." U.S. Const. amend. VIII; *see also* Minn. Const. art. I, § 5. An excessive-fines challenge under the Eighth Amendment is not limited to criminal matters. *Wilson v. Comm'r of Revenue*, 656 N.W.2d 547, 552 (Minn. 2003). A civil sanction implicates the excessive-fines clause "when the sanction cannot fairly be said to serve a solely remedial purpose but rather can only be explained as serving either retribution or deterrent purposes as well." *Id.* at 553. The Minnesota Supreme Court has previously concluded that "commitment under the psychopathic personality statute is remedial . . . because it is for treatment purposes and is not for purposes of preventive detention." *Call v. Gomez*, 535 N.W.2d 312, 320 (Minn. 1995).

Here, the applicable statute defines "cost of care" as "the commissioner's charge for services provided to any person admitted to a state facility." Minn. Stat. § 246.50, subd. 5 (2010). The statute defines "charge for services" as "the usual and customary fee charged for services provided to clients." *Id.* (quotation omitted). The statute authorizes the commissioner to recover "the cost of any care provided in a state facility." Minn. Stat. § 246.51, subd. 3. Because Daniels's commitment to the MSOP is remedial in nature and not punitive, requiring Daniels to reimburse the commissioner for the actual costs of his care is not an excessive fine in violation of the Eighth Amendment.

Accordingly, the district court did not err by determining that requiring Daniels to pay the cost of his care does not violate the Eighth Amendment.

IV. The district court did not err by determining that Daniels's argument that evidence of his assets obtained as the result of an unconstitutional search should be suppressed is moot on the motion for summary judgment.

Daniels argues that the district court erred by not suppressing evidence of his assets that was discovered as the result of an unconstitutional search. The district court concluded that this argument was moot on the motion for summary judgment. We agree. How Daniels will satisfy the judgment is beyond the scope of the summary-judgment motion that was before the district court. Thus, the district court did not err by rejecting this argument.

V. The district court did not err by awarding Daniels escrow-account interest.

Daniels contends that the district court erred when it granted him escrow-account interest rather than statutory interest under Minn. Stat. § 549.09, subd. 1(b) (2010).[1] This statutory-interpretation issue presents a question of law which this court reviews de novo. *Goodman v. Best Buy, Inc.*, 777 N.W.2d 755, 758 (Minn. 2010).

Daniels contends that the district court should have awarded him 5% interest from May 8 through July 31, 2007, and 4% interest thereafter, in accordance with Minn. Stat.

[1] The department takes no position on this issue because it asserts that the district court ordered court administration—not the department—to compensate Daniels for the interest he would have received for his IRA account. "An 'adverse' party is any party who would be prejudiced by a reversal or modification of an order, award, or judgment." *Cepek v. Cepek*, 684 N.W.2d 521, 524 (Minn. App. 2004). Here, the district court specifically ordered court administration to pay escrow-account interest to Daniels. Thus, the department is not an adverse party on this issue because it would not be prejudiced by reversal or modification of the district court's order.

§ 549.09, subd. 1(b). The statute provides that "[w]hen a judgment or award is for the recovery of money . . . interest from the time of the verdict, award, or report until judgment is finally entered shall be computed by the court administrator . . . and added to the judgment or award." Minn. Stat. § 549.09, subd. 1(a) (2010). In addition, "preverdict, preaward, or prereport interest on pecuniary damages shall be computed . . . from the time of the commencement of the action." *Id.* (b). For a judgment or award against the state, "the interest shall be computed as simple interest per annum." *Id.* (c)(1) (2010). In certain situations, Minnesota law allows a district court to attach a party's property "as security for the satisfaction of any judgment that the claimant may recover" in "a proceeding ancillary to a civil action for the recovery of money." Minn. Stat. §§ 570.01, .02 (2010).

Here, the district court granted the department's application for an attachment order and seized Daniels's $268,035.41 bank draft, ordering it to "remain in escrow with the Court pending the outcome of the case by depositing the funds in an interest bearing bank account." However, after granting summary judgment to the department, the district court determined that $50,086.59 of the amount attached qualified as "employee benefits" and was exempt from attachment under Minn. Stat. § 550.37, subd. 24. As a result, the district court ordered $50,086.59 to be returned to Daniels. But because the $50,086.59 bank draft was not deposited in an interest-bearing account, the district court calculated the interest that would have accrued if the bank draft had been deposited in accordance with its order and concluded that Daniels was entitled to interest in the amount of $522.36. The amount that the district court ordered to be returned to Daniels

was not a judgment or award; thus, Minn. Stat. § 549.09 does not apply. Accordingly, the district court did not err by granting Daniels escrow-account interest rather than judgment interest.

Affirmed.