STATE OF MINNESOTA
IN COURT OF APPEALS
A11-958

In re the Civil Commitment of: Dennis D. Linehan.

Filed November 14, 2011
Affirmed
Kalitowski, Judge

Ramsey County District Court
File No. P8-94-9362

Dennis D. Linehan, Moose Lake, Minnesota (pro se appellant)

John J. Choi, Ramsey County Attorney, C. David Dietz, Anne E. Jolliffe, Assistant County Attorneys, St. Paul, Minnesota (for respondent)

Considered and decided by Stoneburner, Presiding Judge; Kalitowski, Judge; and Peterson, Judge.

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

KALITOWSKI, Judge

Appellant Dennis D. Linehan challenges the district court's denial of his motion for relief from judgment under Minn. R. Civ. P. 60.02. We affirm.

D E C I S I O N

Appellant was committed as a sexually dangerous person (SDP) in 1995 and, after subsequent hearings, indeterminately committed. His commitment has been repeatedly affirmed on appeal. *See In re Linehan*, 594 N.W.2d 867, 878 (Minn. 1999); *Linehan v. Milczark*, 315 F.3d 920, 927-29 (8th Cir. 2003).

On October 3, 2006, appellant filed a petition with the Minnesota Sex Offender Program (MSOP) special review board seeking discharge from his SDP commitment. The MSOP conducted an investigation and prepared an evaluation stating that the treatment personnel did not support either a provisional or full discharge. Appellant withdrew his petition before the hearing occurred.

On December 8, 2010, appellant moved the district court to vacate his commitment order under Minn. R. Civ. P. 60.02(e)-(f). The district court denied appellant's motion on two alternative grounds. First, the court determined that under this court's holding in *Lonergan*, a person who is indeterminately committed as an SDP is precluded from bringing a motion to vacate the commitment order under rule 60.02. *See In re Commitment of Lonergan*, 792 N.W.2d 473, 476-77 (Minn. App. 2011), *review granted* (Minn. Apr. 19, 2011). Second, the court found that appellant had not completed his treatment programs and thus had not satisfied the judgment within the meaning of rule 60.02(e). *See* Minn. R. Civ. P. 60.02(e) (permitting the court to grant relief from a final order when "[t]he judgment has been satisfied, released, or discharged").

Appellant challenges the district court's denial of his motion. We review a district court's decision whether to vacate a judgment for abuse of discretion. *Charson v. Temple Israel*, 419 N.W.2d 488, 490 (Minn. 1988). But whether a rule 60.02 motion is proper is a legal issue that we review de novo. *Lonergan*, 792 N.W.2d at 476.

As the district court correctly stated, this court has held that it is inappropriate for a person civilly committed as an SDP to petition the district court for relief from commitment under rule 60.02. *Id.* "[T]he plain statutory language [of the Minnesota

Commitment and Treatment Act (Act)] excludes a patient who has been committed as an SDP from the category of persons who may petition the court for an order that he is no longer in need of continued care and treatment." *Id.* at 476; *see also* Minn. Stat. § 253B.17, subd. 1 (2010). Instead, relief is to be sought through the procedure for discharge from civil commitment set forth in the Act. *Id.* at 477; *see also* Minn. Stat. §§ 253B.18, subd. 15; 253B.185, subd. 18 (2010) (providing that a person committed as an SDP may file a petition for reduction in custody with a special review board). Because rule 60.02 is not the proper mechanism for relief, the district court did not abuse its discretion in denying appellant's 60.02 motion.

Appellant also argues that (1) the district court erred in finding that he had not satisfied his judgment under rule 60.02(e) by completing treatment, and (2) the district court erred by failing to appoint counsel. Because appellant's motion to vacate his order of commitment under rule 60.02 is not the proper remedy and our determination on that issue is dispositive, we need not address appellant's remaining argument that he has completed treatment. *Lonergan*, 792 N.W.2d at 477; *In re Commitment of Travis*, 767 N.W.2d 52, 66 (Minn. App. 2009). And we reject appellant's argument that the district court erred by failing to appoint counsel because appellant did not raise the issue in the district court. *See Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988) (stating that an appellate court will not consider matters not argued to and considered by the district court).

Affirmed.