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**STATE OF MINNESOTA
IN COURT OF APPEALS
A12-2055**

Michael Joseph Ponicki,
Appellant,

vs.

Lucinda Jesson, Commissioner of Human Services,
Respondent.

**Filed May 13, 2013
Affirmed
Smith, Judge**

Anoka County District Court
Appeal Panel No. AP119065

Michael C. Hager, Minneapolis, Minnesota (for appellant)

Lori Swanson, Minnesota Attorney General, Barry R. Greller, Assistant Attorney General, St. Paul, Minnesota; and

Anthony Palumbo, Anoka County Attorney, Janice M. Allen, Assistant County Attorney, Anoka, Minnesota (for respondent)

Considered and decided by Cleary, Presiding Judge; Hudson, Judge; and Smith, Judge.

UNPUBLISHED OPINION

SMITH, Judge

Appellant challenges the judicial appeal panel's (the panel) conclusion that it lacks jurisdiction to consider appellant's substantive due process claims. Because appellant

failed to raise his constitutional issues to the Department of Human Services Special Review Board (SRB), they were not preserved for appeal, and we will not consider them. We affirm.

FACTS

Appellant Michael Ponicki was indeterminately civilly committed as a sexually dangerous person in April 2009. He was convicted of one offense, but admits to numerous other uncharged contact and noncontact sexual offenses against children. In November 2010, Ponicki petitioned the SRB for transfer to the Minnesota Sex Offender Program Community Preparation Services (CPS), for a provisional discharge, or for discharge from civil commitment.

In August 2011, the SRB recommended denial of Ponicki's requests. The SRB found that the transfer was not possible because Ponicki was not accepted into the CPS; that a provisional discharge was not appropriate because Ponicki did not complete treatment or the CPS program; and that a full discharge was inappropriate because he did not complete treatment, CPS, or a lengthy provisional discharge to demonstrate he is able to live free of supervision. Following the SRB recommendation, Ponicki petitioned the panel for a rehearing and reconsideration. Before the panel hearing, Ponicki moved in limine, claiming that a reduction in custody was required "pursuant to substantive due process provisions of the 14th Amendment" to the United States Constitution because his treatment was inadequate. In a supporting memorandum, Ponicki reported that his treatment is repetitive and fails to provide him with what he needs to progress. Ponicki concluded that his treatment is constitutionally inadequate. The panel subsequently

conducted a hearing at which Ponicki testified and denied the relief sought in his petition. The panel also concluded that it lacks jurisdiction to address Ponicki's substantive due process claims. *See* Minn. Stat. § 253B.01-.24 (2012). This appeal followed.

DECISION

Ponicki contends that, because the panel has jurisdiction to apply constitutional standards when considering a reduction of custody status, it erred by declining to consider his substantive due process claims. Although he acknowledges that the panel's jurisdiction is limited to the reduction of custody petitions considered by the SRB, Ponicki asserts that the panel has jurisdiction to consider such claims because there is no express limitation on the consideration of constitutional questions.

Whether a court has subject-matter jurisdiction is a question of law, which we review de novo. *In re Thulin*, 660 N.W.2d 140, 143 (Minn. App. 2003). "Subject-matter jurisdiction is defined as not only authority to hear and determine a particular class of actions, but [also] authority to hear and determine the particular questions the court assumes to decide." *Irwin v. Goodno*, 686 N.W.2d 878, 880 (Minn. App. 2004) (quotation omitted). We review questions of statutory interpretation de novo. *In re Senty-Haugen*, 583 N.W.2d 266, 268 (Minn. 1998). "[S]tatutory requirements limiting a court's jurisdiction are threshold requirements that must be complied with before a court can exercise jurisdiction." *Irwin*, 686 N.W.2d at 880 (quotation omitted).

The Minnesota Commitment and Treatment Act governs civil commitments and the panel. Minn. Stat. § 253B.01. To seek a reduction in custody, a patient indeterminately committed as a sexually dangerous person must follow certain statutory

procedures. *See* Minn. Stat. § 253B.185, subd. 9. A “reduction in custody” is a “transfer out of a secure treatment facility, a provisional discharge, or a discharge from commitment.” *Id.*, subd. 9(b)(2). To seek a transfer or discharge, a patient indeterminately committed as a sexually dangerous person must petition a three-member SRB. *Id.*, subd. 9(c). The SRB then conducts a hearing and issues a recommendation to a three-member panel. *Id.*, subd. 9(d), (f). A patient committed as a sexually dangerous person may petition the panel for a rehearing or for reconsideration of the SRB’s recommendation. Minn. Stat. § 253B.19, subd. 2(b). The Panel then issues an order either adopting the SRB’s recommendation or setting the matter for a hearing. *Id.* “The [Panel] must not consider petitions for relief other than those considered by the commissioner from which the appeal is taken.” *Id.*, subd. 2. A person committed as a sexually dangerous person may appeal the panel’s determination to this court. *Id.*, subd. 5.

Ponicki failed to raise his substantive due process claims to the SRB before raising them to the panel. He conceded this point during oral argument. Accordingly, the SRB did not analyze Ponicki’s constitutional claims. The panel is statutorily authorized to rehear and reconsider decisions of the SRB and “must not consider petitions for relief other than those considered by the commissioner from which the appeal is taken.” *Id.*, subd. 2. Because Ponicki did not raise his constitutional claims to the SRB, we will not consider them now. This comports both with the statutory directive that the panel’s review is limited to issues considered by the SRB, as well as our well-established preclusion of issues not raised to the initial factfinder. *See Thiele v. Stich*, 425 N.W.2d

580, 582 (Minn. 1988) (explaining that a reviewing court generally considers only those issues that the record demonstrates have been presented and considered by the initial court); *Big Lake Ass'n v. Saint Louis Cnty. Planning Comm'n*, 761 N.W.2d 487, 491 (Minn. 2009) (stating that issues not raised below are not addressed on appeal); *In re Z.K.*, 695 N.W.2d 656, 662 (Minn. App. 2005) (same). Therefore, because we cannot consider whether the Panel has jurisdiction to hear constitutional claims, and because Ponicki does not challenge the panel's other conclusions, we affirm the panel's decision.

Affirmed.