STATE OF MINNESOTA
IN COURT OF APPEALS
A13-1811

In the Matter of the Civil Commitment of:
Joseph Anthony Favors.

Filed March 17, 2014
Affirmed
Crippen, Judge[*]

Dakota County District Court
File No. 19-P1-07-030418

David A. Jaehne, West St. Paul, Minnesota (for appellant Joseph Anthony Favors)

Lori Swanson, Attorney General, St. Paul, Minnesota; and

James C. Backstrom, Dakota County Attorney, Donald E. Bruce, Assistant County Attorney, Hastings, Minnesota (for respondent)

Considered and decided by Johnson, Presiding Judge; Rodenberg, Judge; and Crippen, Judge.

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

CRIPPEN, Judge

Appellant Joseph Favors challenges the district court's denial of his motion under Minn. R. Civ. P. 60.02(e), seeking relief from judgment indeterminately committing him

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

as a sexually dangerous person (SDP) and a sexual psychopathic personality (SPP). Because a patient may not bring a motion under the rule that calls for transfer or discharge from this commitment, we affirm.

FACTS

In 2009, appellant was civilly committed to the Minnesota Sex Offender Program (MSOP). Appellant appealed his initial commitment judgment, and this court affirmed the determination. *In re Civil Commitment of Favors*, No. A09-2306, 2010 WL 2486349, at *1 (Minn. App. June 22, 2010), *review denied* (Minn. Aug. 24, 2010). In October 2011, appellant filed a petition with the special review board seeking either transfer to a non-secure treatment facility, a provisional discharge, or a full discharge from his commitment. The board denied this petition. Appellant requested review of the board's determination, and the judicial appeal panel affirmed the decision.

In 2013, appellant filed a motion for relief from his commitment under Minn. R. Civ. P. 60.02(e). Appellant asked for transfer or discharge from MSOP, arguing that the program failed to provide him with adequate treatment; committed a fraud upon the court by failing to provide adequate treatment; violated his statutory right to treatment; and rendered his commitment impermissible due to a change in circumstances in failing to provide treatment. Appellant also argued that he no longer suffers from a mental disorder warranting civil commitment.

Determining that the requested relief was not available to appellant under the rule, the district court denied appellant's rule 60.02(e) motion without an evidentiary hearing. The district court further determined that appellant's motion was barred by the Minnesota

Commitment and Treatment Act (Commitment Act) because it provided the exclusive remedy for appellant to seek transfer or discharge from his civil commitment. This order is the basis of appellant's appeal.

D E C I S I O N

Under Minn. R. Civ. P. 60.02(e), a district court may relieve a party from a final judgment if "it is no longer equitable that the judgment should have prospective application . . . ." We review a district court's decision on a rule 60.02 motion for abuse of discretion. *Kosloski v. Jones*, 295 Minn. 177, 180, 203 N.W.2d 401, 403 (1973). A district court abuses its discretion when its decision is "based on an erroneous view of the law" or is "against the facts in the record." *City of N. Oaks v. Sarpal*, 797 N.W.2d 18, 24 (Minn. 2011).

Appellant's arguments fail because he seeks transfer or discharge from MSOP. The supreme court has expressly held that "[a] patient indeterminately civilly committed as a [SDP] or [SPP] may not bring a motion seeking transfer or discharge from his commitment under Minn. R. Civ. P. 60.02 . . . ." *In re Civil Commitment of Lonergan*, 811 N.W.2d 635, 636 (Minn. 2012). Instead, appellant must follow the statutory procedures under the Commitment Act. *Id.* at 640. These statutory procedures require appellant to petition a three-member Special Review Board (Board), which will conduct a hearing and issue its recommendation to a three-member Judicial Appeal Panel (Panel). *Id.* (citing Minn. Stat. § 253B.185, subd. 9(c), (f) (2012)). "The Panel then issues an order either adopting the Board's recommendation or setting the matter for a hearing."

Id. (citing Minn. Stat. § 253B.19, subd. 2(b) (2012)). The district court properly denied his rule 60.02 motion.

In addition, even if appellant's claims were not procedurally barred by the exclusive remedies of the Commitment Act and the supreme court's ruling in *Lonergan*, his motion would fail on the merits. First, in *In re Civil Commitment of Moen*, this court held that "[i]f a person committed as an SDP brings a motion for relief from a commitment order pursuant to rule 60.02(e) . . . based on the alleged inadequacy of treatment in the MSOP, the motion does not state a viable claim for relief under the rule." 837 N.W.2d 40, 43 (Minn. App. 2013), *review denied* (Minn. Oct. 15, 2013). This court also rejected Moen's argument that the alleged inadequate treatment at MSOP constituted a change in circumstances warranting relief. *Id.* at 49. The *Moen* court reasoned that to vacate a commitment under rule 60.02(e), an SDP or SPP patient would need to show that the new circumstance provides a legally valid reason for denying the initial commitment petition. *Id.* Because adequacy of treatment is not a factor in the initial commitment decision, inadequate treatment is insufficient as a matter of law to establish the change in circumstances required for relief under rule 60.02(e). *Id.* We conclude that appellant's arguments, which mirror those in *Moen*, must similarly be rejected.

Second, we reject appellant's argument that the release of the fifth edition of the American Psychiatric Association's *Diagnostic and Statistical Manual of Mental Disorders* (5th ed. 2013) (DSM-5) warrants relief because it indicates that appellant no longer has the sexual, personality, or mental disorder required for commitment under the SDP and SPP statutes. At his commitment hearing, medical witnesses testified that

appellant was diagnosed with 301.7 Antisocial Personality Disorder Not Otherwise Specified (NOS) and 302.70 Paraphilia Sexual Dysfunction NOS. These disorders are still contained within the DSM-5. DSM-5 at 450, 659, 684. The DSM-5 merely replaced the previous "NOS" designation with the words "other specified disorder" and "unspecified disorder." *Id.* at 15-16 (explaining the change in terminology). Moreover, by addressing his mental state, appellant challenges the sufficiency of the evidence used for his initial commitment. Appellant has already challenged his initial commitment, which was denied by the committing court and affirmed by this court. *Favors*, 2010 WL 2486349, at *1. It is no longer within the jurisdiction of this court or the committing court to address appellant's mental state. *See Lonergan*, 811 N.W.2d at 642 (holding that review proceedings under the Commitment Act are the "'exclusive remedy' for patients committed as SDPs and SPPs seeking a transfer or discharge").

Finally, the district court did not err by denying an evidentiary hearing. An evidentiary hearing is "merely a procedural means by which a district court may determine whether a party is entitled to relief." *Moen*, 837 N.W.2d at 47. Because appellant's arguments do not permit relief under rule 60.02(e), the district court did not abuse its discretion by denying appellant an evidentiary hearing.

Affirmed.