STATE OF MINNESOTA
IN COURT OF APPEALS
A13-2048

In the Matter of the Civil Commitment of:
Adam Leroy Meyer,

and

In the Matter of the Civil Commitment of:
Gary Peter Scott.

Filed June 30, 2014
Reversed.
Klaphake, Judge[*]

Koochiching County District Court
File No. 36-P4-06-000115
Lake of the Woods District Court
File No. 39-PR-08-7

Kimberly Wimmer, Wimmer Law Office, Littlefork, Minnesota; and

Erica Lynn Hill Austad, Grand Rapids, Minnesota (for respondents Meyer and Scott)

Lori Swanson, Attorney General, Noah A. Cashman, Angela Helseth Kiese, Assistant Attorneys General, St. Paul, Minnesota; and

Jeffrey Scott Naglosky, Koochiching County Attorney, International Falls, Minnesota; and

Michelle Morin, Lake of the Woods County Attorney, Baudette, Minnesota (for appellant state)

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

Considered and decided by Smith, Presiding Judge; Connolly, Judge; and Klaphake, Judge.

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

KLAPHAKE, Judge

Appellants Koochiching and Lake of the Woods Counties appeal an order from the Koochiching County District Court granting an evidentiary hearing to two patients who were seeking to challenge their indeterminate commitments as sexually dangerous persons (SDPs) or sexually psychopathic personalities (SPPs). We reverse.

D E C I S I O N

Appellants argue that the district court erred by granting respondents an evidentiary hearing under Minn. R. Civ. P. 60.02(e). Whether a patient indeterminately committed as an SDP or SPP may seek relief on a claim of inadequate treatment under rule 60.02 is a legal question that we review de novo. *In re Civil Commitment of Lonergan*, 811 N.W.2d 635, 639 (Minn. 2012). Respondents sought relief under rule 60.02(e), which allows relief from a final judgment when "it is no longer equitable that the judgment should have prospective application."

A patient designated as an SDP or SPP cannot seek relief under rule 60.02 if the motion "(1) distinctly conflict[s] with the Commitment Act, or (2) frustrate[s] a patient's rehabilitation or the protection of the public." *Lonergan*, 811 N.W.2d at 643. Any motion that seeks transfer or discharge is prohibited, because it conflicts with the Commitment Act, which provides the exclusive remedy for patients seeking such relief. *Id*. at 642. An SDP or SPP may only bring a "narrow class of claims" under rule 60.02,

such as "a commitment void for a lack of jurisdiction, ineffective assistance of counsel, and other limited claims that do not specifically request transfer or discharge." *Id*. at 643. Any patient seeking relief from a commitment order under rule 60.02 may not "take advantage of the narrow exception[s]" outlined in *Lonergan* unless the patient specifies the relief sought so that the district court can determine whether that relief "would result in [the patient's] transfer or discharge." *In re Civil Commitment of Moen*, 837 N.W.2d 40, 47 (Minn. App. 2013), *review denied* (Minn. Oct. 15, 2013). The party seeking review has the burden to establish that the operative facts have changed, rendering the current order no longer equitable. *City of Barnum v. Sabri*, 657 N.W.2d 201, 205 (Minn. App. 2003). "To prevail under Minn. R. Civ. P. 60.02(e), a moving party must show that a present challenge to an underlying order would have merit." *Id*. at 206. In this situation, the patient must show that the basis of a rule 60.02(e) motion would provide a present rationale for a district court to deny a commitment petition. *Moen*, 837 N.W.2d at 49.

In *Moen*, this court held that an MSOP patient who asserted inadequacy of treatment claims was procedurally barred from doing so under rule 60.02, and that the patient could not meet his burden of showing a change in the operative facts of his case based on the same claims. *Id.* Here, respondents make essentially the same argument that the patient in *Moen* made. They claim that treatment offered at the MSOP is inadequate generally, and inadequate to meet their specific needs. As in *Moen*, respondents claim they are not seeking transfer or discharge, but their attorney admitted that she did not know the precise relief they are seeking. *See id.* at 46. The only relief

ever requested by respondents was an evidentiary hearing, which this court has held "is not a form of relief in and of itself." *Id*. at 47. And respondents' supplements to their motions plainly state that their current civil commitments are "no longer permissible" because of the inadequacy of treatment, which suggests that they are requesting a transfer or discharge from the MSOP. In *Moen*, this court concluded that a claim of inadequate treatment could not support relief under rule 60.02(e) because the inadequacy of treatment in the MSOP is not a reason for the district court to deny the underlying commitment petition. *Id.* at 99. In other words, "[t]he elements of proof at a commitment trial do not implicate the efficacy of treatment in the MSOP" and "a person responding to an SDP [or SPP] commitment petition could not succeed at trial on the ground that treatment in the MSOP is inadequate." *Id*. *Moen* also makes clear that although rule 60.02(e) is not the proper mechanism for a patient to bring an inadequate treatment claim, other avenues are available to patients for such claims. *Id*. at 47-48. Most notably, both respondents are part of the class of patients challenging several aspects of the MSOP, including the adequacy of treatment, in federal court. *See Karsjens v. Jesson*, No. 11-3659, 2014 WL 667971 (D. Minn. Feb. 20, 2014).

Because respondents' rule 60.02 motions make only inadequacy of treatment claims and request only evidentiary hearings, they are procedurally barred by this court's decision in *Moen*. Accordingly, the district court's order granting an evidentiary hearing must be reversed.

Reversed.