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**STATE OF MINNESOTA
IN COURT OF APPEALS
A16-1226**

In the Matter of the Civil Commitment of:
Peter Allan aka Peter Allan George

**Filed March 6, 2017
Affirmed
Peterson, Judge**

Otter Tail County District Court
File No. 56-PR-07-3493

Peter Allan, Moose Lake, Minnesota (pro se appellant)

Lori Swanson, Attorney General, Matthew G. Frank, Assistant Attorney General, St. Paul, Minnesota (for respondent State of Minnesota)

Considered and decided by Peterson, Presiding Judge; Bjorkman, Judge; and Hooten, Judge.

UNPUBLISHED OPINION

PETERSON, Judge

Appellant argues that the district court erred by denying his motion under Minn. R. Civ. P. 60.02 for relief from his civil commitment. We affirm.

FACTS

Appellant Peter Allan was indefinitely civilly committed as a sexually dangerous person and a sexual psychopathic personality on July 16, 2009. This court affirmed the district court's commitment order on February 23, 2010, despite Allan's assertion that he

had been denied effective assistance of counsel. *In re Civil Commitment of Allan*, No. A09-1607 (Minn. App. Feb. 23, 2010).

In the present matter, Allan moved pursuant to Minn. R. Civ. P. 60.02 to vacate the order for indeterminate commitment based on newly discovered evidence. Allan argues that, because he was using medication at the time of the events that formed the basis for his commitment, he was not responsible for his actions, and that his attorney did not effectively represent his interests. The district court denied his motion. Allan appeals.

D E C I S I O N

Rule 60.02 permits a court to relieve a party from a final judgment or order on six different grounds. We review the district court's denial of a rule 60.02 motion for an abuse of discretion. *In re Civil Commitment of Moen*, 837 N.W.2d 40, 44-45 (Minn. App. 2013), *review denied* (Minn. Oct. 15, 2013). The party seeking relief has the burden of proof. *City of Barnum v. Sabri*, 657 N.W.2d 201, 205 (Minn. App. 2003).

I.

Allan's motion is based on what he describes as newly discovered evidence. In his motion, Allan asserted that he "has come upon evidence that was not available to him at the time of his civil commitment trial." But Allan did not rely on Minn. R. Civ. P. 60.02(b), which provides that a party may be relieved from a final judgment based on "[n]ewly discovered evidence which by due diligence could not have been discovered in time to move for a new trial." A motion for relief on this basis must be made no more than one year after entry of the judgment, and if Allan had sought relief on this basis, his motion would have been untimely. Minn. R. Civ. P. 60.02.

In the alternative, Allan alleged ineffective assistance of counsel as a basis for his motion. “Attorney misconduct has been characterized as ‘excusable neglect’ under clause (a) [of rule 60.02], to provide a basis for vacation of a dismissal, but only if the motion is brought within one year of dismissal.” *Chapman v. Special Sch. Dist. No. 1*, 454 N.W.2d 921, 923 (Minn. 1990). Allan did not allege that clause (a) provided a basis for his motion.

Instead, Allan argued that his commitment should be vacated based on the residual basis: “[a]ny other reason justifying relief from the operation of the judgment.” Minn. R. Civ. P. 60.02(f).¹ A motion brought under rule 60.02(f) must be brought within a reasonable time after entry of judgment. Minn. R. Civ. P. 60.02.

Relief under rule 60.02(f) “is available only under exceptional circumstances and then, only if the basis for the motion is other than that specified under clauses (a) through (e).” *Chapman*, 454 N.W.2d at 924. Allan’s claims of newly discovered evidence and ineffective assistance of counsel, therefore, cannot be grounds for relief from judgment under rule 60.02(f), because they are specific grounds for relief under rule 60.02(a) and (b). The district court did not err by denying Allan’s motion for relief under Minn. R. Civ. P. 60.02(f).

¹ Allan also argued that he should be granted relief under Minn. R. Civ. P. 60.02(d) because the judgment is void. Allan has not alleged facts that show the judgment is void for a lack of jurisdiction or a due-process violation. *See, e.g., Matson v. Matson*, 310 N.W.2d 502, 506 (Minn. 1981) (subject-matter jurisdiction); *In re Commitment of Beaulieu*, 737 N.W.2d 231, 235 (Minn. App. 2007) (personal jurisdiction); *Majestic Inc. v. Berry*, 593 N.W.2d 251, 257 (Minn. App. 1999) (due-process argument concerning entry of judgment after limitations period has expired), *review denied* (Minn. Aug. 18, 1999).

II.

Allan argues that the district court abused its discretion by refusing to hold an evidentiary hearing on his motion. Minn. R. Civ. P. 60.02 does not provide for an evidentiary hearing. Allan may be relying on postconviction procedure; an evidentiary hearing must be held on a petition for postconviction relief “[u]nless the petition and the files and records of the proceeding conclusively show that the petitioner is entitled to no relief.” Minn. Stat. § 590.04, subd. 1 (2016). But other posttrial motions may be decided without an evidentiary hearing. For example, a motion for a new trial is “heard on the files, exhibits, and minutes of the court.” Minn. R. Civ. P. 59.02. A habeas corpus “petitioner is entitled to an evidentiary hearing only if a factual dispute is shown by the petition.” *Seifert v. Erickson*, 420 N.W.2d 917, 920 (Minn. App. 1988), *review denied* (Minn. May 18, 1988).

Rule 60.02 states that “the procedure for obtaining any relief from a judgment shall be by motion as prescribed in these rules or by an independent action.” Minn. R. Civ. P. 43.05 states that “[w]henever a motion is based on facts not appearing in the record, the court may hear the matter on affidavits presented by the respective parties, but the court may direct that the matter be heard wholly or partly on oral testimony or depositions.” The supreme court has stated that “the use of oral testimony upon the hearing of a motion has been said to be discretionary with the [district] court and not a matter of right.” *Saturnini v. Saturnini*, 260 Minn. 494, 496, 110 N.W.2d 480, 482 (1961). Allan provided the district court with an extensive appendix of materials related to his claims that provided sufficient

information for the district court to make its decision. The district court did not abuse its discretion by declining to hold an evidentiary hearing.

Affirmed.