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**STATE OF MINNESOTA
IN COURT OF APPEALS
A17-0378**

In the Matter of the Civil Commitment of:
Alexander Mark Martinelli.

**Filed July 24, 2017
Affirmed
Johnson, Judge**

Judicial Appeal Panel
File No. AP15-9033

Lori Swanson, Attorney General, William Young, Assistant Attorney General, St. Paul, Minnesota; and

Michael O. Freeman, Hennepin County Attorney, Elizabeth Beltaos, John L. Kirwin, Assistant County Attorneys, Minneapolis, Minnesota (for appellant Commissioner of Human Services)

Brian C. Southwell, Brian Southwell, Ltd., Minneapolis, Minnesota (for respondent Alexander Mark Martinelli)

Considered and decided by Cleary, Chief Judge; Johnson, Judge; and Reilly, Judge.

UNPUBLISHED OPINION

JOHNSON, Judge

Alexander Mark Martinelli is civilly committed as a sexually dangerous person. He petitioned for either a transfer to the department of human services' Community Preparation Services program, a provisional discharge, or a discharge. The judicial appeal panel denied his petition with respect to a provisional discharge or a discharge but granted his petition with respect to a transfer to the Community Preparation Services program. The

commissioner appeals. We conclude that the evidence supports the judicial appeal panel's findings of fact and, therefore, affirm.

FACTS

Martinelli had a troubled childhood with inconsistent living arrangements, drug abuse, and an extensive history of sexual experiences. In 1993, Martinelli committed a series of sexual assaults against several adolescent males. After he pleaded guilty to criminal charges, he was admitted to an outpatient sex-offender treatment program but was terminated from the program approximately three months later. In 1994, Martinelli fled to Nova Scotia, where he sexually assaulted two adolescent males and two adolescent females. In January 1998, the Hennepin County District Court granted a petition to civilly commit Martinelli as a sexually dangerous person (SDP) for an indeterminate period of time. This court affirmed. *In re Martinelli*, No. C6-98-569, 1998 WL 613845 (Minn. App. Sept. 15, 1998).

In recent years, Martinelli has been in the custody of the commissioner of human services at its facility in St. Peter. In April 2014, Martinelli petitioned for a transfer to an unsecured in-patient facility in the department's Community Preparation Services program (CPS), a provisional discharge, or a discharge. The special review board conducted a hearing and recommended that the commissioner deny the petition.

In April 2015, Martinelli requested reconsideration by the judicial appeal panel. The judicial appeal panel conducted a hearing in March 2016. With the assistance of counsel, Martinelli called two witnesses: Thomas Alberg, Ph.D., a licensed psychologist who was the court-appointed examiner, and himself. After Martinelli rested his case, the

commissioner moved to dismiss the petition with respect to the requests for provisional discharge or discharge, and Hennepin County joined in the motion. The judicial appeal panel granted the motion.

In October 2016, the judicial appeal panel resumed the hearing and received additional evidence. Martinelli again called Alberg and again testified in support of his petition. The commissioner called Cassandra Lind, a licensed psychologist and forensic evaluation supervisor for the Minnesota Sex Offender Program (MSOP); Christopher Schiffer, clinical director for MSOP; and Michelle Sexe, operations manager at CPS.

In January 2017, the judicial appeal panel issued a ten-page order in which it granted Martinelli's petition with respect to his request for a transfer to CPS. The commissioner appeals.

D E C I S I O N

The commissioner argues that the judicial appeal panel erred by granting Martinelli's petition with respect to his request for a transfer to CPS.

A.

As an initial matter, the commissioner argues that the judicial appeal panel's findings are not sufficiently particularized to allow meaningful appellate review. The commissioner relies on this court's opinion in *In re Civil Commitment of Spicer*, 853 N.W.2d 803 (Minn. App. 2014), in which we concluded that the district court's findings were insufficient in three ways. *Id.* at 809-12. First, we reasoned that "the vast majority of the district court's findings are not truly findings of fact" because the district court merely recited the testimony of the witnesses. *Id.* at 810. Second, we reasoned that the

district court's true findings were conclusory in nature. *Id.* Third, we reasoned that the district court's true findings were not meaningfully tied to the district court's ultimate conclusions of law. *Id.* at 811. Accordingly, we remanded the matter to the district court for additional findings of fact. *Id.* at 813.

In this case, the commissioner argues that the judicial appeal panel's findings of fact suffer from the same deficiencies. The commissioner's argument might have merit if we were to confine our review to the statements under the heading "Findings of Fact." The 18 paragraphs in that part of the order summarize the evidence without stating the facts that the panel believes to be true. But the judicial appeal panel made true findings of fact in another part of the order, under the heading "Conclusions of Law." There the judicial appeal panel made credibility determinations and stated the facts that it believes to be true. Whether those findings of fact are labeled "findings of fact" or "conclusions of law" is immaterial; the nature of the statements determines how they are treated on appeal. *See Bissell v. Bissell*, 291 Minn. 348, 351 n.1, 191 N.W.2d 425, 427 n.1 (1971); *Cushing v. Cable*, 54 Minn. 6, 8, 55 N.W. 736, 737 (1893); *Otte v. Otte*, 368 N.W.2d 293, 297 (Minn. App. 1985).

Thus, the judicial appeal panel made findings of fact that are sufficient to allow meaningful appellate review.

B.

The commissioner argues that the judicial appeal panel's findings are not supported by the evidence.

A person who is committed as an SDP may be transferred to CPS only if “the transfer is appropriate.” Minn. Stat. § 253D.29, subd. 1(a) (2016). That determination must be based on five factors:

- (1) the person’s clinical progress and present treatment needs;
- (2) the need for security to accomplish continuing treatment;
- (3) the need for continued institutionalization;
- (4) which facility can best meet the person’s needs;
and
- (5) whether transfer can be accomplished with a reasonable degree of safety for the public.

Id., subd. 1(b).

A person who is committed as an SDP may petition the special review board for a transfer. Minn. Stat. § 253D.27, subd. 2 (2016). “The special review board shall hold a hearing on each petition before issuing a recommendation,” *id.*, subd. 3(a), and “shall issue a report with written findings of fact . . . recommend[ing] denial or approval of the petition,” *id.*, subd. 4. If the special review board recommends denial of the petition, the committed person “may petition the judicial appeal panel . . . for a rehearing and reconsideration of” the recommendation. Minn. Stat. § 253D.28, subd. 1(a) (2016). Before the judicial appeal panel, the committed person “must establish by a preponderance of the evidence that the transfer is appropriate.” *Id.*, subd. 2(e). “A party aggrieved by an order of the [judicial] appeal panel may appeal that order” to this court. *Id.*, subd. 4.

The parties dispute the appropriate standard of review for this appeal. The commissioner urges the court to apply a *de novo* standard of review; Martinelli urges the court to apply a clear-error standard of review. Martinelli is correct that, given the procedural history of the case and the nature of the commissioner's arguments, the appropriate standard of review is a clear-error standard of review. Applying that standard of review to the findings of the judicial appeal panel, we “examine the record to determine whether the evidence as a whole sustains the appeal panels' findings.” *Larson v. Jesson*, 847 N.W.2d 531, 534 (Minn. App. 2014) (quoting *Jarvis v. Levine*, 364 N.W.2d 473, 474 (Minn. App. 1985) (quotation omitted)).

C.

In this case, the judicial appeal panel considered each of the five factors in section 253D.29, subdivision 1(b). With respect to the first factor, the judicial appeal panel found that Martinelli had made sufficient clinical progress and that his ongoing treatment needs could be met in CPS. With respect to the second factor, the judicial appeal panel found that the security measures at CPS are sufficient for purposes of ongoing treatment. With respect to the third factor, the judicial appeal panel found that Martinelli would continue to be institutionalized at an in-patient facility in CPS. With respect to the fourth factor, the judicial appeal panel found that CPS would best meet Martinelli's treatment needs. With respect to the fifth factor, the judicial appeal panel found that a transfer to CPS could be accomplished with a reasonable degree of safety for the public. The judicial appeal panel concluded that Martinelli had proved, by a preponderance of the evidence, that a transfer to CPS is appropriate.

The commissioner challenges the findings of the judicial appeal panel with respect to each of the five factors. The commissioner contends that (1) Martinelli's clinical progress has been limited, and he has ongoing treatment needs; (2) Martinelli has a history of absconding, which indicates a need for security; (3) Martinelli continues to need institutionalization; (4) Martinelli's ongoing treatment needs are better met in his current placement; and (5) Martinelli's history indicates that a transfer cannot be accomplished with a reasonable degree of public safety.

As stated above, we review the judicial appeal panel's findings for clear error. *See Larson*, 847 N.W.2d at 534. We do not "weigh the evidence as if trying the matter *de novo*." *Jarvis*, 364 N.W.2d at 474. If the evidence as a whole supports the judicial appeal panel's findings, "it is immaterial that the record might also provide a reasonable basis for inferences and findings to the contrary." *Piotter v. Steffen*, 490 N.W.2d 915, 919 (Minn. App. 1992), *review denied* (Minn. Nov. 17, 1992) (quotation omitted). Accordingly, it is irrelevant that some of the commissioner's witnesses provided testimony that is inconsistent with the judicial appeal panel's findings or its conclusion.

The judicial appeal panel relied primarily on Alberg's written report and testimony. Indeed, the judicial appeal panel expressly referred to him in its findings on four of the five factors (the first, second, fourth, and fifth factors). Alberg was unusually familiar with Martinelli's situation because he was the court-appointed examiner in the initial commitment proceedings two decades earlier. To be sure, Alberg's written report and testimony were different from that of other witnesses, such as Dr. Lind and Schiffer, both of whom recommend that Martinelli not be transferred to CPS. Nonetheless, the judicial

appeal panel was persuaded by Alberg's written report and testimony. On appellate review, this court's task is merely to determine whether the judicial appeal panel's findings are supported by any evidence in the record. *See id.*

Alberg's written report states that Martinelli "has been making significant progress in treatment." Alberg wrote that one of Martinelli's present treatment needs is to work toward de-institutionalization and integration into a community, which can be addressed at CPS. In addition, Schiffer testified that Martinelli can continue to make progress in Phase II treatment at CPS. Sexe testified about the security measures at CPS, which include electronic monitoring, video surveillance, and controlled movement with a staff escort. Alberg clearly expressed his opinion that a transfer to CPS would better meet Martinelli's needs. Alberg testified to his opinion that a transfer to CPS can be accomplished with a reasonable degree of public safety. This evidence supports the findings of the judicial appeal panel.

Thus, the judicial appeal panel did not err by granting Martinelli's petition with respect to his request for a transfer to CPS.

Affirmed.