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**STATE OF MINNESOTA
IN COURT OF APPEALS
A18-0556**

In the Matter of the Civil Commitment of: Dezeray Marie Roblero-Barrios.

**Filed September 4, 2018
Affirmed
Reilly, Judge**

Judicial Appeal Panel
File No. AP17-9022

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Lori Swanson, Attorney General, Ali P. Afsharjavan, Assistant Attorney General, St. Paul, Minnesota (for respondent Commissioner of Human Services)

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Considered and decided by Reilly, Presiding Judge; Bjorkman, Judge; and Klaphake, Judge.*

UNPUBLISHED OPINION

REILLY, Judge

Appellant Dezeray Marie Roblero-Barrios is civilly committed as a sexually dangerous person. She petitioned for a transfer to Community Preparation Services (CPS), provisional discharge, or discharge. The judicial appeal panel granted the commissioner

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

of human services' motion to dismiss her petition. On appeal, appellant challenges the denial of her petition only with respect to transfer to CPS. We affirm.

FACTS

In June 2001, the Olmsted County District Court granted a petition to civilly commit appellant as a sexually dangerous person (SDP) for an indeterminate period of time. In 2016, appellant petitioned for a transfer to a non-secure CPS facility, provisional discharge, or discharge. The special review board conducted a hearing in February 2017 and recommended denial of the petition.

Appellant petitioned for rehearing and reconsideration by the judicial appeal panel, which held a hearing in December 2017. Aided by counsel, appellant called two witnesses, Thomas Alberg, Ph.D., a licensed psychologist and court-appointed examiner, and herself. After appellant rested her case, the commissioner moved to dismiss the petition under Minn. R. Civ. P. 41.02(b), and Olmsted County joined in the motion. The judicial appeal panel granted the motion.

D E C I S I O N

I. Appellant's argument is forfeited.

Appellant challenges the judicial appeal panel's dismissal of her petition for transfer. But appellant's argument is unsupported by legal authority or analysis. An argument "based on mere assertion and not supported by any argument or authorities in appellant's brief is waived and will not be considered on appeal unless prejudicial error is obvious on mere inspection." *State v. Modern Recycling, Inc.*, 558 N.W.2d 770, 772 (Minn. App. 1997). We discern no error in the judicial appeal panel's ruling on mere

inspection. Although appellant's argument is not properly before us, we nevertheless elect to briefly address its merits.

II. The judicial appeal panel did not clearly err in dismissing appellant's petition for transfer.

A person who is committed as an SDP may be transferred out of a secure treatment facility only if "the transfer is appropriate." Minn. Stat. § 253D.29, subd. 1(a) (2016). The determination whether a transfer is appropriate 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) (2016).

A person who is committed as an SDP may petition the special review board for a transfer. Minn. Stat. § 253D.27, subd. 2 (2016). 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). On rehearing, the party seeking transfer "must establish by a preponderance of the evidence that the transfer is appropriate." *Id.*, subd. 2(e) (2016). "A party aggrieved by an order of the [judicial] appeal panel may appeal that order" to this court. *Id.*, subd. 4 (2016).

“[U]nlike a discharge petition, a petition for transfer imposes the burdens of production *and* persuasion on the petitioner at the hearing before the Judicial Appeal Panel.” *Foster v. Jesson*, 857 N.W.2d 545, 548 (Minn. App. 2014) (citing Minn. Stat. § 253D.28, subd. 2(e) (Supp. 2013)). We apply a clear-error standard of review to the panel’s findings concerning a petition for transfer. *Id.* Generally, we determine “from an examination of the record if the evidence as a whole sustains [a judicial] appeal panel’s findings.” *Piotter v. Steffen*, 490 N.W.2d 915, 919 (Minn. App. 1992) (quotation omitted), *review denied* (Minn. Nov. 17, 1992). “If it does so, it is immaterial that the record might also provide a reasonable basis for inferences and findings to the contrary.” *Id.*

The judicial appeal panel considered and applied each of the five statutory factors. With respect to the first factor, the panel found that appellant’s participation in treatment has fluctuated and her lack of participation and motivation hinders her progression. On the second factor, the panel found that appellant has difficulty remaining rule compliant and participating in treatment, and that the number of behavioral expectation reports over the past few years is concerning. Regarding the third factor, the panel found that appellant continues to have unmanaged dynamic risk factors and behavioral issues indicating a need for institutionalization. On the fourth factor, the panel found that appellant’s needs are best met within the secure perimeter because it affords therapeutic support, safety, and structure. With respect to the fifth factor, the panel found that appellant presents with a high degree of psychopathy coupled with sexual deviance, which suggests an increased risk for sexual violence. The panel found that a transfer to CPS could not be made with a reasonable degree of safety to the public.

These findings are supported by the record, particularly by Dr. Alberg's report and testimony, which the panel expressly found credible and persuasive. Dr. Alberg testified that appellant's lack of engagement in treatment hindered her progress. He also testified that appellant's inability to be rule compliant and to demonstrate appropriate behaviors in a very restrictive environment made it highly unlikely that she could be successful in a less restrictive environment, which also implicated safety concerns. Dr. Alberg testified that appellant underwent a sexual-violence risk assessment and scored in the high moderate group. He opined that appellant's dynamic risk factors remained a problem and required "a fair amount of work." Dr. Alberg further opined that institutionalization in a secure setting is necessary for appellant's continued treatment.

Our review of the record leads us to conclude that the judicial appeal panel did not clearly err by granting the commissioner's motion to dismiss. The evidence, taken as a whole, supports the judicial appeal panel's conclusion that appellant failed to show by preponderance of the evidence that she was entitled to transfer. Thus, dismissal was proper.

Affirmed.