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**STATE OF MINNESOTA
IN COURT OF APPEALS
A19-0615**

In the Matter of the Civil Commitment of: Rodney Jon Heginger.

**Filed September 16, 2019
Affirmed
Ross, Judge**

Commitment Appeal Panel
File No. AP18-9018

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Considered and decided by Ross, Presiding Judge; Reilly, Judge; and Slieter, Judge.

UNPUBLISHED OPINION

ROSS, Judge

Sexually dangerous person Rodney Heginger is indeterminately civilly committed to the Minnesota Sex Offender Program. The commitment appeal panel granted Heginger's petition for transfer to community preparation services after an expert testified that transfer would best facilitate his continued treatment. The commissioner of human services appeals, arguing that the panel's factual findings on Heginger's petition are inadequate for appellate review and that the panel clearly erred by granting the petition. Because the panel's

findings explain that, among other things, it credited the opinion of the expert who supported Heginger's transfer, the findings are sufficient for our review. Because the record as a whole supports the panel's decision that transfer is appropriate, we affirm.

FACTS

The district court civilly committed Rodney Heginger to the Minnesota Sex Offender Program (MSOP) indeterminately in 2009 as a sexually dangerous person following a series of sexually abusive offenses, including fondling foster siblings as a child and repeatedly sexually abusing preteen girls as an adult.

Heginger responded positively to treatment, moving to phase two of the program in 2013. In May 2017, he petitioned for either a full or provisional discharge or for a transfer to community preparation services. The special review board recommended that Heginger's petition be denied in full, reasoning that, although Heginger was a consistent treatment participant and made progress, his petition was premature.

Heginger asked the commitment appeal panel to reject the board's recommendation. He withdrew his requests for full and provisional discharge and limited his request to a transfer to community preparation services. Heginger relied principally on evidence from Dr. Anne Pascucci, an expert risk assessor who unequivocally supported his request. Dr. Pascucci had initially assessed Heginger's risk in 2014 and was impressed by the progress he made by December 2017. She opined that nearly all of Heginger's dynamic-need areas had been managed. She discussed his improvement in managing his negative emotions, compulsive behavior, and deviant sexual interests. She was persuaded that Heginger had addressed his problems with social rejection by becoming a program

unit representative and engaging in peer-conflict resolution. She considered his successes in vocational programming and money management to be protective factors. Dr. Pascucci was also encouraged by Heginger's age-appropriate relationship with an adult female and his regular contact with his family. She concluded that Heginger is ready for placement at community preparation services, where he can practice applying the skills he has developed in a less restrictive environment.

The commissioner challenged Heginger's evidence, presenting testimony from Michelle Sexe, the community preparation services operations manager, Christopher Schiffer, the MSOP clinical court services director, and Dr. Elisa Carr, MSOP's forensic evaluator. Sexe explained that the community preparation services building is an unsecured facility where Heginger would be outfitted with a GPS device and monitored with cameras. Schiffer opined that Heginger's transfer would be premature because he had not been transparent about his sexual fantasies about children. Dr. Carr believed that transfer would be inappropriate. She explained that her opinion rested more on Heginger's static risk factors (that is, his past criminal behavior) than his current circumstances.

The panel granted Heginger's petition for transfer to community preparation services. It found Dr. Pascucci's opinion credible and supported by the evidence, and it found that Heginger had shown by a preponderance of the evidence that his transfer was appropriate.

The commissioner appeals.

DECISION

The commissioner raises two issues, arguing that the panel's findings are insufficient for appellate review and that the panel clearly erred by granting the transfer petition. Neither argument is convincing.

I

We do not agree that the panel's findings are insufficient for appellate review. When determining whether an order permits meaningful appellate review, we ask whether it identifies the facts found to be true and upon which the decision is based. *In re Civil Commitment of Spicer*, 853 N.W.2d 803, 811 (Minn. App. 2014).

The order passes this test. Its evidentiary and logical rationale is immediately apparent. It credits Dr. Pascucci's opinion that Heginger's transfer to community preparation services is the appropriate course for his treatment, and it explains why:

The [CAP] has considered all the evidence presented in this case. Dr. Pascucci testified credibly and her opinion is well-supported by the facts in this case. [Heginger] has made substantial progress in treatment and has insight into his treatment needs. Although he continues to have remaining treatment needs, those treatment needs can be addressed at CPS and the [CAP] finds that CPS is the best facility to meet [Heginger's] treatment needs. [Heginger's] continued progress in treatment is unlikely to change his static risk scores on actuarial tools. Furthermore, Dr. Pascucci testified that [Heginger] has protective factors to help mitigate his risk factors. The [CAP] finds that the need for security to accomplish [Heginger's] continuing treatment can be provided at CPS. Although [Heginger] requires continued institutionalization, he will progress in treatment with the deinstitutionalization opportunities offered at CPS. Although the [CAP] heard testimony regarding [Heginger's] need for supervision, no evidence was presented that [Heginger] presents a flight risk or may abscond and the [CAP] finds that

a transfer can be made with a reasonable degree of safety for the public.

The panel's findings sufficiently explain that the basis for its decision is Dr. Pascucci's opinion.

The commissioner contends that crediting Dr. Pascucci's opinion is not sufficient to meet the standard for particularized findings that we described in *Spicer*. The commissioner's argument takes language in *Spicer* out of context. In *Spicer*, we reviewed a district court civil-commitment order in which the district court seemingly found two experts entirely credible. *Id.* at 810–11. But crediting the experts' opinions in their entirety was illogical because the opinions contradicted each other and one suffered from internal inconsistencies. *Id.* We explained that we were “unable to determine which portions of which experts' opinions the district court relied on when making findings of fact and conclusions of law.” *Id.* at 811. We reversed, reasoning that the district court needed to comment separately on each expert opinion and discuss their relative credibility to specifically find the facts that were in dispute. *Id.* at 810. This case does not present the problem we faced in *Spicer*. The panel credited Dr. Pascucci's opinion alone, and that opinion unequivocally supports the panel's decision. We have no difficulty understanding the panel's findings for our review.

II

We are also satisfied that the panel's decision to grant Heginger's transfer petition was supported by the weight of the evidence, based on the panel's credibility assessment. We review the panel's transfer decision for clear error, determining whether the record

supports its findings. *In re Civil Commitment of Edwards*, __ N.W.2d __, __, 2019 WL 3294765, at *6 (Minn. App. July 22, 2019), *pet. for review filed* (Minn. Aug. 21, 2019). We refrain from reweighing the evidence, we defer to the panel’s credibility findings, and we will affirm the transfer decision if the evidence as a whole supports the findings. *Id.* at *5–6.

Before determining whether to grant a petition for transfer to a less restrictive setting, the panel must find by a preponderance of the evidence that transfer is appropriate in light of five factors: the committed person’s clinical progress and treatment needs; the need for security to the person’s continuing treatment; the need for institutionalization; the best facility for the person’s needs; and the transfer’s impact on public safety. Minn. Stat. § 253D.29, subd. 1(b) (2018). Our review of the record satisfies us that the panel’s finding that Heginger met his burden on these factors was sufficiently supported by the evidence as a whole.

The commissioner points to evidence supporting a contrary conclusion on each of the statutory factors. But the suggestion that “the record might also provide a reasonable basis for inferences and findings” contrary to the panel’s findings is immaterial. *Edwards*, 2019 WL 3294765, at *5 (emphasis omitted) (quoting *In re Civil Commitment of Fugelseth*, 907 N.W.2d 248, 256 (Minn. App. 2018), *review denied* (Minn. Apr. 17, 2018)). We ask only whether the panel clearly erred in its findings, deferring to the fact-finder’s evaluation of expert testimony. *Id.* We recognize that the evidence suggesting that Heginger was not entirely transparent about his deviant sexual interests and concerns about his criminal history might have supported a less favorable finding about his reoffense risk. But these

facts face competing evidence that the panel found more persuasive. We will not reweigh the evidence on appeal as if we sit as fact-finders. The record as a whole supports the panel's finding that Heginger's transfer to community preparation services is appropriate.

Affirmed.