STATE OF MINNESOTA
IN COURT OF APPEALS
A10-1269

In re the Civil Commitment of: Peter Gerard Lonergan

Filed October 9, 2012
Affirmed in part, reversed in part, and remanded
Hudson, Judge

Dakota County District Court
File No. 19-P1-06-008179

Peter Gerard Lonergan, Moose Lake, Minnesota (pro se appellant)

James C. Backstrom, Dakota County Attorney, Debra E. Schmidt, Pauline Halpenny, Assistant County Attorneys, Hastings, Minnesota; and

John L. Kirwin, Special Assistant County Attorney, Minneapolis, Minnesota (for respondent Dakota County)

Considered and decided by Hudson, Presiding Judge; Ross, Judge; and Schellhas, Judge.

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

HUDSON, Judge

This appeal of the district court's denial of appellant's motion under Minn. R. Civ. P. 60.02 challenging his commitment has been remanded by the Minnesota Supreme Court, which reversed in part this court's affirmance of the district court's order. *In re Commitment of Lonergan*, 811 N.W.2d 635 (Minn. 2012). Based on a reconsideration of

Lonergan's claims in light of the supreme court's opinion, we affirm in part, reverse in part, and remand.

FACTS

The facts are set forth in more detail in this court's earlier opinion, *In re Commitment of Lonergan*, 792 N.W.2d 473, 474–76, *rev'd in part and remanded*, 811 N.W.2d 635 (Minn. 2012). Briefly, Lonergan was indeterminately committed in 2009 as a sexually dangerous person (SDP). He did not appeal the commitment order but brought a motion under Minn. R. Civ. P. 60.02 about a year after his commitment. *Id.* at 476. Lonergan claimed in his motion that: (1) his SDP commitment was void; and (2) he should be placed in another program that provided adequate treatment. The district court denied the motion without a hearing.

As noted by the supreme court, Lonergan raised specific arguments that: (1) the Minnesota Sex Offender Treatment Program (MSOP) breached its "treatment contract," (2) MSOP failed to meet its treatment obligations under the Minnesota Treatment and Commitment Act, (3) MSOP committed "fraud upon the court," (4) MSOP illegally confined Lonergan "for profit," (5) MSOP "exacerbated the punitive nature of the program," and (6) MSOP failed to confine Lonergan for purposes of treatment. 811 N.W.2d at 637. Lonergan also argued that MSOP treatment was a "sham" and that he did not actually have a mental illness or severe personality disorder while at MSOP. *Id.*

The district court denied Lonergan's motion without a hearing. This court affirmed, concluding that "the language in [the Commitment Act] that prohibit[ed Lonergan] from petitioning the committing court for discharge from his indeterminate

commitment as an SDP, applies equally to preclude a rule 60.02 motion to vacate the indeterminate-commitment order," and that "[Lonergan's] district-court challenge to the adequacy of his treatment also fail[ed]," because "judicial review of the indeterminate-commitment order is not the proper avenue for [Lonergan] to assert a right-to-treatment argument." 792 N.W.2d at 476–77. This court held that the Commitment Act, Minn. Stat. § 253B.01-.24 (2010) provides a statutory framework governing SDP commitment that does not allow a patient to use rule 60.02 to present "a constitutional challenge to the commitment or a challenge to the adequacy of a patient's conditions of treatment." *Id.* at 474. The supreme court reversed in part and remanded, "conclud[ing] that Lonergan's claims warrant reconsideration in light of our opinion." 811 N.W.2d at 643.

D E C I S I O N

The supreme court has concluded that an SDP or SPP patient cannot use rule 60.02 to present a claim for transfer or discharge, or to present a claim that would either present a "distinct conflict" with the Commitment Act, or "frustrate the purpose" of the Act. 811 N.W.2d at 641–42. But the court suggested that a motion seeking "to cure—for example—a procedural or jurisdictional defect during the commitment process, does not necessarily interfere with" the purposes of the Act. *Id.* at 642–43. And the court indicated that there is a "narrow class of claims" that could be brought under rule 60.02, citing, as examples, lack of jurisdiction and ineffective assistance of counsel. *Id.* at 643.

Lonergan does not claim that the district court lacked jurisdiction or that he was denied the effective assistance of counsel. But the supreme court's opinion does not rule out any of the claims Lonergan does raise from being permissible rule 60.02 grounds for

relief. Therefore, we must examine the eight claims Lonergan raises in light of the supreme court's opinion, beginning with the claim that does not directly challenge MSOP treatment.

No mental illness or disorder

Lonergan alleges that he has been told by MSOP personnel that he is not mentally ill and that no "mental illness or severe personality disorder" has manifested itself in the two years he has been in MSOP. *See* 811 N.W.2d at 637 (noting that Lonergan claims he has not manifested a "mental illness or severe personality disorder" while at MSOP). To be committed as an SDP, a person must have "manifested a sexual, personality, or other mental disorder or dysfunction" that makes him "likely to engage in acts of harmful sexual conduct." Minn. Stat. § 253B.02, subd. 18c(2), (3) (2010). Thus, this claim attacks the basis for Lonergan's commitment. Although Lonergan does not explicitly seek discharge based on his lack of a mental illness or disorder, the supreme court's opinion notes that the Commitment Act is the "exclusive remedy" for patients seeking transfer or discharge. 811 N.W.2d at 642 (quotation omitted). We conclude that this claim in effect seeks discharge and that it cannot be raised in a rule 60.02 motion.

Treatment challenges

Lonergan claims that MSOP has (1) breached its "treatment contract," (2) violated the Commitment Act's requirement of treatment, (3) unlawfully detained him for profit, (4) "exacerbated the punitive nature of the program," (5) failed to confine him for treatment purposes, and (6) provided treatment that is a "sham." These claims can be broadly categorized as adequacy-of-treatment claims. He also argues that the committing

court was misled to believe that he would receive sex-offender treatment to correct the illness or disorder that led to his commitment. This argument, framed as a claim of fraud on the court, essentially challenges the adequacy of treatment as well.

Lonergan argues that these are "limited claims that do not specifically request transfer or discharge," *Lonergan*, 811 N.W.2d at 643, which the supreme court's opinion allows to be brought under rule 60.02. The county concedes that the supreme court's opinion is "wholly silent" on the issue of whether adequacy-of-treatment claims can be brought under rule 60.02. But it argues that adequacy-of-treatment claims are, under caselaw, beyond the purview of the committing court, and that they are more appropriately brought in a section 1983 action or a habeas corpus petition.

Caselaw holds that adequacy-of-treatment claims are not ripe before the district court has decided the petition for commitment. *In re Commitment of Travis*, 767 N.W.2d 52, 58 (Minn. App. 2009). And this court has stated that "[g]enerally, the right to treatment issue is not reviewed on appeal from a commitment order." *In re Wicks*, 364 N.W.2d 844, 847 (Minn. App. 1985), *review denied* (Minn. May 31, 1985). But Lonergan's rule 60.02 motion followed his indeterminate commitment. The petition for Lonergan's commitment was granted in 2009, and this appeal is not from that order.

The county also argues that *Travis* establishes that inadequacy of treatment is not a proper basis for challenging the constitutionality of commitment and that *Travis*, as well as this court's prior opinion in *Lonergan*, indicate that treatment issues should be reviewed by special review boards and the judicial appeal panel. *See Lonergan*, 792 N.W.2d at 477 (citing *Travis* as concluding that right-to-treatment issue is properly raised

in a petition to a special review board); *Travis*, 767 N.W.2d at 58–59 (noting that proposed patient had not shown that he could not raise right-to-treatment issue "through other legal avenues after commitment, such as habeas corpus" or petition to a special review board).

But the supreme court's opinion states that there is a "narrow class of claims," including ineffective assistance and "other limited claims that do not *specifically request* transfer or discharge" that fall within the scope of rule 60.02. *Lonergan*, 811 N.W.2d at 643 (emphasis added). Lonergan's adequacy-of-treatment claims may, in effect, seek a transfer or discharge from MSOP. But they do not specifically request transfer or discharge.

We note that the Commitment Act, chapter 253B, provides a patient with a right to treatment, Minn. Stat. § 253B.03, subd. 7 (2010), but that act does not explicitly grant either the special review board or the judicial appeal panel authority to review a denial of treatment. *See* Minn. Stat. §§ 253B.185, subds. 11-18 (2010 & Supp. 2011) (providing for provisional discharge, discharge, and transfer, and stating role of special review board and judicial appeal panel in these decisions), .19, subd. 2(b) (2011) (providing for review by judicial appeal panel in SDP and SPP cases), .22 (2010) (providing for review board "to review the admission and retention of" patients). The Commitment Act incorporates provisions in the Patient's Bill of Rights, including a right to appropriate care and an "internal grievance procedure." Minn. Stat. § 144.651, subds. 6, 20 (2010); *see* Minn. Stat. § 253B. 185, subd. 7(b) (incorporating statutory rights provided in Patient's Bill of Rights, as limited in that provision). But we do not read these references to other

statutory provisions applicable to medical facilities generally as providing a remedy for a committed sex offender to challenge the validity of civil commitment based on a denial of treatment.[1] Thus, the Commitment Act contains no provision with which a remedy under rule 60.02 for inadequate-treatment claims would "distinct[ly] conflict," *Lonergan*, 811 N.W.2d at 641.

Rule 60.02(e) allows relief from a judgment when "it is no longer equitable that the judgment should have prospective application." Lonergan's adequacy-of-treatment claims do not allege that his commitment was improper. Rather, they represent an attempt to show that Lonergan's commitment, although properly ordered in 2009, is no longer permissible.

"Rule 60.02(e) represents the historic power of the court of equity to modify its decree in light of changed circumstances." *City of Barnum v. Sabri*, 657 N.W.2d 201, 205 (Minn. App. 2003). It "has direct application to injunctions . . . but would also apply to any judgment that has prospective effect." 2A David F. Herr & Roger S. Haydock, *Minnesota Practice* § 60.24 (5th ed. 2012). A civil commitment authorizing the confinement of a sex offender indeterminately has a prospective effect. And if the treatment facility to which Lonergan has been committed no longer provides the

[1] The Commitment Act provides that the statutory rights incorporated by reference from the Patient's Bill of Rights "may be limited" as necessary "to protect the safety and well-being" of others, including the public. Minn. Stat. § 253B.185, subd. 7(a). Thus, it is highly unlikely that a grievance process would lead to the release of an SDP or SPP patient. The Commitment Act does not provide regional center review boards, which do have authority to review the "retention" as well as admission of patients, with the authority to discharge patients based on a denial of treatment or violation of the Patient's Bill of Rights. *See* Minn. Stat. § 253B.22, subd. 1.

treatment contemplated by the statute, and which the statute gives him a right to receive, that constitutes a "change of circumstances" within the purview of rule 60.02.

Lonergan's individualized claim that he personally has been denied treatment is one that goes to the heart of the justification for the commitment order. Civil commitment as an SDP or SPP is constitutionally permissible because it is designed to provide treatment. *See In re Blodgett*, 510 N.W.2d 910, 916 (Minn. 1994) ("So long as civil commitment is programmed to provide treatment and periodic review, due process is provided."). This court has implicitly acknowledged that a substantive due-process challenge to the adequacy of treatment may be brought, as long as it is not brought prematurely, which is before commitment has occurred. *See In re Travis*, 767 N.W.2d at 59.[2]

The county points out that there are other legal remedies for a right-to-treatment claim, such as a section 1983 action or a petition for habeas corpus. *See Travis*, 767 N.W.2d at 58 (suggesting habeas corpus as appropriate avenue for relief, in addition to special review board). But section 1983 is intended as a remedy for a violation of federally protected rights. *Simmons v. Fabian*, 743 N.W.2d 281, 285 (Minn. App. 2007). And this court has recently held that habeas corpus is limited to constitutional and jurisdictional challenges. *Beaulieu v. Dep't of Human Servs.*, 798 N.W.2d 542, 548 (Minn. App. 2011), *review granted* (Minn. July 19, 2011). Therefore, if a committed

[2] The supreme court noted in an early decision construing the Minnesota Commitment Act of 1982 that it had suggested, in dictum, that a committed patient had a constitutional, as well as a statutory, right to adequate treatment. *In re Joelson*, 385 N.W.2d 810, 811 n.1 (Minn. 1986) (citing *Bailey v. Noot*, 324 N.W.2d 164, 167 (Minn. 1982)).

patient challenges his treatment on non-constitutional grounds, he may not have an effective remedy outside of rule 60.02.

Moreover, a committed patient's claim that he is being denied treatment is a claim that, although it could be raised in a habeas petition or a section 1983 action, could, at least theoretically, be raised under rule 60.02 as well. Furthermore, the adequacy-of-treatment claim does not necessarily require an extensive record more properly developed in an independent action, and the district court's decision on that issue seems unlikely to be inconsistent with the rulings of other courts on other individualized adequacy- or denial-of-treatment claims.

For all of the above reasons, we conclude that Lonergan may raise adequacy- or denial-of-treatment claims by a rule 60.02(e) motion. And we remand to the district court for a consideration of the adequacy- or denial-of-treatment claims that Lonergan raised in his motion. We, however, affirm the district court's denial of Lonergan's other claims.

Affirmed in part, reversed in part, and remanded.