This opinion will be unpublished and
may not be cited except as provided by
Minn. Stat. § 480A.08, subd. 3 (2010).

STATE OF MINNESOTA
IN COURT OF APPEALS
A10-1615

In the Matter of the Civil Commitment of:
Steven Merrill Hogy.

Filed October 29, 2012
Affirmed in part, reversed in part, and remanded
Halbrooks, Judge

Goodhue County District Court
File No. 25-PR-07-1705

Lori Swanson, Attorney General, Angela Helseth Kiese, Assistant Attorney General, St. Paul, Minnesota; and

Stephen N. Betcher, Goodhue County Attorney, Red Wing, Minnesota (for respondent)

Steven Merrill Hogy, Moose Lake, Minnesota (pro se appellant)

Considered and decided by Halbrooks, 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

HALBROOKS, Judge

This appeal from the denial of appellant's rule 60.02 motion challenging his SDP and SPP commitment has been remanded by the supreme court for reconsideration in light of that court's opinion in *In re Lonergan*, 811 N.W.2d 635 (Minn. 2012). Both Hogy and Goodhue County have filed supplemental memoranda addressing the impact of

Lonergan on this appeal. Based on a reconsideration of appellant's claims in light of *Lonergan*, we affirm in part, reverse in part, and remand.

FACTS

Appellant Steven Hogy was committed in December 2007 as a sexually dangerous person (SDP) and a sexual psychopathic personality (SPP). An indeterminate commitment order was issued in July 2008. Hogy did not file an appeal from that order.

In June 2010, Hogy filed a motion under Minn. R. Civ. P. 60.02 for relief from the civil commitment. The motion raised the following claims: (1) a breach by the Minnesota Sex Offender Program (MSOP) of the "treatment contract"; (2) MSOP's failure to meet its treatment obligations under the Minnesota Commitment and Treatment Act; (3) "fraud upon the court"; (4) MSOP's illegal confinement of Hogy "for profit"; (5) MSOP exacerbated the punitive nature of the program; and (6) MSOP failed to confine Hogy for purposes of treatment. Hogy 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.

The district court denied Hogy's motion, construing it as seeking relief under rule 60.02(f), which allows relief based on "(a)ny other reason justifying relief from the operation of the judgment." The district court concluded that (1) Hogy's motion did not show the "exceptional circumstances" required under rule 60.02(f); (2) Governor Pawlenty's 2003 executive order did not violate Hogy's constitutional rights; (3) Hogy could not seek discharge from the district court that committed him; and (4) Hogy could not bring adequacy-of-treatment claims under rule 60.02. This appeal follows.

D E C I S I O N

In *Lonergan*, the supreme court held 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 Minn. Stat. §§ 253B.01-.24 (2010), the Minnesota Commitment and Treatment Act, or "frustrate the purpose" of the act. 811 N.W.2d at 641. The supreme 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 it 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.

The county argues that all of Hogy's claims are transfer or discharge claims and therefore barred under *Lonergan*. That would include Hogy's claims of denial of treatment even when they do not explicitly seek discharge. Hogy does not claim either lack of jurisdiction or ineffective assistance of counsel. In his memorandum, he repeats the claims made in his motion, without addressing whether *Lonergan* allows those claims to be made in a rule 60.02 motion. We address Hogy's claims individually in light of the supreme court's *Lonergan* opinion.

"Fraud on the Court"

Hogy's motion argues that the district court that committed him was misled "to believe that Hogy would receive sex offender treatment at an accredited program to correct specific mental illness or severe personality disorders alleged as part of his civil commitment."

This claim, variously stated in terms of fraud and misrepresentation, is a claim covered by Minn. R. Civ. P. 60.02(c). A motion for relief under rule 60.02(c) must be brought within one year. Minn. R. Civ. P. 60.02. Hogy's motion was filed in June 2010, nearly two years after the 2008 indeterminate commitment order. A claim of "fraud on the court" is not subject to any time limit. *Maranda v. Maranda*, 449 N.W.2d 158, 165 (Minn. 1989). But we need not address whether Hogy's claim is one of "fraud on the court" or misrepresentation generally. To the extent that Hogy claims fraud or misrepresentation based on a denial of a right to treatment, it is subject to the analysis offered below of Hogy's other challenges to MSOP treatment.

Treatment Challenges

The county argues that Hogy's challenges to MSOP treatment are essentially transfer or discharge claims. But the county concedes that the *Lonergan* opinion did not address whether adequacy-of-treatment claims can be brought under rule 60.02. The county argues, however, that the committing court has no role in overseeing the treatment of a committed patient.

The act provides a patient with a right to treatment. Minn. Stat. § 253B.03, subd. 7. It does not explicitly provide either the special review board or the judicial appeal panel with authority to review the adequacy of a patient's treatment. *See* Minn. Stat. §§ 253B.185, subds. 11-18 (providing for provisional discharge, discharge, and transfer, and role of special review board and judicial appeal panel in each type of decision), .19, subd. 2(b) (providing for review by judicial appeal panel in SDP and SPP cases), .22 (providing for review board "to review the admission and retention of" patients). The act

incorporates provisions in the Patients' Bill of Rights, which include a right to appropriate care and an "internal grievance procedure." Minn. Stat. § 144.651, subds. 6, 20 (2010); *see also* Minn. Stat. § 253B.185, subd. 7(b) (incorporating statutory rights provided in Patients' 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 claim that his civil commitment is no longer valid because of a denial of treatment.[1] Thus, there is no provision in the act itself with which a remedy under rule 60.02 for inadequate-treatment claims would "distinctly conflict."

Rule 60.02(e), which allows relief from a judgment when "it is no longer equitable that the judgment should have prospective application," provides authority for a district court to review an inadequate-treatment claim. "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 *Minnesota Practice*, Herr & Haydock, *Civil Rules Annotated* § 60.24, at 32 (5th ed. 2012). A civil commitment authorizing the indeterminate confinement of a sex offender

[1] The act provides that the statutory rights incorporated by reference from the Patients' 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 act does not provide regional center review boards, which 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 Patients' Bill of Rights. *See* Minn. Stat. § 253B.22, subd. 1.

has a prospective effect. And part of Hogy's argument is that if the treatment facility to which he has been committed no longer provides the treatment contemplated by the statute, and which the statute gives him a right to receive, that constitutes a "change of circumstances" undermining the validity of his commitment.

Hogy's claim that he personally has been denied treatment is one that goes to the heart of the justification for his commitment order. Civil commitment as an SDP or SPP is constitutionally permissible as long as 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.") A claim that treatment is being denied would tend to undermine the constitutionality of the commitment. If treatment is denied and the commitment therefore no longer satisfies substantive due process, there may be a "change of circumstances" that warrants relief from the judgment.

The county argues that the denial-of-treatment claims are not properly before the district court because there are other legal remedies. *See In re Travis*, 767 N.W.2d 52, 58 (Minn. App. 2009); *In re Wicks*, 364 N.W.2d 844, 847 (Minn. App. 1985). 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). If a committed patient challenges the MSOP program on non-constitutional grounds, he may not have an effective remedy outside of rule 60.02.

Thus, a committed patient's claim that he is being denied treatment is a claim that, although potentially cognizable in a habeas petition or a section 1983 action, he should not be barred from raising under rule 60.02. And such a claim does not necessarily require an extensive record more properly developed in an independent action.

We conclude that Hogy may raise a denial-of-treatment claim by a motion under rule 60.02(e). Not all of Hogy's allegations against MSOP are denial-of-treatment claims. We remand to the district court only for consideration of those claims that are of that nature and that were raised in his rule 60.02 motion. As to Hogy's other claims, we affirm the district court's denial of them.

Affirmed in part, reversed in part, and remanded.