STATE OF MINNESOTA
IN COURT OF APPEALS
A12-1366

In the Matter of the Civil Commitment of: David Leroy Gamble, Jr.

Filed December 31, 2012
Affirmed
Schellhas, Judge

Ramsey County District Court
File No. 62-MH-PR-09-479

David Leroy Gamble, Jr., Moose Lake, Minnesota (pro se appellant)

John J. Choi, Ramsey County Attorney, Beth Gessner Sullivan, Assistant County Attorney, St. Paul, Minnesota (for respondent Ramsey County)

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

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

SCHELLHAS, Judge

Appellant, who is indeterminately committed as a sexually dangerous person, challenges the district court's order denying his rule 60.02 motion to vacate his judgment of commitment and set his case for trial or order his "immediate placement in a viable, accredited program which offers meaningful sex offender treatment that is suitable for the alleged diagnosis as found by [the district] Court." (Footnote omitted.) We affirm.

FACTS

In May 2010, while represented by legal counsel, appellant David Leroy Gamble, Jr., stipulated in writing to his initial and final judicial commitment as a sexually dangerous person. The district court accepted the stipulation and committed Gamble to the Minnesota Commissioner of Human Services and Minnesota Sex Offender Program (MSOP) as a sexually dangerous person. On June 7, 2010, the court issued its written findings, conclusions of law, order, and judgment of commitment.

In April 2011, Gamble moved the district court for relief from the judgment under Minn. R. Civ. P. 60.02, on the grounds of: (1) ineffective assistance of counsel, (2) violation of his right to due process because Ramsey County was "not compelled to show proof of [his] serious difficulty controlling sexual behavior," (3) violation of his right to due process because he was "coerced" into signing the stipulation for commitment, (4) violation of his right to due process because the stipulation for commitment failed to show that he suffered "from a recognizable Personality or Mental Disorder to justify a Sexual Disorder to warrant Civil Commitment," and (5) "unconstitutional" commitment because MSOP is a "failed program" and does "not withstand constitutional scrutiny . . . in light of the lack of treatment being provided." On September 16, the court denied Gamble's motion in its entirety and, on October 12, denied his request for reconsideration. On December 8, Gamble noticed an appeal from the October 12 order. Because a request for reconsideration does not extend the time for taking an appeal, this court denied Gamble's appeal as untimely, and the supreme court

denied review. *In re Civil Commitment of Gamble*, No. A11-2204 (Minn. App. Jan. 11, 2010) (order), *review denied* (Minn. Mar. 20, 2012).

On May 4, 2012, Gamble moved the district court for an order compelling his court-appointed attorney to release certain records to him. On the day that the court heard the motion, Gamble again moved the court under rule 60.02 for relief from the judgment of commitment and also moved for an order appointing him a different attorney. In his second rule 60.02 motion, Gamble raised the same issues that he raised in his first rule 60.02 motion and other issues. Pertinent to this appeal, Gamble argued that his written stipulation for commitment contained "vague words and grammar" which led him to believe he had the option to withdraw from "the contract at any time," that an evidentiary hearing was necessary "to determine the reasonable terms of the contract and then enforce those terms," and that he was entitled to an evidentiary hearing based on newly discovered evidence regarding his ineffective-assistance-of-counsel claim. The district court summarily denied Gamble's motion in its entirety, concluding that Gamble was collaterally estopped from raising the same issues in his second rule 60.02 motion that he raised in his first motion. The court denied Gamble's newly raised issues on the basis that they lacked merit.

This appeal follows.

D E C I S I O N

Gamble argues that the district court erred by: (1) not allowing him to withdraw his stipulation for commitment, (2) not conducting an evidentiary hearing based on his newly discovered evidence regarding his ineffective-assistance-of-counsel claim, and

(3) abusing its "judicial powers by tricking [him] into court under false pretense." Respondent Ramsey County's brief contains substantial discussion about the district court's application of collateral estoppel. In his reply brief, Gamble challenges the court's ruling that some of his claims are barred by collateral estoppel. We therefore will consider the issue of the district court's application of collateral estoppel. *See* Minn. R. Civ. App. P. 128.02, subd. 4 ("The appellant may file a brief in reply to the brief of the respondent. The reply brief must be confined to *new matter raised in the brief of the respondent*." (emphasis added)).

Stipulation for Commitment

Gamble argues that the language in the stipulation for commitment led him to believe that he had the right to withdraw from his written stipulation "at any time" and that an evidentiary hearing was necessary to determine "the reasonable terms of the contract and then enforce those terms." Gamble's arguments are unpersuasive.

"In a civil matter, a stipulation 'cannot ordinarily be repudiated or withdrawn from by one party without the consent of the other, except by leave of the court for cause shown.'" *In re Commitment of Rannow*, 749 N.W.2d 393, 396 (Minn. App. 2008) (quoting *Gran v. City of St. Paul*, 274 Minn. 220, 223, 143 N.W.2d 246, 249 (1966)), *review denied* (Minn. Aug. 5, 2008). Civil commitment hearings "are civil in nature," not criminal. *Id.* at 396. "Stipulations are . . . accorded the sanctity of binding contracts." *Shirk v. Shirk*, 561 N.W.2d 519, 521 (Minn. 1997). When interpreting stipulations, the "rules of contract construction apply." *Blonigen v. Blonigen*, 621 N.W.2d 276, 281 (Minn. App. 2001), *review denied* (Minn. Mar. 13, 2001). "Contract language is

ambiguous if it is 'reasonably susceptible to more than one interpretation.'" *Baker v. Best Buy Stores, LP*, 812 N.W.2d 177, 180 (Minn. App. 2012) (quoting *Brookfield Trade Ctr. v. Cnty. of Ramsey*, 584 N.W.2d 390, 394 (Minn. 1998)), *review denied* (Minn. Apr. 25, 2012). "'A contract must be interpreted in a way that gives all of its provisions meaning.'" *Id.* at 180 (quoting *Current Tech. Concepts, Inc. v. Irie Enters.*, 530 N.W.2d 539, 543 (Minn. 1995)).

Gamble bases his argument on the following language in the stipulation for commitment: "My attorney told me and I understand that if the court does not approve this agreement, or if I withdraw this stipulation, I have an absolute right to have commitment hearings." He argues that the language grants him the authority to withdraw from the stipulation despite the undisputed fact that the district court approved the stipulation. We conclude that the language in the stipulation for commitment is not ambiguous, and we reject Gamble's argument as meritless and absurd.

Evidentiary Hearing

The district court determined that Gamble's affidavits that he purports constitute newly discovered evidence are irrelevant to the issues that Gamble raised in his second rule 60.02 motion and did not justify an evidentiary hearing. We agree.

Preliminarily, we note that Gamble brought his motion under rule 60.02(d)–(f), not rule 60.02(b), which provides that a court may "relieve a party" from a "final judgment . . . , order, or proceeding and may order a new trial or grant such other relief as may be just" on the basis of "[*n*]*ewly discovered evidence*." Minn. R. Civ. P. 60.02(b) (emphasis added). Moreover, for a court to grant relief on the basis of newly discovered

evidence, "the moving party must show that the new evidence was not discovered until after trial, and could not have been discovered before trial by the exercise of reasonable diligence." *Frazier v. Burlington N. Santa Fe Corp.*, 811 N.W.2d 618, 631 (Minn. 2012) (quotation omitted). "[T]he newly discovered evidence must be relevant and admissible" and "must not be merely collateral, impeaching, or cumulative, but rather, must be such as to have a probable effect upon the result of a new trial." *Id.* (quotation omitted). The "determination of whether all named factors have been met is within the trial judge's discretion." *Id.* (quotation omitted).

Gamble submitted affidavits in connection with his claim of ineffective assistance of trial counsel—that his trial counsel coerced him to sign the stipulation for commitment. The submitted affidavits are from two civilly committed persons whom Gamble's court-appointed attorney also represented. The district court correctly determined that these affidavits are irrelevant to Gamble's claim of ineffective assistance of counsel because neither affiant has any personal knowledge about counsel's representation of Gamble, the terms of or circumstances surrounding Gamble's stipulation for commitment, or what occurred at Gamble's civil commitment proceedings. The affiants have no personal knowledge about why Gamble signed the stipulation for commitment or whether his counsel coerced him to do so.

Gamble relies on three cases to support his argument that he was entitled to an evidentiary hearing on the basis of the submitted affidavits. His reliance on these cases is misplaced. All three cases are criminal cases, not civil cases. Moreover, the alleged newly discovered evidence in these cases is strikingly dissimilar from the purported

evidence contained in Gamble's affidavits. In two of the criminal cases, the supreme court remanded for an evidentiary hearing when the appellant produced affidavits showing that at least one trial witness recanted. *Opsahl v. State*, 677 N.W.2d 414, 422–24 (Minn. 2004); *Ferguson v. State*, 645 N.W.2d 437, 442–43 (Minn. 2002). In the third case, the appellant produced expert-witness affidavits, two of which supported the appellant's ineffective-assistance-of-counsel claim and all of which touched directly on what occurred at the appellant's trial. *State v. Rhodes*, 627 N.W.2d 74, 88 (Minn. 2001).

Here, despite the fact that Gamble's affidavits did not entitle him to an evidentiary hearing on the basis of newly discovered evidence, the district court essentially offered Gamble an evidentiary hearing when it informed him on the record that he could call his court-appointed attorney to testify to "whether or not [she] coerced him because [she was] the only one that was in the room." Gamble declined the offer, stating that he was "not prepared because when [he] tried to file a letter to the Court to request subpoenas to bring in witnesses on comments that [his court-appointed attorney] has made, [he] was denied to get subpoenas." The following colloquy ensued:

> THE COURT: Wait. Wait. You have to understand, we are talking about—I think you are talking about what may have happened when this stipulation was signed. . . . Now, was this [witness] you were talking about at that proceeding?
> GAMBLE: No, Your Honor.
> THE COURT: Well, then I think that probably would be irrelevant.

The district court then told Gamble that he was "collaterally estopped from bringing [a] subsequent motion with respect to the [ineffective-assistance-of-counsel claim]" because

those "matters have been previously dealt with [by the district court's September 16, 2011 order]."

We conclude that Gamble received a full and fair hearing on his claim of ineffective assistance of counsel. The district court did not abuse its discretion by not conducting an evidentiary hearing or by denying Gamble's motion for relief on the basis of newly discovered evidence. New evidence that is irrelevant or merely collateral is not sufficient for a trial court to grant a motion for relief under rule 60.02(b). *Frazier*, 811 N.W.2d at 631.

Abuse of Judicial Powers

Gamble argues that the district court "lured [him] to the court under the guise of a scheduling hearing. He was then *bushwhacked* into an evidentiary hearing. None of these things equates to proper procedural due process or substantive due process." Gamble's argument is unpersuasive and unsupported by any cited legal authority. Our review of the record leads us to conclude that the district court did not abuse its judicial powers in any way.

Application of Collateral Estoppel

Gamble argues in his reply brief that the district court made an error of law in its September 16, 2011 order by denying his ineffective-assistance-of-counsel claim and that the district court therefore also erred in its July 18, 2012 order by concluding that "[c]ollateral estoppel[] precludes reconsideration" of his ineffective-assistance-of-counsel claim.

"Whether collateral estoppel precludes litigation of an issue is a mixed question of law and fact that we review de novo." *Hauschildt v. Beckingham*, 686 N.W.2d 829, 837 (Minn. 2004). "Once the reviewing court determines that collateral estoppel is available, the decision to apply collateral estoppel is left to the district court's discretion. The district court's decision will be reversed only upon a determination that the court abused its discretion." *In re Estate of Perrin*, 796 N.W.2d 175, 179 (Minn. App. 2011) (quotation omitted).

Collateral estoppel applies when:

> (1) the issue [was] identical to one in a prior adjudication; (2) there was a final judgment on the merits; (3) the estopped party was a party or was in privity with a party to the prior adjudication; and (4) the estopped party was given a full and fair opportunity to be heard on the adjudicated issue.

Hauschildt, 686 N.W.2d at 837.

Gamble contends only that the fourth prong of collateral estoppel is not satisfied here, arguing that the district court, in its September 16, 2011 order, erroneously stated that Gamble did not have a constitutional right to counsel. Citing *Beaulieu v. Minn. Dep't of Human Servs.*, 798 N.W.2d 542, 551 (Minn. App. 2011), *review granted* (Minn. July 19, 2011), Gamble argues that he has a due-process right to effective assistance of counsel. But Gamble misreads *Beaulieu*. This court concluded in *Beaulieu* that "[n]either the United States Supreme Court nor the Minnesota Supreme Court has held that the Due Process Clause of the Fourteenth Amendment confers a right to the effective assistance of counsel for a person who is the subject of a civil-commitment proceeding." *Id.*

Here, the district court properly applied *Beaulieu* in its order of September 16, 2011, to conclude that Gamble's argument was "unfounded." Moreover, in that order, the district court considered Gamble's ineffective-assistance-of-counsel claim on its merits and concluded that it was meritless under Minn. Stat. § 253B.07, subd. 2 (2010). We conclude that, in its July 18, 2012 order, the district court did not err by applying collateral estoppel to bar Gamble's ineffective-assistance-of-counsel claim.

Adequacy of Treatment

Upon Gamble's first rule 60.02 motion, while *Lonergan* was pending before the supreme court, the district court addressed Gamble's right-to-adequate-treatment claim on the merits and denied Gamble relief. Upon Gamble's second rule 60.02 motion, the district court ruled that the doctrine of collateral estoppel barred Gamble's right-to-adequate-treatment claim. Gamble did not raise his right-to-adequate-treatment claim in his initial brief nor did respondent raise the issue in its brief. In his reply brief, Gamble urges this court to consider his right-to-adequate-treatment claim in consideration of *In re Lonergan*, 811 N.W.2d 635 (Minn. 2012). We deem the issue waived by Gamble and decline to consider it. *See Peterson v. BASF Corp.*, 711 N.W.2d 470, 482 (Minn. 2006) ("It is well-established that failure to address an issue in brief constitutes waiver of that issue."); *Wood v. Diamonds Sports Bar & Grill, Inc.*, 654 N.W.2d 704, 707 (Minn. App. 2002) ("If an argument is raised in a reply brief but not raised in an appellant's main brief, and it exceeds the scope of the respondent's brief, it is not properly before this court and may be stricken from the reply brief."), *review denied* (Minn. Feb. 26, 2003).

Affirmed.