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STATE OF MINNESOTA
IN COURT OF APPEALS
A13-1205

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

Filed December 16, 2013
Affirmed
Minge, Judge[*]

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

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

Lori Swanson, Attorney General, Angela Helseth Kiese, Assistant Attorney General, St. Paul, Minnesota (for respondent state)

Considered and decided by Ross, Presiding Judge; Bjorkman, Judge; and Minge, Judge.

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

MINGE, Judge

Appellant challenges the district court's denial of his request for relief under Minn. R. Civ. P. 60.02(e), claiming that the judgment civilly committing him as a sexual

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

psychopathic personality (SPP) and a sexually dangerous person (SDP) should no longer have prospective application because the Minnesota Sex Offender Program (MSOP) is not offering adequate treatment. Because we conclude that on this record rule 60 does not provide a basis for consideration of appellant's claims and that appellant has and has had other remedies, we affirm.

FACTS

Appellant Steven Merrill Hogy was civilly committed to MSOP as an SDP and SPP in 2008. In June 2010, Hogy moved pursuant to Minn. R. Civ. P. 60.02 (d), (e)-(f), for dismissal of the judgment of commitment or transfer to an accredited sex-offender treatment program. The district court denied his motion without an evidentiary hearing. Hogy appealed to this court, which affirmed the district court's order. *In re Civil Commitment of Hogy*, No. A10-1615 (Minn. App. Jan. 25, 2011). On May 15, 2012, the supreme court vacated this decision and remanded the matter to this court "for further proceedings consistent with *In re Civil Commitment of Lonergan*, . . . [811 N.W.2d 635 (Minn. 2012)]."

This court issued an opinion after remand, affirming the district court's order in part and reversing and remanding in part. *In re Civil Commitment of Hogy*, A10-1615, 2012 WL 5289686 (Minn. App. Oct. 29, 2012), *review denied* (Minn. Jan. 15, 2013). We affirmed the district court's order insofar as it dealt with Hogy's request for discharge or transfer but reversed and remanded as to his denial-of-treatment claims made under Minn. R. Civ. P. 60.02(e). *Id.* at *2-3. In doing so, this court noted that "Hogy's claim

that he personally has been denied treatment is one that goes to the heart of the justification for his commitment order." *Id.* at *3.

On remand, the district court once again denied Hogy's motions. The district court concluded that (1) a patient's proceeding under rule 60 must focus on individual denial-of-treatment claims, not on generalized claims against the MSOP, and that Hogy failed to make a prima facie case that he was denied treatment; (2) Hogy's bald assertions are not meritorious as a matter of law because the record is replete with documents indicating that the MSOP has provided treatment including periodic reviews discussing his treatment since 2008; (3) to the extent that Hogy is asking the court to address generalized deficiencies in treatment, the district court has no jurisdiction over the MSOP because it was not made a party to his motion; and (4) Hogy has a potential remedy as a party to a class action in federal district court that seeks to address patients' claims of inadequate treatment.

Hogy appeals this decision. Recently this court decided *In re Civil Commitment of Moen*, 837 N.W.2d 40, 43 (Minn. App. 2013), *review denied* (Minn. Oct. 15, 2013), which held that "a person committed as an SDP [who] brings a motion for relief from a commitment order pursuant to rule 60.02(e) . . . based on the alleged inadequacy of treatment in the MSOP . . . does not state a viable claim for relief under the rule." Our *Moen* decision addresses certain issues in Hogy's case.

D E C I S I O N

We review a district court's denial of a rule 60.02 motion for an abuse of discretion. *In re Welfare of Children of Coats*, 633 N.W.2d 505, 510 (Minn. 2001);

Moen, 837 N.W.2d at 44-45. Hogy has the burden of proof in a rule 60.02 proceeding. *City of Barnum v. Sabri*, 657 N.W.2d 201, 205 (Minn. App. 2003).

The issue before us is whether the commitment judgment should be vacated because "it is no longer equitable that the judgment should have prospective application." Minn. R. Civ. P. 60.02(e). In *Lonergan*, which discussed claims of inadequate treatment similar to those raised by Hogy, the supreme court stated that relief under rule 60.02 from commitment under the Minnesota Commitment and Treatment Act (the commitment act), Minn. Stat. §§ 253B.01-.24 (2012), is permissible only to the extent that the rules of civil procedure do not conflict with or are not inconsistent with the provisions of the commitment act. 811 N.W.2d at 639 (citing Minn. R. Civ. P. 81.01(a), App. A). For this reason, the supreme court concluded that any claim seeking transfer or discharge must be brought solely under the commitment act and not through a rule 60.02 motion, because the commitment act sets forth a specific procedure for requesting this relief. 811 N.W.2d at 642; *see also* Minn. Stat. § 253B.185, subds. 1(e), 9(b)-(c) (2012) (stating that discharges and transfers must be made in accordance with the provisions of the commitment act and that a special-review board will hear such petitions); Minn. Stat. § 253B.18, subd. 4c (2012) (providing for special-review board).[1]

Further, the supreme court stated any claim that conflicts with the twin purposes of the commitment act, patient rehabilitation and protection of the public, likewise cannot be raised by a rule 60.02 motion. *Lonergan*, 811 N.W.2d at 642-43. The supreme court

[1] The commitment act as it applies to SDP and SPP commitments has been revised and renumbered by 2013 Minn. Laws ch. 49, §§ 1-22, at 210-231 (codified at Minn. Stat. §§ 253D.01-.36 (Supp. 2013)) (effective August 1, 2013).

identified a narrow class of permissible claims that neither sought transfer or discharge, nor conflicted with the commitment act's purpose. This class includes claims of lack of jurisdiction, ineffective assistance of counsel, or "procedural or jurisdiction defect[s] [that occur] during the commitment process." *Id.*

The *Moen* decision from this court relies on the reasoning of *Lonergan*. Moen made the same claims that Hogy makes here; he alleged that the MSOP treatment program was ineffective and that he had "not been offered adequate treatment to meet his needs." 837 N.W.2d at 44. Relying on *Lonergan*, this court stated that the commitment act established the sole means for patients seeking discharge or transfer. *Id.* at 46 (citing *Lonergan*, 811 N.W.2d at 642). Although Moen failed to specify precisely what relief he was seeking, this court concluded that "Moen's appellate brief reveals that his true purpose is to vacate the commitment order, a form of relief that obviously would result in his discharge." *Moen*, 837 N.W.2d at 47.

Here, Hogy asserts that his requested relief is to dismiss the commitment judgment or to be placed in a viable accredited program. Hogy also does not assert claims that fit within the narrow class of claims that the supreme court identified in *Lonergan* as permissible under the provisions of rule 60.02. Hogy does not allege lack of jurisdiction, ineffective assistance of counsel, or any other procedural or jurisdictional defect. The district court correctly identified Hogy's request as primarily one for transfer or discharge—he asks to be transferred to a different program or that the order of commitment be vacated. These are claims that cannot be made through a rule 60.02

motion. *Lonergan*, 811 N.W.2d at 642. The district court did not err by denying Hogy's motion on this basis.

In *Moen*, this court determined that Moen's request for relief under rule 60.02(e) also failed on the merits. 837 N.W.2d at 49. Both Moen and Hogy cite rule 60.02(e), which provides relief when "'it is no longer equitable that the judgment should have prospective application.'" *Id.* at 48 (citing Minn. R. Civ. P. 60.02(e)). Relief under this clause is generally granted if there has been a change in the relevant caselaw or statutory law, or if there has been a change in the operative facts. *Id.* at 48-49. According to *Moen*, a "change in the operative facts" requires a moving party to "'show that a present challenge to an underlying order would have merit.'" *Id.* at 49 (quoting *Sabri*, 657 N.W.2d at 206). This means that Hogy "must establish that the inadequacy of treatment in the MSOP presently is a reason for a district court to deny a commitment petition." *Id.* In *Moen*, this court held that inadequacy of treatment options at MSOP would not be grounds for denial of a civil commitment petition and that therefore a "rule 60.02(e) motion would not state a viable claim for relief." *Id.* That determination is applicable here.

The district court correctly observed that Hogy is not without remedy. He is included within a federal court, class-action law suit currently challenging the adequacy of treatment in the MSOP program. *See Karsjens v. Jesson*, 283 F.R.D. 514 (D. Minn. 2012) (order certifying class). In addition, in *Moen* this court noted that SDP/SPP patients may seek relief through a habeas corpus petition or pursuant to section 1983 of title 42 of the United States Code. 837 N.W.2d at 47-48. Finally, Hogy petitioned the

special-review board in 2011 for discharge or transfer; when his petition was denied, he appealed the adverse decision of the special-review board to the judicial-appeal panel, which also denied his petition. Hogy appealed the appeal-panel decision to this court, but dismissed the appeal before it could be heard. Hogy retains a right to petition the special-review board for transfer or discharge under Minn. Stat. § 253D.27 (Supp. 2013); to contest a decision of the special-review board before the judicial-appeal panel under Minn. Stat. § 253D.28 (Supp. 2013); and to appeal that decision to the court of appeals under Minn. Stat. §§ 253B.19, subd. 5, .27, subd. 4 (Supp. 2013). Such avenues of relief are not encompassed in Hogy's present appeal.

For all of these reasons, we affirm the district court's order denying Hogy's motion for rule 60.02 relief.

Affirmed.