STATE OF MINNESOTA
IN COURT OF APPEALS
A13-0537

In the Matter of the Civil Commitment of:
Ozahwaasko Giishig, n/k/a Guy Greene

Filed September 9, 2013
Affirmed
Rodenberg, Judge

Sherburne County District Court
File No. 71-P9-05-002825

Guy Israel Greene, Moose Lake, Minnesota (*pro se* appellant)

Lori Swanson, Attorney General, Matthew G. Frank, Assistant Attorney General, St. Paul, Minnesota (for respondent State of Minnesota)

Considered and decided by Rodenberg, Presiding Judge; Connolly, Judge; and Chutich, Judge.

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

RODENBERG, Judge

Appellant challenges the district court's denial of his motion for relief under Minn. R. Civ. P. 60.02. He also argues that the district court erred by denying his motions requesting the appointment of counsel, sanctions against the assistant attorney general, and that the district court recuse itself from this matter. We affirm.

FACTS

In September 2006, the district court indeterminately committed Ozahwaasko Giishig, n/k/a/ Guy Greene, as a sexually dangerous person (SDP) and a sexual psychopathic personality (SPP). In 2007, appellant appealed his commitment. We affirmed. *See In re Civil Commitment of Giishig*, No. A07-0616, 2007 WL 2601423 (Minn. App. Sept. 11, 2007), *review denied* (Minn. Nov. 13, 2007).

Following his commitment, appellant has sought relief at the federal and state level. Appellant is currently a member of a federal class action suit against the Minnesota Sex Offender Program (MSOP). *See Karsjens v. Jesson*, No. 11-CV-3659 (D. Minn. June 24, 2012) (order certifying class). He has also filed his own case in federal court, which has been stayed pending the resolution of the class action. *See Greene v. Benson*, No. 11-CV-979 (D. Minn. Feb. 6, 2012) (order staying pending cases). In state court, appellant has filed numerous motions and a petition seeking to vacate his commitment, all of which have been denied.

On November 9, 2012, appellant moved for relief under Minn. R. Civ. P. 60.02(e) requesting an evidentiary hearing and the appointment of counsel. Appellant argued that "changed circumstances" existed because "the Minnesota Sex Offender Program no longer offers adequate treatment," claiming that a March 2011 report by the Minnesota Office of the Legislative Auditor, which was issued following an evaluation of the MSOP and the civil commitment process, be recognized as newly discovered evidence. On December 20, 2012, appellant moved the district court to recuse itself because its

previous order dismissing a prior rule 60.02(f) motion represented "nothing but Revenge and Retribution in order to oppress and deny" him counsel.

On December 31, 2012, the county responded, arguing that appellant's motion should be denied because appellant is improperly seeking discharge from his commitment and that he is not entitled to equitable relief because he is not participating in treatment. The county provided evidence that appellant is considered a nonparticipant in treatment because he withdrew completely from treatment in 2009 and, other than a single group session in 2010, has not participated in treatment since 2009. The county also included a news article regarding litigation surrounding the MSOP in which appellant is quoted as saying, "I'm going to sue my way out the front door."

Appellant objected to the county's response and requested sanctions under Minn. R. Civ. P. 11. Appellant denied that he was refusing treatment. He filed a copy of a signed treatment consent form, which was dated after the state had filed its response, and which appellant also claimed he signed under duress. On February 15, 2013, appellant filed another rule 60.02(e) motion, again arguing that "changed circumstances" exist.

On March 5, 2013, the district court denied appellant's rule 60.02 motion because it "is nothing more than an attempt to circumvent the statutory process for discharge from commitment." The district court concluded that, although appellant makes individual claims of inadequate treatment, the remedy he is seeking is not a change in treatment but a discharge. The district court also denied appellant's motions for appointment of counsel, for rule 11 sanctions against the assistant attorney general, and for the district

court to recuse itself. Appellant appeals and requests that this court "void" his civil commitment order.

D E C I S I O N

I.

Appellant first challenges the district court's denial of his motion for an evidentiary hearing under Minn. R. Civ. P. 60.02(e), which provides:

> On motion and upon such terms as are just, the 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 for the following reasons: . . .
>
> (e) The judgment has been satisfied, released, or discharged or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application . . . .

Rule 60.02 provides a district court with "discretionary power to grant relief." *Charson v. Temple Israel*, 419 N.W.2d 488, 490 (Minn. 1988). We apply an abuse-of-discretion standard of review to a district court's decision on a rule 60.02 motion. *Kosloski v. Jones*, 295 Minn. 177, 180, 203 N.W.2d 401, 403 (1973). That discretion is abused only when the district court's determination went "against logic and facts on the record," was "arbitrary or capricious," or was based on "an erroneous view of the law." *Posey v. Fossen*, 707 N.W.2d 712, 714 (Minn. App. 2006) (quotation omitted). "To prevail under Minn. R. Civ. P. 60.02(e), a moving party must show that a present challenge to an underlying order would have merit." *City of Barnum v. Sabri*, 657 N.W.2d 201, 206 (Minn. App. 2003).

Appellant disputes the district court's conclusion that he is seeking a discharge from treatment. He maintains that his effort is to "void" his commitment based on inadequate treatment. The district court concluded that appellant's motion "is nothing more than an attempt to circumvent the statutory process for discharge from commitment" and conflicts with the supreme court's ruling in *In re Civil Commitment of Lonergan*, 811 N.W.2d 635, 636 (Minn. 2012). Although the district court acknowledged that appellant made individual claims of inadequate treatment, it concluded that appellant was ultimately seeking a discharge from commitment given his statements to the media that he will "sue [his] way out the front door" and that he has not actively participated in treatment for several years. We recently held in *In re Civil Commitment of Moen* that a person civilly committed as an SDP may not bring a rule 60.02 motion for relief based on claimed inadequate treatment at MSOP. ___ N.W.2d ___, 2013 WL 3968801, at *1 (Minn. App. Aug. 5, 2013). Because appellant's 60.02(e) motion sought relief based upon claims of inadequate treatment, appellant is not entitled to relief under the rule. Appellant's motion is not a nontransfer, nondischarge claim, but is instead an attempt to be released from the MSOP. He must follow the statutory procedures rather than turn to the courts. *See Lonergan*, 811 N.W.2d at 640–43. The district court properly denied appellant's request for an evidentiary hearing.

II.

Appellant next argues that the district court erred in denying his motion for appointment of counsel. The county argues that appellant is not entitled to counsel because his motion is not a proceeding under the Commitment Act.

An individual who is civilly committed "has the right to be represented by counsel at any proceeding" under Minn. Stat. §§ 253B.01–.24 (2012). Minn. Stat. § 253B.07, subd. 2c. The district court found that appellant had court-appointed counsel during all stages of his commitment proceeding and during his commitment appeal. *See Giishig*, No. A07-0616, 2007 WL 2601423. The district court concluded that, based upon its determination that appellant's motion was meritless, "there is no need for counsel." But even had there been merit to appellant's rule 60.02(e) motion, appellant is not entitled to counsel. A rule 60.02(3) motion in this circumstance is not a "proceeding" under section 253B. *See Moen*, ___ N.W.2d at ___, 2013 WL 3968801 at *8. "A rule 60.02 motion is not mentioned in chapter 253B as an action or step . . . [taken] to obtain relief with respect to [a] commitment." *Id.* at ___, 2013 WL 3968801 at *9. The district court did not err in denying appellant's motion for appointment of counsel.

III.

Appellant also contends that the district court erred in denying his motion for sanctions pursuant to Minn. R. Civ. P. 11. He argues that opposing counsel "misrepresented the facts, obtained affidavits in bad faith, asked the [district] court to legislate from the bench, breached the court[']s order, malicious prosecution, and frivolous pleadings."

This court reviews "the propriety of rule 11 sanctions generally under an abuse-of-discretion standard." *Leonard v. Nw. Airlines, Inc.*, 605 N.W.2d. 425, 432 (Minn. App 2000), *review denied* (Minn. Apr. 18, 2000). When signing a pleading or other paper that is filed with a district court, a party or an attorney must certify that the paper is not

presented to the court for an improper purpose; that the legal contentions are warranted by law or by a nonfrivolous argument for the reversal, modification, or extension of the law; that the factual contentions and allegations have evidentiary support; and that denials of factual contentions are warranted by the evidence or are reasonably based on a lack of information. Minn. R. Civ. P. 11.02.

Here, the district court denied appellant's motion for bad faith sanctions because "[t]here is certainly no showing of bad faith on the part of the state in this matter to justify the imposition of any type of sanction." The district court concluded that appellant's argument was meritless. On appeal, appellant has failed to establish any basis under Minnesota statutes or caselaw showing that he is entitled to sanctions in these circumstances. Absent such a basis, the district court did not abuse its discretion in denying appellant's motion for sanctions.

IV.

Appellant finally argues that the district court erred in denying his motion that the judge recuse himself. We review a district court's decision to deny a motion to recuse for an abuse of discretion. *Carlson v. Carlson*, 390 N.W.2d 780, 785 (Minn. App. 1986), *review denied* (Minn. Aug. 20, 1986). A judge who has presided at a motion or other proceeding may not be removed except upon an affirmative showing of prejudice on the part of that judge. Minn. R. Civ. P. 63.03.

Here, the judge had presided over previous motions involving appellant, including a prior motion for relief under rule 60.02(f). Thus, appellant is required to make an affirmative showing of prejudice. *See* Minn. R. Civ. P. 63.03. However, appellant

merely makes general assertions and does not point to specific instances of judicial bias. An assignment of error based on "mere assertion" without support of legal argument or authorities "is waived and will not be considered on appeal unless prejudicial error is obvious on mere inspection." *Schoepke v. Alexander Smith & Sons Carpet Co.*, 290 Minn. 518, 519–20, 187 N.W.2d 133, 135 (1971). Appellant has failed to make an affirmative showing of prejudice. *See In re Welfare of D.L.*, 479 N.W.2d 408, 415 (Minn. App. 1991) ("Bias or prejudice, to be disqualifying, must stem from an extrajudicial source and result in an opinion on the merits on some basis other than what the judge learned from her participation in the case"), *aff'd*, 486 N.W.2d 375 (Minn. 1992). The judge did not abuse his discretion in denying appellant's motion to recuse.

Affirmed.