STATE OF MINNESOTA
IN COURT OF APPEALS
A13-0628

In the Matter of the Civil Commitment of:
Merlin Darrell Adolphson.

Filed August 19, 2013
Affirmed
Chutich, Judge

Pope County District Court
File No. 61-PX-93-000073

Merlin D. Adolphson, Moose Lake, Minnesota (pro se appellant)

Lori Swanson, Attorney General, Noah Cashman, Assistant Attorney General, St. Paul, Minnesota; and

Neil Nelson, Pope County Attorney, Glenwood, Minnesota (for respondent)

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

CHUTICH, Judge

Appellant Merlin Darrell Adolphson challenges the district court's denial of his motion for relief from his civil commitment under Minnesota Rule of Civil Procedure 60.02(e), arguing that the district court abused its discretion by denying him appointed counsel and an evidentiary hearing. Because the district court did not abuse its discretion in denying Adolphson's rule 60.02(e) motion, we affirm.

FACTS

Adolphson was civilly committed to the Minnesota Sex Offender Program (MSOP) as a psychopathic personality (now known as a sexual psychopathic personality) in 1993. In February 2013, Adolphson filed a motion for relief under Minnesota Rule of Civil Procedure 60.02(e), arguing that "changed circumstances" made his commitment impermissible because MSOP does not provide adequate treatment. Adolphson's allegations are based largely on a March 2011 report of the Legislative Auditor. *See generally* Minn. Office of the Leg. Auditor, *Civil Commitment of Sex Offenders* (Mar. 2011), *available at* http://www.auditor.legt.state.mn.us/ped/pedrep/ccso.pdf. Adolphson requested an evidentiary hearing to determine if "changed circumstances" existed and also asked the district court to appoint counsel to represent him in bringing his motion.

The district court denied the motion, finding that Adolphson "provide[d] absolutely no evidence or information that he, on an individual basis, is being denied adequate treatment," and concluding that Adolphson was not entitled to an evidentiary hearing. The district court also denied Adolphson's motion for a court-appointed attorney because his rule 60.02(e) motion was not a proceeding under the commitment act. Adolphson appealed.

D E C I S I O N

I. Motion under Minnesota Rule Civil Procedure 60.02(e)

Adolphson challenges the district court's denial of his motion for relief under Minnesota Rule Civil Procedure 60.02(e), which states:

> 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 it is no longer equitable that the judgment should have prospective application; . . . .

To prevail on a rule 60.02(e) motion, "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).

A district court has "discretionary power to grant relief" under rule 60.02. *Charson v. Temple Israel*, 419 N.W.2d 488, 490 (Minn. 1988). A district court's decision on a rule 60.02 motion will not be reversed unless the court abused its discretion. *Kosloski v. Jones*, 295 Minn. 177, 180, 203 N.W.2d 401, 403 (1973). A district court abuses its discretion when its decision is "based on an erroneous view of the law" or is "against the facts in the record." *City of N. Oaks v. Sarpal*, 797 N.W.2d 18, 24 (Minn. 2011).

Here, the district court concluded that Adolphson's claim of inadequate treatment failed because he did not present any "individualized information about how his

treatment is lacking." In his brief, Adolphson identifies numerous alleged inadequacies in MSOP, including that MSOP operates in a "prison-like setting"; MSOP does not provide for less restrictive alternative treatment environments; MSOP has had numerous leadership and content changes; the program has changed facilities; and MSOP has only conditionally released one client in its history. But Adolphson fails to explain how these "changed circumstances" relate to his specific individual treatment. Instead, the record demonstrates that Adolphson refuses to participate in MSOP's treatment program and is considered a non-participant in the program. Accordingly, the district court did not abuse its discretion in concluding that Adolphson "cannot make a claim of lack of adequate treatment when he chooses not to participate."

Moreover, Adolphson's motion for relief is not proper under rule 60.02. The supreme court addressed the ability of a civilly committed person to request relief under rule 60.02 in *In re Commitment of Lonergan*, 811 N.W.2d 635 (Minn. 2012). The supreme court concluded that a civilly committed person may bring a motion under rule 60.02 as long as it does not "distinctly conflict" with the Minnesota Commitment and Treatment Act or "frustrate a patient's rehabilitation or the protection of the public." *Id.* at 642–43. The supreme court found that the Commitment Act and rule 60.02(e) "conflict" when a patient seeks discharge from commitment or transfer out of a secure facility. *Id.* at 642. Accordingly, when a civilly committed person seeks such relief, he or she "must exclusively follow the Commitment Act's specific procedures for petitioning for a transfer or discharge," which includes petitioning a special review board and review by a judicial appeal panel, rather than turning to the courts. *Id.* at 642, 640.

The supreme court further concluded that a civilly committed person could bring a "narrow class of claims" under rule 60.02 if those claims do not directly conflict with the Commitment Act. *Id.* at 643. As examples of such claims, the court mentioned "ineffective assistance of counsel" or an attempt to cure a procedural or jurisdictional defect during the commitment process. *Id.* at 642–43.

On appeal, Adolphson claims that he has not "'distinctly' asked for a release, discharge, [or] transfer," and argues that he is only seeking an evidentiary hearing on whether changed circumstances have rendered his commitment impermissible. But Adolphson is not asserting one of the nontransfer, nondischarge claims specifically identified in *Lonergan*. Rather, he alleges only that MSOP is not providing him adequate treatment and, in his prayer for relief, requests "release, vacat[ion] or modification of the original judgment."

Because Adolphson ultimately seeks to be released from commitment and does not seek a remedy for any specific inadequacy in his individual treatment, a rule 60.02 motion is not the proper vehicle for relief. Adolphson must direct his request to a special review board, not to the courts. *See* Minn. Stat. § 253B.185, subds. 1(e), 9 (2012). Thus, the district court did not abuse its discretion by denying Adolphson's rule 60.02(e) motion.

II. Motion for Appointed Counsel

Adolphson also contends that the district court erred by denying his motion for appointment of counsel. The district court concluded that Adolphson does not have a

statutory right to counsel to bring his rule 60.02 motion because it is not a proceeding under the commitment statute.

A civilly committed person has the right to be represented by counsel at any proceeding under chapter 253B. Minn. Stat. § 253B.07, subd. 2c (2012). Adolphson is seeking discharge outside of the statutory commitment proceedings, however, and therefore he is not entitled to court-appointed counsel. *In re Commitment of Moen*, __ N.W.2d ___, ___, 2013 WL 3968801, at *9 (Minn. App. 2013). Thus, the district court did not err by denying Adolphson's motion for appointment of counsel.

Affirmed.