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**STATE OF MINNESOTA  
IN COURT OF APPEALS  
A10-1615**

In the Matter of the Civil Commitment of: Steven Merrill Hoky

**Filed January 25, 2011  
Affirmed  
Halbrooks, Judge**

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

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

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

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

Considered and decided by Shumaker, Presiding Judge; Halbrooks, Judge; and Schellhas, Judge.

**UNPUBLISHED OPINION**

**HALBROOKS**, Judge

Appellant challenges the district court's decision to deny his motion to vacate the indeterminate-commitment order. Because the district court acted within its discretion, we affirm.

## **FACTS**

Appellant Steven M. Hogy was indeterminately committed as a sexually dangerous person (SDP) on July 23, 2008. On June 1, 2010, appellant moved to vacate the indeterminate-commitment order pursuant to Minn. R. Civ. P. 60.02(f). According to appellant, a motion to vacate the judgment is “the most appropriate method to advance his concerns with regard to the current Judgment of this Court.” Appellant alleges that he was “misled” to believe that he would receive appropriate sex-offender treatment at the time of his indeterminate commitment, but that he has “yet to receive any significant sex offender treatment.” Appellant argues that the lack of treatment provided in the Minnesota Sex Offender Program (MSOP) violates his right to substantive due process. Respondent State of Minnesota opposed the motion, arguing that the district court is without the authority to oversee appellant’s treatment at MSOP.

The district court denied appellant’s motion without a hearing. The district court concluded that “[appellant]’s challenges to the legitimacy or quality of treatment at MSOP are not proper subjects of a Rule 60.02 motion before the committing court.” This appeal follows.

## **DECISION**

Appellant argues that the district court abused its discretion by denying his motion to vacate the commitment order, contending that a rule 60.02(f) motion is the proper method of challenging the adequacy of his treatment in MSOP.

A district court’s decision to vacate a judgment under rule 60.02(f) is reviewed for an abuse of discretion. *Charson v. Temple Israel*, 419 N.W.2d 488, 490 (Minn. 1988).

Minn. R. Civ. P. 60.02(f) permits the district court to relieve a party from a final judgment for any reason “justifying relief from the operation of judgment.” But relief under this subdivision of the rule is available only in exceptional circumstances. *Chapman v. Special Sch. Dist. No. 1*, 454 N.W.2d 921, 924 (Minn. 1990).

A person receiving services in connection with civil commitment “has the right to receive proper care and treatment, best adapted, according to contemporary professional standards, to rendering further supervision unnecessary.” Minn. Stat. § 253B.03, subd. 7 (2010). But this court has recently held that a rule 60.02 motion is not the proper vehicle for challenging the conditions of treatment in MSOP. *In re Commitment of Lonergan*, \_\_\_ N.W.2d \_\_\_, \_\_\_, 2011 WL 9189, at \*4 (Minn. App. Jan. 4, 2011). We based our conclusion on the language of Minn. Stat. § 253B.17, subd. 1 (2010), which plainly “excludes a patient who has been committed as an SDP from the category of persons who may petition the court for an order that he is no longer in need of continued care and treatment.” *Id.* at \*3. We reasoned that this language applies equally to preclude a rule 60.02 motion to vacate an indeterminate-commitment order. *Id.* at \*4. Likewise, we reaffirmed the holding of previous cases that patients may not assert right-to-treatment arguments by way of judicial review. *Id.* (citing *In re Wicks*, 364 N.W.2d 844, 847 (Minn. App. 1985), *review denied* (Minn. May 31, 1985)). Instead, a patient must bring a petition to a treatment-facility special review board in order to raise issues related to his

or her treatment. *Id.* (citing *In re Commitment of Travis*, 767 N.W.2d 52, 58-59 (Minn. App. 2009)).<sup>1</sup>

Because appellant brought a rule 60.02 motion to challenge the conditions of his confinement and treatment in MSOP and because the motion is not the proper means for raising these issues, we conclude that the district court acted within its discretion by denying appellant's motion.

**Affirmed.**

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<sup>1</sup> Appellant also seems to argue that the civil-commitment statutes violate various constitutional provisions. Because these arguments were not raised to the district court, we decline to address them here. *See Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988) (stating that arguments not raised to the district court are waived on appeal).