STATE OF MINNESOTA

IN SUPREME COURT

A21-0042
A21-0043

Court of Appeals — Thissen, J.

Ricky Lee McDeid,

Appellant (A21-0042),

Shane P. Garry,

Appellant (A21-0043),

vs.

Filed: February 1, 2023
Office of Appellate Courts

Nancy Johnston, CEO/Director,
Minnesota Sex Offender Program, et al.,

Respondents.

Andrew J. Pieper, Bradley Prowant, Stoel Rives LLP, Minneapolis, Minnesota; and

Roxanna V Gonzalez, Dorsey & Whitney LLP, Minneapolis, Minnesota, for appellants.

Keith Ellison, Attorney General, Aaron Winter, Assistant Attorney General, Saint Paul, Minnesota, for respondents.

Teresa Nelson, Daniel R. Shulman, Minneapolis, Minnesota, for amicus curiae American Civil Liberties Union of Minnesota.

Jennifer L. Thon, Warren J. Maas, Jones Law Office, Mankato, Minnesota, for amici curiae Civilly Committed Patients in the Minnesota Sex Offender Program on the Transfer Waiting List.

Daniel E. Gustafson, Gustafson Gluek PLLC, Minneapolis, Minnesota; and

Madeline M. Ranum, Eric S. Janus, Sex Offense Litigation and Policy Resource Center, Mitchell Hamline School of Law, Saint Paul, Minnesota, for amici curiae Legal and Treatment Experts Michael H. Miner and Eric S. Janus.

S Y L L A B U S

Minnesota Sex Offender Program patients had a clearly established right to transfer to Community Preparation Services within a reasonable time following issuance of a Minnesota Commitment Appeals Panel transfer order.

Reversed and remanded.

O P I N I O N

THISSEN, Justice.

Qualified immunity operates to shield government officials from liability and litigation arising out of the performance of discretionary functions or acts that result in a violation of a person's statutory or constitutional rights. The Minnesota Commitment Appeals Panel (CAP) ordered two patients in the Minnesota Sex Offender Program (MSOP), Ricky Lee McDeid and Shane P. Garry (collectively, the Patients), to be transferred to Community Preparation Services (CPS)—a reduction in custody. The Patients claim that the Commissioner of the Department of Human Services and the Executive Director of the Minnesota Sex Offender Program (collectively, State Officials) violated their due process rights by delaying transfer of the Patients to CPS for over 2 years following the CAP transfer orders and seek relief under 42 U.S.C. § 1983. The State Officials seek to invoke qualified immunity against the Patients' section 1983 claims.

The district court concluded the Patients each sufficiently alleged a violation of their Fourteenth Amendment due process rights to a transfer to CPS within a reasonable amount of time following a CAP transfer order. The district court also determined, however, that qualified immunity shields the State Officials because the right to transfer to CPS within a reasonable time of the CAP transfer orders was not clearly established when the CAP transfer orders were issued. Consequently, the district court granted the State Officials' motions to dismiss. In affirming the district court, the court of appeals assumed, without deciding, that the Patients had sufficiently alleged violations of their due process rights. But the court of appeals agreed with the district court that the right to a transfer within a reasonable time of the CAP transfer orders was not clearly established.

We reverse. We hold that the right to transfer to CPS within a reasonable time of the CAP transfer orders was clearly established when the CAP orders to transfer McDeid and Garry were issued. What amount of time is reasonable in any given set of circumstances is an issue of fact to be determined by the district court. Accordingly, we reverse the decision of the court of appeals and remand to the court of appeals to address the question it did not address: whether the Patients sufficiently alleged violations of their due process rights.

FACTS

McDeid and Garry are both civilly committed patients in the MSOP. Several Minnesota statutes govern the commitment, treatment, and court-ordered reductions in custody of patients in the MSOP. *See generally* Minn. Stat. §§ 253B.01–.24 (2022) (Minnesota Commitment and Treatment Act); Minn. Stat. §§ 253D.01–.36 (2022)

(Minnesota Commitment and Treatment Act: Sexually Dangerous Persons and Sexual Psychopathic Personalities); Minn. Stat. §§ 246B.01–.10 (2022) (addressing the MSOP). McDeid was committed as a sexually dangerous person and a sexual psychopathic personality by the Aitkin County District Court on July 22, 1999. Garry was committed as a sexually dangerous person by the Rice County District Court on April 16, 2012. Persons designated as a sexually dangerous person or a sexual psychopathic personality generally are committed for treatment to an MSOP secure treatment facility for an indeterminate period of time. Minn. Stat. § 253D.07, subds. 3, 4.

The Legislature established the MSOP to "provide specialized sex offender assessment, diagnosis, care, treatment, supervision, and other services to civilly committed sex offenders." Minn. Stat. § 246B.02. Treatment is structured in phases that are mandated by statute to enable patients to progress towards discharge. *See* Minn. Stat. § 253B.03, subd. 7 (establishing the right of patients to receive treatment "rendering further supervision unnecessary"). According to the statutory mandates and the MSOP's treatment policies, patients progress through the treatment phases in part by transferring from the secure facilities at Moose Lake and St. Peter to the less restrictive environment at CPS. *See id.*; Minn. Stat. § 246B.01, subd. 2a ("Community preparation services are designed to assist civilly committed sex offenders in developing the appropriate skills and resources necessary for an eventual successful reintegration into a community."); Minn. Dep't of Hum. Servs., *Minnesota Sex Offender Program Treatment Overview* (2017), https://mn.gov/dhs/assets/msop-treatment-overview_tcm1053-313402.pdf [opinion attachment]. CPS is a residential setting outside of the secure perimeter of the facility at

St. Peter and is thus designated as a "reduction in custody." Minn. Stat. § 253D.27, subd. 1(b) (designating "transfer out of a secure treatment facility, a provisional discharge, or a discharge from commitment" as a "reduction in custody").

Minnesota statutes divide authority over the progress of MSOP patients through treatment. The State Officials have exclusive authority over general operational decisions and treatment decisions. *See* Minn. Stat. §§ 246B.01, subd. 2c, .02 (defining the roles of the Executive Director and the Commissioner); Minn. Stat. §§ 246B.03–.04 (laying out general governance rules). The CAP (called the judicial appeal panel in statute, Minn. Stat. § 253D.28) has exclusive authority over reductions in custody decisions. *See* Minn. Stat. § 253B.19, subd. 1 (establishing the judicial appeal panel (CAP)); Minn. Stat. § 253D.27, subd. 4 (vesting the exclusive authority to authorize reductions in custody in the CAP).

The legislative scheme centers a Special Review Board at the nexus of the State Officials' operational and treatment decision authority and the CAP's reduction in custody authority. *See* Minn. Stat. §§ 253D.04, 253B.22 (creating the Special Review Board comprised of three members that includes at least one mental health specialist and one attorney). The statute states that either the MSOP Executive Director or the patient may file a petition for a reduction in custody with the Special Review Board. Minn. Stat. § 253D.27, subd. 2. The Special Review Board must hold a hearing on the petition. Minn. Stat. § 253D.27, subd. 3. The Special Review Board then considers whether the transfer is "appropriate" after consideration of five factors set forth in the statute: (1) "the person's clinical progress and present treatment needs"; (2) "the need for security to accomplish continuing treatment"; (3) "the need for continued institutionalization"; (4) "which facility

can best meet the person's needs"; and (5) "whether transfer can be accomplished with a reasonable degree of safety for the public" (collectively, Mandatory Transfer Factors). Minn. Stat. § 253D.29, subd. 1. The Special Review Board must then issue a report to the CAP recommending "denial or approval of the petition." Minn. Stat. § 253D.27, subd. 4.

The statute makes explicit that "[n]o reduction in custody . . . recommended by the [Special Review Board] is effective until it has been reviewed by the [CAP]." Minn. Stat. § 253D.27, subd. 4. The patient, Commissioner of Human Services, or certain county attorneys may petition the CAP for rehearing and reconsideration of a Special Review Board recommendation. Minn. Stat. § 253D.28, subd. 1(a). In that case, the CAP must hold a hearing. *Id.*, subd. 1(b). If no petition for rehearing and reconsideration of a Special Review Board recommendation is filed, the CAP "shall either issue an order adopting the recommendations . . . or set the matter on for a hearing." *Id.*, subd. 1(c). The party seeking a transfer to a less restrictive facility "must establish by a preponderance of the evidence that the transfer is appropriate." *Id.*, subd. 2(e). Once again, the CAP determines whether a transfer is "appropriate" by considering the statutory Mandatory Transfer Factors. Minn. Stat. § 253D.29, subd. 1.

The CAP reviews petitions for transfer de novo. Minn. Stat. § 253D.28, subd. 3. And "[n]o order of the [CAP] granting a transfer . . . shall be made effective sooner than 15 days after it is issued." *Id.* A party aggrieved by a CAP order may appeal to the Minnesota Court of Appeals. *Id.*, subd. 4 (incorporating appeal rights set forth in Minn. Stat. § 253B.19, subd. 5). "The filing of an appeal shall immediately suspend the operation

of any order granting transfer . . . pending the determination of the appeal." Minn. Stat. § 253B.19, subd. 5.

It is undisputed that both Patients followed all statutory procedures required of them when they petitioned for reductions in custody and that all procedures were followed that culminated in the CAP issuing their transfer orders. As part of—and the culmination of—that statutory process, the CAP, on September 21, 2017, ordered McDeid's transfer to CPS and on January 24, 2018, Garry's transfer to CPS. The orders did not provide a specific date by which the transfers to CPS must occur. The State Officials did not appeal either order. Nonetheless, the State Officials did not transfer McDeid or Garry.

On November 20, 2019—around 2 years after the CAP transfer orders were issued for McDeid and Garry—each Patient filed a petition for writ of mandamus demanding that the transfers be effectuated. They also filed complaints alleging violations of their Fourteenth Amendment due process rights and praying for damages pursuant to 42 U.S.C. § 1983. McDeid and Garry allege that no other procedures were available to them to effectuate their court-ordered transfers to CPS and progression in treatment.

The next month, on December 11, 2019, McDeid was transferred to CPS—2 years and 2 months after the issuance of the CAP transfer order.[1] Garry was not transferred to

[1] McDeid subsequently amended his complaint to drop the petition for writ of mandamus.

CPS until approximately 8 months after McDeid's transfer—on July 29, 2020—nearly 2½ years after the issuance of his CAP transfer order.[2]

On December 13, 2019, the State Officials filed motions to dismiss each Patient's petition for mandamus relief and section 1983 claim for failure to state a claim and lack of subject matter jurisdiction. *See* Minn. R. Civ. P. 12.02(e). As relevant here, the State Officials asserted that the section 1983 claims should be dismissed because qualified immunity shields them from liability and lawsuit even if their conduct in delaying the transfer violated the Patients' constitutional rights.

In separate orders, the district court granted the State Officials' motions to dismiss the Patients' due process claims. It found that the Patients had sufficiently pleaded their section 1983 claims: that the statutes created a protected liberty interest in timely transfer to a less restrictive facility upon issuance of a CAP transfer order, that the State Officials violated that right when they failed to transfer the Patients in a reasonable amount of time, and that the Patients were "denied meaningful process or procedural protections . . . to ensure timely or actual enforcement of the CAP Order." The court also determined, however, that the State Officials were entitled to qualified immunity and granted their motions to dismiss. The court interpreted federal qualified immunity standards to require very specific precedent to clearly establish the very specific right being violated. The court

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[2] Because Garry was transferred to CPS only a short time before the district court issued its order in his case and because he had not yet amended his complaint to drop his petition for writ of mandamus, the district court's order addressed it. The court ruled that Garry's petition for mandamus relief survived the State Officials' motion to dismiss. Garry subsequently stipulated to the dismissal of his mandamus petition.

concluded that, because the Patients did not identify a case in which an official's failure to transfer an individual to a less restrictive setting in the civil commitment context was held to have violated due process, qualified immunity applied.

The court of appeals consolidated the Patients' appeals from the district court orders dismissing their claims and affirmed the district court. *McDeid v. Johnston*, Nos. A21-0042, A21-0043, 2021 WL 3277218, at *4 (Minn. App. Aug. 2, 2021). The court of appeals assumed, without deciding, that the section 1983 claims had been sufficiently pleaded and only addressed whether the Patients' right to be transferred to CPS within a reasonable amount of time of the CAP transfer order was clearly established. *See id.* at *2. Like the district court, the court of appeals applied the federal qualified immunity rule quite narrowly. The court of appeals noted that neither the statute nor the CAP orders themselves "articulate *when* an official must implement a CAP order granting transfer" and that "the parties do not cite to, nor are we aware of, any precedential or even nonprecedential authority discussing a civilly committed sex offender's right to transfer to CPS within a reasonable time of a final CAP order granting transfer." *Id.* at *4. In rejecting the existence of clearly established law, the court of appeals distinguished Eighth Circuit criminal cases that the Patients had cited, stating that the criminal context is different than the civil commitment context. *Id.* at *3; *see Slone v. Herman*, 983 F.2d 107 (8th Cir. 1993); *Walters v. Grossheim*, 990 F.2d 381 (8th Cir. 1993).

We granted review on the sole issue decided by the court of appeals—whether the Patients' right to timely implementation of the CAP transfer orders was clearly established.

ANALYSIS

The Patients allege that the State Officials violated their due process rights when they delayed transferring the Patients to CPS for more than 2 years following the issuance of the CAP transfer orders. The Patients seek damages pursuant to 42 U.S.C. § 1983, a federal statute that provides a specific damages remedy for plaintiffs whose constitutional rights were violated by state officials. *Ziglar v. Abbasi*, 582 U.S. ___, 137 S. Ct. 1843, 1854 (2017).

The district court dismissed the complaints on the basis of qualified immunity. Qualified immunity is a judicially created "affirmative defense available to public officials sued for damages under" section 1983 for actions taken while the officials are performing in their official capacity. *Elwood v. Rice County*, 423 N.W.2d 671, 674 (Minn. 1988) (citing *Harlow v. Fitzgerald*, 457 U.S. 800, 815 (1982)). It shields public officials from liability—indeed, from being sued—even when those officials violated an individual's constitutional rights. "Qualified immunity balances two important interests—the need to hold public officials accountable when they exercise power irresponsibly and the need to shield officials from harassment, distraction, and liability when they perform their duties reasonably." *Pearson v. Callahan*, 555 U.S. 223, 231 (2009); *see also Harlow*, 457 U.S. at 816 (explaining that the purpose of qualified immunity is to protect government officials from "the risks of trial—distraction of officials from their governmental duties, inhibition of discretionary action, and deterrence of able people from public service"); *Welters v. Minn. Dep't of Corr.*, 982 N.W.2d 457, 475 (Minn. 2022) (discussing the balance of considerations underlying qualified immunity). Whether qualified immunity shields a

government official from liability is a legal question that we review de novo. *Mumm v. Morrison*, 708 N.W.2d 475, 481 (Minn. 2006).

Federal law applies an objective, two-prong test for qualified immunity: (1) whether the plaintiff alleged facts showing the violation of "a federal statutory or constitutional right," and (2) whether that right was "clearly established" at the time of the alleged violation. *District of Columbia v. Wesby*, 583 U.S. ___, 138 S. Ct. 577, 589 (2018). Although the two questions are often intertwined, courts may "exercise their sound discretion in deciding which of the two prongs . . . should be addressed first in light of the circumstances in the particular case at hand." *Pearson*, 555 U.S. at 236. In this case, the court of appeals assumed without deciding that the years-long delay by the State Officials in transferring the Patients to CPS violated their federal constitutional due process rights to a transfer within a reasonable time following the issuance of the CAP transfer orders. *McDeid*, 2021 WL 3277218, at *2. Therefore, the only issue we decide on appeal is the issue the court of appeals addressed: whether the right to a transfer to CPS within a reasonable time following the CAP transfer order was "clearly established" at the time of the alleged violation.[3] *See id.* at *2–4.

[3] Because the court of appeals skipped the first part of the qualified immunity test, this case comes to us in a unique procedural posture. This is not a criticism of the court of appeals. The court of appeals concluded that, assuming the Patients had a constitutional right to a transfer to CPS within a reasonable time, that right was not clearly established. *McDeid*, 2021 WL 3277218, at *2. In concluding that the right was not clearly established, the court of appeals notably relied in part on their interpretation of the requirements of state statutes. We reach the opposite conclusion and, accordingly, the question of whether the Patients alleged a violation of their federal due process rights becomes significantly more important. The question is complicated here by the fact that the precise nature of the right being asserted—procedural due process or substantive due process—is not clear from the

Qualified immunity is not available to shield public officials from a lawsuit and liability when they have "violated a statutory or constitutional right" that was " 'clearly established' at the time of the challenged conduct." *Ashcroft v. al-Kidd*, 563 U.S. 731, 735 (2011) (quoting *Harlow*, 457 U.S. at 818). Accordingly, we must decide whether the Patients' right to a transfer to CPS within a reasonable time following the final decision of the CAP was clearly established at the time of the CAP transfer orders and through the time when the State Officials transferred the Patients over 2 years later.

To be clearly established, a law must provide a sufficient level of particularity to afford a public official " 'fair and clear warning of what the Constitution requires.' " *City & County of San Francisco v. Sheehan*, 575 U.S. 600, 617 (2015) (quoting *al-Kidd*, 563 U.S. at 746 (Kennedy, J., concurring)). A right is clearly established when "the right's contours were sufficiently definite that any reasonable official in the defendant's shoes

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decisions below and the parties' briefing and arguments before us. And this case comes to us from an order dismissing the case under Minn. R. Civ. P. 12.02(e) for failure to state a claim upon which relief can be granted. In such cases, we read the claims broadly in the plaintiffs' favor. *Thompson v. St. Anthony Leased Hous. Assocs. II, LP*, 979 N.W.2d 1, 5–6 (Minn. 2022) (stating that we review Rule 12 dismissals de novo, accept the facts stated in the complaint as true, and construe all reasonable inferences in favor of the plaintiffs); *see also Buzzell v. Walz*, 974 N.W.2d 256, 265 (Minn. 2022) (observing that Minnesota is a notice-pleading state).

Accordingly, to answer the question directly posed by this appeal—are the State Officials obligated to transfer a patient to CPS within a reasonable amount of time following a CAP order—we also assume without deciding that their failure to do so is a federal due process violation. We remand the case to the court of appeals to address directly the question of whether the failure to transfer the Patients to CPS within a reasonable time sufficiently alleged violations of the Patients' federal constitutional rights that would support a section 1983 claim.

would have understood that he was violating it." *Plumhoff v. Rickard*, 572 U.S. 765, 778–79 (2014).[4]

A right is clearly established when there is "controlling authority or a robust consensus of cases of persuasive authority." *Wesby*, 583 U.S. at ___, 138 S. Ct. at 589–90 (quoting *al-Kidd*, 563 U.S. at 741–42) (internal quotation marks omitted). "While there does not have to be 'a case directly on point,' existing precedent must place the lawfulness of the particular [action] 'beyond debate.' " *Wesby*, 583 U.S. at ___, 138 S. Ct. at 590 (quoting *al-Kidd*, 563 U.S. at 741); *see also Ziglar*, 582 U.S. at ___, 137 S. Ct. at 1867 ("[A]n officer might lose qualified immunity even if there is no reported case directly on point. But in the light of pre-existing law, the unlawfulness of the officer's conduct must be apparent." (citations omitted) (internal quotation marks omitted)). In other words, when in the light of pre-existing law, the unlawfulness of the official's action was apparent, "[t]he lack of a factually identical case is not dispositive." *Morris v. Zefferi*, 601 F.3d 805, 812 (8th Cir. 2010).

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[4] The court of appeals suggested that Eighth Circuit case law was not relevant because it was not binding precedent on, but only had persuasive value for, a Minnesota state court. *McDeid*, 2021 WL 3277218, at *3. That analysis is incorrect. The relevant question for the qualified immunity analysis is whether case law *binding on the public official* has clearly established the right that official is alleged to have violated, not whether it is binding on the court determining whether the public official is entitled to official immunity. More particularly, both Minnesota and federal courts establish the constitutional obligations of Minnesota government officials. The Minnesota Supreme Court, the Eighth Circuit, and the United States Supreme Court have all addressed various aspects of the constitutionality of the MSOP and the rights of individuals civilly committed to it. *See, e.g.*, *Call v. Gomez*, 535 N.W.2d 312, 318 (Minn. 1995); *Karsjens v. Piper*, 845 F.3d 394, 407–11 (8th Cir. 2017); *Linehan v. Minnesota*, 522 U.S. 1011 (1997) (vacating our decision and remanding the case to us in light of *Kansas v. Hendricks*, 521 U.S. 346 (1997)).

When a government official's action involves a fact-intensive decision that had to be made quickly in a fluid situation, more specificity is required of governing case law to enable that official to discern the lawfulness of their decision. *Mullenix v. Luna*, 577 U.S. 7, 12 (2015) (explaining that "[s]uch specificity is especially important in the Fourth Amendment context, where the Court has recognized" the difficulty officers may experience in determining how a "relevant legal doctrine, here excessive force, will apply" in each factual situation that the officer may confront (citation omitted) (internal quotation marks omitted)); *see also al-Kidd*, 563 U.S. at 742 (rejecting that clearly established law in a pretextual arrest case may be found "lurking in the broad history and purposes of the Fourth Amendment" or "broad historical assertions" (citation omitted) (internal quotation marks omitted)).

In cases that are less fact bound and when the public official has more time to deliberate, however, courts have "taken a broad view of what constitutes 'clearly established law' for the purpose of qualified immunity, requiring *some but not precise factual correspondence with precedents* and demanding that officials apply 'general, well-developed legal principles.' " *Hall*, 996 F.2d at 958 (emphasis added) (quoting *Boswell v. Sherburne County*, 849 F.2d 1117, 1121 (8th Cir. 1988)); *see Welters*, 982 N.W.2d at 481 n.16 (stating that when a state official "is engaging in routine conduct that does not require quick decision-making to evaluate and protect a competing government interest, there is less nuance involved and thus less particularity is required to clearly establish what the constitution requires").

To determine whether the Patients had a clearly established right to transfer to CPS within a reasonable time after issuance of the CAP transfer orders, we first review the structure of the statutes and the MSOP treatment policies. The Legislature set forth the process governing transfers to less restrictive facilities in great detail.

The statutes vest the CAP with the *exclusive* authority to order a transfer, provisional discharge, or discharge of those committed as a sexually dangerous person or a person with a sexual psychopathic personality. *See* Minn. Stat. § 253B.19, subd. 1; Minn. Stat. § 253D.27, subd. 4. The statutes set forth the process under which such reduction in custody decisions are made. *See* Minn. Stat. § 253D.07, subd. 4 (providing that a "committed person shall be transferred, provisionally discharged, or discharged, only as provided in this chapter"). First, either the MSOP Executive Director or the patient may file a petition for a reduction in custody with the Special Review Board. Minn. Stat. § 253D.27, subd. 2. The Special Review Board must hold a hearing on the petition, *id.*, subd. 3, and consider whether the transfer is "appropriate" after considering five Mandatory Transfer Factors, Minn. Stat. § 253D.29, subd. 1. The Special Review Board issues a report to the CAP with "written findings of fact" to support its recommendation to approve or deny a petition for a reduction in custody. Minn. Stat. § 253D.27, subd. 4. However, "[n]o reduction in custody . . . is effective until it has been reviewed by the [CAP]." *Id.*

The CAP reviews de novo all recommendations from the Special Review Board regarding reduction in custody petitions. Minn. Stat. § 253D.28, subd. 3. The statute provides that the Commissioner shall participate as *a party* to the proceeding pending

before the CAP. *Id.*, subd. 2(b). In other words, under the plain terms of the statute, the Commissioner is *not* the decision-maker regarding reduction in custody decisions. *See In re Civil Commitment of Kropp*, 895 N.W.2d 647, 652 (Minn. App. 2017) ("[T]he executive director and commissioner act as parties who may file petitions and state their support or opposition to any [reduction in custody] petition filed."), *rev. denied* (Minn. June 20, 2017); *see also* Minn. Stat. § 253D.27, subd. 1(b) ("A reduction in custody is considered to be a commitment proceeding under section 8.01."). And, as a party, the Commissioner has the opportunity and obligation to inform the CAP in writing whether the Commissioner supports or opposes the petition and provide a summary of facts in support of the Commissioner's position. Minn. Stat. § 253D.28, subd. 2(b).

The statute charges the CAP with deciding whether the party seeking transfer to CPS has "establish[ed] by a preponderance of the evidence that the transfer is appropriate" after applying the Mandatory Transfer Factors established by the Legislature. Minn. Stat. § 253D.28, subd. 2(e); *see also* Minn. Stat. § 253D.29, subd. 1 (stating that a transfer to CPS is not allowed "unless the transfer is appropriate" after consideration of the Mandatory Transfer Factors). The statute further provides: "A majority of the judicial appeal panel [CAP] *shall rule* upon the petition" and determine whether the party seeking transfer to CPS has met his burden of proving transfer is appropriate. Minn. Stat. § 253D.28, subd. 3 (emphasis added). If the CAP decides transfer is appropriate, no order of the CAP granting a transfer "shall be made effective sooner than 15 days after it is issued." *Id.* That, of course, presumes the order will be effective thereafter. Finally, a party aggrieved by a CAP order, including the Commissioner, may appeal as a party to the Minnesota Court of

Appeals under section 253B.19, subdivision 5. Minn. Stat. § 253D.28, subd. 4. "The filing of an appeal shall immediately suspend the operation of any order granting transfer . . . pending the determination of the appeal." Minn. Stat. § 253B.19, subd. 5.

We must pay attention to these provisions. They tell us that a CAP transfer order is made *effective* after 15 days following its issuance. Minn. Stat. § 253D.28, subd. 3; *see also* Minn. Stat. § 253D.27, subd. 4 ("No reduction in custody . . . is effective until it has been reviewed by the [CAP] and until 15 days after an order . . . ."). The ordinary meaning of "effective" is "taking effect." *Effective*, *Webster's Third New International Dictionary* 724 (2002). "Effect" means "something that follows immediately from an antecedent," "a resultant condition," "RESULT, OUTCOME." *Effect*, *Webster's Third New International Dictionary* 724 (2002). Thus, after the issuance of the CAP transfer order and the passing of the 15-day waiting period (assuming no appeal is taken in accordance with Minn. Stat. §§ 253D.28, subd. 4, and 253B.19, subd. 5), the transfer becomes mandatory. Accordingly, under the plain terms of the statute, if (as here) a CAP transfer order was not appealed, it became effective and operational after 15 days following its issuance.

Eighth Circuit precedents are persuasive here. "A reasonably competent official should know that it is not lawful to disobey a final and nonappealable court order." *Slone v. Herman*, 983 F.2d 107, 111 (8th Cir. 1993). In *Slone*, government officials argued that they had discretion to retain an inmate in confinement, despite the inmate's court-ordered release. *Id.* at 110. The officials did not appeal the court order. *Id.* The Eighth Circuit in *Slone* concluded that the inmate's right to be released was clearly established, stating:

> Once Judge Ely issued his order, it was within the officials' discretion to request a hearing and to appeal that order. When they failed to appeal the order, they no longer had any discretion over what to do with Slone; defendants were bound by a final and nonappealable court order to release him.

Id.

The State Officials nonetheless argue that the CAP transfer order is ultimately not binding on them. They point to section 246B.01, subdivision 2a, which states in part that "[a] civilly committed sex offender *may* be placed in [CPS] only upon an order of the [CAP] under section 253B.19." (Emphasis added.) The State Officials argue that "may" makes the statutory language permissive and that accordingly, CAP transfer orders merely provide authorization for them to transfer patients at their discretion.

The State Officials misread the provision. Read in context, the statutory language that they rely upon places a *limit* on the State Officials' power to transfer patients to CPS; it does not expand their discretion. The word "may" in the sentence is used in the sense of "having permission to." *May*, *Merriam Webster's Collegiate Dictionary* 719 (10th ed. 1996); *see State v. Stirens*, 506 N.W.2d 302, 305 (Minn. 1993) (interpreting "may" as "ha[ving] authority to"). The provision states that the State Officials have permission to transfer a patient "only" when a certain condition is met; namely, "upon an order of the [CAP] under section 253B.19." Minn. Stat. § 246B.01, subd. 2a. Read correctly, the provision reinforces the conclusion that the CAP has exclusive power to order a transfer to CPS.

Nothing in the statute suggests that CAP transfer orders for reduction in custody are effective and operational only when the Commissioner concludes that the CAP got the

decision right.[5] This conclusion is reinforced by the fact that the Legislature expressly set forth the factors that must be considered when determining whether a transfer is

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[5] The State Officials note that they have discretion over treatment decisions in the MSOP. The authority to make treatment decisions and the authority to make reduction of custody decisions are statutorily distinct, however. *Compare* Minn. Stat. §§ 253D.27–.28 (setting forth the procedure for petitions for reduction in custody in which the State Officials are parties, not decision-makers), *with* Minn. Stat. §§ 246B.01, subd. 2c, .02 (defining the roles of the Executive Director and the Commissioner), *and* Minn. Stat. §§ 246B.03–.04 (laying out general governance rules).

For this reason, the State Officials' reliance on *Youngberg v. Romeo*, 457 U.S. 307 (1982), is misplaced. The State Officials pluck a quote from *Youngberg* to argue that a public official is entitled to qualified immunity if she is unable to satisfy her normal professional standards because of budgetary constraints. *Youngberg* involved a developmentally disabled individual confined to a state institution after commitment proceedings. *Id.* at 309–10. After he suffered numerous injuries in confinement, his mother sued on his behalf, claiming that the state hospital administrators of the institution violated his substantive Fourteenth Amendment right to liberty and his Eighth Amendment rights to reasonably safe conditions of confinement, freedom from unreasonable bodily restraints, and such minimally adequate training as reasonably might be required by these interests. *Id.* at 309–11. The Supreme Court held that the committed individual had a constitutional right to reasonably safe conditions of confinement, freedom from unreasonable bodily restraints, and such minimally adequate training as reasonably may be required by those interests. *Id.* at 315–19, 322. It further held that determining whether the committed individual's substantive constitutional rights were violated "must be determined by balancing his [constitutional] liberty interests against the relevant state interests." *Id.* at 321. The proper standard for determining whether the State has adequately protected such rights is whether professional judgment in fact was exercised. *Id.* at 322–23. The Supreme Court noted that in assessing the exercise of professional judgment, a court may consider "budgetary constraints" on the security hospital administrators. *Id.* at 323.

Youngberg is inapposite for several reasons. First, the appeal did not directly involve qualified immunity. *Id.* at 313 n.13. More importantly, the issue in this appeal is not whether the State Officials properly exercised professional judgment; the legal question is whether they were required to comply with the CAP orders within a reasonable amount of time. That determination is not an act of professional judgment. Although there may be some wiggle room as to what is a reasonable time—an issue that is not before us—once that reasonable time has passed, the State Officials no longer have any discretion to ignore the CAP transfer order. The logical conclusion of the State Officials' *Youngberg* argument is that they can choose to ignore a CAP transfer order indefinitely (indeed, forever) if the Legislature fails to provide funding. As set forth in this opinion, that is not the law.

appropriate. Minn. Stat. § 253D.29, subd. 1. In short, transfer orders issued by the CAP are mandatory and the State Officials do not have the discretion to ignore CAP transfer orders.

The State Officials also argue that, even if a CAP transfer order imposes on them a mandatory duty to transfer, the statutes do not "authorize" the CAP to "dictate" *when* a transfer to CPS must occur. They note that the CAP transfer orders here did not include a specific date by which the transfers had to be made and that "chapter 253D's only pertinent mention of timing" is the 15-day stay on the operation of a CAP transfer order. *See* Minn. Stat. § 253D.28, subd. 3. Accordingly, they posit that because the statutes do not expressly require them to comply with a CAP transfer order within a specific amount of time, they "retained some discretion" to determine when to transfer the Patients to CPS.

We accept that all these points are correct. The State Officials may have "some discretion" on the timing of the transfer. But that is not the question before us. The question we must address is whether it was clearly established that the Patients had a right to a transfer to CPS *within a reasonable time* following the final decision of the CAP that such a transfer was appropriate. We conclude that the answer to that question is "Yes," as a matter of longstanding precedent in Minnesota, both from our court and the Eighth Circuit.[6]

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[6] The question of whether the years-long delay between the CAP transfer order and the actual date the Patients were transferred was "reasonable" was not addressed below, and we express no opinion on how that question should be resolved. Generally, what is a "reasonable time" in any given context involves questions of fact, making claims turning on "reasonable time" determinations generally inappropriate for disposition on a motion to dismiss. *See, e.g.*, *Krause v. Union Match Co.*, 170 N.W. 848, 849 (Minn. 1919); *Peterson*

In *State ex rel. Laurisch v. Pohl*, we considered a statute that required the county to draw new districts for county commissioners when certain statutory conditions existed. 8 N.W.2d 227, 229 (Minn. 1943). Notwithstanding the statute, the county commissioners did not redistrict for 3 years after the statutory conditions requiring redistricting existed in the county. *Id.* at 231. A resident of the county sued to compel the commissioners to redraw the lines. *Id.* at 229. The county commissioners opposed the lawsuit, contending that they had "discretion to act at such time as they deem[ed] proper" to redistrict their county. *Id.* at 231. The district court issued a writ of mandamus requiring that the county proceed with redistricting. *Id.* at 229.

We affirmed the district court's mandamus order. *Id.* at 231. We stated: "It is a well recognized rule that when a public officer is called upon to perform a public duty by statute and no time is specified for the performance of the act, *it is required that the act be performed within a reasonable time*." *Id.* (emphasis added) (collecting cases). The fact that the statutory language was permissive in form did not matter: " 'Whenever public interests or individual rights call for the exercise of a power given to public officials, the language used in conferring the power, though permissive in form, is to be deemed mandatory.' " *Id.* at 230 (quoting 6 Dunnell Minn. Digest & Supplement, *Mandatory and Directory Provisions* § 8954).

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v. Sch. Dist. No. 14, 203 N.W. 46, 47 (Minn. 1925); *Hemming v. Ald, Inc.*, 155 N.W.2d 384, 387–88 (Minn. 1967); *but see Laundry Serv. Co. v. Fidelity Laundry Mach. & Eng'g Co.*, 245 N.W. 36, 38 (Minn. 1932) (recognizing in a warranty case that what is a reasonable time for rescission of a sale is "usually a question of fact for the jury," but that "conditions may exist that make the question one of law).

In *Hall v. Lombardi*, a 1993 case involving facts quite analogous to this case, the Eighth Circuit articulated a similar, common-sense legal principle. 996 F.2d 954 (8th Cir. 1993). *Hall* involved a transfer of an inmate between different units in a penitentiary. *Id.* at 956. The inmate obtained final approval for a transfer from a more restrictive to a less restrictive prison unit. *Id.* Nonetheless, prison officials failed to transfer him for 17 months. *Id.* The Eighth Circuit held:

> *Any reasonable official* would understand that once [the inmate] obtained final approval for release [transfer from the more restrictive to less restrictive prison unit], he had a legitimate expectation of being released in *a reasonable amount of time*, and that failing to meet that expectation for such a long time [17 months] violated [the inmate's] rights.

Id. at 959 (emphasis added); *see also Walters v. Grossheim*, 990 F.2d 381, 383 (8th Cir. 1993) (affirming the district court's finding that reasonable officials should know that "an unstayed order of a court must be obeyed").[7]

In this case, the statutes authorize the CAP to order a transfer to CPS when such a transfer is "appropriate" in light of legislative mandated considerations, Minn. Stat. § 253D.29, subd. 1, and requires that the State Officials effectuate such orders. The statute

[7] *Hall* is not inapposite because the case involves a transfer of a convicted person within a correctional facility rather than the transfer of a civilly committed person within a secure hospital treatment program. *See* 996 F.2d at 956. This purported distinction is irrelevant because there are not varying degrees of obligation to obey transfer orders; a court order mandating transfer within a penitentiary is just as mandatory as a court order mandating transfer within the MSOP.

does not allow the State Officials to ignore the transfer order. And they must perform that statutory duty within a reasonable time.[8]

Final CAP orders are mandatory. Government officials must fulfill a mandated act or duty within a reasonable time under Minnesota law. *See, e.g.*, *Pohl*, 8 N.W.2d at 231

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[8] The State Officials also make the startling claim that there is no broad requirement that "litigants must always comply with court orders" and that "what action (if any) a court order requires, as well [as] whether compliance with the court order may be excused, depends on the language of the applicable court order and the other surrounding factual circumstances." In particular, the State Officials claim that "the law excuses noncompliance with even explicit, mandatory court orders due to inability to comply" and assert that they were unable to comply with the CAP order to transfer to CPS because there was a lack of bed space in CPS.

The State Officials' sole citation to support this position is *Hopp v. Hopp*, 156 N.W.2d 212 (Minn. 1968). *Hopp* is readily distinguishable and does not establish a general principle that parties do not have to follow court orders that they cannot perform. The order at issue in *Hopp* was a contempt of court order against a private party for failure to make child support and alimony payments ordered in a divorce decree. *See id.* at 214–15. Civil contempt orders that allow the court to imprison a person who fails to comply with a court decree are distinguishable from the CAP orders in this case. Under the Minnesota statute, "[w]hen the contempt consists in the omission to perform an act *which is yet in the power of the person to perform*, the person may be *imprisoned* until the person performs it, and in such case the act shall be specified in the warrant of commitment." Minn. Stat. § 588.12 (2022) (emphasis added). In *Hopp*, we read this as a prohibition against imprisoning someone for contempt because he cannot perform the act if the party demonstrates that "he is wholly unable to do" so, notwithstanding a good-faith effort to perform. *Hopp*, 156 N.W.2d at 217; *see also* Minn. Stat. § 588.10 (2022) ("In case of the person's inability to pay the fine or endure the imprisonment, the person may be relieved by the court or officer in such manner and upon such terms as may be just.").

The question of whether the State Officials were justified in delaying the transfers due to lack of bed space—notwithstanding that the State controls the amount of bed space and allocation of resources to ensure there is sufficient bed space to run the MSOP program—is not before us. That is a disputed substantive question that goes to whether the State Officials actually made the transfers within a reasonable time. It is certainly within the power of the Legislature to fund sufficient bed space to provide the services and processes that the Legislature itself requires in the statutes. The only question before us is whether the right to a transfer within a reasonable time of the CAP transfer order was clearly established, not whether the State Officials actually violated that right.

(collecting cases). Accordingly, the right to timely transfer upon final approval is "not abstract," and thus "general, well-established legal principles, *so evident that they would be confirmed by general common sense*" are sufficient to provide notice to a reasonable official that an "extended delay" violates that right. *Hall*, 996 F.2d at 959, 961 (emphasis added); *see also Ziglar*, 582 U.S. at ___, 137 S. Ct. at 1866 (clarifying that the particularity requirement for clearly established law is to protect officials accused of violating extremely abstract rights). Our precedent and analogous Eighth Circuit cases establish relevant bedrock principles of law concerning the duty of public officials to follow court orders and form a robust consensus of cases of persuasive authority, in combination with the Minnesota statutes governing reductions in custody, that clearly established that compliance with a CAP transfer order must occur within a reasonable time.

CONCLUSION

For the foregoing reasons, we reverse the decision of the court of appeals. The State Officials had a clear obligation to execute the CAP transfer orders within a reasonable period of time. We remand to the court of appeals to address whether the State Officials' clear obligation to transfer the Patients to CPS within a reasonable time following a CAP transfer order gives rise to a federal due process right and, accordingly, whether the State Officials' failure to do so (assuming, as we must at this stage, that the Patients can ultimately prove that failure) is a violation of the Patients' federal constitutional rights sufficient to support a section 1983 claim.

Reversed and remanded.

DEPARTMENT OF HUMAN SERVICES

Minnesota Sex Offender Program Treatment Overview

Program Philosophy and Approach

The Minnesota Sex Offender Program (MSOP) uses a three-phase treatment process. Clients initially address treatment-interfering behaviors and attitudes (Phase I) in preparation for focusing on their patterns of abuse and identifying and resolving the underlying issues in their offenses (Phase II). Clients in the later stages of treatment focus on deinstitutionalization and reintegration, applying the skills they acquired in treatment across settings and maintaining the changes they have made while managing their risk for re-offense (Phase III).

MSOP draws on several contemporary treatment models in its treatment. These models include: cognitive-behavioral therapy, group psychotherapy, relapse prevention, risk/needs/responsivity and stages of change literature, with additional philosophical influences from the Good Lives model. Treatment is guided by an individualized treatment plan that defines measurable goals.

Comprehensive and Individualized Treatment

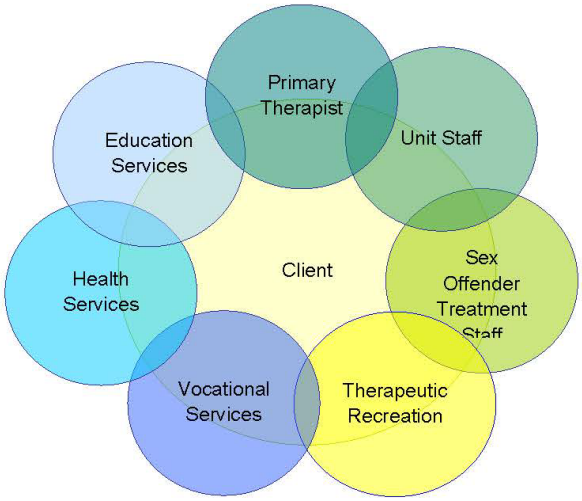
MSOP is a comprehensive treatment program. Clients acquire skills through active participation in group therapy and are provided opportunities to demonstrate meaningful change through participation in rehabilitative services, including education classes, therapeutic recreational activities and vocational programming. Clients are observed and monitored not only in treatment groups, but in all aspects of daily living. This is crucial for assessing clients' progress in making and maintaining meaningful personal change and consistently applying treatment concepts, decreasing their risk for re-offense.

Individualized treatment plans incorporate input from the entire treatment team, based on the results of a sexual offender assessment. Goals address clients' individual risk factors for recidivism and specific treatment need areas. Treatment progress is reviewed on a quarterly basis.

Treatment Design

MSOP clients who choose to engage in treatment participate in a sexual offender assessment that sets the foundation for their individualized treatment plan. Clients are placed in programming based on their clinical needs. MSOP provides sex-offender treatment to meet the needs of all clients.

MSOP is one program with two facilities. Moose Lake and St. Peter each contribute to the mission of MSOP by specializing in different components of the treatment process.

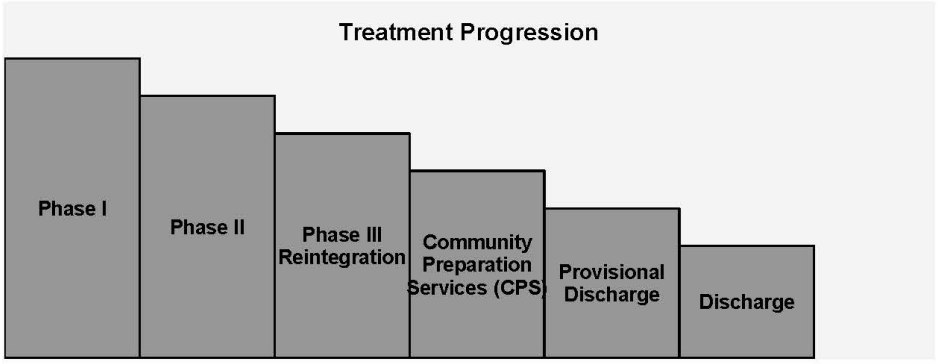


The Moose Lake facility houses individuals involved in the civil commitment process, conventional non-treatment participants and those participating in phases I and II of treatment.

Individuals who have demonstrated meaningful change and are progressing through treatment are moved to St. Peter to complete primary treatment and begin the reintegration process. In addition to the components of reintegration, St. Peter also provides alternative programming for clients who are in need of unique treatment approaches due to developmental disabilities, traumatic brain injuries and/or severe learning disabilities.

Specialty programming within MSOP includes:

- **Admissions:** Clients newly admitted to MSOP and/or are going through the commitment proceedings.
- **Alternative Programming:** Clients who may have compromised executive functioning such as cognitive impairments, traumatic brain injuries and/or profound learning disabilities. These clients are unlikely to be successful in conventional programming and are in need of specially designed interventions.
- **Assisted Living:** Clients who require specialized medical care.
- **Behavior Therapy Unit:** Clients who demonstrate behaviors that are disruptive to the general population and/or affect the safety of the facility: criminal behavior, repetitive restrictions to maintain safety and threatening behavior are treated on this unit with the goal of mainstreaming once the treatment-interfering behaviors have been successfully addressed.
- **Conventional Programming Unit:** Clients motivated to participate in sexual offender-specific treatment and are meeting behavioral expectations of the program.
- **Mental Health Unit:** Clients referred to this unit have significant mental health issues and/or associated functional impairment. Staff provide the clinical treatment necessary for the clients to stabilize their behavior(s) in relation to their mental health symptoms.
- **Community Preparation Services:** Clients who have been granted transfer by the courts to reside outside the secure perimeter.



Treatment Progression

Clients progress through treatment by actively participating in group therapy and changing their thinking and behaviors. New treatment goals are identified as they arise. As clients successfully progress through Phase II they begin to focus on reintegration in St. Peter. Phase III programming begins inside the secure perimeter and extends out to Community Preparation Services (CPS) when transfer outside the perimeter is approved by the courts. While residing in CPS, clients progress through three levels of liberties. These liberties gradually reintroduce the client to community activities and address deinstitutionalization. The transitional period is designed to provide opportunities for clients to apply their acquired skills and to master increasing liberties and responsibility while maintaining public safety. Once the courts have placed clients in CPS, they continue the reintegration process while preparing for eventual provisional discharge. In the final phase of treatment, a client may petition the Special Review Board and courts for provisional discharge into the community.