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**STATE OF MINNESOTA
IN COURT OF APPEALS
A13-2271**

In the Matter of the Civil Commitment of: Peter Allan,
a/k/a Peter Allan George, Peter Slaton, Peter Allan Kyute.

**Filed June 23, 2014
Affirmed
Stauber, Judge**

Otter Tail County District Court
File No. 56PR073493

Peter Allan, Moose Lake, Minnesota (pro se appellant)

Lori Swanson, Attorney General, Matthew Frank, Assistant Attorney General, St. Paul, Minnesota; and

David J. Hauser, Otter Tail County Attorney, Fergus Falls, Minnesota (for respondent)

Considered and decided by Larkin, Presiding Judge; Worke, Judge; and Stauber, Judge.

UNPUBLISHED OPINION

STAUBER, Judge

Appellant, who is civilly committed in the Minnesota Sex Offender Program (MSOP), challenges the denial of his motion for an evidentiary hearing. We affirm.

FACTS

In July 2009, appellant Peter Allan was committed to the MSOP as a sexually dangerous person (SDP) and sexual psychopathic personality (SPP). *See* Minn. Stat.

§ 253B.185 (2012). The district court found clear and convincing evidence that Allan sexually assaulted five women, including his own half-sister and a 15-year-old girl. In most of the cases, Allan gained the trust of his victims, drugged them with the prescription sleep aid Ambien, and sexually assaulted them while they were impaired. This court affirmed Allan's commitment. *In re Civil Commitment of Allan*, A09-1607 (Minn. App. Feb. 23, 2010).

Allan has since filed two challenges to his commitment that reached this court, both of which we denied. *See Allan v. Jesson*, A13-0868 (Minn. App. Dec. 16, 2013), *review denied* (Minn. Feb. 26, 2014); *Allan v. Paulson*, A13-1133 (Minn. App. Feb. 24, 2014). Allan has also made at least three unsuccessful motions for discharge under Minn. R. Civ. P. 60.02.

In February 2013, Allan filed his most recent pro se motion seeking an evidentiary hearing under rule 60.02(e) and (f). The district court, which found that Allan was a "non-participant" in the MSOP program because he "chooses not to participate in sex-offender-specific programming," denied the motion. This appeal follows.

D E C I S I O N

Allan challenges the district court's denial of his motion under rule 60.02(e) and (f) for an evidentiary hearing. We review a district court's denial of a rule 60.02 motion for abuse of discretion. *In re Civil Commitment of Moen*, 837 N.W.2d 40, 44-45 (Minn. App. 2013), *review denied* (Minn. Oct. 15, 2013).

Rule 60.02(e) applies when "it is no longer equitable that [a] judgment should have prospective application." Minn. R. Civ. P. 60.02(e). The rule represents a court's

historic equitable power “to modify its decree in light of changed circumstances.” *City of Barnum v. Sabri*, 657 N.W.2d 201, 205 (Minn. App. 2003) (citation omitted). Because the Commitment Act, Minn. Stat. §§ 253B.001-.24 (2012), is the exclusive remedy for patients committed as SDPs and SPPs pursuing transfer or discharge, a rule 60.02 motion may not seek those ends. *In re Civil Commitment of Lonergan*, 811 N.W.2d 635, 642 (Minn. 2012). Although Allan claims that he seeks only an evidentiary hearing, not transfer or discharge, an evidentiary hearing is “merely a procedural means by which a district court may determine whether a party is entitled to relief” and thus does not constitute one of the narrow “nontransfer, nondischarge claim[s]” appropriate for a rule 60.02(e) motion. *Moen*, 837 N.W.2d at 46-47. Further, as a matter of law, the allegation that the MSOP provides inadequate treatment does not constitute a change in circumstances sufficient to establish a right to relief under rule 60.02(e). *Id.* at 49. Allan’s rule 60.02(e) arguments are based on his perception that the MSOP provides ineffective treatment, and thus do not provide a proper basis for a rule 60.02(e) motion.

Allan also references rule 60.02(f), a residual clause that allows a district court to grant relief from a judgment for “[a]ny other reason justifying relief from the operation of the judgment.” Minn. R. Civ. P. 60.02(f). The rule affords relief “only under exceptional circumstances” not addressed elsewhere in rule 60.02. *Sabri*, 657 N.W.2d at 207 (citations omitted). The district court found that Allan did not raise specific exceptional circumstances under rule 60.02(f). And because Allan “refused to participate in the treatment he claims to be inadequate,” the district court noted that “it would be difficult to describe his circumstances as exceptional or to find an equitable reason to grant him

relief.” We agree. Additionally, Allan does not specify his rule 60.02(f) theories on appeal, and we consider issues not briefed on appeal waived. *Melina v. Chaplin*, 327 N.W.2d 19, 20 (Minn. 1982).

Because Allan has not raised rule 60.02(f) arguments below or on appeal, and because his rule 60.02(e) arguments are not properly before this court, the district court did not abuse its discretion.

Affirmed.