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**STATE OF MINNESOTA
IN COURT OF APPEALS
A13-1894**

In the Matter of the Civil Commitment of: Orlando John Lindgren.

**Filed April 21, 2014
Affirmed
Schellhas, Judge**

Hennepin County District Court
File No. 27-MH-PR-06-120

Orlando J. Lindgren, Moose Lake, Minnesota (pro se appellant)

Michael O. Freeman, Hennepin County Attorney, John L. Kirwin, Assistant County Attorney, Minneapolis, Minnesota (for respondent)

Considered and decided by Schellhas, Presiding Judge; Stauber, Judge; and Klaphake, Judge.*

UNPUBLISHED OPINION

SCHELLHAS, Judge

Arguing that the Minnesota Sex Offender Program fails to provide adequate treatment, appellant challenges the district court's denial of his Minn. R. Civ. P. 60.02(e) motion. We affirm.

* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

FACTS

In September 2006, the court indeterminately committed appellant Orlando Lindgren to the Minnesota Sex Offender Program (MSOP) as a Sexually Dangerous Person (SDP). The court denied Lindgren’s motion for relief under Minn. R. Civ. P. 60.02(e) in August 2013. This appeal follows.

DECISION

Minnesota Rule of Civil Procedure 60.02(e) permits “the court . . . [to] relieve a party . . . from a final judgment . . . , order, or proceeding and . . . order a new trial or grant such other relief as may be just” when “it is no longer equitable that the judgment should have prospective application.” “This court applies an abuse-of-discretion standard of review to a district court’s denial of a rule 60.02 motion.” *In re Civil Commitment of Moen*, 837 N.W.2d 40, 44–45 (Minn. App. 2013), *review denied* (Minn. Oct. 15, 2013).

In this case, Lindgren moved the district court for an evidentiary hearing, arguing that, under rule 60.02(e), he “has the right to challenge the adequacy or denial of treatment based on ‘changed circumstances.’” The district court denied the motion on the ground that Lindgren’s adequacy-of-treatment claim and rule 60.02 motion were barred by the exclusive remedies in the Commitment Act; *In re Civil Commitment of Lonergan*, 811 N.W.2d 635 (Minn. 2012); and *Moen*. We agree.

In *Lonergan*, the supreme court held that a patient indeterminately civilly committed as an SDP

may not bring a motion seeking transfer or discharge from his commitment under Minn. R. Civ. P. 60.02; but, such a patient may bring a Rule 60.02 motion that does not (1) distinctly

conflict with the Minnesota Commitment and Treatment Act, Minn. Stat. ch. 253B (2010), or (2) frustrate the statutory purposes of rehabilitating the patient and protecting the public.

811 N.W.2d at 636–37. In *Moen*, we concluded that Moen’s rule 60.02(e) motion was barred by the exclusive transfer-or-discharge remedies of the Commitment Act and *Lonergan* because Moen did not assert a nontransfer, nondischarge claim. 837 N.W.2d at 47. We stated that because Moen could not “establish a change in the operative facts that existed at the time of his commitment and, accordingly, [could not] establish changed circumstances of the type necessary for relief under rule 60.02(e),” his “rule 60.02(e) motion would not state a viable claim for relief, even if it were not barred by the exclusive transfer-or-discharge remedies of the Commitment Act and the supreme court’s opinion in *Lonergan*.” *Id.* at 49.

In his motion, Lindgren purported to ask simply for an evidentiary hearing. And Lindgren claims that he is not making an inadequate-treatment argument, stating that “[t]his appeal is a ‘lack of jurisdiction’ claim, based on jurisdictional defects during the commitment process.” He explains on appeal that the alleged jurisdictional defect on which he based his rule 60.02(e) motion was the district court “confining [Lindgren] indefinitely to MSOP (a fictitious treatment program) designed to deny adequate treatment thus violating the Court’s statutory jurisdiction to commit.” But nowhere in his written submissions has Lindgren characterized his claim as such or relied on rule 60.02(d), which pertains to jurisdictional defects. Lindgren’s reliance on rule 60.02 belies his intention to seek transfer or discharge from civil commitment because a rule 60.02

motion asks a court to “relieve a party . . . from a final judgment . . . , order, or proceeding and . . . order a new trial or grant such other relief as may be just.” His motion made clear that he requested an evidentiary hearing based on changed circumstances that MSOP no longer offers adequate treatment.

We conclude that the district court properly denied Lindgren’s rule 60.02(e) motion because Lindgren sought transfer or discharge from civil commitment and an SDP cannot raise an inadequate-treatment argument in a rule 60.02(e) motion.

Affirmed.