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**STATE OF MINNESOTA
IN COURT OF APPEALS
A07-1756**

Steven Rousseau,
Appellant,

vs.

Cal R. Ludeman,
Commissioner of Human Services,
Respondent.

**Filed March 4, 2008
Affirmed
Hudson, Judge**

Hennepin County District Court
File No. 04880 HGI

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Lori Swanson, Attorney General, Robin Christopher Vue-Benson, Assistant Attorney General, 1800 Bremer Tower, 445 Minnesota Street, St. Paul, Minnesota 55102-2134; and

Michael O. Freeman, Hennepin County Attorney, Theresa Couri, Assistant County Attorney, C-2000 Government Center, 300 South Sixth Street, Minneapolis, Minnesota 55487 (for respondent)

Considered and decided by Hudson, Presiding Judge; Kalitowski, Judge; and Huspeni, Judge.*

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

UNPUBLISHED OPINION

HUDSON, Judge

Appellant challenges the judicial appeal panel's decision denying his request for a provisional discharge from his indeterminate commitment as mentally ill and dangerous. Because the panel sufficiently weighed witness credibility, the panel's findings are sustained by the record as a whole, and the panel did not err in concluding that appellant did not meet the statutory criteria for a provisional discharge, we affirm.

FACTS

In 1992, appellant Steven Rousseau was civilly committed as mentally ill and dangerous. Appellant was found not guilty of second-degree murder by reason of mental illness. Appellant had an obsession with imagined drug activity, which, he told police, caused him to kill a tenant at his boarding house.

Appellant's treating psychiatrist at the time of his commitment diagnosed him with paranoid delusional disorder, persecutory type. The psychiatrist reported that appellant maintained fixed false beliefs, including a conspiracy fixation, and misperceived facts and information. A psychologist from the state security hospital testified at the hearing on appellant's indeterminate commitment that appellant's conspiracy belief made it likely that appellant would misread his environment if he were in the community, making him a danger to others, and that appellant continued to deny that he was mentally ill or that he needed medication. Appellant's commitment was made indeterminate.

Following a two-week stay at the Minnesota Security Hospital, appellant was transferred to St. Peter Regional Treatment Center. In 2000, appellant was provisionally discharged to a group supervised living facility; however, that discharge was revoked in 2001 following appellant's lapse into cocaine use. In 2002, appellant was again provisionally discharged to a group supervised living facility, and in 2004, he was provisionally discharged to independent living. In February 2005, the special review board denied appellant's petition for full discharge from commitment.

In April 2005, appellant's provisional discharge was revoked on an emergency basis because appellant had begun to show signs of mental illness and had dropped out of his day treatment program without permission. Appellant was returned to the Transition Services Program at St. Peter. It was later determined that while on provisional discharge, appellant had stopped taking one of his neuroleptic medications.

The special review board upheld the revocation of appellant's provisional discharge. The Commissioner of the Department of Human Services, based on recommendation of the special review board, denied appellant's petition for a full discharge. After appellant filed a petition for rehearing and reconsideration before the judicial appeal panel, the parties stipulated to a remand to the special review board to consider provisional discharge, which had not been initially requested. The special review board recommended denial of provisional discharge to independent living, the commissioner denied the amended petition, and appellant again petitioned for rehearing and reconsideration.

The judicial appeal panel held a bifurcated hearing on appellant's petition. During the first half of the hearing, appellant testified on his own behalf and presented testimony from Dr. Peter Meyers, the court-appointed independent examiner. Dr. Meyers recommended provisional discharge and reported that, based on testing, appellant did not exhibit symptoms of psychosis, and that his symptoms of formal thought disorder were in remission. Dr. Meyers attributed appellant's behavior largely to his diagnosed antisocial personality disorder, which he reported was not susceptible to medication intervention, and reported that there was nothing more to gain from appellant's continued treatment in the current setting.

At the close of the first hearing, respondent moved to dismiss the petition for failure to present a prima facie case; the appeal panel denied the motion and proceeded with the second half of the hearing. At that hearing, members of appellant's treatment team testified in opposition to the petition. Appellant's treating psychologist, Dr. Melissa Klein, testified that appellant had continuing work to do on his treatment goals, with particular attention to developing cognitive techniques to address his misperceptions of others and their motivations. She also testified that appellant disagreed with parts of his current relapse prevention plan, making further work on that issue necessary. MaLinda Henderson, appellant's treating psychiatric nurse practitioner, testified that appellant's uncooperative behavior with treatment staff made it difficult to monitor and assess his progress and that appellant currently took the position that he did not believe he had a mental illness or needed medication. Dr. Deanna Nelson, a forensic psychologist who conducted a risk assessment of appellant, testified that based on her observation,

appellant showed a degree of suspiciousness that was not represented in the diagnosis for antisocial personality disorder. Lynn Ness, a psychiatric social worker and appellant's Hennepin County case manager, testified that it would be difficult to develop a relapse-prevention plan for appellant in the community because he does not believe that he has a mental illness.

The appeal panel denied appellant's petition, concluding that he did not meet the statutory criteria for provisional discharge. This appeal follows.

D E C I S I O N

In reviewing a judicial-appeal-panel decision, this court determines whether the record as a whole sustains the panel's findings. *Piotter v. Steffen*, 490 N.W.2d 915, 919 (Minn. App. 1992), *review denied* (Minn. Nov. 17, 1992). "If it does so, it is immaterial that the record might also provide a reasonable basis for inference and findings to the contrary." *Id.* (quotation omitted). The judicial appeal panel's assessment of the credibility of experts has particular significance. *Id.* This court reviews de novo whether a set of facts meets statutory criteria. *See State v. Bunde*, 556 N.W.2d 917, 918 (Minn. App. 1996) ("[A]pplication of statutory criteria to facts as found is a question of law that we review de novo.").

Provisional discharge from a commitment as mentally ill and dangerous may be granted if a patient is "capable of making an acceptable adjustment to open society." Minn. Stat. § 253B.18, subd. 7 (2006). Two factors must be considered when determining whether a person meets the criteria for provisional discharge: whether the patient has a continuing need for treatment in the current treatment setting and whether

the provisional-discharge-plan conditions provide a reasonable degree of protection for the public and enable the patient to make a successful adjustment to the community. *Id.* The party petitioning for discharge has the burden to go forward with the evidence, and the party opposing discharge has the burden to prove the need for commitment by clear and convincing evidence. Minn. Stat. § 253B.19, subd. 2 (2006).

Appellant argues that the judicial appeal panel's findings are insufficient because they do not show that the panel weighed witness credibility. But the panel made specific findings on Dr. Meyers's testimony, as well as the testimony of members of appellant's treatment team. The panel concluded that "the more credible evidence showed that . . . [appellant's] course of hospitalization and present mental status" indicated a need for continued treatment and supervision in the current setting, and that "the conditions of [appellant's] provisional discharge plan will not provide a reasonable degree of protection to the public nor enable [a]ppellant to adjust successfully in the community." These findings and conclusions sufficiently show that the panel assessed witness credibility.

Appellant also argues that the panel's findings on the need to treat him in the current setting were not supported by evidence in the record and that the panel erred by concluding, based on those findings, that appellant did not meet the criteria for provisional discharge. Appellant maintains that the panel improperly discounted Dr. Meyers's testimony that no gain was occurring from appellant's therapy in the current treatment setting. But the panel also had before it the testimony of Dr. Klein, appellant's treating psychologist, who testified that appellant had remaining treatment-plan goals of

self-monitoring, recognizing and discussing symptoms, risk factors, and coping skills. The panel was entitled to find Dr. Klein's testimony more credible than that of Dr. Meyers, who saw appellant for a limited time. *See Piotter*, 490 N.W.2d at 919 (recognizing that testimony by treating professionals should be given greater weight than testimony of consulting expert, who had less time to make adequate evaluation of patient).

Appellant also argues that the record does not support the judicial appeal panel's findings that appellant did not believe he had a mental illness and would not continue his medication. The record reflects that at some point, appellant's treatment team informed him that he was no longer exhibiting symptoms of psychosis. Based on these statements, it appears appellant concluded that he no longer suffered from a major mental illness, and he contends now that any confusion on this point is attributable, in part, to his treatment team. At oral argument, appellant's counsel attempted to clarify appellant's position by stating that when appellant claims he is not mentally ill, he in fact means that he is asymptomatic.

We acknowledge, based on this record, that appellant may have initially misunderstood the results of his psychological tests as reported to him by his treatment team. But a careful review of the record as a whole shows that the treatment team never wavered from its determination that appellant continued to suffer from a major mental illness and that appellant disagreed with that determination. Specifically, the record shows that Dr. Klein testified that although appellant was asymptomatic, he still had a diagnosis of schizophrenia, paranoid type. And appellant himself testified that he

disagreed with his diagnosis of schizophrenia, paranoid type, and that, although he was willing to take his neuroleptic medication, he did not think he needed it. Appellant's treating nurse practitioner testified that appellant currently took the position that he did not have a mental illness. And Dr. Klein testified that appellant indicated he would stop taking his medication after the final judicial-appeal-panel hearing. In addition, the record shows that appellant's earlier decision to discontinue one of his medications on his own violated the terms of a previous provisional discharge. Thus, the evidence supports the district court's findings, and the findings support the panel's conclusion that appellant continues to need treatment and supervision in the current setting.

Appellant also challenges the panel's determination that the conditions of his provisional discharge plan would not provide a reasonable degree of protection for the public or enable appellant to make a successful adjustment in the community. Appellant argues that his caseworker's concern about his adjustment in the community relates to his filing of grievances against providers and other parties, which does not illustrate symptoms of his illness. But some of appellant's grievances include allegations of malpractice made on the ground that medical providers did not agree with appellant's opinion that he did not have a mental illness. Further, appellant's caseworker testified that the recent increase in grievance filings paralleled a similar increase that occurred before appellant committed the 1991 murder. Appellant maintains that any additional concerns about community adjustment would be addressed through the provisional-discharge process. But appellant's firm request for an independent-living arrangement, especially in light of previous revocations of provisional discharges, does not support a

determination of a reasonable degree of protection to the public, and such an arrangement would not facilitate a gradual, supervised adjustment to the community.

The judicial appeal panel's findings are supported by the evidence in the record as a whole, and the panel did not err in concluding that respondent proved by clear and convincing evidence that appellant did not meet the statutory criteria for provisional discharge.

Affirmed.