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**STATE OF MINNESOTA
IN COURT OF APPEALS
A10-1479**

In the Matter of the Civil Commitment of:
William Joseph Eggert

**Filed March 8, 2011
Affirmed
Schellhas, Judge**

Blue Earth County District Court
File No. 07-PR-08-136

William J. Eggert, Moose Lake, Minnesota (pro se appellant)

Ross E. Arneson, Blue Earth County Attorney, Angela Helseth Kiese, Assistant County Attorney, Mankato, Minnesota (for respondent)

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

UNPUBLISHED OPINION

SCHELLHAS, Judge

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

FACTS

Appellant William Eggert was initially committed as a sexually dangerous person (SDP) in September 2008, and indeterminately committed in January 2009, pursuant to

the Minnesota Commitment and Treatment Act, Minn. Stat. §§ 253B.01 – 253B.23 (2008). Eggert appealed, and this court affirmed. *In re Commitment of Eggert*, No. A09-502, 2009 WL 2928775 (Minn. App. Sept. 15, 2009), *review denied* (Minn. Nov. 17, 2009).

In June 2010, Eggert moved the committing court for relief from judgment under Minn. R. Civ. P. 60.02(d)–(f). The district court denied Eggert’s motion without a hearing. The district court concluded, in relevant part, that “Eggert’s motion does not demonstrate the exceptional circumstances required for relief” under rule 60.02(f); “[t]he committing court . . . has no jurisdiction over civil commitment discharge proceedings in SDP and [sexually psychopathic personality] cases”; and “Eggert’s challenges to the legitimacy or quality of treatment at [the Minnesota Sex Offender Program] are not proper subjects of a Rule 60.02 motion before the committing court.” This appeal follows.

DECISION

Eggert makes four arguments: (1) the district court erred by concluding that he failed to demonstrate exceptional circumstances requiring relief under rule 60.02(f); (2) the district court erred when it ruled on his case without the benefit of an evidentiary hearing to determine the conditions at the Minnesota Sex Offender Program (MSOP); (3) Minn. Stat. § 253B.185 (2010) violates equal protection by treating civilly committed sex offenders and mentally ill and dangerous persons different from other patients currently civilly committed in Minnesota; and (4) civil commitment as an SDP to the MSOP is now so punitive, given the dramatic rule and liberty-deprivation changes of the

last two years, that it violates his substantive-due-process rights and contravenes the Double Jeopardy and Ex Post Facto Clauses.

This court generally reviews a district court's decision whether to vacate a judgment for abuse of discretion. *Charson v. Temple Israel*, 419 N.W.2d 488, 490 (Minn. 1988). But in cases where only legal issues are involved, this court reviews the district court's determination de novo. *Poured Concrete Founds. Inc. v. Andron, Inc.*, 507 N.W.2d 888, 892 (Minn. App. 1993), *review denied* (Minn. Jan. 27, 1994).

Under Minn. R. Civ. P. 60.02(f), the district court may relieve a party from a final judgment for any reason justifying relief from the operation of the judgment. Rule 60.02(f) operates as a residual clause, which affords relief in "exceptional circumstances" not covered by clauses (a)–(e). *Chapman v. Special Sch. Dist. No. 1*, 454 N.W.2d 921, 924 (Minn. 1990).

Right to Treatment

Eggert argues that the MSOP's failure "to offer him any treatment" demonstrates exceptional circumstances justifying relief under rule 60.02(f). "A person receiving services under [the Minnesota Commitment and Treatment Act] 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 a committed person may not use a rule-60.02 motion to raise a claim that he was denied appropriate treatment at the MSOP. *See In re Commitment of Lonergan*, 792 N.W.2d. 473, 477 (Minn. App. 2011) ("[J]udicial review of the indeterminate-commitment order is not the proper avenue . . . to assert a right-to-treatment argument."). Rather, "a

person committed as an SDP . . . properly raises a right-to-treatment issue by means of a petition to a treatment-facility special review board.” *Id.* (citing *In re Commitment of Travis*, 767 N.W.2d 52, 58–59 (Minn. App. 2009)); *see also In re Pope*, 351 N.W.2d 682, 683 (Minn. App. 1984) (“The treatment of [committed] patients is properly raised before a hospital review board and not before the committing court.”). Therefore, Eggert’s rule-60.02 challenge to the adequacy of his treatment was improper, and the district court correctly declined to address his right-to-treatment argument.

Constitutional Issues

Eggert argues that Minnesota’s commitment laws violate his substantive-due-process rights and contravene the Double Jeopardy and Ex Post Facto Clauses. Eggert also argues that the punitive nature of the MSOP “makes [his] experience more onerous than other civilly committed citizens in Minnesota who are not sex offenders and perhaps more onerous with other sex offenders in the United States, which violates equal protection.”

The Minnesota Commitment and Treatment Act provides:

Any patient, *except* one committed as a person who is mentally ill and dangerous to the public or as a sexually dangerous person or person with a sexual psychopathic personality . . . or any interested person may petition the committing court . . . for an order that the patient is not in need of continued care and treatment

Minn. Stat. § 253B.17, subd. 1 (2010) (emphasis added).

In *Loneragan*, this court concluded that “the statutory framework governing commitment as an SDP does not authorize a constitutional challenge to a commitment order

or a challenge to the adequacy of a patient's conditions of treatment under rule 60.02.” 792 N.W.2d at 474. “[T]he language in Minn. Stat. § 253B.17, subd. 1, which prohibits appellant from petitioning the committing court for discharge from his indeterminate commitment as an SDP, applies equally to preclude a rule 60.02 motion to vacate the indeterminate-commitment order.” *Id.* at 476. “The proper procedure . . . to seek a reduction in custody is a petition to a special review board, which is specifically authorized by statute.” *Id.* at 477; *see also* Minn. Stat. § 253B.18, subds. 4c, 5 (2010) (discussing special review boards). Therefore, rule 60.02 does not provide a procedure for consideration of constitutional claims. Because Eggert's motion was improper, the district court did not abuse its discretion by denying his request for relief from judgment without a hearing.

Even if Eggert's constitutional claims were not barred by *Lonergan*, they still would fail. The Minnesota Supreme Court has concluded that the Minnesota Commitment and Treatment Act does not violate a person's substantive-due-process rights or contravene the Double Jeopardy and Ex Post Facto Clauses. *See In re Linehan*, 594 N.W.2d 867, 871–72, 875–76 (Minn. 1999) (holding that SDP statute in the Minnesota Commitment and Treatment Act, referred to in the opinion as the Minnesota Sexually Dangerous Person Act, does not violate a person's substantive-due-process rights and reaffirming prior holding that it does not contravene the Double Jeopardy and Ex Post Facto Clauses). And Eggert's equal-protection claim was not raised to the district court. Generally, an appellate court will not consider matters not argued to and considered by the district court. *Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988); *see*

also In re Welfare of C.L.L., 310 N.W.2d 555, 557 (Minn. 1981) (declining to address a constitutional issue raised for the first time on appeal from a termination of parental rights).

Affirmed.