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**STATE OF MINNESOTA
IN COURT OF APPEALS
A12-1230**

Lucinda Jesson,
Commissioner of Human Services,
Respondent,

Blue Earth County,
Respondent,

vs.

John H. Rydberg,
Appellant.

**Filed January 7, 2013
Affirmed
Ross, Judge**

Blue Earth County District Court
File No. 07-P5-92-001707

Lori Swanson, Attorney General, Noah A. Cashman, Assistant Attorney General, St. Paul, Minnesota; and

Ross E. Arneson, Blue Earth County Attorney, Mark A. Lindahl, Assistant County Attorney, Mankato, Minnesota (for respondents)

Gregory R. Solum, Edina, Minnesota (for appellant)

Considered and decided by Ross, Presiding Judge; Bjorkman, Judge; and Crippen,
Judge.*

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

UNPUBLISHED OPINION

ROSS, Judge

Appellant John Rydberg was civilly committed as a psychopathic personality in 1993 after he completed a prison sentence for a 1979 sexual assault. Rydberg has transitioned through various treatment programs, including a residential home for civilly committed sex offenders. In 2009, Rydberg petitioned for provisional discharge from civil commitment, which the special review board recommended granting. Respondent Commissioner of Human Services Lucinda Jesson objected to the board's recommendation and the judicial appeal panel found clear and convincing evidence that Rydberg should not be provisionally discharged. Based on our deferential review of the panel's decision, we affirm.

FACTS

John Rydberg committed a series of violent sexual assaults in Wisconsin and Minnesota between 1969 and 1979. Rydberg's criminal history includes escapes from a Wisconsin sex offender treatment program in 1977 and 1979. During the latter escape, Rydberg raped a Minnesota woman at knifepoint in her home in front of her children. Rydberg was returned to Wisconsin after that assault and later paroled back to prison in Minnesota. Following his prison term in 1993, the district court civilly committed Rydberg indefinitely as a sexual psychopathic personality.

Rydberg refused to participate in sex offender treatment for the first five years he was civilly committed. Once he began to participate in a four-phase inpatient sex offender treatment program in 1998, he successfully completed it and was transferred in

2002 to another facility to begin a transition phase of his custodial treatment. In May 2003, the sex-offender program's clinical director decided to grant Rydberg pass-eligibility status, a decision that was approved by the special review board, assented to by the judicial appeal panel, and affirmed by this court. *Rydberg v. Goodno*, 689 N.W.2d 310, 315 (Minn. App. 2004). Rydberg has never actually been given a pass into the community, but he has continued to progress through each treatment phase. After the board approved his transfer to the community-preparation-services unit, Rydberg was transferred in 2008 to the Halvorson House, "a residential home for civilly committed sex offenders outside of the secure perimeter."

Rydberg petitioned for complete discharge or provisional discharge on December 1, 2009. The board "recommend[ed] that the petition for provisional discharge be granted and the petition for [complete] discharge be denied." The board's recommendation that the provisional discharge be granted was conditioned on the requirement that

the halfway house placement is appropriately licensed, has a history of housing and supervising sex offenders, and the term of placement is limited not to six months but such period of time as may be necessary to ensure Mr. Rydberg's adequate adjustment to open society, provide for his need for supervision, ensure his ability to function safely in the community, and obtain a favorable ruling on a petition to amend his provisional discharge.

The commissioner objected to the board's recommendations. This led eventually to an amended provisional discharge plan. The board made additional findings that the new

plan, considered in conjunction with its previous findings, satisfied the requirement that Rydberg could make an acceptable adjustment to society.

Because the commissioner objected to the findings, Rydberg's provisional discharge was reviewed by the judicial appeal panel. The panel conducted a hearing and took testimony over seven days scattered between March 2011 and January 2012. It received testimony from one of Rydberg's victims, a state expert, and Rydberg himself. It also heard testimony from Rydberg's treatment providers, counselors, and clinicians. The panel found that the state had shown by clear and convincing evidence that Rydberg should not be provisionally discharged.

Rydberg now appeals.

D E C I S I O N

Rydberg challenges the judicial appeal panel's finding that the evidence clearly and convincingly shows that he continues to need treatment. In reviewing an appeal panel decision, we examine the record to determine if its findings are sustained by the evidence as a whole. *Piotter v. Steffen*, 490 N.W.2d 915, 919 (Minn. App. 1992), *review denied* (Minn. Nov. 17, 1992). We limit this inquiry to whether the evidence sustains the findings even if the evidence might also reasonably support contrary findings. *Id.* But we review the panel's legal decisions de novo. *See Coker v. Ludeman*, 775 N.W.2d 660, 663 (Minn. App. 2009), *review dismissed* (Minn. Feb. 24, 2010).

The party seeking discharge from civil commitment bears the initial burden. Minn. Stat. § 253B.19, subd. 2(d) (2010). But in this case, the parties and the panel agreed that the initial burden had been met by the special review board's decision. The issue of the

initial burden having been resolved, we will focus on the ultimate burden, which falls on the commissioner. The commissioner, as “the party opposing discharge or provisional discharge[,] bears the burden of proof by clear and convincing evidence that the discharge or provisional discharge should be denied.” Minn. Stat. § 253B.19, subd. 2(d). A person civilly committed as a sexual psychopathic personality may be provisionally discharged only if “it appears to the satisfaction of the judicial appeal panel . . . that the [person] is capable of making an acceptable adjustment to open society.” Minn. Stat. § 253B.185, subd. 12 (2010). The appeal panel deciding whether to allow provisional discharge must consider two factors:

- (1) whether the patient’s course of treatment and present mental status indicate there is no longer a need for treatment and supervision in the patient’s current treatment setting; and
- (2) whether the conditions of the provisional discharge plan will provide a reasonable degree of protection to the public and will enable the patient to adjust successfully to the community.

Id., subd. 12(1), (2).

The panel here concluded that, “[b]ased on all the evidence, the testimony, and the credibility and persuasiveness of the evidence, the panel is NOT satisfied that Rydberg can make an acceptable adjustment to open society on provisional discharge.” In reaching that conclusion, the panel found “clear and convincing evidence that Rydberg’s course of treatment and present mental status indicate that Rydberg is still in need of treatment and supervision in his current treatment setting,” and “clear and convincing evidence that the

conditions of his provisional discharge plan do not provide a reasonable degree of protection to the public or would allow him to successfully adjust to open society.”

Rydberg argues that these decisions are erroneous because he completed all required phases of treatment, because committed sex offenders surely must have some opportunity for release, and because the independent expert’s testimony and report are unreliable. We are satisfied that the panel’s findings are sustained by the record. Dr. Harry Hoberman, retained by the state as an independent expert, indicated that Rydberg remained significantly psychopathic, as measured on psychopathy measurement tools, and “that exceptional levels of risk management are appropriate” because Rydberg showed a high risk of reoffending. He testified that Rydberg continued to need treatment in his current secured setting. Rydberg testified himself during the hearing and refused to acknowledge his diagnosis as a sexual sadist and admitted that he lied during treatment. Rydberg exhibited difficulty controlling his anger with staff even during the pendency of the hearing. Elizabeth Barbo, who had assessed Rydberg in the sex-offender program, testified that Rydberg’s risk profile “is in the very high category compared to other adult male sex offenders.” Scott Halvorson, a sex-offender program reintegration specialist on Rydberg’s treatment team, testified that Rydberg still struggled with some of his emotional risk factors. Dr. Warren Maas, Rydberg’s therapist, testified that Rydberg continued to have “unhealthy” outbursts.

The only evidence calling into question the panel’s conclusion was provided by Dr. Paul Reitman, the court-appointed examiner. But Dr. Reitman’s report was undermined when it was shown to rely on an erroneously interpreted sexual-reaction test,

use the incorrect standard to determine whether Rydberg should be provisionally discharged, and include information provided by Rydberg that was proven false. And Dr. Reitman acknowledged that Dr. Hoberman accurately assessed Rydberg's risk of re-offense as "very high" and requiring "exceptional levels of risk management." Given the support in the record for the panel's concern about Rydberg's present condition, we cannot say that the panel's determination was error.

We also see support for the panel's finding that Rydberg's progress through treatment did not warrant a provisional discharge. A 2005 risk appraisal concluded that Rydberg had a "high range of psychopathic personality disorder" despite some indication of improvement with treatment. It also found that he had little insight into his own psychosexual history. Although a 2011 psychological assessment noted "advancement towards taking accountability" for pathologies, it also noted that Rydberg's "lack of trust and faith in others is substantial and his antisocial tendencies [are] strong." Rydberg disagreed with his diagnoses. Rydberg reported to residential staff that he might be "in his cycle" of offense, a comment his therapist found "fairly significant considering how far along" he was in his treatment. In June 2011, Rydberg told his therapist that he heard a report about national guard troops deploying and "thought about the wives left behind and that they would be vulnerable." Rydberg recognized that this was a dangerous thought, but his having engaged in it adds further support to the panel's conclusion that his course of treatment should continue in his current regulated treatment setting.

We affirm the panel's conclusion that the evidence clearly and convincingly shows that Rydberg's course of treatment and present mental status render supervision in his current treatment setting necessary.

Affirmed.