STATE OF MINNESOTA
IN COURT OF APPEALS
A13-0382

In the Matter of the Civil Commitment of: John Myron Guy

Filed July 15, 2013
Affirmed
Toussaint, Judge[*]

Becker County District Court
File No. 03-P4-06-000895

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

Michael D. Fritz, Becker County Attorney, Detroit Lakes, Minnesota (for respondent state)

John Myron Guy, Moose Lake, Minnesota (pro se appellant)

Considered and decided by Kalitowski, Presiding Judge; Johnson, Chief Judge; and Toussaint, Judge.

U N P U B L I S H E D O P I N I O N

TOUSSAINT, Judge

Appellant John Myron Guy was civilly committed as a sexually dangerous person (SDP) in 2007. In this appeal, appellant challenges the district court's denial of his motion for relief under Minn. R. Civ. P. 60.02, arguing that the district court abused its

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

discretion by denying his request for an evidentiary hearing and that the court erred by denying his motion for appointment of counsel. Because appellant is seeking a discharge from his commitment based only on generalized complaints about the MSOP, and not based on any individualized treatment concerns, the district court did not abuse its discretion in denying his rule 60.02(e) motion. We affirm.

FACTS

Appellant was committed to the Minnesota Sex Offender Program (MSOP) as an SDP in 2007 after a two-day trial. A subsequent treatment report supported his continued commitment, and appellant waived a review hearing. The district court issued a final commitment order in April 2007, and appellant did not file an appeal. In April 2010, appellant filed a pro se motion for relief under Minn. R. Civ. P. 60.02(f). The district court denied the motion, and this court affirmed. *In re Commitment of Guy*, No. A10-1392 (Minn. App. Feb. 22, 2011), *review denied* (Minn. May 15, 2012).

On January 14, 2013, appellant filed a motion for relief under Minn. R. Civ. P. 60.02(e). Appellant argued that "changed circumstances" rendered his commitment impermissible because the MSOP does not provide adequate treatment. Appellant appeared to base this claim on a March 2011 report by the Minnesota Office of the Legislative Auditor (March 2011 report) that was issued following an evaluation of the MSOP and the civil-commitment process.[1] He also noted that he has the "right to challenge the adequacy or denial of treatment" based on "changed circumstances" under

[1] *See generally* Minn. Off. of the Legis. Auditor, *Evaluation Report: Civil Commitment of Sex Offenders* (Mar. 2011), http://www.auditor.leg.state.mn.us/ped/pedrep/ccso.pdf.

the Minnesota Supreme Court's ruling in *In re Commitment of Lonergan*, 811 N.W.2d 635 (Minn. 2012). Appellant requested that the court grant an evidentiary hearing to determine if "changed circumstances" existed. Appellant also moved for appointment of counsel.

On January 22, 2013, before the state had a chance to respond, the district court denied appellant's motion, concluding that the motion did not have "any basis in fact or law." The court also noted that the "issues in this motion are the same or similar issues" that were raised and rejected by the district court and the Minnesota Court of Appeals in appellant's previous rule 60.02 motion and that "nothing has occurred since then to merit a different outcome."

Appellant filed this appeal in March 2013. In addition to his adequacy-of-treatment claims[2], appellant also argues on appeal that he has been illegally confined to the MSOP for profit, that the MSOP has committed fraud on the court, and that the MSOP has exacerbated the punitive nature of its program. He again supports his claim that the MSOP does not provide adequate treatment by citing to the March 2011 report. He argues that his "individualized claim that he personally has been denied treatment is one that goes to the heart of the justification for the commitment order" and that the district court should have granted an evidentiary hearing to determine whether changed circumstances exist that render his commitment impermissible. Appellant asks this court

[2] Appellant's adequacy-of-treatment claims include contentions that he has not been provided adequate treatment, that the MSOP has "failed to meet its treatment obligations under the Minnesota Commitment and Treatment Act," and that the MSOP failed to confine him for the purpose of treatment.

to vacate his commitment and also requests "any other relief that [the court] deems just and proper."

D E C I S I O N

I.

Appellant challenges the district court's denial of his motion for relief under Minn. R. Civ. P. 60.02, which states:

> On motion and upon such terms as are just, the court may relieve a party . . . from a final judgment[,] . . . order, or proceeding and may order a new trial or grant such other relief as may be just for the following reasons:
>
> . . . .
>
> (e) The judgment has been satisfied, released, or discharged . . . or it is no longer equitable that the judgment should have prospective application . . . .

A district court has "discretionary power to grant relief" under rule 60.02. *Charson v. Temple Israel*, 419 N.W.2d 488, 490 (Minn. 1988). A district court's decision on a rule 60.02 motion should not be reversed unless the court abused its discretion. *Kosloski v. Jones*, 295 Minn. 177, 180, 203 N.W.2d 401, 403 (1973). A court abuses its discretion when its decision is "based on an erroneous view of the law" or is "against the facts in the record." *City of North Oaks v. Sarpal*, 797 N.W.2d 18, 24 (Minn. 2011). "To prevail under Minn. R. Civ. P. 60.02(e), a moving party must show that a present challenge to an underlying order would have merit." *City of Barnum v. Sabri*, 657 N.W.2d 201, 206 (Minn. App. 2003).

In this case, the district court concluded that appellant's motion was "without any basis in fact or law." The court also held that appellant's arguments "are the same or

similar issues" that appellant had raised in the previous rule 60.02 motion that was denied by the district court, and that "nothing has occurred since then to merit a different outcome." In *Lonergan*, the Minnesota Supreme Court addressed the ability of a patient who has been civilly committed as an SDP or a sexual psychopathic personality to bring a rule 60.02 motion for relief. 811 N.W.2d at 640-43. The court held that, if a patient is seeking a discharge or transfer to another facility, the patient must follow certain statutory procedures that include filing a petition to a special review board and seeking review from a judicial appeal panel, rather than turning to the courts. *Id.* at 640-43 (citing Minn. Stat. § 253B.185, subds. 1(e), 9 (2010)). But, the court stated, if a patient raises a "nontransfer, nondischarge claim," the patient may bring a rule 60.02 motion as long as it does not "distinctly conflict" with the Minnesota Commitment and Treatment Act or "frustrate a patient's rehabilitation or the protection of the public." *Id.* at 642-43. As examples of the "narrow category" of claims that may be raised in court under rule 60.02, the court listed "ineffective assistance of counsel," "lack of subject matter jurisdiction," and an attempt to cure "a procedural or jurisdictional defect during the commitment process." *Id.*

In his motion, appellant requested an evidentiary hearing to determine if there are "changed circumstances" or "extraordinary circumstances" that render his commitment impermissible. In his brief to this court, appellant specifically requests that this court "vacate the commitment." Appellant is seeking a discharge here, a request that should be directed to a special review board, not to the courts. Appellant claims that he "is not and has not asked for a transfer or discharge," and repeatedly mentions his request for an

evidentiary hearing. It is unclear exactly what type of relief appellant is seeking or expecting if he is granted an evidentiary hearing, but he appears to argue that such a hearing will demonstrate "changed circumstances" that render his commitment impermissible and prompt the court to vacate his commitment, effectively granting him discharge. Appellant contends that his commitment is impermissible based simply on the results of the MSOP evaluation and generalized complaints about the MSOP. He is not disputing his individual treatment or seeking a remedy for any specific inadequacy in his treatment. Thus, the district court did not abuse its discretion by denying appellant's motion for relief under rule 60.02.

Appellant also argues here that the lack of adequate treatment by the MSOP violates his constitutional rights.[3] Appellant cites the March 2011 report to support his adequacy-of-treatment claim. Appellant claims that his "individualized claim that he personally has been denied treatment is one that goes to the heart of the justification for the commitment order" and that the district court should have granted an evidentiary hearing to determine whether changed circumstances exist that render his commitment impermissible. However, he fails to identify on appeal any aspects of the MSOP or his treatment that he believes are flawed, discuss how any alleged flaws impact him, or propose remedies for any alleged flaws. Appellant did discuss, in his motion to the district court, some specific aspects of the MSOP that he believes are flawed, including

[3] Appellant also argues that he has been illegally confined to the MSOP for profit, that the MSOP has committed fraud on the court, and that the MSOP has exacerbated the punitive nature of its program. Appellant did not raise these issues in his motion to the district court, and we do not address them. *Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988).

the length of the program, the hours of treatment, the qualifications of the staff, and changes in the treatment-program leadership and content. But appellant fails to address these issues in his brief on appeal, and they are waived. *See Melina v. Chaplin*, 327 N.W.2d 19, 20 (Minn. 1982) (holding that issues not briefed on appeal are waived).[4]

II.

Finally, appellant argues that the district court erred by denying his motion for appointment of counsel. A civilly-committed person has the right to be represented by counsel at any proceedings under Minn. Stat. §§ 253B.01-.24 (2012). Minn. Stat. § 253B.07, subd. 2c. But, the statute only confers a right to counsel at commitment proceedings. Because appellant's motion is an attempt to seek discharge outside of the statutory discharge proceedings, he is not entitled to appointment of counsel.

Affirmed.

[4] The state also argues that appellant's claims should be denied based on collateral estoppel or law-of-the-case. Because we affirm the district court on other grounds, we do not address these arguments.