STATE OF MINNESOTA
IN COURT OF APPEALS
A13-0521

In the Matter of the Civil Commitment of: Arden Charles Reich

Filed July 22, 2013
Affirmed
Larkin, Judge

Pope County District Court
File No. 61-PR-11-97

Arden C. Reich, Moose Lake, Minnesota (pro se appellant)

Lori Swanson, Attorney General, John D. Gross, Assistant Attorney General, St. Paul, Minnesota (for respondent)

Considered and decided by Larkin, Presiding Judge; Halbrooks, Judge; and Worke, Judge.

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

LARKIN, Judge

Appellant challenges the district court's denial of his request for an evidentiary hearing under Minnesota Rule of Civil Procedure 60 and court-appointed counsel. We affirm.

FACTS

The district court indeterminately committed appellant Arden Charles Reich as a sexually dangerous person (SDP) in January 2012. In February 2013, Reich filed a

"motion for evidentiary hearing pursuant to rule 60.02(e)" asking "the committing court to look at the original commitment during an [e]videntiary [h]earing" because "during his commitment" at the Minnesota Sex Offender Program (MSOP) he has "not been offered adequate treatment to meet his needs." Reich argued that the lack of treatment at MSOP violates his due-process rights. The district court determined that Reich also effectively raised double-jeopardy and equal-protection claims. In addition to his request for an evidentiary hearing, Reich moved the district court to appoint an attorney to represent him in the motion proceeding.

Respondent State of Minnesota filed a memorandum of law in opposition to Reich's motion for an evidentiary hearing. Along with the memorandum, the state submitted an affidavit of Tara Osborne, an MSOP clinical supervisor familiar with Reich. Osborne stated that Reich "is currently considered a non-participant in the MSOP treatment program, as he chooses not to participate in sex offender specific programming. He has refused to sign his individual treatment plan and treatment contract."

The district court denied Reich's motion for court-appointed counsel on March 1 and denied Reich's motion for an evidentiary hearing in a written order filed March 8. This appeal follows.

D E C I S I O N

I.

On appeal, Reich argues that the district court abused its discretion in denying his motion for an evidentiary hearing under Minn. R. Civ. P. 60.02(e) because "there are

changed circumstances that require an evidentiary hearing."[1]

Under Minn. R. Civ. P. 60.02(e), "the court may relieve a party or the party's legal representatives from a final judgment . . . order, or proceeding and may order a new trial or grant such other relief as may be just" if "[t]he judgment has been satisfied, released, or discharged or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application." "Rule 60.02(e) represents the historic power of the court of equity to modify its decree in light of changed circumstances." *City of Barnum v. Sabri*, 657 N.W.2d 201, 205 (Minn. App. 2003). "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." *Id*. at 206. "The burden of proof in a proceeding under Rule 60.02 is on the party seeking relief." *Id.* at 205.

"Whether to hold an evidentiary hearing on a motion generally is a discretionary decision of the district court, which we review for an abuse of discretion." *Thompson v. Thompson*, 739 N.W.2d 424, 430 (Minn. App. 2007). "A district court abuses its discretion when its findings are not supported by the record or it misapplies the law." *Minneapolis Grand, LLC v. Galt Funding LLC*, 791 N.W.2d 549, 556 (Minn. App. 2010).

In support of his argument that there are changed circumstances since his January 2012 indeterminate commitment, Reich cites a March 2011 legislative auditor's report to

[1] Reich does not assign error to the district court's conclusion that his double-jeopardy and equal-protection claims lack merit.

argue that "[MSOP] does not provide adequate treatment to its patients/clients." Reich further argues that because "the facility to which [he] was committed to no longer provides adequate treatment contemplated by the statute . . . that constitutes a change of circumstances within the purview of Rule 60.02(e)." Reich asserts 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." (Emphasis added.) But the district court correctly found that Reich "has voluntarily refused to participate in sex offender treatment" and concluded that it "cannot make substantive determinations about the adequacy of [Reich's] treatment when he chooses not to participate." The district court did not abuse its discretion by denying Reich's motion for a hearing on that ground. *See Bailey v. Noot*, 324 N.W.2d 164, 167 (Minn. 1982) (holding that a "right to treatment" claim was premature because appellant had not yet started treatment); *In re Blodgett*, 490 N.W.2d 638, 644 (Minn. App. 1992) ("Even if the committed individual refuses treatment, the state has the power to keep trying to treat the individual."), *aff'd*, 510 N.W.2d 910 (Minn. 1994).

The state argues that we should not "address the merits of Reich's claims" because "[a]llowing an adequacy of treatment challenge to be raised under Rule 60.02 before the committing [district] court is contrary to the Civil Commitment and Treatment Act's removal of committing courts from ongoing involvement in indeterminate commitments." The state bases its argument on *In re Civil Commitment of Lonergan*, in which the supreme court stated that "under our case law, to the extent that the Commitment Act and Rule 60.02 present a distinct conflict, [civilly-committed

individuals] must seek relief under the procedures set out in the Commitment Act, not Rule 60.02." 811 N.W.2d 635, 641 (Minn. 2012).

We decline to address the state's argument for two reasons. First, although the district court decided Reich's claims on the merits, it did not explicitly address whether or not adequacy-of-treatment or denial-of-treatment claims are properly raised in a rule 60 motion under the test set forth in *Lonergan*. *See Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988) ("A reviewing court must generally consider only those issues that the record shows were presented and considered by the [district] court in deciding the matter before it." (quotation omitted)). Second, because we affirm the district court's decision on the merits, it is not necessary to determine whether adequacy-of-treatment claims are properly raised in a rule 60 motion. *See Educ. Minnesota-Osseo v. Indep. Sch. Dist. 279, Osseo Area Sch.*, 742 N.W.2d 199, 202 (Minn. App. 2007) (stating that because respondent "prevails on the merits, we do not address its subsidiary procedural arguments"), *review denied* (Minn. Feb. 19, 2008).

II.

Reich argues that the district court erred in denying his request for court-appointed counsel. In support of his argument, Reich references several district court cases in which counsel has been appointed to represent patients in proceedings under rule 60.02.

Under the Minnesota Commitment and Treatment Act "[a] patient has the right to be represented by counsel at any proceeding under this chapter." Minn. Stat. § 253B.07, subd. 2c (2012). "The court shall appoint a qualified attorney to represent the proposed patient if neither the proposed patient nor others provide counsel." *Id.* "The attorney

shall be appointed at the time a petition for commitment is filed" and "continue to represent the person throughout any proceedings under this chapter unless released as counsel by the court." *Id.* "[T]he right [to counsel in a civil-commitment proceeding] provided by section 253B.07, subdivision 2c, [is] a statutory right, not a constitutional right." *Beaulieu v. Minnesota Dep't of Human Servs.*, 798 N.W.2d 542, 550 (Minn. App. 2011), *aff'd*, 825 N.W.2d 716 (Minn. 2013).

Under the Special Rules of Procedure Governing Proceedings Under the Minnesota Commitment and Treatment Act, "the court shall appoint a qualified attorney to represent the respondent at public expense" immediately "upon the filing of a petition for commitment" and "at any subsequent proceeding under this chapter." Minn. Spec. R. Commit. & Treat. Act 9. "The attorney shall represent the respondent until the court dismisses the petition or the commitment and discharges the attorney." *Id.* "Counsel for the respondent is not required to file an appeal or commence any proceeding under Minnesota Statutes, chapter 253B if, in the opinion of counsel, there is an insufficient basis for proceeding." *Id.*

The district court denied Reich's request for court-appointed counsel, stating only that it was "not permitted according to appellate decisions." We need not determine whether Reich had a statutory right to counsel on his rule-60.02 motion because even if he did, any violation of the right is harmless. *See Droste v. Julien*, 477 F.3d 1030, 1036 (8th Cir. 2007) (stating that because the Sixth Amendment right to counsel was not implicated, "we believe an error in disqualifying counsel in the civil context is subject to a harmless error analysis"). The district court's denial of relief under rule 60.02 was

based on the merits of the motion, which the district court correctly found to be inadequate. Because there is "an insufficient basis for proceeding," court-appointed counsel would not have been required to pursue Reich's rule-60.02 motion. *See* Minn. Spec. R. Commit. & Treat. Act 9. Thus, on this record, we conclude that any violation of Reich's purported statutory right to court-appointed counsel is harmless.

Affirmed.