STATE OF MINNESOTA
IN COURT OF APPEALS
A13-0645

In the Matter of the Civil Commitment of:
Joseph Edwin Harju.

Filed August 19, 2013
Affirmed
Chutich, Judge

St. Louis County District Court
File No. 69DU-PR-08-665

Joseph Edwin Harju, Moose Lake, Minnesota (pro se appellant)

Mark Rubin, St. Louis County Attorney, Benjamin Michael Stromberg, Assistant County Attorney, Duluth, Minnesota (for respondent)

Considered and decided by Kalitowski, Presiding Judge; Worke, Judge; and Chutich, Judge.

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

CHUTICH, Judge

Appellant Joseph Edwin Harju challenges the district court's order denying his motion under Minnesota Rule of Civil Procedure 60.02 to vacate his stipulation to civil commitment as a sexually dangerous person and his motion for appointment of counsel. Because the district court did not abuse its discretion in determining that Harju's motion was untimely and in denying his request for counsel, we affirm.

FACTS

Between 1972 and 2002, Harju was convicted of several sex-related offenses involving young boys. In 2008, Harju stipulated to civil commitment as a sexually dangerous person. He later moved to vacate the stipulation, asserting that he did not understand the consequences of the stipulation and that it was based on the state's unfulfilled promise of lenient treatment. After denying Harju's motion, the district court ordered his indeterminate commitment in July 2009. This court affirmed both the denial of the motion to vacate the stipulation and the order for indeterminate commitment. *In re Commitment of Harju*, No. A09-1619 (Minn. App. Feb. 9, 2010), *review denied* (Minn. Apr. 20, 2010).

In January 2013, Harju filed with the district court another motion to vacate his stipulation under rule 60.02. Harju, who was diagnosed with Paraphilia, Not Otherwise Specified, submitted a 2011 blog post from the Psychiatric Times website suggesting that Coercive Paraphilia is not a proper disorder on which to base a civil commitment. Harju argued that this article showed that his stipulation was the product of fraud or fraud upon the court, and that changed circumstances required that he be allowed to withdraw the stipulation. Harju also asked the district court to appoint counsel to represent him in the rule 60.02 motion.

The district court denied Harju's motions, concluding that he was not entitled to counsel and that his rule 60.02 motion was untimely. Harju appealed.

D E C I S I O N

I. Motion to Appoint Counsel

Harju first contends that the district court erred in declining to appoint counsel to represent him in this proceeding.[1] Concerning the right to counsel in a civil-commitment proceeding, Minnesota law provides that "[a] patient has the right to be represented by counsel at any proceeding under . . . chapter [253B]." Minn. Stat. § 253B.07, subd. 2c (2012). Harju filed his motion under rule 60.02 of the Minnesota Rules of Civil Procedure, however, and not under chapter 253B, and he is therefore not entitled to counsel. *In re Commitment of Moen*, ___ N.W.2d ___, ___, 2013 WL 3968801, at *8–9 (Minn. App. Aug. 5, 2013) (holding that a civilly committed person has no right to counsel in a challenge to the commitment brought under rule 60.02). The district therefore did not err in denying Harju's motion for appointed counsel.

II. Rule 60.02 Motion

Harju next argues that the district court erred in denying his motion to vacate the stipulation under rule 60.02. As an initial matter, we note that Harju does not specifically seek discharge or transfer from his commitment, but rather argues that his stipulation should be vacated and the matter be set for a new trial. He may therefore seek relief

[1] Along with his right-to-counsel argument, Harju contends that the district court failed to liberally construe his filings. Harju is correct that courts must liberally construe the filings of pro se litigants. *See Roby v. State*, 787 N.W.2d 186, 191 (Minn. 2010) (noting that, under the postconviction statute, courts "liberally constru[e] petitions and consider[] claims despite not being properly raised"); *Kasson State Bank v. Haugen*, 410 N.W.2d 392, 395 (Minn. App. 1987) ("A [district] court has a duty to ensure fairness to a pro se litigant by allowing reasonable accommodation so long as there is no prejudice to the adverse party."). Our review of the record shows that the district court properly and liberally construed Harju's motions.

under rule 60.02. *See In re Commitment of Lonergan*, 811 N.W.2d 635, 642 (Minn. 2012) (stating that rule 60.02 relief is available in limited situations when a civilly committed patient does not seek transfer or discharge from his commitment).

We review the district court's decision on a rule 60.02 motion for an abuse of discretion. *Charson v. Temple Israel*, 419 N.W.2d 488, 490 (Minn. 1988). A court abuses its discretion when its decision is "against logic and facts on the record," is "arbitrary or capricious," or is based on "an erroneous view of the law." *Posey v. Fossen*, 707 N.W.2d 712, 714 (Minn. App. 2006) (quotation omitted). The party seeking relief under rule 60.02 bears the burden of proof. *City of Barnum v. Sabri*, 657 N.W.2d 201, 206 (Minn. App. 2003).

Rule 60.02 provides that a party may seek relief from a "final judgment . . . , order, or proceeding" for the following reasons:

> (a) Mistake, inadvertence, surprise, or excusable neglect;
> (b) Newly discovered evidence . . . ;
> (c) Fraud . . . , misrepresentation, or other misconduct of an adverse party;
> (d) The judgment is void;
> (e) . . . [I]t is no longer equitable that the judgment should have prospective application; or
> (f) Any other reason justifying relief from the operation of the judgment.

Further, the rule "does not limit the power of a court . . . to set aside a judgment for fraud upon the court." Minn. R. Civ. P. 60.02. Motions made under subsections (a), (b), or (c) must be brought within one year after the judgment has been entered. *Id.* Motions

seeking relief under subsections (d), (e), and (f), and those alleging fraud upon the court, must be brought "within a reasonable time."[2] *Id.*

The district court first construed Harju's motion as one alleging fraud under rule 60.02(c). We agree with the district court that Harju's arguments concerning the blog post are based on fraud. Because motions for relief from judgment under rule 60.02(c) must be brought within one year, and Harju's motion was filed more than three years after the stipulation, the district court did not abuse its discretion in denying the motion as untimely.

Further, construing Harju's motion as only seeking relief under reasons (d), (e), and (f), the district court did not abuse its discretion in determining that he did not bring his motion "within a reasonable time." Minn. R. Civ. P. 60.02. "Generally, what constitutes a reasonable time for seeking rule 60.02 relief varies based on the facts of each case." *Palladium Holdings, LLC v. Zuni Mortg. Loan Trust 2006-OA1*, 775 N.W.2d 168, 177 (Minn. App. 2009), *review denied* (Minn. Jan. 27, 2010). The Psychiatric Times blog post was written about a year and a half before Harju brought his motion to vacate in January 2013. While we acknowledge Harju's limited access to outside materials and note his argument that he did not learn of the post until six months before

[2] Harju argued to the district court that fraud-upon-the-court motions were not subject to any time limit, citing *Maranda v. Maranda*, 449 N.W.2d 158 (Minn. 1989). The *Maranda* court did not state that no time limit applied to fraud-upon-the-court motions, however, but instead distinguished between regular fraud under rule 60.02(c) (which is subject to a one-year time limit), and fraud upon the court, which is not. *Id.* at 165. Thus, *Maranda* makes clear that fraud-on-the-court motions are not subject to the one-year time limitation, but does not address whether they are subject to the "reasonable time" provision. For purposes of this opinion, we will assume, without deciding, that rule 60.02 requires fraud-on-the-court motions to be brought within a reasonable time.

filing his motion, we cannot conclude that the district court's finding of untimeliness is "against logic and facts on the record," or is "arbitrary or capricious." *Posey*, 707 N.W.2d at 714 (quotation omitted). The district court therefore did not abuse its discretion in denying Harju's motion as untimely.

Moreover, even if Harju's motion were timely, it lacks substantive merit. Concerning rule 60.02(d), a judgment is void only if the district court lacked jurisdiction over the proceeding or if a due-process violation occurred. *Matson v. Matson*, 310 N.W.2d 502, 506 (Minn. 1981) (subject-matter jurisdiction); *In re Commitment of Beaulieu*, 737 N.W.2d 231, 235 (Minn. App. 2007) (personal jurisdiction); *Majestic Inc. v. Berry*, 593 N.W.2d 251, 257 (Minn. App. 1999) (due process), *review denied* (Minn. Aug. 18, 1999). Because Harju does not allege lack of jurisdiction or any due-process infirmity, he cannot show that the stipulation is void under rule 60.02(d).

Rule 60.02(e) provides relief when "it is no longer equitable that the judgment should have prospective application." This rule "represents the historic power of the court of equity to modify its decree in light of changed circumstances." *City of Barnum*, 657 N.W.2d at 205.

Harju argues that the Psychiatric Times blog post shows that circumstances have changed since his stipulation and that Coercive Paraphilia, or rape, is now not a diagnosis that can support civil commitment. Harju was not diagnosed with Coercive Paraphilia, however, and his crimes did not involve violent rape. Instead, as the state notes, "Harju's 28 year history of sexually offending against children in four different states was not characterized by violently coercive sexual behavior, but rather by more nuanced,

predatory grooming behavior." While the blog post also questions Not Otherwise Specified diagnoses, it definitively addresses only Coercive Paraphilia. The blog post therefore does not address Harju's diagnoses and cannot represent changed circumstances justifying withdrawal of his stipulation to commitment as a sexually dangerous person under rule 60.02(e).

Harju also cites rule 60.02(f), which allows relief from a judgment for "[a]ny other reason justifying relief from the operation of the judgment." He makes no new argument on this point beyond that made under rule 60.02(e). For the reasons discussed above, Harju is not entitled to relief under rule 60.02(f).

Finally, Harju asserts that he is entitled to relief from the stipulation and commitment because the blog post shows "fraud upon the court." In considering fraud upon the court, the focus must be on "whether the offending party engaged in an unconscionable scheme or plan to influence the court improperly." *Maranda*, 449 N.W.2d at 165. Harju clearly has not alleged facts that, even if true, show fraud on the court. The blog post was published two years after his commitment and therefore would have had no effect on the opinions of the court-appointed evaluators or on Harju's decision to stipulate. Further, no evidence exists of any "unconscionable scheme or plan to influence the court improperly." *Id.*

In sum, even if Harju's motion were timely, he is not entitled to relief from the stipulation under any provision of rule 60.02 and the district court did not abuse its discretion in denying his motion without an evidentiary hearing.

Affirmed.