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**STATE OF MINNESOTA
IN COURT OF APPEALS
A13-1260**

In the Matter of the Civil Commitment of:
Michael D. Benson.

**Filed December 2, 2013
Affirmed
Johnson, Judge**

Douglas County District Court
File No. 21-P4-93-000117

Michael Benson, Moose Lake, Minnesota (*pro se* appellant)

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

Chad M. Larson, Douglas County Attorney, Alexandria, Minnesota (for respondent)

Considered and decided by Johnson, Judge; Rodenberg, Judge; and Chutich,
Judge.

UNPUBLISHED OPINION

JOHNSON, Judge

In 1993, Michael D. Benson was civilly committed as a sexual psychopathic personality (SPP). In 2013, Benson brought a motion for relief from the district court's commitment order pursuant to rule 60.02(e) of the Minnesota Rules of Civil Procedure. The district court denied the motion. The district court also denied Benson's motion for appointment of counsel in connection with his rule 60.02(e) motion. We affirm.

FACTS

In his motion for relief under rule 60.02(e), Benson alleged that the Minnesota Sex Offender Program (MSOP) has failed to provide him with adequate treatment and that the inadequacy of his treatment constitutes “changed circumstances,” which entitles him to an evidentiary hearing. At the same time, Benson moved for the appointment of counsel to assist him with the rule 60.02(e) motion.

The district court denied Benson’s rule 60.02(e) motion. The district court determined that, although Benson requested only an evidentiary hearing, Benson’s motion implicitly requested a transfer or discharge from his commitment. The district court concluded that Benson’s rule 60.02(e) motion is barred by provisions of the Commitment Act that provide the exclusive remedies for an SPP who seeks transfer or discharge from his civil commitment. The district court also denied Benson’s motion for appointment of counsel. Benson appeals.

D E C I S I O N

I. Rule 60.02(e) Motion

Benson argues that the district court erred by denying his motion for relief under rule 60.02(e). Specifically, Benson argues that MSOP’s failure to provide adequate treatment constitutes “changed circumstances,” which entitles him to an evidentiary hearing.

Rule 60.02(e) permits a district court to relieve a party from a final order or judgment and order a new trial or other appropriate relief if “it is no longer equitable that the judgment should have prospective application.” Minn. R. Civ. P. 60.02(e). We

review a district court's decision on a rule 60.02 motion for abuse of discretion. *In re Welfare of Children of Coats*, 633 N.W.2d 505, 510 (Minn. 2001); *In re Civil Commitment of Moen*, 837 N.W.2d 40, 44-45 (Minn. App. 2013), *review denied* (Minn. Oct. 15, 2013).

To resolve Benson's appeal, we must apply two recent opinions concerning motions under rule 60.02(e) for relief from a civil commitment order. In *In re Civil Commitment of Lonergan*, 811 N.W.2d 635 (Minn. 2012), the supreme court held that the "exclusive remedy" for a patient who seeks a transfer or discharge from civil commitment is contained in the Commitment Act. *Id.* at 642. Thereafter, in *Moen*, this court held that a civilly committed person may not avoid the *Lonergan* bar by requesting only an evidentiary hearing but refraining from requesting any form of ultimate relief. *Moen*, 837 N.W.2d at 47.

In his motion, Benson requested only that the district court hold an evidentiary hearing. "An evidentiary hearing, however, is not a form of relief in and of itself; an evidentiary hearing is merely a procedural means by which a district court may determine whether a party is entitled to relief." *Id.* Because Benson did not request any form of ultimate relief on the merits, the district court correctly concluded that Benson's motion is procedurally barred by the exclusive transfer-or-discharge remedies of the Commitment Act and by the supreme court's decision in *Lonergan*. *See id.* Thus, the district court did not err by denying Benson's rule 60.02(e) motion.

In his reply brief, Benson attempts to avoid the *Lonergan* procedural bar by asserting that his motion challenges "jurisdictional defects during the commitment

process.” Benson’s motion frequently stated that the commitment court lacked jurisdiction. A lack-of-jurisdiction claim may be within the narrow class of nontransfer, nondischarge claims that would not conflict with the Commitment Act. *Loneragan*, 811 N.W.2d at 642-43. But an SPP seeking relief from a commitment order cannot avoid the *Loneragan* procedural bar by merely labeling his claims as jurisdictional. Benson has not made any particular allegations or arguments that would allow a conclusion that the commitment court lacked jurisdiction. Thus, his motion is procedurally barred by the exclusive transfer-or-discharge remedies of the Commitment Act and by *Loneragan*.

The district court decided Benson’s rule 60.02(e) motion based on the *Loneragan* procedural bar and, therefore, did not need to consider the merits of Benson’s motion. But even if Benson’s claims were not procedurally barred, his motion would fail on the merits. This court held in *Moen* that “there is no apparent reason to believe that inadequate treatment in the MSOP would be a legally valid reason for a district court to deny a petition or would even be relevant to the issues to be determined by a district court” because “[t]he elements of proof at a commitment trial do not implicate the efficacy of treatment in the MSOP.” 837 N.W.2d at 49. For these same reasons, Benson’s rule 60.02(e) motion does not state a viable claim for relief, even if it were not procedurally barred by the exclusive transfer-or-discharge remedies of the Commitment Act and by *Loneragan*.

II. Motion for Appointment of Counsel

Benson also argues that the district court erred by denying his motion for court-appointed counsel to assist him with his rule 60.02(e) motion. A respondent in a civil

commitment proceeding “has the right to be represented by counsel at any proceeding under” the Commitment Act, and the district court is required to appoint counsel to represent the respondent in such proceedings if he does not have counsel. Minn. Stat. § 253B.07, subd. 2c (2012). But “a rule 60.02 motion is not a ‘proceeding’ under the Commitment Act, as that term is used in section 253B.07, subdivision 2c.” *Moen*, 837 N.W.2d at 51. Thus, Benson does not have a right to counsel to assist him with his rule 60.02(e) motion. Accordingly, the district court did not err by denying Benson’s motion for appointment of counsel.

Affirmed.