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**STATE OF MINNESOTA
IN COURT OF APPEALS
A13-2183**

In the Matter of the Civil Commitment of:
Wayne Carl Nicolaison.

**Filed June 30, 2014
Affirmed
Willis, Judge***

Hennepin County District Court
File No. 27-P7-91-034391

Wayne Carl Nicolaison, Moose Lake, Minnesota (pro se appellant)

Michael O. Freeman, Hennepin County Attorney, John L. Kirwin, Assistant County
Attorney, Minneapolis, Minnesota (for respondent)

Considered and decided by Kirk, Presiding Judge; Hooten, Judge; and Willis,
Judge.

UNPUBLISHED OPINION

WILLIS, Judge

In this pro se appeal, appellant challenges the district court's denial of his motion
under Minn. R. Civ. P. 60.02 for relief from his civil commitment, arguing that because

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

he is receiving inadequate treatment, the commitment court lacked jurisdiction to commit him. We affirm.

FACTS

Appellant Wayne Carl Nicolaison was involuntarily civilly committed as a sexually psychopathic personality (SPP) in 1992. Later that year, he was indeterminately civilly committed. In January 2013, he filed a pro se motion under Minn. R. Civ. P. 60.02, challenging the adequacy of the treatment provided to him by the Minnesota Sex Offender Program (MSOP) and requesting that the district court hold an evidentiary hearing and appoint counsel for him. Nicolaison argued that he was “*not* seeking a discharge of commitment, nor a transfer,” but argued that the district court should “void the Order of Commitment” because the court “lacks subject matter jurisdiction” to enforce the order. The district court denied his motion without granting an evidentiary hearing on the ground that Nicolaison’s adequacy-of-treatment claim could not be brought in a motion under rule 60.02 and was barred under the supreme court’s holding in *In re Civil Commitment of Lonergan*, 811 N.W.2d 635, 642 (Minn. 2012).

Nicolaison moved for a new trial, which was denied because the motion was “clearly one for reconsideration, and not properly made under Rule 59.01 as the time for such post-trial motions has passed.” This pro se appeal follows.

DECISION

Minnesota Rule of Civil Procedure 60.02(e) permits “the court . . . [to] relieve a party . . . from a final judgment . . . , order, or proceeding and . . . order a new trial or grant such other relief as may be just” when “it is no longer equitable that the judgment

should have prospective application.” “This court applies an abuse-of-discretion standard of review to a district court’s denial of a rule 60.02 motion.” *In re Civil Commitment of Moen*, 837 N.W.2d 40, 44-45 (Minn. App. 2013), *review denied* (Minn. Oct. 15, 2013).

On appeal, Nicolaison claims that he “is *not* seeking a discharge of commitment, nor a transfer” but that because MSOP has failed to provide adequate treatment, the district court lacks jurisdiction to continue his commitment and must dismiss “the petition for commitment, setting [Nicolaison] to his liberty.” This claim has no merit.

Despite Nicolaison’s contention, he ultimately seeks a transfer or discharge from MSOP. The supreme court has expressly held that a patient indeterminately civilly committed

may not bring a motion seeking transfer or discharge from his commitment under Minn. R. Civ. P. 60.02; but, such a patient may bring a Rule 60.02 motion that does not (1) distinctly conflict with the Minnesota Commitment and Treatment Act, Minn.[]Stat. ch. 253B (2010), or (2) frustrate the statutory purposes of rehabilitating the patient and protecting the public.

Lonergan, 811 N.W.2d at 636-37. Instead, Nicolaison must follow the statutory procedures under the commitment act. *Id.* at 640. These statutory procedures require Nicolaison to petition a three-member special review board, which will conduct a hearing and issue its recommendation to a three-member judicial appeal panel. *Id.* (citing Minn. Stat. § 253B.185, subd. 9(c), (f) (2010)). “The Panel then issues an order either adopting the Board’s recommendation or setting the matter for a hearing.” *Id.* (citing Minn. Stat. § 253B.19, subd. 2(b) (2010)). Accordingly, the district court properly denied Nicolaison’s rule 60.02 motion.

Even if Nicolaison’s claim is not procedurally barred by the exclusive remedies of the commitment act and the supreme court’s ruling in *Loneragan*, his motion fails on the merits. Nicolaison characterizes his challenge as attacking the commitment court’s “jurisdiction of the subject matter”¹ but bases his argument on the fact that MSOP has denied him adequate treatment. *See id.* at 642-43 (“But a motion under Rule 60.02 seeking to cure . . . [a] jurisdictional defect during the commitment process, does not necessarily interfere with a patient’s rehabilitation or put public safety at risk.”). He asserts that because he is receiving inadequate treatment, the commitment court lacked jurisdiction to commit him and lacks jurisdiction to keep him confined.

In *Moen*, we concluded that the appellant’s rule 60.02(e) motion was barred by the exclusive transfer-or-discharge remedies of the commitment act and *Loneragan* because he did not assert a nontransfer, nondischarge claim. 837 N.W.2d at 47. We stated that because Moen could not “establish a change in the operative facts that existed at the time of his commitment and, accordingly, [could not] establish changed circumstances of the type necessary for relief under rule 60.02(e),” his “rule 60.02(e) motion would not state a viable claim for relief, even if it were not barred by the exclusive transfer-or-discharge remedies of the Commitment Act and the supreme court’s opinion in *Loneragan*.” *Id.* at 49. Because the adequacy of treatment is not a factor in the initial commitment decision, a claim of inadequate treatment is insufficient as a matter of law to establish the change in circumstances required for relief under rule 60.02(e). *Id.*

¹ Subject-matter jurisdiction refers to the authority of the district court to hear cases. *In re Commitment of Beaulieu*, 737 N.W.2d 231, 237 (Minn. App. 2007). Minnesota district courts have jurisdiction over civil commitments. *Id.*

Here, although Nicolaison claims to challenge the commitment court's jurisdiction over his initial case, he makes no substantive argument regarding why it lacked jurisdiction. Instead, his arguments mirror those we rejected in *Moen*, barring rule 60.02 motions based on the alleged inadequacy of treatment.² As a result, the district court did not err by denying Nicolaison's motion.

Affirmed.

² The *Moen* court also concluded, as a matter of law, that a rule 60.02 motion is not a proceeding under the commitment act. 837 N.W.2d at 50-51. Accordingly, Nicolaison does not have a statutory right to counsel with regard to his rule 60.02(e) motion. *Id.* at 51.