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**STATE OF MINNESOTA
IN COURT OF APPEALS**

A13-1538

A13-1539

A13-1540

A13-1541

A13-1542

In the Matter of the Civil Commitments of:
Allen Lashawn Pyron (A13-1538),
Peter Gerard Lonergan (A13-1539),
Robert Archie Kunshier (A13-1540),
Eugene Christopher Banks (A13-1541),
Joseph Rothove (A13-1542).

Filed February 24, 2014

Affirmed

Cleary, Chief Judge

Dakota County District Court
File Nos. 19-P9-07-006304, 19-P1-06-008179,
19-P5-88-001302, 19-P6-98-008535, 19-P7-01-009107

David A. Jaehne, West St. Paul, Minnesota (for appellants Pyron, Lonergan, Kunshier,
Banks, and Rothove)

Lori Swanson, Attorney General, St. Paul, Minnesota; and

James C. Backstrom, Dakota County Attorney, Donald E. Bruce, Assistant County
Attorney, Hastings, Minnesota (for respondent)

Considered and decided by Cleary, Chief Judge; Johnson, Judge; and Rodenberg,
Judge.

UNPUBLISHED OPINION

CLEARY, Chief Judge

Appellants Allen Lashawn Pyron, Robert Archie Kunshier, Eugene Christopher Banks, Joseph Rothove, and Peter Gerard Lonergan are indefinitely civilly committed as sexually dangerous persons (SDP) and/or as having sexual psychopathic personalities (SPP). Appellants have all moved pursuant to Minn. R. Civ. P. 60.02 for various forms of relief related to their commitments and treatment in the Minnesota Sex Offender Program (MSOP). The district court denied appellants' rule 60.02 motions. We affirm.

FACTS

In their motions for relief under rule 60.02, appellants alleged that their commitments should be set aside or stayed because of inadequate treatment in the MSOP. Each appellant also requested an evidentiary hearing to prove that there is inadequate treatment in the MSOP.¹

A few appellants requested additional but related forms of relief. Kunshier requested money for depositions of expert witnesses to support his claims that he has completed treatment and that the MSOP does not provide adequate treatment. Banks moved for a determination of whether he meets the criteria for commitment as an SDP. Rothove requested reopening of his commitment as a result of insufficient treatment in the MSOP. Lonergan moved for amendment of his commitment to be allowed to attend a

¹ Kunshier also requested an evidentiary hearing to present testimony that he has completed treatment and that he no longer has a need for treatment. Banks requested an evidentiary hearing to establish his ability to control his behavior.

different treatment program, funding for depositions, and that judicial notice be taken of certain opinions and exhibits.

In all five cases, the district court held that all requested forms of relief involved either a discharge from commitment or transfer from the MSOP. The district court further held that these forms of relief were not available under rule 60.02 and denied appellants' motions. Appellants now appeal.

D E C I S I O N

Appellants assert that the district court erred by denying their motions for relief under Minn. R. Civ. P. 60.02. Rule 60.02 provides that a district court may relieve a party from a final order or judgment and order a new trial or other appropriate relief on six grounds. Minn. R. Civ. P. 60.02(a)-(f). Appellants have all brought motions on one or more of the following four grounds. First, relief may be granted if the adverse party committed fraud, misrepresentation, or other misconduct. *Id.*, 60.02(c). Second, relief may be granted if the judgment is void. *Id.*, 60.02(d). Third, relief may be granted if the 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.” *Id.*, 60.02(e). Fourth, relief under rule 60.02 is also available for “[a]ny other reason justifying relief from the operation of the judgment.” *Id.*, 60.02(f). This court reviews a district court’s decision on a rule 60.02 motion for abuse of discretion. *In re Civil Commitment of Moen*, 837 N.W.2d 40, 44-45 (Minn. App. 2013), *review denied* (Minn. Oct. 15, 2013).

Appellants' claims are controlled by the holdings in two recent opinions addressing requests for relief from a civil commitment order under rule 60.02. In the first case, *In re Civil Commitment of Lonergan*, the supreme court determined that certain rule 60.02 motions for relief from a civil commitment conflict with the Commitment Act. 811 N.W.2d 635, 642-43 (Minn. 2012). The court held that rule 60.02 motions seeking relief from a civil commitment are barred if the motion "(1) distinctly conflict[s] with the Commitment Act, or (2) frustrate[s] a patient's rehabilitation or the protection of the public." *Id.* at 643. Rule 60.02 motions brought by SDP or SPP patients seeking transfer or discharge from the MSOP distinctly conflict with the Commitment Act and are barred. *Id.* at 642. The Commitment Act does not prevent rule 60.02 motions "rais[ing] nontransfer, nondischarge claims such as ineffective assistance of counsel and lack of subject matter jurisdiction." *Id.*

In *Moen*, this court further held that a committed person may not avoid the *Lonergan* holding by refraining from requesting any form of relief. 837 N.W.2d at 47. This includes requesting an evidentiary hearing since an evidentiary hearing "is not a form of relief in and of itself . . . [and] is merely a procedural means by which a district court may determine whether a party is entitled to relief." *Id.*

Appellants' requests for discharge and transfer are barred by the holding in *Lonergan*. None of the appellants asserted one of the nontransfer or nondischarge claims that are referenced in *Lonergan*. In *Moen*, the court reasoned that the vacation of a commitment order is "a form of relief that obviously would result in [] discharge." *Id.* Because rule 60.02 motions requesting discharge from a civil commitment are barred

under *Lonergan*, appellants' requests for their commitments to be set aside or stayed are barred. *See Lonergan*, 811 N.W.2d at 642. All of appellants' claims for transfer from the MSOP are similarly barred under *Lonergan*. *See id.* In each case, the district court properly identified appellants' requests for relief as requests for transfer or discharge.

Appellants' rule 60.02 motions all requested an evidentiary hearing. As stated in *Moen*, an evidentiary hearing is not a form of relief in and of itself. *See Moen*, 837 N.W.2d at 47. A committed person may not avoid the *Lonergan* holding by failing to request any relief. *See id.* Appellants' requests for evidentiary hearings were correctly denied by the district court. Kunshier and Lonergan also requested funding for depositions, and Lonergan requested that judicial notice be taken of certain opinions and exhibits. These requests are similarly barred since they do not constitute requests for relief and were requested for the purpose of seeking transfer or discharge. The district court did not abuse its discretion in denying all of appellants' claims for relief as procedurally barred under the holdings in *Lonergan* and *Moen*.

Although the district court denied appellants' rule 60.02 motions by determining that appellants' claims for relief were for transfer or discharge and procedurally barred under *Lonergan*, appellants' motions also fail on the merits. Appellants raised a number of their claims for relief under rule 60.02(e) based on the alleged inadequacy of their treatment in the MSOP. The appellant in *Moen* also argued that alleged inadequate treatment constituted changed circumstances entitling him to relief under 60.02(e). *Id.* at 49. In *Moen*, this court held that relief under the applicable language in rule 60.02(e) is generally granted if there has been a change in operative facts, which requires a moving

party to show that a “present challenge to [the] underlying order would have merit.” *Id.* at 48-49 (quotation omitted). This court further stated 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” since “[t]he elements of proof at a commitment trial do not implicate the efficacy of treatment in the MSOP.” *Id.* at 49. Under this court’s holding in *Moen*, appellants’ claims for relief under rule 60.02(e) based on inadequate treatment fail on the merits, even if not procedurally barred under *Lonergan*.

Affirmed.