

This opinion will be unpublished and may not be cited except as provided by Minn. Stat. § 480A.08, subd. 3 (2012).

**STATE OF MINNESOTA
IN COURT OF APPEALS
A13-0729**

In the Matter of the Civil Commitment of: Bradley Wayne Foster.

**Filed September 16, 2013
Affirmed
Stoneburner, Judge**

St. Louis County District Court
File No. 69HIPR0637

Bradley W. Foster, Moose Lake, Minnesota (pro se appellant)

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

Considered and decided by Stoneburner, Presiding Judge; Peterson, Judge; and Toussaint, Judge.*

UNPUBLISHED OPINION

STONEBURNER, Judge

Appellant, who was committed as a sexually dangerous person (SDP) and sexual psychopathic personality (SPP) in 2007, challenges the district court's summary denial of his request for appointment of counsel and motion for relief under Minn. R. Civ. P. 60.02. We affirm.

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

FACTS

Appellant Bradley Wayne Foster was indeterminately committed as an SDP/SPP in 2007. In February 2013, Foster moved for relief from judgment under Minn. R. Civ. P. 60.02, asking the district court to void the commitment order and order his immediate placement in a different, effective, treatment program. Foster asserts that the treatment he has received since his commitment is inadequate. Foster requested that the district court appoint counsel to represent him on the motion. The district court denied the motion without a hearing, holding that the relief Foster requested was outside the scope of relief available under Rule 60, and that Foster was not entitled to appointed counsel. This appeal followed.

DECISION

This court applies an abuse-of-discretion standard of review to a district court's denial of a rule 60.02 motion. *In re Children of Coats*, 633 N.W.2d 505, 510 (Minn. 2001). A court abuses its discretion when its decision is "based on an erroneous view of the law" or is "against the facts in the record." *City of N. Oaks v. Sarpal*, 797 N.W.2d 18, 24 (Minn. 2011).

Minn. R. Civ. P. 60.02 provides the general framework for relief from judgments and orders. But because the Minnesota Commitment and Treatment Act provides a specific procedural framework under which an SDP/SPP may seek discharge from commitment or transfer, the supreme court has held that the Act is the exclusive procedure for seeking such relief. *In re Civil Commitment of Lonergan*, 811 N.W.2d 635,

642 (Minn. 2012) (holding that because the Commitment Act provides a specific procedure for SDP/SPPs to seek transfer or discharge, they may not seek transfer or discharge through any other procedure, including Rule 60.02.) To the extent that Foster sought transfer or discharge, the district court did not abuse its discretion by holding that the relief sought is beyond the scope of relief available under Rule 60.02.

Despite the unambiguous request for discharge or transfer contained in his Rule 60.02 motion, Foster asserts, in his reply brief on appeal, that he has never requested discharge or transfer but rather seeks unspecified relief based on the failure of MSOP to provide adequate treatment for the diagnoses that led to his commitment. But even if we could construe Foster's motion as he now requests, we recently held that a Rule 60.02 motion of an SDP/SPP asserting inadequate treatment without specifying the relief sought is also barred by the exclusive remedies of the Commitment Act and *Loneragan*. *In re Civil Commitment of Moen*, __ N.W.2d __, No. A13-0602, slip op. at 7–8 (Minn. App. Aug. 5, 2013).

Because Foster is not entitled to relief under Rule 60.02, his request for appointment of counsel to represent him on such a motion is moot. Additionally, *Moen* addresses this issue on the merits and holds that an SDP/SPP is not entitled to appointment of counsel to pursue Rule 60.02 relief. Foster, like Moen, relies on the “right to counsel” provision for proceedings under the Commitment Act, which provides, in relevant part:

A patient has the right to be represented by counsel *at any proceeding under this chapter*. The court shall appoint a qualified attorney to represent the proposed patient if neither

the proposed patient nor others provide counsel. The attorney shall be appointed at the time a petition for commitment is filed. In all proceedings under this chapter, the attorney shall:

.....

(3) continue to represent the person throughout any proceedings under this chapter unless released as counsel by the court

Minn. Stat. § 253B.07, subd. 2c (2012) (emphasis added).

As we held in *Moen*, this provision unambiguously provides for appointed counsel only for proceedings under the Commitment Act, and there is no provision for appointment of counsel to pursue a Rule 60.02 motion.

In his reply brief, Foster, for the first time, cites Rule 9 of the Special Rules of Procedure Governing Proceedings under the Minnesota Commitment and Treatment Act. Rule 9 does provide for a right to appointed counsel, but by its plain language, also applies only to proceedings brought under the Commitment Act. *See* Minn. Spec. R. Commit & Treat. Act 9 (stating that the court “shall appoint a qualified attorney to represent the respondent at public expense at any subsequent proceeding *under this chapter*”) (emphasis added).

Affirmed.