STATE OF MINNESOTA
IN COURT OF APPEALS
A13-1158

In the Matter of the Civil Commitment of: James John Rud

Filed March 3, 2014
Affirmed
Larkin, Judge

Scott County District Court
File No. 70-PR-08-14829

James J. Rud, Moose Lake, Minnesota (pro se appellant)

Lori Swanson, Attorney General, Angela Helseth Kiese, Assistant Attorney General, St. Paul, Minnesota; and

Patrick Ciliberto, Scott County Attorney, Shakopee, Minnesota (for respondent)

Considered and decided by Worke, Presiding Judge; Larkin, Judge; and Kirk, Judge.

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

LARKIN, Judge

Appellant, an indeterminately committed patient, challenges the district court's denial of his motion for relief under Minnesota Rule of Civil Procedure 60. We affirm.

FACTS

The district court indeterminately committed appellant James John Rud as a sexually dangerous person (SDP) and a sexual psychopathic personality (SPP) in September 2010. This court affirmed Rud's commitment. *In re Commitment of Rud*, A10-2005 (Minn. App. May 31, 2011).

In February 2013, Rud moved the district court under Minnesota Rules of Civil Procedure 60.02(e) and 60.02(f) for an order "to vacate the current commitment [o]rder" and for "immediate placement in a viable accredited program which offers meaningful sex offender specific treatment that is suitable for the alleged diagnosis found by [the district court] that bears some semblance of a relationship to the original reasons for commitment." In his motion papers, Rud argued that the district court was "[misled] to believe that [he] would receive sex offender treatment at an accredited program to correct specific mental illness or severe personality disorder . . . as part of his civil commitment," and that "[h]e has yet to receive any significant sex offender treatment." Rud asserted that "good and accredited programs do exist," such as "Alpha Human Services in Minneapolis" and "Path Finders of Saint Paul." Rud requested a hearing on his motion.

In a written order filed May 23, 2013, the district court noted that "[w]hile [Rud] appears to be raising adequacy of treatment claims, the remedy he appears to be seeking is a transfer." The district court concluded that, under *In re Civil Commitment of Lonergan*, 811 N.W.2d 635 (Minn. 2012), "transfers are issues to be reviewed under Commitment Act procedures rather than by the courts." The district court denied Rud's motion without a hearing. Rud appeals.

D E C I S I O N

Under rule 60.02, "the court may relieve a party or the party's legal representatives from a final judgment . . . order, or proceeding and may order a new trial or grant such other relief as may be just" if, in relevant part,

> (e) 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; or
>
> (f) Any other reason justifying relief from the operation of the judgment.

Minn. R. Civ. P. 60.02(e), (f).

"An SDP or an SPP may not bring a rule 60.02 motion if the motion '(1) distinctly conflict[s] with the [Minnesota Commitment and Treatment Act (Commitment Act)], or (2) frustrate[s] a patient's rehabilitation or the protection of the public.'" *In re Civil Commitment of Moen*, 837 N.W.2d 40, 46 (Minn. App. 2013), *review denied* (Minn. Oct. 15, 2013) (*quoting Lonergan*, 811 N.W.2d at 643). "The first prong of the bar prohibits any rule 60.02 motion that seeks transfer or discharge." *Id*. "The second prong requires a comparison of the rule 60.02 motion with the purposes of the Commitment Act to determine whether the motion is barred." *Id*. We review de novo the district court's determination of whether the Commitment Act conflicts with or is inconsistent with Rule 60.02. *Lonergan*, 811 N.W.2d at 639.

Rud acknowledges that under *Lonergan*, he cannot bring a rule 60.02 motion seeking transfer. But he argues that under the meaning of the Commitment Act, "transfer" refers only to transfers "taking place . . . within the Minnesota Sex Offender

Program (MSOP)." And he "never asked to be transferred to another part of the MSOP. What he demands is placement in another program, apart from the MSOP, where he may receive treatment . . . ."

Rud's argument is unpersuasive. First, the plain language of the Commitment Act does not support Rud's contention that a "transfer" within the meaning of the act can occur only within the MSOP. *See* Minn. Stat. § 253D.29, subd. 1(a) (Supp. 2013) ("Transfer may be to other treatment programs under the commissioner [of human services]'s control."). Second, even assuming for the sake of argument that Rud's motion did not request the type of transfer prohibited under *Lonergan*, Rud's requested relief included an order "to vacate the current commitment [o]rder" in conjunction with his request for "immediate placement in a viable accredited program." The practical effect of an order vacating his commitment would be discharge. *See Moen*, 837 N.W.2d at 47 (noting that a request to "vacate the commitment order" is "a form of relief that obviously would result in . . . discharge"). And because a rule 60.02 motion is not the proper procedure by which to seek a discharge, the district court did not err in denying Rud's motion. *See Lonergan*, 811 N.W.2d at 642 ("[T]he Commitment Act is the exclusive remedy for patients committed as SDPs and SPPs seeking a transfer or discharge." (quotation omitted)).

Rud also argues that the district court erred in "considering outdated facts to support [its] conclusion of whether [he] is being adequately treated." In its memorandum supporting its order denying Rud's motion, the district court stated:

> Prior to the unpublished decision by the [c]ourt of [a]ppeals in May 2011, the [c]ourt found that "Rud's history in prison also shows limited commitment to any treatment program, with significant violations throughout his treatment and the inability to refrain from having material that is inconsistent with his efforts to address his condition."

Rud contends that the district court's statement shows that it "was not aware of all current relevant facts" and that the remedy is reversal and remand for "a hearing to update [its] informational factual base and then determine this case on that set of facts." But because the district court correctly concluded that Rud's motion was procedurally barred under *Lonergan*, whether or not the district court considered "outdated facts" is irrelevant and a "hearing to update [its] informational factual base" could not alter the outcome. Because Rud cannot show that he was prejudiced by the district court's inclusion of an earlier factual finding in its memorandum, the inclusion is not a basis for reversal. *See Midway Ctr. Associates v. Midway Ctr., Inc.*, 306 Minn. 352, 356, 237 N.W.2d 76, 78 (1975) (stating that appellate courts "do not reverse unless there is error causing harm to the appealing party," and that "error without prejudice is not ground for reversal" (quotation omitted)).

Affirmed.