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**STATE OF MINNESOTA
IN COURT OF APPEALS
A16-1452**

In the Matter of the Civil Commitment of: Robert Archie Kunshier

**Filed May 1, 2017
Affirmed
Peterson, Judge**

Dakota County District Court
File No. 19-P5-88-001302

Robert A. Kunshier, Moose Lake, Minnesota (pro se appellant)

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

Considered and decided by Johnson, Presiding Judge; Peterson, Judge; and
Klaphake, Judge.*

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

PETERSON, Judge

In this appeal from the district court's denial of appellant's rule 60.02 motion to vacate his commitment to the Minnesota Sex Offender Program (MSOP), appellant argues that his original commitment is void for lack of jurisdiction. We affirm.

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

FACTS

Appellant Robert Archie Kunshier was indeterminately committed as a sexual psychopathic personality (SPP) on May 3, 1993. Kunshier has repeatedly challenged his commitment during the intervening years. On June 6, 2016, Kunshier moved pursuant to Minn. R. Civ. P. 60.02 to vacate his commitment based on jurisdictional defects. Kunshier alleged that the judge who sentenced him in a criminal matter in 1988 promised that he would not be civilly committed if he completed sex-offender treatment while serving a criminal sentence.

In 1988, respondent Dakota County had filed a petition to civilly commit Kunshier, but the district court continued the hearing on the petition during the years that Kunshier was in prison until 90 days before his release date. During the 1988 commitment hearing, the district court made the following remarks explaining the decision to continue the hearing:

First, [Kunshier] is incarcerated at Stillwater State Prison and at the present time constitutes no danger to society. Secondly, it is apparent from the testimony that we have received today that under Minnesota law a psychopathic personality has almost no opportunity to be released from the Minnesota Security Hospital at St. Peter during his or her lifetime if committed under such a provision. I do not know if [Kunshier] understands the gravity of this matter, I do not know if it is likely to influence his amenability to treatment, but I think rather than sentencing a person to a lifetime commitment during three hours of trial, we can give him the right to make every effort to demonstrate that he is, in fact, capable of changing his life.

I am going to preserve the testimony on this matter. Even if the matter had to be retried from scratch in 1993 that would not unduly burden the Court in comparison to the

consequences [Kunshier] would suffer if I ordered the commitment.

The district court repeated these remarks in its memorandum filed with the order continuing the hearing. There is no record of a promise by the district court arising out of Kunshier's criminal proceedings. In 1993, the county renewed its commitment petition, despite the fact that Kunshier completed sex-offender treatment in prison.

The district court reviewed Kunshier's current filings without an evidentiary hearing and denied his motion to vacate his commitment, concluding that Kunshier's request was "the functional equivalent of a request for discharge of commitment. This relief is not available to a person committed as a SPP." The district court also concluded that Kunshier's motion lacked merit, failed to explain the "nexus between Judge Lacy's^[1] claimed statements and Dakota County's jurisdiction to petition for civil commitment," and was untimely. The district court also denied Kunshier's request for an evidentiary hearing. Kunshier appeals.

DECISION

I.

As a preliminary matter, Kunshier argues that he was deprived of his constitutional rights by the county's failure to serve him with its memorandum written in response to his motion to vacate. The county concedes that it inadvertently failed to serve Kunshier. Under the Minnesota Rules of Civil Procedure, a written motion and supporting affidavits must be served at least five days before a hearing; a responsive affidavit must be served

¹ Judge Lacy presided over the criminal proceeding in 1988.

“not later than one day before the hearing, unless the court permits them to be served at some other time.” Minn. R. Civ. P. 6.04.

“Failure to comply with the Rule 6.04 notice requirement is not a jurisdictional defect but may be enforced if prejudice is shown.” *Sudheimer v. Sudheimer*, 372 N.W.2d 792, 794 (Minn. App. 1985). “The primary factor to be considered in a dismissal is the prejudice to the parties. The moving party has the burden of showing particular prejudice of such a character that some substantial right or advantage will be lost or endangered.” *Id.* (citation and quotation omitted). Kunshier has not demonstrated that he was prejudiced by the county’s failure to serve him with its memorandum; his motion was considered on written evidence, and the county’s filing did not enlarge the issues before the court. Furthermore, because we conclude that Kunshier’s claims lack merit, any error that the district court made in considering the county’s filings was harmless. *See* Minn. R. Civ. P. 61 (stating that court must “disregard any error or defect in the proceeding which does not affect the substantial rights of the parties”).

II.

Kunshier moved pursuant to Minn. R. Civ. P. 60.02 for relief from a void judgment. Kunshier alleges that the district court in 1993 had no jurisdiction over him because he was told in 1988 that he would not be committed if he successfully completed sex-offender treatment during his incarceration. Kunshier does not clarify whether he is asserting a lack of personal jurisdiction or a lack of subject-matter jurisdiction. The party moving for relief under rule 60.02 has the burden of proof. *City of Barnum v. Sabri*, 657 N.W.2d 201, 205 (Minn. App. 2003).

Personal jurisdiction

“Personal jurisdiction refers to a court’s power to decide the rights and interests of the parties in a lawsuit.” *H.A.W. v. Manuel*, 524 N.W.2d 10, 12 (Minn. App. 1994), *review denied* (Minn. Jan. 13, 1995). A court has personal jurisdiction over a party when there is an adequate connection between that party and the state, and the party receives notice of the action and is given a reasonable opportunity to respond. *In re Commitment of Beaulieu*, 737 N.W.2d 231, 235 (Minn. App. 2007). We review issues of personal jurisdiction as questions of law subject to de novo review. *Id.*

Kunshier undoubtedly had an adequate connection with the state: he was a state resident and was incarcerated in a Minnesota prison when the initial commitment hearing was held. Kunshier argues that the court no longer had jurisdiction over him because of an alleged agreement with the district court during his criminal plea in 1988, in which he claims the court promised him that he would not be committed if he attended sex-offender treatment while in prison. This argument would be consistent with the principle that personal jurisdiction must not offend “traditional notions of fair play and substantial justice.” *H.A.W.*, 524 N.W.2d at 12-13 (quotation omitted). But Kunshier has provided no evidence that the district court made such a promise.

A review of the transcript from the 1988 commitment hearing reveals that the district court continued the commitment proceedings to 1993 and stated that it did so at least partially to give Kunshier an opportunity to show that he could change his life. But the transcript does not support Kunshier’s claim that there was a promise by the district

court that he would not be committed if he completed sex-offender treatment while in prison.

In 1994, Kunshier raised a similar claim, arguing to this court that “the county violated the terms of his plea agreement by not releasing him after he had served his sentence.” *In re Civil Commitment of Kunshier*, 521 N.W.2d 880, 885 (Minn. App. 1994). Kunshier contended that “by pleading guilty he waived important constitutional rights and that commitment . . . would violate his plea agreement, rendering his self-conviction a form of state-sponsored deceit.” *Id.* This court rejected that argument. *Id.* at 886. Kunshier has not demonstrated that his commitment is void for lack of personal jurisdiction.

Subject-matter jurisdiction

“Subject-matter jurisdiction is a court’s power to hear and determine cases of the general class or category to which the proceedings in question belong.” *Bode v. Minn. Dep’t of Nat. Res.*, 594 N.W.2d 257, 259 (Minn. App. 1999) (quotation omitted), *aff’d* 612 N.W.2d 862 (Minn. 2000). We review whether the district court has subject-matter jurisdiction as a question of law. *Tischer v. Hous. & Redev. Auth. of Cambridge*, 693 N.W.2d 426, 428 (Minn. 2005).

In 1988, when the original petition was filed and stayed, and in 1993, when the petition was reinstated, petitions for judicial commitment were heard by the judge of the probate court in the county where the subject of the petition resided. Minn. Stat. § 526.10 (1988, 1992); *see also* Minn. Const. art. VI, § 11 (providing that original jurisdiction for incompetency proceedings “shall be provided by law”). The petition for Kunshier’s

commitment was heard in the probate division of the Dakota County district court, a court that had subject-matter jurisdiction over a commitment proceeding.

Kunshier argues that the district court forfeited subject-matter jurisdiction based on its alleged statement that he would not be committed if he completed sex-offender treatment while in prison. A party may raise a lack of subject-matter jurisdiction at any time, but “parties cannot confer subject-matter jurisdiction on the district court by agreement.” *Centra Homes, LLC v. City of Norwood Young America*, 834 N.W.2d 581, 586 (Minn. App. 2013). Just as parties cannot confer subject-matter jurisdiction on the district court by agreement, subject-matter jurisdiction may not be removed from a court by agreement; it exists by reason of constitutional and statutory authority. *See Tischer*, 693 N.W.2d at 430 (stating that “[s]ubject matter jurisdiction cannot be conferred by consent of the parties, it cannot be waived, and it can be raised at any time in the proceeding”). Kunshier has not shown that the court that committed him did not have subject-matter jurisdiction over his commitment proceedings.

III.

Kunshier argues that the district court erred by determining that he was seeking discharge from MSOP through his rule 60.02 motion. Although Kunshier’s motion sought only an evidentiary hearing to determine whether the district court had jurisdiction to commit him, the district court stated that Kunshier’s “request for an evidentiary hearing and any relief sought thereafter, is the functional equivalent of a request for discharge of commitment. This relief is not available to a person committed as a SPP.” This court reviews the district court’s decision on a rule 60.02 motion for an 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).

A person committed as a sexually dangerous person (SDP) or a SPP may not use rule 60.02 to seek transfer or discharge from commitment; the Commitment Act, Minn. Stat. §§ 253B.01-.24 (2016), provides the exclusive remedy for a SDP or a SPP seeking transfer or discharge. *In re Civil Commitment of Loneragan*, 811 N.W.2d 635, 642 (Minn. 2012). But other claims that do not conflict with the Commitment Act or frustrate its purposes of patient rehabilitation and public safety may be raised through a rule 60.02 motion. *Id.* at 642-43.

Kunshier raised one of the issues that *Loneragan* held permissible under rule 60.02; he argued that his commitment is void for lack of jurisdiction. *Id.* at 643. Although the district court mischaracterized Kunshier’s motion as a request for transfer or discharge, Kunshier failed to sustain his burden of proving that the commitment judgment is void for lack of personal or subject-matter jurisdiction. Therefore, the district court’s erroneous conclusion that Kunshier’s motion was a request for transfer or discharge was harmless. See Minn. R. Civ. P. 61 (stating that in any stage of a proceeding a court “must disregard any error or defect” that does not affect the parties’ substantial rights).

IV.

Kunshier argues that the district court erred by concluding that his motion was untimely. The district court noted that Kunshier’s motion was brought “nearly 28 years^[2]

² The current motion was made 23 years after Kunshier was committed; the original petition was filed 28 years ago and stayed for five years.

after his civil commitment. After multiple court proceedings [Kunshier] appears to raise for the first time an issue that he was aware of and did not raise in 1993.”

A motion under Minn. R. Civ. P. 60.02(d), which permits relief from a void judgment, must be made “within a reasonable time.” The district court’s decision whether to open a judgment is reviewed for an abuse of discretion. *Palladium Holdings, LLC v. Zuni Mortg. Loan Trust 2006-OA1*, 775 N.W.2d 168, 173 (Minn. App. 2009), *review denied* (Minn. Jan. 27, 2010). “Generally, what constitutes a reasonable time for seeking rule 60.02 relief varies based on the facts of each case.” *Id.* at 177.

Kunshier does not explain why he waited 23 years to claim a lack of jurisdiction. He bases his claim on an alleged agreement made with the district court during his 1988 plea hearing, a fact that he would have been aware of at the time of his commitment hearing in 1993. Kunshier was represented by counsel at the 1993 hearing, and his attorney raised the issue whether “the State has in fact contracted by stipulation with my client in such a manner as to have resolved [this commitment petition] by negotiated settlement and therefore that the Court has been deprived of the jurisdiction to hear this particular case because there has been a written settlement between the State of Minnesota and my client.”

This court rejected this argument in Kunshier’s appeal from his commitment. *Kunshier*, 521 N.W.2d at 885. Although Kunshier’s current argument is not identical to the argument he made before this court in 1994, he was aware of the 1988 court proceedings when he appeared at the commitment hearing in 1993, and he provides no reason why he waited 23 years to raise his current argument. The district court did not abuse its discretion in determining that Kunshier’s motion to vacate was untimely.

V.

Kunshier argues that he should have been allowed an evidentiary hearing before the district court made its decision. Rule 60.02 does not specifically provide for an evidentiary hearing. Minn. R. Civ. P. 43.05 states that “[w]henever a motion is based on facts not appearing in the record, the court may hear the matter on affidavits presented by the respective parties, but the court may direct that the matter be heard wholly or partly on oral testimony or depositions.” The district court has discretion to hear matters without testimony. *Saturnini v. Saturnini*, 260 Minn. 494, 496, 110 N.W.2d 480, 482 (1961).

Kunshier’s motion states that the factual basis for the relief he seeks “can all be confirmed through court records,” and Kunshier has not identified any facts not appearing in the record that could not be presented to the district court without an evidentiary hearing. The district court did not abuse its discretion by considering Kunshier’s motion without an evidentiary hearing.

Affirmed.