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**STATE OF MINNESOTA
IN COURT OF APPEALS
A16-2044**

In the Matter of the Civil Commitment
of: Donald Dean Christiansen

**Filed May 30, 2017
Affirmed
Johnson, Judge**

Judicial Appeal Panel
File No. AP15-9102
St. Louis County File No. 69DU-PR-06-451

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Considered and decided by Johnson, Presiding Judge; Stauber, Judge; and Toussaint, Judge.*

UNPUBLISHED OPINION

JOHNSON, Judge

Donald Dean Christiansen petitioned the special review board for provisional discharge from his civil commitment to the Minnesota Sex Offender Program. The special

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

review board granted his petition. The commissioner of human services and St. Louis County appealed to the judicial appeal panel, which denied Christiansen's petition. We conclude that the judicial appeal panel's findings are not clearly erroneous and, therefore, affirm.

FACTS

In January 2007, Christiansen was committed as a sexually dangerous person and a sexual psychopathic personality to the Minnesota Sex Offender Program (MSOP) for an indeterminate period of time. *See In re Civil Commitment of Christiansen*, No. A07-1290, 2007 WL 4305465 (Minn. App. Dec. 11, 2007). Before his commitment, he was convicted of three criminal offenses for sexually assaulting minor females while he was under the influence of alcohol or controlled substances. *See id.* at *1. Christiansen has been in phase III of sex-offender treatment (which focuses on re-integration into the community) since October 2010. In April 2013, the special review board granted Christiansen's petition to transfer to Community Preparation Services (CPS) because he had demonstrated sufficient skills to understand his offending behavior and to manage his mental health and behavioral issues.

In November 2014, Christiansen petitioned the board for provisional discharge. At that time, his mental-health diagnoses included paranoid anti-social personality disorder and severe chemical-use disorders. His treatment reports indicated that, despite his extensive history of paranoia, Christiansen had developed skills to effectively manage his emotions and relate his behaviors to his offending cycle. In February 2015, however, Christiansen quit taking Zoloft, a psychotropic medication that helped him manage his

mental-health issues, because of potential adverse reactions with a medication he takes for a life-threatening physical condition. Christiansen's mental-health and behavioral issues regressed after he quit taking Zoloft, he disengaged with his treatment team and peers, and he failed to apply treatment techniques to manage his behavioral issues.

In June 2015, the board held a hearing on Christiansen's petition for provisional discharge. The board recommended that the petition be granted. The board found that Christiansen has physical- and mental-health issues that affect his ability to fully participate in sex-offender treatment. The board found that Christiansen had successfully controlled his mental-health and behavioral issues while taking Zoloft but that his behavioral issues had regressed since quitting Zoloft in February 2015. The board found that Christiansen had become "increasingly suspicious and difficult to interact with" and that his "treatment goal areas decreased." The board nonetheless found that Christiansen had made "substantial progress" in treatment and that his mental-health issues could be more effectively treated in the community at an out-patient facility in the city of Virginia. The board found that Christiansen could be discharged to out-patient treatment "with a reasonable degree of protection to the public."

The county petitioned for rehearing and reconsideration by the judicial appeal panel, and the commissioner of human services joined in the petition. The panel conducted a two-phase hearing on May 20, 2016, and July 22, 2016. *See* Minn. Stat. § 253D.28, subd. 2(d) (2016); *Coker v. Jesson*, 831 N.W.2d 483, 485-86 (Minn. 2013). The panel received 6 exhibits from Christiansen and 24 exhibits from the commissioner and the county. At the first-phase hearing, the panel heard testimony from four witnesses: Thomas Alberg, a

court-appointed examiner; Christos Petsoulis, the director of the out-patient treatment facility in Virginia; Angela van der Walt, a risk assessor retained by the department of human services (DHS); and Christiansen. At the second-phase hearing, the panel heard testimony from four witnesses: Melissa Preteau, the board coordinator for DHS; Anne Pascucci, a psychologist and forensic evaluator for MSOP; Brenda Todd-Bense, associate clinical director of MSOP; and Christiansen.

The evidence presented by the three parties did not diverge significantly. The professionals agreed that, based on an actuarial analysis of static and dynamic risk factors, Christiansen has a moderately high risk of recidivism. Alberg and Pascucci agreed on Christiansen's diagnosis of paranoid personality disorder. They agreed that significant risk factors for Christiansen relate to his management of his paranoia and that his paranoia and suspicion of others could cause him to withdraw from treatment. They agreed that Christiansen had made progress in treatment and that he continued to make progress even after a period of regression. It was undisputed that there has been a high turnover rate in therapists at CPS and that Christiansen has seen 13 different therapists in a 24-month period.

Petsoulis testified that he is familiar with Christiansen's treatment needs and that his out-patient facility in Virginia could provide appropriate treatment. He testified that there was a bed available for Christiansen at the facility. He testified that the facility offers sex-offender programming and that its therapists know each client. He testified that there is no 24-hour staff to supervise residents but that he is willing to implement any supervisory measures required by DHS.

Pascucci, Van der Walt, Todd-Bense, and a former clinical director for MSOP recommended against provisional discharge. But Alberg testified that the high turnover rate among therapists at CPS may be impacting Christiansen's progress in treatment, especially because he does not trust others. Alberg testified that Christiansen's mental-health issues could be and should be treated in an out-patient setting.

In November 2016, the judicial appeal panel issued an order denying Christiansen's petition for provisional discharge. The panel concluded as follows:

1. Petitioner's course of treatment and present mental status indicate that there is a need for treatment and supervision in his current treatment setting.
2. The conditions of Petitioner's provisional discharge plan will not adequately provide a reasonable degree of protection to the public or allow him to adjust successfully to the community at this time.
3. The parties opposing provisional discharge have established by clear and convincing evidence that the provisional discharge should be denied.

Christiansen appeals.

D E C I S I O N

I. Adequacy of Findings

Christiansen first argues that the judicial appeal panel's findings are inadequate such that appellate review is not possible. Christiansen asks this court to remand the matter to the board for additional findings.

Christiansen relies primarily on this court's opinion in *In re Civil Commitment of Spicer*, 853 N.W.2d 803 (Minn. App. 2014), in which we concluded that the district court's

findings that Spicer met the statutory criteria for commitment were insufficient in three ways. *Id.* at 810-12. First, we reasoned that “the vast majority of the district court’s findings [were] not truly findings of fact” because the district court merely recited the testimony of the witnesses. *Id.* at 810. Second, we reasoned that the district court’s true findings were conclusory in nature. *Id.* at 810-11. Third, we reasoned that the district court’s true findings were not meaningfully tied to the district court’s ultimate conclusions of law. *Id.* at 811. Accordingly, we remanded the matter to the district court for additional findings of fact. *Id.* at 812.

The commissioner contends that Christiansen’s case is distinguishable from *Spicer* and that the panel’s findings are adequate. We agree with the commissioner. The panel’s order is based primarily on true findings, even though there are some findings that merely recite the evidence. The findings on which the order is based generally are not conclusory in nature. And those findings are tied to the statutory requirements for provisional discharge. *See* Minn. Stat. § 253D.30, subd. 1(b) (2016). In short, the panel’s order is unlike the order in *Spicer*.

Thus, the panel’s findings are sufficient to allow meaningful appellate review.

II. Evidence Supporting Denial of Petition

Christiansen also argues that the judicial appeal panel erred by denying his petition on the merits. He contends that the evidence does not support the panel’s conclusion that he does not qualify for provisional discharge.

Provisional discharge is appropriate if a committed person is “capable of making an acceptable adjustment to open society.” *Id.*, subd. 1(a). In determining whether a committed person is eligible for provisional discharge, the panel must consider two factors:

(1) whether the committed person’s course of treatment and present mental status indicate there is no longer a need for treatment and supervision in the committed person’s current treatment setting; and

(2) whether the conditions of the provisional discharge plan will provide a reasonable degree of protection to the public and will enable the committed person to adjust successfully to the community.

Id., subd. 1(b). The party requesting provisional discharge bears the burden of production in the first phase of the hearing. Minn. Stat. § 253D.28, subd. 2(d) (2016); *Coker*, 831 N.W.2d at 485-86. In the second phase of the hearing, the party opposing provisional discharge bears the burden of persuasion, which requires “proof by clear and convincing evidence that the discharge or provisional discharge should be denied.” Minn. Stat. § 253D.28, subd. 2(d); *Coker*, 831 N.W.2d at 486. Clear and convincing evidence is “evidence that is more than a preponderance of the evidence but less than proof beyond a reasonable doubt.” *State v. Jones*, 753 N.W.2d 677, 696 (Minn. 2008) (quotation omitted).

This court applies a clear-error standard of review to the panel’s decision, “examin[ing] the record to determine whether the evidence as a whole sustains the appeal panels’ findings.” *Larson v. Jesson*, 847 N.W.2d 531, 534 (Minn. App. 2014) (alteration in original) (quotation omitted). We do not “weigh the evidence as if trying the matter *de novo*.” *Jarvis v. Levine*, 364 N.W.2d 473, 474 (Minn. App. 1985). If the evidence as a whole sustains the panel’s findings, it is immaterial that the record might also support

inferences and findings to the contrary. *See, e.g., Rydberg v. Goodno*, 689 N.W.2d 310, 314 (Minn. App. 2004); *Piotter v. Steffen*, 490 N.W.2d 915, 919 (Minn. App. 1992), *review denied* (Minn. Nov. 17, 1992).

A.

With respect to the first factor, Christiansen contends that the panel clearly erred because the evidence shows that he does not receive adequate treatment in his current placement in CPS and that there is no further need for treatment in that placement. He relies on the undisputed evidence that he has regressed in treatment since he quit taking Zoloft and that he cannot establish a long-term relationship with a therapist at CPS.

The panel found that Christiansen had regressed while in stage 2 of phase III of sex-offender treatment and that his regression stems from his paranoia and his suspicion of others, including treatment staff. These findings are supported by the evidence. Pascucci and Van der Walt testified that Christiansen had regressed significantly since transferring to CPS in 2014 and since quitting Zoloft in 2015 . Todd-Bense testified about Christiansen's inability to use learned treatment techniques to manage his mental-health issues when activated by conflict situations. Todd-Bense provided an example in which a conflict in January 2016 put Christiansen in an emotionally heightened state for weeks, caused him to disengage from treatment staff, and required him to be placed under observation because of his threats to engage in self-harm. Todd-Bense testified that Christiansen's community outings were presently suspended as of January 2016 because of the incident. Todd-Bense further testified that Christiansen was denied advancement to stage 3 of phase III of sex-offender treatment because of his emotional dysregulation.

Christiansen's argument is based primarily on those parts of the evidentiary record that support his petition for provisional discharge. For example, Christiansen, Alberg, and Van der Walt testified, and Alberg's report shows, that CPS has experienced a high rate of turnover with its therapists and that Christiansen has had 13 primary therapists in a 24-month period. Todd-Bense testified that the longest period of time that a therapist has worked with Christiansen is approximately six months. The panel agreed with Alberg's testimony that Christiansen's inability to form a long-term relationship with a therapist has been detrimental to his progress in treatment. The panel also credited Petsoulis's testimony that the mental-health issues causing Christiansen's regression could be treated at the out-patient facility in Virginia. This evidence is of limited value on appeal, however, because it is "immaterial" that the record may contain evidence to support findings that are contrary to the panel's findings. *See, e.g., Rydberg*, 689 N.W.2d at 314.

Christiansen also contends that the out-patient facility in Virginia is a superior placement option to CPS and that "[t]here was absolutely no evidence that Christiansen's treatment needs can only be met at MSOP." For support, he cites Alberg's testimony that CPS is "not even probably the most optimal place" for the treatment of Christiansen's paranoia issues and Petsoulis's testimony that his staff could provide the required treatment. But the governing statute requires the panel to consider "whether the committed person's course of treatment and present mental status indicate *there is no longer a need for treatment and supervision in the committed person's current treatment setting.*" Minn. Stat. § 253D.30, subd. 1(b) (emphasis added). Alternative out-patient facilities are

irrelevant in light of the panel's finding that Christiansen still needs treatment in his current setting in CPS.

Thus, the panel did not clearly err in its findings with respect to the first statutory factor.

B.

With respect to the second statutory factor, Christiansen contends that the judicial appeal panel clearly erred because the panel did not make clear findings on his present level of risk and because evidence shows that he has been sufficiently rehabilitated in sex-offender treatment such that he no longer is a danger to the public.

The panel resolved this issue by stating as follows: "Until [Christiansen] can demonstrate sufficient coping skills to manage his mistrust for a sustained period of time at CPS, the Panel cannot find that [Christiansen] would successfully adjust to the community or that the provisional discharge plan would adequately provide for public safety." This finding is supported by the evidence. Pascucci and Van der Walt testified that Christiansen is in the moderately high category for recidivism compared to other male sex offenders. Pascucci and Van der Walt reported that Christiansen's dynamic risk factors relate to his paranoia and his inability to implement learned treatment skills to manage his paranoia. Alberg testified that Christiansen's most significant risk factor is his paranoia, which may cause him to disengage with treatment staff. Pascucci and Van der Walt determined that Christiansen's dynamic risk factors had doubled since he transferred to CPS in 2014, and the panel found this increase "concerning" because it coincided with Christiansen's gaining greater liberties. The panel also found that completion of sex-

offender treatment would reduce Christiansen's risk to the public, and Todd-Bense testified that Christiansen had not yet completed sex-offender treatment because he was in stage 2 of phase III.

Christiansen's contention is based on an asserted lack of findings specifically relating to his risk to the public. Christiansen asserts that he was behaviorally compliant in sex-offender treatment until shortly before the hearing before the panel. He asserts that Pascucci's use of a certain actuarial tool in her risk assessment accounted for dynamic risks such as his paranoia and that his provisional discharge plan adequately accounts for the risks posed by his paranoia. Christiansen did not present any evidence that credibly calls into question the panel's findings on his risk level. But again, as previously noted, it is "immaterial" that the record contains a basis for inferences contrary to the panel's findings. *See, e.g., Rydberg*, 689 N.W.2d at 314.

Thus, the panel did not clearly err in its findings with respect to the second statutory factor.

In sum, the "evidence as a whole" supports the judicial appeal panel's denial of Christiansen's petition for provisional discharge.

Affirmed.