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**STATE OF MINNESOTA
IN COURT OF APPEALS
A17-0259**

In the Matter of the Civil Commitment of:
Leah Christina Graeber

**Filed July 17, 2017
Affirmed
Johnson, Judge**

Judicial Appeal Panel
File No. AP15-9137

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Considered and decided by Larkin, Presiding Judge; Johnson, Judge; and Reilly,
Judge.

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

JOHNSON, Judge

Leah Christina Graeber is civilly committed as a mentally ill and dangerous person.
She petitioned for a provisional discharge or a discharge. The judicial appeal panel granted
the commissioner of human services' motion to dismiss her petition. We affirm.

FACTS

In 2010, Graeber was involved in an automobile accident in which she drove at a speed of more than 100 m.p.h., crossed a median, and crashed into an oncoming vehicle, killing an 11-year-old boy and injuring three others. The state charged Graeber with criminal vehicular operation and fifth-degree controlled-substance crime, but she was found incompetent to stand trial. In March 2012, the Dakota County District Court granted a petition to civilly commit Graeber as mentally ill and dangerous (MI&D) for an indeterminate period of time. *See generally In re Civil Commitment of Graeber*, No. A12-0710, 2012 WL 4052899 (Minn. App. Sept. 17, 2012).

In February 2014, Graeber petitioned for a provisional discharge or a discharge from her civil commitment. The special review board conducted a hearing and issued an order recommending that the petition be denied. The commissioner of human services adopted the recommendation and denied the petition.

In June 2015, Graeber requested reconsideration by the judicial appeal panel, which conducted a hearing in August 2016. With the assistance of counsel, Graeber called two witnesses: Thomas Alberg, Ph.D, a licensed psychologist, and herself. After Graeber rested her case, the commissioner of human services moved to dismiss Graeber's petition, and Dakota County joined in the motion. The judicial appeal panel took the matter under advisement. In December 2016, the judicial appeal panel issued a six-page order in which it granted the motion to dismiss. Graeber appeals.

DECISION

Graeber argues that the judicial appeal panel erred by granting the motion to dismiss her petition for a provisional discharge or a discharge.

A.

A person who is committed as MI&D may be provisionally discharged only if he or she “is capable of making an acceptable adjustment to open society.” Minn. Stat. § 253B.18, subd. 7 (2016). That determination must be based on two factors:

- (1) whether the patient’s course of hospitalization and present mental status indicate there is no longer a need for treatment and supervision in the patient’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 patient to adjust successfully to the community.

Id. A person who is committed as MI&D may be fully discharged only if he or she “is capable of making an acceptable adjustment to open society, is no longer dangerous to the public, and is no longer in need of inpatient treatment and supervision.” *Id.*, subd. 15.

A person who is committed as MI&D may petition the special review board for a provisional discharge or a discharge. *Id.*, subds. 4c, 5. “The special review board shall hold a hearing on each petition” and, thereafter, shall “mak[e] its recommendation to the commissioner” of human services. *Id.*, subd. 5(c). If the commissioner denies the petition, the committed person “may petition the judicial appeal panel for a rehearing and reconsideration of” that decision. Minn. Stat. § 253B.19, subd. 2(a) (2016). The judicial appeal panel must hold a hearing. *Id.* At the hearing, the committed person “bears the burden of going forward with the evidence, which means presenting a *prima facie* case

with competent evidence to show that the person is entitled to the requested relief.” *Id.*, subd. 2(c). “If the petitioning party has met this burden, the party opposing discharge or provisional discharge bears the burden of proof by clear and convincing evidence that the discharge or provisional discharge should be denied.” *Id.*

If the commissioner wishes to challenge a petitioner’s *prima facie* case, the commissioner may move to dismiss the petition pursuant to rule 41.02(b) of the Minnesota Rules of Civil Procedure, which provides, in relevant part:

After the plaintiff has completed the presentation of evidence, the defendant, without waiving the right to offer evidence in the event the motion is not granted, may move for a dismissal on the ground that upon the facts and the law, the plaintiff has shown no right to relief.

Minn. R. Civ. P. 41.02(b); *see also Coker v. Jesson*, 831 N.W.2d 483, 490-91 (Minn. 2013) (holding that other provisions of rule 41.02(b) do not apply to proceedings before judicial appeal panel because of conflict with section 253B.19, subdivision 2(d)). In considering such a motion, the judicial appeal panel “may not weigh the evidence or make credibility determinations.” *Coker*, 831 N.W.2d at 490. “Instead, the Appeal Panel is required to view the evidence produced at the first-phase hearing in a light most favorable to the committed person.” *Id.* at 491. This court applies a *de novo* standard of review to a judicial appeal panel’s grant of a rule 41.02(b) motion to dismiss. *Larson v. Jesson*, 847 N.W.2d 531, 534 (Minn. App. 2014).

B.

In this case, the judicial appeal panel determined that Graeber did not produce evidence capable of establishing the first factor, that “there is no longer a need for treatment

and supervision in the patient's current treatment setting.” See Minn. Stat. § 253B.18, subd. 7(1). Specifically, the judicial appeal panel stated,

She continues to be psychotic and delusional and to believe she is God. She has a history of medication noncompliance, which causes her to decompensate psychiatrically, but feels she does not need to take her medications and has said that if released, she would discontinue taking them at the earliest opportunity.

The judicial appeal panel also determined that Graeber did not produce evidence capable of establishing the second factor, that “the conditions of the provisional discharge plan will provide a reasonable degree of protection to the public and will enable the patient to adjust successfully to the community.” See Minn. Stat. § 253B.18, subd. 7(2). Specifically, the judicial appeal panel stated,

The Petitioner continues to have a psychotic disorder and to pose a danger to the public. She has poor social judgment and has been assessed to have a high likelihood of committing future acts of violence. Moreover, besides stating that she does not want to go to [a different treatment facility] and would go to Chicago if discharged, no evidence was presented at the Hearing . . . as to any specific facility or locale to which the Petitioner should be provisionally discharged or discharged, so as to provide any degree of protection for the public, or any assurances that the Petitioner would be able to adjust successfully or reintegrate into the community.

The decision of the judicial appeal panel is correct in light of Graeber's evidence. Alberg's written report states as follows: Graeber has a long history of mental illness, having been diagnosed with schizoaffective disorder—bipolar type, cannabis dependence, and alcohol abuse. She is delusional and believes that she is God. She presents as psychotic, agitated, and disorganized in her thoughts. She has poor abstract reasoning and social judgment. She wants to discontinue taking her medication and is highly likely to

commit future violent acts. She continues to need treatment in an in-patient setting. There is not a reasonable discharge plan that would protect the public.

At the hearing, Alberg testified by reiterating the opinions in his written report. He elaborated by testifying that, if Graeber were discharged, she might quit her medication and return to using street drugs. He testified that a risk assessment indicates that Graeber is likely to act out. He concluded by opining that Graeber should not be provisionally discharged or discharged.

Graeber's own testimony did not advance her cause. She testified that believes that she is God. She testified that she believes that she is in a romantic relationship with a particular celebrity. She testified that she does not like to take her prescribed medication and that, if she were discharged, she would like to use alcohol, marijuana, methamphetamine, and crack cocaine. In general, her testimony suggests ongoing delusions.

None of Graeber's evidence is capable of proving that she "is entitled to the requested relief." *See* Minn. Stat. § 253B.19, subd. 2(c). Her evidence does not tend to show that "there is no longer a need for treatment and supervision in the patient's current treatment setting" or that "the conditions of the provisional discharge plan will provide a reasonable degree of protection to the public and will enable the patient to adjust successfully to the community." *See* Minn. Stat. § 253B.18, subd. 7. To the contrary, Graeber's evidence suggests that she continues to need treatment and supervision in her current setting, that she would present a risk to public safety if she were provisionally

discharged, and that she likely would not adjust to the community if she were provisionally discharged.

Thus, Graeber did not satisfy her burden of production at the hearing before the judicial appeal panel. Because she did not introduce evidence capable of satisfying the criteria for provisional discharge, she also cannot satisfy the more-stringent criteria for a full discharge. *See* Minn. Stat. § 253B.18, subds. 7, 15. Therefore, the judicial appeal panel did not err by granting the motion to dismiss the petition.

Affirmed.