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**STATE OF MINNESOTA
IN COURT OF APPEALS
A17-1056**

In the Matter of the Civil Commitment of:
Dale Allen Lindsey.

**Filed November 13, 2017
Affirmed
Cleary, Chief Judge**

Judicial Appeal Panel
File No. AP15-9132
Hennepin County File No. 27-MH-PR-05-1149

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Considered and decided by Cleary, Chief Judge; Bjorkman, Judge; and Reyes, Judge.

UNPUBLISHED OPINION

CLEARY, Chief Judge

Appellant Dale Allen Lindsey is civilly committed as a sexually dangerous person (SDP). He petitioned for a transfer to the department of human services' Community

Preparation Services (CPS) in St. Peter. The judicial appeal panel (the panel) denied his petition. He appeals the panel's decision. We conclude that the evidence supports the panel's findings of fact and affirm.

FACTS

Lindsey was civilly committed as a SDP in 2006. He is currently in the second phase of the three phase Minnesota Sex Offender Program (MSOP) at the secure MSOP facility at Moose Lake. In November of 2015, he petitioned for discharge, provisional discharge, or transfer to the less restrictive CPS. The Special Review Board conducted a hearing and recommended his petition be denied. In December of 2015, Lindsey petitioned for rehearing and reconsideration before the panel. The panel conducted the first of the two-phase hearing process in September of 2016. At the Phase I hearing, Lindsey withdrew his requests for discharge and proceeded on his transfer request. The panel heard testimony from Dr. Amanda Powers, the court-appointed examiner. She testified that Lindsey met the criteria to be transferred to CPS and that CPS had an adequate level of security and could meet Lindsey's ongoing treatment needs. At the end of the hearing, the commissioner and the county agreed that a Phase II hearing was appropriate.

During the period of time between the Phase I and Phase II hearings, Lindsey had a series of outbursts that resulted in behavioral citations for threatening and assaultive behavior towards MSOP staff. Lindsey also participated in an additional sexual violence risk assessment administered by Dr. Cassandra Lind. The results of the assessment indicated that Lindsey was in the high-risk, high-need category and that he was not

currently managing his dynamic-risk factors. Based on the results of the exam, Dr. Lind opined that transfer would not be appropriate. Prior to the Phase II hearing, Dr. Powers submitted an addendum to her initial report. Dr. Powers withdrew her recommendation for transfer after reviewing updated treatment records for Lindsey. She opined that Lindsey's outbursts were precursors to assaultive behavior and he required the structured environment of the Moose Lake facility to regain control of his behavior.

The Phase II hearing was spread over two days in December 2016 and April of 2017. The panel heard testimony from Lindsey, Dr. Powers, MSOP clinical director Peter Puffer, Dr. Lind, and CPS operations manager Michelle Sexe. Lindsey testified on his own behalf. Dr. Powers, Dr. Lind, and Puffer opined that transfer to CPS was not appropriate given Lindsey's current treatment needs. The panel issued a written order on May 10, 2017. The panel determined that Lindsey failed to establish by a preponderance of evidence that transfer was appropriate and the panel denied his request to transfer. Lindsey appeals.

D E C I S I O N

Lindsey argues that the panel failed to make sufficient findings to permit appellate review and erred in denying his petition for transfer to CPS.

I. Sufficiency of Findings

Lindsey argues that the findings made by the panel are insufficient to permit appellate review. Lindsey relies on this court's opinion in *In re Civil Commitment of Spicer*, 853 N.W.2d 803 (Minn. App. 2014) where we concluded that the district court's findings with respect to Spicer's civil commitment proceedings were insufficient in three

ways. *Id.* at 809-11. The court held that 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. In addition, the court found that the district court's findings were conclusory in nature, *id.*, and that the district court's true findings were not meaningfully tied to the ultimate conclusions of law. *Id.* at 811.

Lindsey argues that here, as in *Spicer*, the panel failed to state which evidence was more or less persuasive, which facts were more or less important, and which statutory factors were most significant. This case is distinguishable from *Spicer*. In *Spicer*, while the district court provided an extensive and exhaustive order, this court was unable to determine how the district court reached its conclusion based on the inconsistencies therein. *Id.* at 810-11. Here, the panel's findings clearly indicate how Lindsey failed to meet the burden of proving by clear and convincing evidence that transfer was appropriate. Lindsey failed to present any competent evidence in favor of transfer and the forensic examiner's opinion that transfer was inappropriate at this time was persuasive. The panel concluded that Lindsey's own self-serving testimony in favor of transfer could not constitute competent evidence absent some neutral, corroborating evidence. Dr. Powers withdrew her support for transfer based on Lindsey's regression between the first and second phase hearings and no neutral evidence was presented in favor of transfer.

The panel made six explicit findings of fact that bore direct relation to the five statutory factors and tied those facts to the conclusions of law through the memorandum

that accompanied the order.¹ The memorandum provides context to the findings of fact and explains which evidence was credited by the panel and which was not. The panel recited the evidence offered by both sides, made credibility determinations, and made particularized findings of fact that supported its conclusion of law. The panel's findings are sufficiently particularized to allow for meaningful appellate review.

II. Statutory Criteria for Transfer

Lindsey argues that the panel committed clear error in failing to analyze the statute in a manner that gave meaning to each provision and that its findings are not supported by the evidence.

We review a judicial appeal panel's decision for clear error to "determine whether the evidence as a whole sustains the panel's findings." *In re Civil Commitment of Kropp*, 895 N.W.2d 647, 650 (Minn. App. 2017), *review denied* (Minn. June 20, 2017). This court does not reweigh the evidence and if the record sustains the findings of the panel, we will not reverse. *Id.* If the record sustains the panel's findings, it is immaterial that it might also support contrary findings. *Id.* A judicial appeal panel clearly errs if it ignores the "vast weight of the evidence." *Piotter v. Steffen*, 490 N.W.2d 915, 919-920 (Minn. App.

¹ Although Minn. R. Civ. P. 52.01 requires that "the court shall find the facts specially and state separately its conclusions of law," the object of the rule is to ensure "that sufficient, ultimate facts be stated to legally support the conclusions of law reached." *Graphic Arts Educ. Found., Inc. v. State*, 240 Minn. 143, 145, 59 N.W.2d 841, 844 (1953) (discussing Minn. Stat. § 546.27 (2016)). Further, "[t]he rule prescribes no specific format, and expressly allows a written opinion or memorandum of decision to stand as findings of fact and conclusions of law." *Transit Team, Inc. v. Metro. Council*, 679 N.W.2d 390, 398 (Minn. App. 2004) (discussing rule 52).

1992), *review denied* (Minn. Nov. 17, 1992). This court reviews de novo questions of statutory construction and the application of statutory criteria to the facts found. *Kropp*, 895 N.W.2d at 650.

Transfer is governed by Minn. Stat. § 253D.29 (2016). A person who is committed as a SDP may be transferred only if “the transfer is appropriate.” *Id.*, subd. 1. The panel is required to address any applicable statutory factors when making its decision. *Piotter*, 490 N.W.2d at 919. Those factors include: the person’s “clinical progress and present treatment needs;” “the need for security to accomplish continuing treatment;” “the need for continued institutionalization;” which facility can best meet the person’s needs; and whether transfer can be accomplished with a reasonable degree of safety for the public. Minn. Stat. § 253D.29, subd. 1(b) (2016).

1. Lindsey’s clinical progress and present treatment needs

The panel found that Lindsey’s ongoing treatment needs cannot be accomplished at CPS. Lindsey contends that this finding is not supported by the record because of the evidence presented about his progress in the program. The panel heard testimony from Dr. Powers and Dr. Lind that Lindsey made significant progress in the course of his treatment. However, both testified that Lindsey had regressed significantly during the period of time between the Phase I and Phase II hearings. Lindsey’s regression was well documented through psychiatric reports and behavioral citations from MSOP staff. The mental health professionals opined that Lindsey’s regression and continued struggles with anger management would be best addressed at the secure facility at Moose Lake. The panel

concluded that while Lindsey had made significant progress in his overall treatment, he continues to have significant difficulty controlling his anger. The panel also found Dr. Lind's testimony persuasive regarding Lindsey's lack of progress on his dynamic-risk factors. Lindsey failed to present any competent evidence regarding his progress and present treatment needs. The record supports the panel's finding that Lindsey's ongoing treatment needs could not be accomplished at CPS.

2. The need for security to accomplish continuing treatment

Lindsey argues that the panel committed clear error in failing to give each provision of the transfer statute meaning. Lindsey contends that the statute must be analyzed with respect to the security of the treatment staff. Security is defined as "the measures necessary to achieve the management and accountability of patients of the facility, staff, and visitors, as well as property of the facility." Minn. Stat. § 253D.02, subd. 14 (2016). The object of the "security" in this subdivision is the security of Lindsey and other MSOP clients, visitors to the facility, as well as the treatment staff.

The panel found that the security provided at CPS was insufficient for Lindsey to complete his treatment. The panel heard testimony about the security measures in place at CPS and found that the measures in place include cameras in the interior common areas, individually tailored GPS monitoring, and security staff on the premises at all times. Lindsey presented no competent evidence that CPS had the proper level of security to provide for his treatment needs. Multiple mental health professionals testified as to incidents of Lindsey's threatening and hostile behavior. Dr. Lind testified that Lindsey

requires the security measures provided at the Moose Lake facility based on the results of two actuarial psychological tests he was given that indicated he was a moderate to high risk for recidivism and continues to possess high treatment needs. She also explained that his anger and attitude toward her made her fear for her safety after her most recent interview with him.

The record supports the panel's finding that the security measures at CPS were not sufficient to provide adequate security for Lindsey and other MSOP clients, visitors, and staff.

3. The need for continued institutionalization

Lindsey contends that this factor concerns the security of the patient and that the panel failed to analyze this factor accordingly. Institutionalization is not defined in chapter 253D. Much of the testimony surrounding the need for institutionalization centered on the types of external controls at each facility, the level of physical security, and the treatment structure that each institutional setting provided. The panel found that CPS did not provide the necessary structure, security, or institutional setting that Lindsey needs to complete his treatment.

Both Moose Lake and CPS are institutional settings. Lindsey presented no competent evidence that the level of institutionalization at CPS met his current needs. Dr. Powers opined that Lindsey required the structure and security that his current treatment team provided at Moose Lake. Dr. Lind identified three protective factors necessary to prevent further regression: professional care; living circumstances; and

external control. After balancing these factors, she stated that Lindsey would benefit from remaining at Moose Lake as he has access to a number of mental health professionals around the clock and that Moose Lake is a highly-secured environment with a number of external controls. She further testified that, while CPS would provide a similar amount of access to mental health professionals, it had fewer external controls and did not have the level of structure that Lindsey required. The panel concluded that Lindsey's anger management issues and recent disruptive behavior would be best addressed in the more structured environment at Moose Lake. The record supports the panel's finding that CPS lacked the institutional setting that Lindsey requires.

4. Which facility can best meet the person's needs

The panel found that the Moose Lake facility met Lindsey's current treatment needs and that those needs could not be properly addressed at CPS. Lindsey argues that the treatment programs are the same at both facilities and his treatment needs could not be met at Moose Lake because of an alleged conspiracy to impede his treatment by the staff at Moose Lake. Lindsey testified at length about his belief that the Moose Lake staff discriminated against him in the past and provoked him to break regulations to ensure that he did not obtain a transfer. Lindsey offered evidence of a prior incident with members of the Moose Lake staff involving an effort to target him with reprimands and impede his progress. The incident was acknowledged by MSOP clinical director Puffer, who stated that the issue was being monitored. Despite these allegations, the panel concluded that there was substantial evidence that Lindsey made significant progress with his treatment

team at Moose Lake prior to the Phase I hearing. Lindsey testified that he currently had a positive relationship with members of his treatment team.

The panel weighed the evidence and concluded that the more open, less structured CPS environment would not help Lindsey with his current anger management issues and that those issues would be best addressed in the more structured environment at Moose Lake. The record supports the panel's finding that the Moose Lake facility best meets Lindsey's current treatment needs.

5. Whether the transfer can be accomplished with a reasonable degree of safety for the public

The panel found that transfer could not be accomplished with a reasonable degree of safety for the public. Lindsey contends that the witnesses for the commissioner failed to demonstrate that his transfer posed a risk to the public. Lindsey had the burden of proof and persuasion and failed to present any competent evidence that his transfer could be done with a reasonable degree of safety to the public. Moreover, the commissioner presented evidence that Lindsey's recent behavioral incidents were precursors to physically assaultive behavior and demonstrated that he did not have his dynamic-risk factors under control. The panel's finding that transfer could not be accomplished with a reasonable degree of safety to the public is supported by the record.

The panel made sufficiently particularized findings to permit appellate review. The panel correctly analyzed the Minn. Stat. § 253D.29 factors and the panel's findings are

supported by the record. The panel did not err in denying Lindsey's petition to transfer to CPS.

Affirmed.