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**STATE OF MINNESOTA
IN COURT OF APPEALS
A18-0630**

In re the Civil Commitment of:
Dennis Darol Linehan.

**Filed September 4, 2018
Affirmed
Kirk, Judge**

Judicial Appeal Panel
File No. AP17-9054

Rick E. Mattox, Prior Lake, Minnesota (for appellant Dennis Darol Linehan)

Lori Swanson, Attorney General, James H. Clark III, Assistant Attorney General, St. Paul, Minnesota (for respondent Commissioner of Human Services)

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Considered and decided by Kirk, Presiding Judge; Reilly, Judge; and Smith, Tracy M., Judge.

UNPUBLISHED OPINION

KIRK, Judge

Appellant, a sexually dangerous person (SDP) indeterminately committed at the Minnesota Sex Offender Program (MSOP), challenges the dismissal of his petition for a transfer to Community Preparation Services (CPS). Because the judicial appeal panel did not clearly err in denying appellant a transfer to CPS on this record, we affirm.

FACTS

Appellant Dennis Darol Linehan, 77 years old, has a lengthy history of criminal sexual conduct involving girls and young women, which includes convictions for kidnapping in 1965 and attempted sexual assault in 1975. After serving time in prison for his convictions, he was indeterminately committed to MSOP as an SDP in a final order dated February 22, 1996. His indeterminate commitment has been repeatedly affirmed. *In re Linehan*, 594 N.W.2d 867, 869 (Minn. 1999); *see also Linehan v. Milczark*, 315 F.3d 920, 927-29 (8th Cir. 2003).

On July 10, 2016, appellant petitioned the special review board (SRB) for a provisional discharge, a full discharge, or a transfer to CPS. The SRB recommended that appellant's entire petition be denied. Appellant then petitioned the judicial appeal panel (panel) for rehearing and reconsideration. The panel appointed Dr. Robert Riedel and Dr. Amanda Powers as examiners. At the hearing, appellant challenged only the denial of his transfer to CPS. After appellant rested, the commissioner moved to dismiss his petition. On February 23, 2018, the panel granted the commissioner's motion to dismiss, denied appellant a transfer to CPS, and adopted the recommendations of the SRB in full.

This appeal follows.

DECISION

I. The panel did not clearly err in denying appellant's petition for a transfer.

We review a judicial appeal panel's decision to dismiss a petition to transfer for clear error. *Foster v. Jesson*, 857 N.W.2d 545, 548 (Minn. App. 2014). We "examine the record to determine whether the evidence as a whole sustains the appeal panels' findings"

and do not “weigh the evidence as if trying the matter de novo.” *Jarvis v. Levine*, 364 N.W.2d 473, 474 (Minn. App. 1985) (quotation omitted). For the panel to grant a transfer, the petitioner must establish by a preponderance of the evidence that the following factors support a transfer: (1) the petitioner’s clinical progress and present treatment needs; (2) the need for security to ensure continuing treatment; (3) the need for continued institutionalization; (4) the facility best able to meet the petitioner’s needs; and (5) public safety. Minn. Stat. §§ 253D.28, subd. 2(e) (2016), .29, subd. 1(a), (b) (2016).

Here, the panel found that appellant did not prove that a transfer was appropriate under the statutory factors. The panel received and reviewed Dr. Reidel’s and Dr. Powers’s reports and appellant’s sexual violence risk assessment, treatment plan, and sex offender treatment and therapy progress reports from MSOP. Appellant and Dr. Reidel also testified at the rehearing. The panel found that Dr. Reidel’s report and testimony recommending a transfer were not credible and relied on Dr. Powers’s report, finding it entirely credible.

Appellant argues that the panel erred in discrediting Dr. Reidel’s report. But the panel sat as the trier of fact and was able to weigh the credibility of the witnesses and evidence in determining whether appellant met his burden. *Foster*, 857 N.W.2d at 548 (discussing *Coker v. Jesson*, 831 N.W.2d 483, 489-90 (Minn. 2013), and explaining that a judicial appeal panel sits as the trier of fact, weighs evidence, and makes credibility determinations on a transfer petition). The record supports the panel’s findings that Dr. Reidel did not fully address the statutory criteria or appellant’s dynamic risk factors, that he changed his diagnoses during his testimony, and that he admitted that some of his findings were wrong or conclusory. On this record, the panel’s finding after reviewing the

examiners' reports was not clearly erroneous, and we defer to the panel's credibility determinations.

Appellant argues that the panel clearly erred by denying him a transfer to CPS and by failing to credit him for his past treatment history and significant clinical progress. Appellant maintains that he had completed five versions of treatment, does well when he participates, and has internalized his treatment principles. Appellant further contends that he does not need the present level of secure treatment or institutionalization at MSOP and poses no risk to the public at 77 years old. Appellant argues that his needs would be better served at CPS, a facility which offers its patients hope.

The panel found that appellant has a high risk of re-offense, is not currently participating in treatment, has remaining treatment needs, and does not have a relapse-prevention plan. The panel also found that appellant requires the ongoing secure treatment and continued institutionalization provided at MSOP and that MSOP is the facility best able to meet his needs while also ensuring the public's safety. A review of the record as a whole shows that the panel's findings on the statutory factors are not clearly erroneous.

Petitioner's high risk for sexual re-offense is clearly supported by appellant's sexual violence risk assessment and his actuarial scores on the Static-99R, Static-2002R, MnSOST-3.1.2, and the VRAG-R, all of which indicate a high level of sexual recidivism, as discussed in Dr. Powers's report. The panel found that appellant met the high-risk combination of paraphilia and a high level of psychopathy, which Dr. Reidel called the "deadly duo." The panel also considered appellant's dynamic risk factors and found that appellant's high risk of re-offense, failure to complete sex offender treatment, and ongoing

treatment needs coupled with his lack of cooperation and current non-participant status support continued secure treatment and institutionalization at MSOP.

In making its decision, the panel considered appellant's past treatment history, including his two years at the transition program at St. Peter from 2004 to 2006—the rough equivalent of present-day CPS—but found that appellant was sent back to MSOP due to his escape risk. The panel noted his intermittent participation and progress from 2008 to 2016, his active participation in 2015 with his former therapist, and his reengagement in 2017. The panel also considered appellant's testimony that he is not currently engaged in treatment and that his treatment went “down the tube” when his former therapist left MSOP.

The record supports the panel's finding that appellant has not progressed far enough in treatment to support a transfer. Appellant remains in phase two of the three-phase program at MSOP. Dr. Powers's report, appellant's sexual violence risk assessment, appellant's treatment plan, and nearly every treatment and therapy progress report from MSOP, as well as appellant's own testimony, indicate appellant's inconsistent participation, unwillingness to engage, and overall lack of progress at MSOP are due to his lack of faith in the system, his belief that he does not need treatment, and his belief that he was wrongfully convicted and wrongfully committed. Appellant has been incarcerated since the 1970s, but the panel found that he has not developed a relapse-prevention plan, has not begun to work on reintegration skills or developed independent living skills, and he has no support system outside of MSOP.

A review of the entire record supports the panel's findings that neither the public's safety, nor appellant's continued treatment, can be ensured if appellant is transferred to a less secure, less structured facility like CPS. The panel did not clearly err in denying appellant a transfer to CPS on this record.

II. Appellant's other arguments are not properly before this court.

In addition, appellant argues repeatedly in his appellate brief that the panel ignored evidence that MSOP has failed to provide him with adequate treatment in a form best adapted to meet his needs. Appellant maintains that MSOP has failed to make a reasonable accommodation for his antisocial personality disorder (ASPD) and that his commitment is unconstitutional and amounts to preventative detention.

Committed patients have the right to "receive proper care and treatment, best adapted, according to current professional standards, to rendering further supervision unnecessary." Minn. Stat. § 253B.03, subd. 7 (2016). However, committing courts are not the final arbiters of differences of opinion in treatment decisions. *See Matter of Kolodrubetz*, 411 N.W.2d 528, 534-35 (Minn. App. 1987) (citing Minn. Stat. § 253B.03, subd. 7 (1986)) (finding committing court erred in reviewing treatment recommendations of hospital review board), *review denied* (Minn. Nov. 6, 1987). The commitment act offers relief to an indeterminately committed patient through a petition for transfer or discharge only. *In re Civil Commitment of Lonergan*, 811 N.W.2d 635, 641-42 (Minn. 2012); *see* Minn. Stat. § 253D, subd. 27 (2016).

Accordingly, in reviewing the SRB's recommendation to deny appellant's transfer to CPS, the panel did not have the authority to review the MSOP's treatment decisions, the

adequacy of appellant's treatment, or appellant's constitutional arguments regarding his treatment and commitment. These issues were beyond the scope of the panel's authority under the commitment act and are not properly before this court on appeal.

Affirmed.