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**STATE OF MINNESOTA
IN COURT OF APPEALS
A18-0944**

In the Matter of the Civil Commitment of:
Edward Eugene Dooley.

**Filed February 19, 2019
Affirmed
Rodenberg, Judge**

Kandiyohi County District Court
File No. 34-PR-13-69

Edward E. Dooley, Moose Lake, Minnesota (pro se appellant)

Keith Ellison, Attorney General, Angela Helseth Kiese, Assistant Attorney General,
St. Paul, Minnesota; and

Shane D. Baker, Kandiyohi County Attorney, Willmar, Minnesota (for respondent)

Considered and decided by Rodenberg, Presiding Judge; Cleary, Chief Judge; and
Reilly, Judge.

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

RODENBERG, Judge

Appellant Edward Eugene Dooley appeals from the district court's order denying both his motion to withdraw his agreement to submit his civil commitment case to the district court for resolution on a stipulated record and his motion to reopen the commitment proceedings under Minn. R. Civ. P. 60.02. Appellant argues that his agreement was not voluntary, knowing, and intelligent and that he received ineffective assistance of counsel. We affirm.

FACTS

Appellant has, by his own estimation, sexually abused 150 victims. Respondent Kandiyohi County petitioned to civilly commit appellant as a sexually dangerous person (SDP) in July 2013. Appellant, with the assistance of counsel, entered into an agreement to submit the matter to the district court for decision on a stipulated record. The district court issued an order in January 2014 committing appellant as a SDP. Appellant took no appeal.

More than four years later, rather than seeking review through the statutory framework established for civilly committed persons, appellant sought relief by moving the district court pro se to “withdraw stipulation as a SDP.” Appellant argued that the 2013 stipulation was not made voluntarily, knowingly, and intelligently, and that his court-appointed counsel had been ineffective. The district court appointed counsel to represent appellant on this new motion.

The district court denied appellant’s motion after a hearing. It reasoned that appellant “misunderstands the issue.” Appellant argued to the district court, and maintains on appeal, that he stipulated in 2013 that he was a SDP. The district court found that the record from 2013 is clear that the case was submitted to the district court as a contested matter based upon stipulated evidence. The district court also rejected appellant’s argument that he received ineffective assistance of counsel. Despite appellant’s original

court-appointed counsel's recent arrest for drug charges,¹ the district court found that appellant failed to demonstrate that he received less-than-appropriate legal advice in 2013.

This appeal followed.²

DECISION

Appellant's argument that the district court erred by denying his motion is based on a false premise. Whether by reason of misrepresentation or misapprehension, appellant incorrectly asserts that he stipulated in 2013 to being a SPD. That is incorrect. As noted by the district court, appellant agreed to submit the case for decision based on a stipulated record. The district court made clear at that time that the case would proceed as a contested matter.

Appellant seeks to vacate the commitment judgment. A district court has discretionary power to grant relief from a final judgment, Minn. R. Civ. P. 60.02, and a district court's denial of such relief is reviewed for an abuse of discretion, *Charson v. Temple Israel*, 419 N.W.2d 488, 490 (Minn. 1988).

A party may seek relief from a "final judgment . . . , order, or proceeding" for the following reasons:

- (a) Mistake, inadvertence, surprise, or excusable neglect;
- (b) Newly discovered evidence . . . ;

¹ The state filed a criminal complaint on Feb. 2, 2018, charging appellant's former attorney, R.M., with first-degree sale of 17 grams or more of cocaine or methamphetamine under Minn. Stat. § 152.021, subd. 1(1) (2016), and first-degree possession of 50 grams or more of cocaine or methamphetamine under Minn. Stat. § 152.021, subd. (2)(a)(1) (2016).

² Both parties submitted supplemental authorities after this appeal was submitted for decision. We have considered those additional authorities.

- (c) Fraud . . . , misrepresentation, or other misconduct of an adverse party;
- (d) The judgment is void;
- (e) . . . it is no longer equitable that the judgment should have prospective application; or
- (f) Any other reason justifying relief from the operation of the judgment.

Minn. R. Civ. P. 60.02. Motions brought under rule 60.02(a)-(c) must be brought within one year of the judgment, order, or proceeding being challenged. *Id.* Motions brought under rule 60.02(d)-(f) shall be brought within a “reasonable time.” *Id.* The parties disagree about whether appellant’s motion is timely.³ Regardless of whether the motion is timely, it fails on the merits.

Appellate courts may consider ineffective-assistance-of-counsel claims of civilly committed persons raised by motion under rule 60.02. *In re Civil Commitment of Lonergan*, 811 N.W.2d 635, 642 (Minn. 2012).⁴ We analyze an ineffective-assistance-of-

³ The Minnesota Supreme Court has stated that “[a]ttorney misconduct has been characterized as ‘excusable neglect’ under clause (a), to provide a basis for vacation of a dismissal, but only if the motion is brought within one year of dismissal.” *Chapman v. Special Sch. Dist. No. 1*, 454 N.W.2d 921, 923 (Minn. 1990); *cf. Cole v. Wutzke*, 884 N.W.2d 634, 637 (Minn. 2016) (analyzing a motion for relief under rule 60.02(a) based on counsel’s mistake and ignorance of the law). Appellant’s motion, if based solely on ineffective assistance of counsel, is untimely. But because appellant’s argument concerning his trial counsel is interrelated with his argument relating to his ability to enter a voluntary and knowing waiver, we address the merits as if the motion were timely under Minn. R. Civ. P. 60.02(f).

⁴ To the extent that the Commitment Act and Minn. R. Civ. P. 60.02 present a distinct conflict, persons committed as a SDP “must seek relief under the procedures set out in the Commitment Act, not Rule 60.02.” *Lonergan*, 811 N.W.2d at 641. If there is no distinct conflict, persons committed as a SDP must follow the procedures set out in the Commitment Act if application of rule 60.02 would frustrate the purpose of the act. *Id.* Persons civilly committed may not bring any claims under rule 60.02 that seek a transfer or discharge, as it would create a direct conflict with the exclusive remedies provided by the Commitment Act. *Id.* at 641-42. But a civilly committed person may bring claims

counsel claim in a civil-commitment case under the standard set out in *Strickland v. Washington*, 466 U.S. 668, 688, 694, 104 S. Ct. 2052, 2064, 2068 (1984) applicable to criminal cases. See *In re Dibley*, 400 N.W.2d 186, 190 (Minn. App. 1987), review denied (Minn. Mar. 25, 1987); see also *In re Alleged Mental Illness of Cordie*, 372 N.W.2d 24, 28-29 (Minn. App. 1985), review denied (Minn. Sept. 26, 1985). To establish ineffective assistance of counsel under the *Strickland* standard, a party must demonstrate that counsel's representation "fell below an objective standard of reasonableness," and that "but for counsel's unprofessional errors, the result of the proceeding would have been different." . There is a strong presumption that counsel's representation was reasonable. *State v. Pearson*, 775 N.W.2d 155, 165 (Minn. 2009).

Appellant argues that his lawyer was ineffective in 2013 because he was recently charged with various drug offenses. We see no support for appellant's argument that he received ineffective assistance of counsel. Appellant was civilly committed in January 2014; his former counsel was charged over four years later. And, there is nothing in the record to suggest that appellant received less-than-adequate representation at the time of his civil commitment proceedings.⁵

under rule 60.02, such as ineffective assistance of counsel and lack of subject matter jurisdiction, so long as such claims do not frustrate the two-fold purpose of the Commitment Act—(1) protection of the public, and (2) rehabilitation of the patient. *Id.* at 642.

⁵ Appellant also argues that he had a right to counsel for purposes of his motion to "withdraw stipulation as a SDP." Notwithstanding that a civilly committed person has no right to counsel in a challenge to the commitment brought under rule 60.02, *In re Civil Commitment of Moen*, 837 N.W.2d 40, 51 (Minn. App. 2013), review denied (Minn. Oct. 15, 2013), the district court appointed counsel to represent appellant on this motion.

Appellant argues that he is entitled to withdraw his stipulation because it was not knowing, voluntary, and intelligent. “The decision to vacate a stipulation rests largely in the discretion of the district court, and its action will not be reversed absent a showing that the court acted so arbitrarily as to constitute an abuse of that discretion.” *In re Commitment of Rannow*, 749 N.W.2d 393, 396 (Minn. App. 2008) (quotation omitted), *review denied* (Minn. Aug. 5, 2008). A stipulation cannot ordinarily be repudiated or withdrawn by one party without consent of the other except by leave of the court for cause shown. *Gran v. City of St. Paul*, 143 N.W.2d 246, 249 (Minn. 1966). “Stipulations are therefore accorded the sanctity of binding contracts.” *Shirk v. Shirk*, 561 N.W.2d 519, 521 (Minn. 1997).

“A stipulation may be vacated when it was made improvidently and in good conscience and equity should not stand. When there is fraud or duress that prejudices the party making the stipulation, the stipulation was improvidently made.” *Rannow*, 749 N.W.2d at 396-97 (citation omitted). A district court acts within its discretion by refusing to vacate a stipulation when the party “had a sound, rational basis for entering into the stipulation” and the stipulation was made “knowingly and voluntarily.” *Id.* at 399.

We see no support for appellant’s argument—the district court found, during the civil commitment proceedings, that the agreement to submit the matter to the court on a stipulated record was a “knowing, voluntary, and intelligent decision.” Appellant’s trial counsel stated that both he and his associate had spoken with appellant extensively on several occasions about the decision to submit the case on a stipulated record. The agreement to submit the case on a stipulated record was accompanied by an express understanding that appellant was opposing commitment and that his lawyer would consider

a constitutional challenge if appellant was committed. The district court made clear that “it is very much a contested hearing.”

Appellant testified at the 2014 hearing that he had extensive discussions concerning his decision to submit the case on a stipulated record, he acknowledged having reviewed and gone over with counsel a written agreement, and he signed the bottom of each page of that agreement. Appellant further testified that he acknowledged that his attorney would continue to argue that appellant does not meet the criteria of a SDP and that he wished to go forward on a stipulated record despite a significant chance the district court would not find in his favor on a constitutional challenge to the civil commitment laws as applied to him. Appellant testified that he was able to think clearly at the time. Appellant said he understood that he had the right to testify on his own behalf and that he was giving up his right to testify. Appellant testified that no one had pressured him to make the agreement and that he was doing so of his own free will on the advice of his attorney. Lastly, the district court examined appellant and ensured that he understood the rights he was giving up. Appellant confirmed that he wished to proceed on a stipulated record.

The record supports the district court’s findings, and the district court acted within its discretion in denying appellant’s motion to “withdraw stipulation as a SDP.”⁶

Affirmed.

⁶ Appellant argues that he was incompetent to enter into a stipulation according to Minn. R. Crim. P. 20.01. We do not consider this argument because it is being raised for the first time on appeal. *Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988).