

*This opinion is nonprecedential except as provided by
Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A20-0715**

Peter Gerard Lonergan,
Appellant,

vs.

Nancy Johnston, et al.,
Respondents.

**Filed April 19, 2021
Affirmed
Smith, Tracy M., Judge**

Ramsey County District Court
File No. 62-CV-20-678

Peter Gerard Lonergan, Moose Lake, Minnesota (pro se appellant)

Keith Ellison, Attorney General, Molly Beckius, Assistant Attorney General, St. Paul,
Minnesota (for respondents)

Considered and decided by Connolly, Presiding Judge; Ross, Judge; and Smith,
Tracy M., Judge.

NONPRECEDENTIAL OPINION

SMITH, TRACY M., Judge

Appellant Peter Gerard Lonergan is indeterminately civilly committed as a sexually dangerous person at the Minnesota Sex Offender Program (MSOP) facility in Moose Lake. Following an incident with a staff member and a subsequent hearing on the matter, MSOP restricted Lonergan from certain areas outside his living unit and other comfort-related

amenities for three days. In response, Lonergan filed a petition for a writ of prohibition in the district court against respondents MSOP executive director Nancy Johnston and facility director Kevin Moser, challenging the restrictions and the lawfulness of MSOP's disciplinary policies and procedure. The district court denied the petition. Because Lonergan has adequate legal remedies for his claims, the district court did not abuse its discretion by denying a writ of prohibition. We affirm.

FACTS

These facts cited here are derived from the hearing on Lonergan's application for a writ of prohibition as well as the application's supporting documents.

Lonergan is a civilly committed sexually dangerous person residing at MSOP's Moose Lake facility. He has resided there since 2009. In December 2019, Lonergan approached the staff desk to ask a staff member a question and walked around the side of the desk. The staff member asked Lonergan to move to the front of the desk, explaining that that was the direction that staff had been given. MSOP had not yet sent notice to clients that, in order to protect confidentiality and security, clients were not permitted behind staff desks. Lonergan did not comply with the employee's request. After the employee repeated the request, Lonergan shouted, "Are you f-----g kidding me?," "What? I don't have a right to be at the desk?," and, "Are you really f-----g joking with me right now? Nevermind!" The employee directed Lonergan to leave for a third time. Lonergan then complied. While leaving, Lonergan told the employee, "I'll get away from the desk, but I am a human f-----g being and you people should treat me like one," and said that he needed to "get out of here before these f-----g people make [him] go nuts."

Lonergan received a Behavioral Expectation Report (BER) citing abuse, harassment, and failure to comply with employee instructions. A BER is issued for violating the facility's Behavioral Expectations Handbook. A BER citation may lead to the loss of privileges or other restrictions depending on the infraction's severity. Under MSOP's disciplinary policy—the policy on Client Behavioral Expectations—Lonergan had the right to a hearing before the MSOP Behavioral Expectations Unit (BEU). The BEU reviews the BERs and issues findings based on the preponderance of the evidence. The BEU may rescind or amend the BER and the restrictions imposed. Clients cannot call witnesses or be represented by counsel during the BEU hearing process, but they may make a statement during the hearing. The BEU, however, may examine any evidence or call witnesses as it deems appropriate. A client may appeal the BEU's decision to the facility director and may appeal the facility director's decision to the MSOP executive director.

Lonergan attended his hearing and made a statement to the BEU. The BEU rescinded the abuse and harassment violations but affirmed the failure-to-comply violation, which is a major rule violation. As a result, MSOP restricted Lonergan from certain areas outside his living unit and other comfort-related amenities for three days. Lonergan did not appeal this decision to the MSOP facility director or executive director.

Instead, Lonergan filed a petition for a writ of prohibition in the district court, along with a motion for a temporary restraining order (TRO). The district court held a hearing on the petition and the motion. The district court denied the TRO at the hearing, and it later denied the writ of prohibition in a written order.

Lonergan appeals the denial of the writ of prohibition.

DECISION

“A writ of prohibition is an extraordinary remedy and is only used in extraordinary cases.” *In re Comm’r of Pub. Safety*, 735 N.W.2d 706, 710 (Minn. 2007). “The writ is not one of right but of discretion and issues only in extreme cases where the law affords no other adequate remedy by motion, trial, appeal, certiorari, or otherwise.” *Wasmund v. Nunamaker*, 151 N.W.2d 577, 579 (Minn. 1967). To warrant a writ of prohibition, three requirements must be met: “(1) an inferior court or tribunal must be about to exercise judicial or quasi-judicial power; (2) the exercise of such power must be unauthorized by law; and (3) the exercise of such power must result in injury for which there is no adequate remedy.” *Minneapolis Star & Tribune Co. v. Schumacher*, 392 N.W.2d 197, 208 (Minn. 1986) (citations omitted). We review denials of a writ of prohibition for an abuse of discretion. *See In re Paul W. Abbott Co.*, 767 N.W.2d 14, 18 (Minn. 2009). The district court abuses its discretion when “its decision is based on an erroneous view of the law or is against logic and the facts in the record.” *Thompson ex rel. Minor Child v. Schrimsher*, 906 N.W.2d 495, 500 (Minn. 2018) (quotation omitted).

The district court determined that the third requirement for a writ of prohibition was lacking. This determination was not error. To the extent that Lonergan was challenging the BER already imposed, he confirmed to the district court that he had chosen not to pursue MSOP’s internal appeal process—an avenue of relief that was available to him. In addition, in his petition for a writ, Lonergan sought declaratory relief declaring MSOP’s disciplinary policies and procedure unlawful and injunctive relief to prohibit the imposition on him of future BERs, require the repeal of MSOP’s the policy on Client Behavioral Expectations,

and require the appointment of a special master to develop a new policy MSOP policy structure. But Lonergan did not demonstrate that avenues are unavailable to obtain the legal remedy of declaratory relief or relief under civil rights statutes.

Lonergan argues that the third requirement for a writ of prohibition was met because it is evident that he “is injured by the imposition of BERs.” But merely showing injury is not enough—the party seeking the writ must demonstrate an injury for which there is not an adequate legal remedy. *Minneapolis Star & Tribune Co.*, 392 N.W.2d at 208.

In sum, the district court did not abuse its discretion by determining that Lonergan failed to meet the third requirement for obtaining a writ of prohibition. Because all three requirements must be met, *id.*, we need not address whether Lonergan satisfied the other two. We conclude that the district court did not abuse its discretion by denying Lonergan’s petition for a writ of prohibition.

Affirmed.