

**STATE OF MINNESOTA
IN COURT OF APPEALS
A20-1586**

In the Matter of the Civil Commitment of: Charles Randal Ashman.

**Filed June 14, 2021
Reversed and remanded
Slieter, Judge**

Commitment Appeal Panel
File No. AP20-9002

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Keith Ellison, Attorney General, Anthony R. Noss, Aaron E. Winter, Assistant Attorneys General, St. Paul, Minnesota (for respondent Commissioner of Human Services)

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Considered and decided by Slieter, Presiding Judge; Johnson, Judge; and Hooten, Judge.

SYLLABUS

The commitment appeal panel is authorized by the Minnesota Commitment and Treatment Act: Sexually Dangerous Person and Sexual Psychopathic Personalities, Minn. Stat. §§ 253D.01-.36 (2020), to review a revocation-of-transfer recommendation made by the special review board.

OPINION

SLIETER, Judge

Appellant Charles Randal Ashman challenges the commitment appeal panel's (CAP's)¹ determination that it lacks authority to review the special review board's (SRB) recommendation regarding the revocation of Ashman's transfer from a secure treatment facility. Because the applicable statutes unambiguously authorize the CAP to review the SRB's recommendation regarding the revocation of a transfer from a secure treatment facility, we reverse and remand for Ashman to receive a hearing before the CAP.

FACTS

On September 8, 2000, appellant Charles Randal Ashman was indeterminately committed as a sexually dangerous person and a sexual psychopathic personality to the Minnesota Sex Offender Program (MSOP) in St. Peter. Ashman began committing sexual assaults at approximately age 24 against females ranging from age 13 to adult, resulting in both multiple convictions for criminal sexual conduct and associated incarcerations.

In August 2016, Ashman was granted a transfer from the secured perimeter in St. Peter to Community Preparation Services (CPS).² In May 2019, Ashman voluntarily

¹ We refer to the entity formerly known as the supreme court appeal panel, or statutorily as the judicial appeal panel, as the commitment appeal panel or the "CAP." See Minn. Stat. § 253D.28, subd. 1(a) (providing for review by "the judicial appeal panel established under section 253B.19, subdivision 1").

² CPS is located outside of the secure perimeter at MSOP's St. Peter location. *In re Civil Commitment of Fugelseth*, 907 N.W.2d 248, 251 (Minn. App. 2018), *review denied* (Minn. Apr. 17, 2018). CPS is defined by statute as "specialized residential services or programs operated or administered by [MSOP] outside of a secure treatment facility" and it is designed to assist persons in treatment for "eventual successful reintegration into a

agreed to return to the MSOP secure perimeter “as he continued to act aggressively towards others, exhibit[ed] problems with his GPS monitor, and demonstrate[d] poor motivation for treatment.” Ashman’s transfer to CPS was revoked by the executive director of MSOP the following month.

Ashman timely appealed his transfer revocation to the SRB and simultaneously filed a new petition for a transfer outside of the MSOP perimeter. The SRB recommended upholding the revocation of Ashman’s transfer and denying his new transfer petition. Ashman, age 63, sought a “rehearing and reconsideration” by the CAP of the SRB’s recommendations.

During the first-phase hearing, the CAP determined that Ashman failed to meet his burden of proof that a new transfer to CPS was appropriate and dismissed the petition pursuant to Minn. R. Civ. P. 41.02(b) and Minn. Stat. § 253D.28, subd. 2(d). *See also Larson v. Jesson*, 847 N.W.2d 531, 535 (Minn. App. 2014) (describing the two-phase hearing process before the CAP). Ashman does not contest that ruling. The CAP next declined to review SRB’s recommendation regarding the revocation of Ashman’s transfer to CPS, determining that it lacked statutory authority to do so. Ashman appeals.

ISSUE

Does the CAP have statutory authority to review the SRB’s recommendation regarding the revocation of Ashman’s transfer from a secure treatment facility?

community.” Minn. Stat. § 246B.01, subd. 2a (2020). A civilly committed person may only be placed in CPS by order of the CAP. *Id.*

ANALYSIS

The CAP has statutory authority to review the revocation of Ashman’s transfer from a secure treatment facility.

A.

Proceedings involving the commitment of sexually dangerous persons and sexual psychopathic personalities are currently governed by the Minnesota Commitment and Treatment Act: Sexually Dangerous Person and Sexual Psychopathic Personalities Minnesota Statutes chapter 253D.³ The issue before us requires an analysis of three interrelated statutes within chapter 253D; namely, Minn. Stat. § 253D.27 (Petition for Reduction in Custody), Minn. Stat § 253D.28 (Judicial Appeal Panel), and Minn. Stat. § 253D.29 (Transfer).

Section 253D.27 outlines the process through which a committed person may petition for “transfer out of a secure treatment facility.” Minn. Stat. § 253D.27, subd. 1(b). This petition triggers application of section 253D.29, which identifies factors to be considered upon a committed person’s petition to transfer from a secure treatment facility, and any subsequent transfer revocation. Minn. Stat. § 253D.29, subds. 1, 3. After a transfer has been approved, it may later be revoked by the executive director of MSOP. Minn. Stat. § 253D.29, subd. 3. If the executive director revokes a committed person’s transfer, the

³ When Ashman was committed in 2000, all civil commitment types in Minnesota were governed by the Minnesota Commitment and Treatment Act (MCTA). *See* Minn. Stat. §§ 253B.01-.24 (2010 & Supp. 2011). The MCTA was amended in 2013 to move many of the provisions regarding persons committed as sexually dangerous persons and sexual psychopathic personalities from chapter 253B to the newly enacted chapter 253D. *See* Minnesota Commitment and Treatment Act: Sexually Dangerous Persons and Sexual Psychopathic Personalities, 2013 Minn. Laws ch. 49, §§ 1-22, at 210-31.

aggrieved person may simultaneously seek review of the transfer revocation by the SRB and re-petition the SRB for a new transfer pursuant to section 253D.27. Minn. Stat. § 253D.29, subd. 3(d)-(e).

Following the petition by the aggrieved person and pursuant to section 253D.27, the SRB “shall hold a hearing on each petition before issuing a recommendation.” Minn. Stat. § 253D.27, subd. 3(a). “Within 30 days of the hearing, the [SRB] shall issue a report with written findings of fact and shall recommend denial or approval of the petition to the [CAP].” *Id.*, subd. 4. The CAP’s procedure for review of the SRB’s recommendations is established in section 253D.28. Minn. Stat. § 253D.28.

Finally, we note that section 253D.30 (Provisional Discharge) is not at issue before this court.⁴ However, this section involves nearly identical language to that here at issue in section 253D.29. *Compare* Minn. Stat. § 253D.30, subd. 6 (describing petition for review of provisional discharge revocation), *with* Minn. Stat. § 253D.29, subd. 3(e) (describing petition for review of transfer revocation). Therefore, our conclusion that the CAP has statutory authority to review the SRB’s transfer revocation recommendation applies equally to section 253D.30 regarding revocation of provisional discharge recommendations.

⁴ The CAP concluded that *In re Dority*, in which this court considered the revocation of a provisional discharge pursuant to Minn. Stat. § 253D.30, was persuasive in reaching its conclusion that it did not have authority to review the revocation of a transfer. No. A18-1212, 2019 WL 178563, at *4 (Minn. App. Jan. 14, 2019), *review denied* (Minn. Mar. 19, 2019).

B.

We now construe these three statutes in response to the parties' arguments. Ashman and respondent Hennepin County⁵ assert that the CAP possesses authority to review the SRB's transfer revocation recommendation. They direct this court to the plain language of section 253D.29, which requires the SRB to make a recommendation to the CAP on a revocation review petition, as well as to the above-referenced related statutory provisions.

Respondent commissioner of human services (the commissioner), relying almost exclusively on this court's unpublished *Dority* opinion, asserts that the CAP has no such authority. In *Dority*, this court analyzed nearly identical language in section 253D.30 regarding the revocation of a provisional discharge and concluded the CAP lacked authority to review the SRB's recommendation. 2019 WL 178563, at *4. Absent a specific directive in section 253D.29, the commissioner argues, the CAP is without authority to review the SRB's transfer revocation recommendation.

We are not persuaded by the commissioner's reliance on this court's unpublished *Dority* decision in support of her interpretation of section 253D.29.⁶ We instead rely on our statutory analysis and conclude that, when these three statutory provisions are read

⁵ Respondent Anoka County, the county of financial responsibility, did not file a brief in this matter and did not appear before the CAP at Ashman's first-phase hearing. It did at that time, however, "join[] with the recommendations of all assessments opining that revocation of [Ashman's] transfer to CPS remains appropriate."

⁶ We note that *Dority's* challenge to the CAP's refusal to review the revocation of a provisional discharge pursuant to section 253D.30 was raised for the first time during oral argument to this court. *Id.*

together, they unambiguously authorize the CAP to review a transfer revocation recommendation of the SRB.

Appellate courts review issues of statutory interpretation *de novo*. See, e.g., *In re Civil Commitment of Poole*, 921 N.W.2d 62, 66 (Minn. App. 2018), review denied (Minn. Jan. 15, 2019). The goal of statutory interpretation is to “ascertain and effectuate the intention of the legislature.” Minn. Stat. § 645.16 (2020); see *In re Schmalz*, 945 N.W.2d 46, 50 (Minn. 2020) (applying Minn. Stat. § 645.16 (2018)); *In re Civil Commitment of Moen*, 837 N.W.2d 40, 50 (Minn. App. 2013) (applying this idea in a commitment appeal). Statutory interpretation first requires an analysis of whether a statute is, on its face, ambiguous. *Christianson v. Henke*, 831 N.W.2d 532, 536 (Minn. 2013). In determining ambiguity, words are given their “plain and ordinary meaning.” *Id.* If a statute is subject to more than one reasonable interpretation, it is ambiguous. *Id.* at 537.

Appellate courts “construe statutes as a whole so that statutory language is understood in context.” *Greene v. Minn. Bureau of Mediation Servs.*, 948 N.W.2d 675, 679 (Minn. 2020) (quotation omitted). Appellate courts “interpret a statute to give effect to all of its provisions; no word, phrase, or sentence should be deemed superfluous, void, or insignificant.” *T.G.G. v. H.E.S.*, 946 N.W.2d 309, 318-319 (Minn. 2020) (quotation omitted). When interpreting statutes, one objective of appellate courts “is to harmonize statutes if possible.” *Vill. Lofts at St. Anthony Falls Ass’n v. Hous. Partners III-Lofts, LLC*, 937 N.W.2d 430, 439 (Minn. 2020).

We begin first by analyzing the plain text of the statute guiding both the transfer from a secure treatment facility and the revocation of such transfer.

Section 253D.29—Transfer and Revocation of Transfer

A committed person may be transferred from a secure treatment facility to another “treatment program[] under the commissioner’s control” when such “transfer is appropriate.” Minn. Stat. § 253D.29, subd. 1(a).

A committed person’s transfer may be revoked by the executive director if the transfer setting does not “provide a reasonable degree of safety for the committed person or others or [if] the committed person has regressed in clinical progress so that” the transfer facility “is no longer sufficient to meet the committed person’s needs.” *Id.*, at subd. 3(a)(1)-(2). The executive director must issue a report documenting the “specific reasons” for revocation within seven days of the transfer revocation. *Id.*, at subd. 3(c).

Following a revocation, section 253D.29, subdivision 3(e) provides a mechanism for re-petitioning for a new transfer and also to seek review of the revocation. *See id.*, subd. 3(d)-(e). Aggrieved persons seeking a review of a revocation of transfer “may petition the [SRB] within seven days . . . for a review of the revocation. . . . The [SRB] shall *review the circumstances leading to the revocation* and, after considering the factors in subdivision 1, paragraph (b), *shall recommend to the [CAP]* whether or not the revocation shall be upheld.” *Id.*, subd. 3(e) (emphasis added).

This statutory language directs the petition-review process to include the CAP’s review of the SRB’s recommendations. First, it allows for a petitioner to seek review by the SRB of a transfer revocation. *Id.* Second, and most importantly for the issue before us, the statute directs that the SRB “shall recommend to the [CAP] whether or not the

revocation shall be upheld.” *Id.*; *see also* Minn. Stat. § 645.44, subd. 16 (2020) (“‘Shall’ is mandatory.”).

Therefore, section 253D.29 unambiguously directs the CAP’s authority to review the SRB’s revocation-of-transfer recommendation. Interpreting this provision as urged by the commissioner—to deny the CAP authority to review the recommendation which the SRB is obligated to make to the CAP—would render this provision superfluous. We reject this interpretation. We interpret a statute to give effect to all its provisions: we do not construe a statute in a manner that will render any of its “word[s], phrase[s], or sentence[s] . . . superfluous . . . or insignificant.” *T.G.G.*, 946 N.W.2d at 318-319 (quotation omitted); *see also State v. Wilson*, 830 N.W.2d 849, 853 (Minn. 2013) (“[W]e interpret the statute in a manner that renders no part of it meaningless.”). As we note above, no initial transfer from a secure facility is final absent CAP approval. Minn. Stat. § 246B.01, subd. 2(a). Therefore, the CAP has authority to consider the SRB’s transfer revocation recommendation.

The CAP’s authority to review is underscored by statutory provisions adjacent to section 253D.29, which we next consider.

Section 253D.27—Petition for Reduction in Custody

Section 253D.27 expressly authorizes the CAP to review a petition seeking a transfer from a secure treatment facility. *See* Minn. Stat. § 253D.27, subd. 1(b) (defining a “reduction in custody” as the “transfer [from] [] a secure treatment facility”). Section 253D.27 unambiguously provides that the SRB’s transfer recommendation is not final *until reviewed by the CAP*: “No reduction in custody or reversal of a revocation of provisional

discharge recommended by the [SRB] is effective until it has been reviewed by the [CAP] and until 15 days after an order from the [CAP] affirming, modifying, or denying the recommendation.” Minn. Stat. § 253D.27, subd. 4. These provisions confirm that the CAP has authority to consider the SRB’s transfer revocation recommendation.

Section 253D.28—The CAP

Section 253D.28 provides that a person committed pursuant to chapter 253D “may petition the [CAP] . . . for a rehearing and reconsideration of a recommendation of the [SRB] under section 253D.27.” Minn. Stat. § 253D.28, subd. 1(a). This provision next states that, even “[i]f no party petitions the [CAP] for a rehearing or reconsideration . . . [,] the [CAP] shall either issue an order adopting the recommendations of the [SRB] *or set the matter on for a hearing.*” *Id.*, subd. 1(c) (emphasis added). This requires the CAP to either adopt the SRB’s recommendations or set a hearing date for review of that recommendation, even if neither party petitions for review. *See id.* The statutory authority for the CAP to set a hearing, even in the absence of a specific request, would be superfluous but for the clear authority in the CAP to review when, as here, a timely petition for a hearing was made. *See T.G.G.*, 946 N.W.2d at 318-319. This language is a further indication of the unambiguous direction this statute provides that the CAP has authority to consider the SRB’s transfer revocation recommendation.

Summary of the Three Statutes

We summarize our review of these three statutes as follows:

- If a committed person’s transfer is revoked pursuant to section 253D.29, subdivision 3, that person may petition the SRB for a new transfer pursuant

to section 253D.27, or seek review by the SRB of the transfer revocation decision, or both.

- When the SRB reviews the revocation of a transfer, it is required to make a recommendation to the CAP pursuant to section 253D.29, subdivision 3(e).
- The CAP shall hold the hearing pursuant to section 253D.28, subdivision 2, and consider the petition for a review of the transfer revocation decision *de novo* pursuant to section 253D.28, subdivision 3.
- Even if no party petitions the CAP for a hearing, the CAP is required to either issue an order accepting the SRB's recommendations, or hold a hearing on the matter, pursuant to section 253D.28, subdivision 1(c).

In sum, once we interpret the relevant provisions in harmony they unambiguously authorize the CAP to review the SRB's recommendation regarding the revocation of a transfer from a secure treatment facility.

C.

We now apply our interpretation of these three statutes to Ashman's claim. Ashman timely appealed to the SRB, seeking both a review of the transfer revocation and a new transfer. The SRB recommended to the CAP to uphold the revocation of Ashman's transfer and to deny his new transfer petition. Ashman timely initiated his petition to the CAP, seeking review of the SRB's revocation-of-transfer recommendation. The CAP had authority and was required to review the SRB's transfer revocation recommendation. It did not do so. We therefore remand to the CAP for a hearing on the SRB's revocation recommendation.

The commissioner asserts that, even if we conclude that the CAP has authority to review the SRB's transfer revocation recommendation, no remand is warranted. The basis for the commissioner's assertion is that the CAP reviewed the statutory factors required to

consider a new transfer pursuant to section 253D.29, subdivision 1(b), and they are the same factors required by section 253D.29, subdivision 3(e), that govern review of a transfer revocation. We disagree.

First, nothing in the CAP's order or in the record suggests that the CAP reviewed the facts which led the executive director to revoke Ashman's transfer pursuant to the factors identified in section 253D.29, subdivision 3(a) (1)-(2). When revoking a transfer, the executive director must consider whether the "nonsecure setting . . . provide[s] a reasonable degree of safety for the committed person or others[,] or [if] the committed person has regressed in clinical progress," so that the transfer facility is no longer meeting the committed person's needs. Minn. Stat. § 253D.29, subd. 3 (a)(1)-(2).

Second, although the CAP considered the five factors in section 253D.29, subdivision 1(b), in relation to Ashman's petition for a new transfer to CPS, it did not consider those same factors in relation to Ashman's petition for rehearing and reconsideration of the revocation of transfer. Therefore, we conclude that a remand is necessary.⁷

⁷ Ashman also raised a constitutional due-process claim. However, because we determine that Ashman is entitled to relief on statutory grounds, we decline to address his constitutional arguments. *See G.H. Holdings, LLC v. Minn. Dept. of Commerce*, 840 N.W.2d 838, 843 (Minn. App. 2013) (deciding case on statutory grounds and declining to address petitioner's due-process claim) (citing *Pietsch v. Minn. Bd. of Chiropractic Exam'rs*, 683 N.W.2d 303, 309 n. 8 (Minn. 2004) (declining to decide constitutional issues presented when the case could be resolved on non-constitutional grounds)).

DECISION

Because the CAP has statutory authority to review the revocation of a civilly committed person's transfer from a secure treatment facility, Ashman is entitled to a hearing by the CAP to review the revocation of his transfer.

Reversed and remanded.