

*This opinion is nonprecedential except as provided by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
A22-0270**

In the Matter of the Civil Commitment of:
Michael Dewayne Perseke.

**Filed August 15, 2022
Affirmed
Kirk, Judge***

Commitment Appeal Panel
File No. AP21-9150

Thomas G. Kramer, Granite Falls, Minnesota (for appellant)

Keith Ellison, Attorney General, Anthony R. Noss, Assistant Attorney General, St. Paul, Minnesota (for respondent Commissioner of the Minnesota Department of Human Services)

Matthew D. Haugen, Chippewa County Attorney, Montevideo, Minnesota (for respondent Chippewa County)

Considered and decided by Slieter, Presiding Judge; Ross, Judge; and Kirk, Judge.

NONPRECEDENTIAL OPINION

KIRK, Judge

Appellant challenges the denial of his petition for transfer, provisional discharge, or discharge from his indeterminate civil commitment to the Minnesota Sex Offender Program as a sexually dangerous person. Because the commitment appeal panel did not abuse its discretion by denying the petition without an evidentiary hearing, we affirm.

* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

FACTS

Appellant Michael Dewayne Perseke is indeterminately civilly committed as a Sexually Dangerous Person (SDP) in the Minnesota Sex Offender Program (MSOP). Perseke has a long history of criminal sexual conduct. In 2020, Perseke petitioned the special review board (the SRB) for a transfer, provisional discharge, or discharge from civil commitment. Following a hearing, the SRB issued a decision recommending denial of the petition. Perseke did not file a petition for rehearing or reconsideration of the SRB's recommendation. The commitment appeal panel (the CAP) issued an order adopting the SRB's findings of fact and recommendations in their entirety and denying Perseke's petition without an evidentiary hearing. Perseke now appeals.

DECISION

Perseke challenges the CAP's decision denying his petition. An individual civilly committed to MSOP may petition the SRB for a transfer, a provisional discharge, or discharge from commitment. Minn. Stat. § 253D.27, subds. 1(b), 2 (2020). In each instance, the committed person first files a petition with the SRB, which conducts a hearing and issues a recommendation to the CAP. Minn. Stat. § 253D.27, subds. 2, 3 (2020). If the SRB recommends denying relief, the committed person may petition the CAP for rehearing or reconsideration of that determination. Minn. Stat. § 253D.28, subd. 1(a) (2020). "If 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) (2020).

Generally, appellate courts “view the evidence in a light favorable to the findings[,]” and “will not conclude that a fact[-]finder clearly erred unless, on the entire evidence, we are left with a definite and firm conviction that a mistake has been committed.” *In re Civ. Commitment of Kenney*, 963 N.W.2d 214, 221 (Minn. 2021) (citations and internal quotation marks omitted). When reviewing a district court’s findings of fact, appellate courts (a) do not reweigh the evidence; (b) do not find their own facts; and (c) do not reconcile conflicting evidence. *Id.* at 221-22. The supreme court stated that the clear error standard of review “is a review of the record to confirm that evidence exists to support the decision[,]” and that “[w]hen the record reasonably supports the findings at issue on appeal, it is immaterial that the record might also provide a reasonable basis for inferences and findings to the contrary.” *Id.* at 222-23 (quotation omitted). The supreme court stated that,

[c]onsequently, an appellate court need not go into an extended discussion of the evidence to prove or demonstrate the correctness of the findings of the trial court. Rather, because the factfinder has the primary responsibility of determining the fact issues and the advantage of observing the witnesses in view of all the circumstances surrounding the entire proceeding, an appellate court’s duty is fully performed after it has fairly considered all the evidence and has determined that the evidence reasonably supports the decision.

Id. at 222 (quotation omitted).

We therefore inquire whether the CAP properly adopted the SRB’s recommendation. Perseke’s failure to seek a hearing before the CAP limits our scope of review to whether the evidence supports the CAP’s findings of fact, and whether the factual findings support the CAP’s conclusions of law and denial of relief. *See Gruenhagen v. Larson*, 246 N.W.2d 565, 569 (Minn. 1976) (stating that absent motion for new trial,

appellate courts may review whether evidence supports findings of fact and whether findings support conclusions of law and judgment); *Kahn v. Tronnier*, 547 N.W.2d 425, 428 (Minn. App. 1996) (stating, in a case in which the appellant did not seek district court review of a referee’s ruling, that the scope of review on appeal was limited to “whether the evidence sustains the findings of fact and whether the findings support the conclusions of law and the judgment”), *rev. denied* (Minn. July 10, 1996).

Transfer.

A committed person seeking a transfer “must establish by a preponderance of the evidence that the transfer is appropriate.” Minn. Stat. § 253D.28, subd. 2(e) (2020). The following factors must be considered in determining whether a transfer is appropriate: “(1) the person’s clinical progress and present treatment needs; (2) the need for security to accomplish continuing treatment; (3) the need for continued institutionalization; (4) which facility can best meet the person’s needs; and (5) whether transfer can be accomplished with a reasonable degree of safety for the public.” Minn. Stat. § 253D.29, subd. 1(b) (2020).

The SRB considered each of these five statutory factors and the CAP adopted the SRB’s factual findings. The CAP found that Perseke’s risk assessment and SRB report indicated that he did not meet the criteria for transfer. The CAP found that although Perseke was behaviorally stable, he “is not an active participant in his treatment and has remaining treatment needs.” The CAP further found that Perseke had “several non-mitigated dynamic risk factors.” The CAP found that Perseke “continue[d] to require

security at his current level,” and that he could not be released from commitment “with a reasonable degree of safety for the public.”

The evidence supports the CAP’s findings of fact. Dr. Crystal Leal conducted a mental health assessment in November 2020. Leal assessed Perseke with Other Specified Paraphilic Disorder, Antisocial Personality Disorder, and Stimulant Use Disorder, among other things. MSOP’s Mallory Jorgenson also conducted a sexual violence risk assessment in August 2021. Jorgenson diagnosed Perseke with Unspecified Paraphilic Disorder, Antisocial Personality Disorder, and Stimulant Use Disorder, in addition to other disorders. Jorgenson opined that Perseke did not meet the statutory requirements for a transfer, partial discharge, or discharge from civil commitment.

Katherine Farrington, the MSOP Treatment Report Supervisor, submitted a Special Review Board Treatment Report in August 2021. Farrington stated that Perseke made only “limited progress in his current phase, which has primarily been the result of his inconsistent motivation for and involvement in treatment.” Perseke acknowledges in his own brief that his participation in treatment groups has “declined.” Perseke stopped attending treatment in June 2021 and, even while in treatment, he only “minimally addressed his treatment plan, lacked investment in the treatment process, and has not addressed treatment needs related to sexuality.” Perseke has not “complete[d] a sexual history polygraph or an objective measure of sexual arousal/interest which are cornerstones for any sex-offense specific treatment program.” Perseke has “openly stated that he has no intention of participating in a future polygraph examination,” which MSOP found troubling in light of Perseke’s expected likelihood of reoffending in the future. Farrington concluded

that Perseke “has not made the level of progress in the areas that would suggest that a transition to a less restrictive setting is clinically indicated at this time.” Therefore, Farrington expressed that in her opinion, “Mr. Perseke’s petition . . . is premature at this time.” The evidence in the record amply supports the CAP’s findings of fact that Perseke is not entitled to a transfer.

We determine further that the CAP’s findings of fact support its conclusions of law. The CAP concluded that Perseke’s transfer request was “not appropriate” because he has outstanding treatment needs and requires security. The CAP concluded that his transfer could not be “accomplished with a reasonable degree of safety for the public.” The record supports the CAP’s findings of fact which, in turn, support the CAP’s legal conclusions that Perseke is not entitled to a transfer.

Provisional Discharge.

For a provisional discharge, a person “shall not be provisionally discharged unless [he] is capable of making an acceptable adjustment to open society.” Minn. Stat. § 253D.30, subd. 1(a) (2020). The CAP considers two factors in determining whether to grant a provisional discharge:

- (1) whether the committed person’s course of treatment and present mental status indicate there is no longer a need for treatment and supervision in the committed person’s current treatment setting; and
- (2) whether the conditions of the provisional discharge plan will provide a reasonable degree of protection to the public and will enable the committed person to adjust successfully to the community.

Id., subd. 1(b) (2020).

The CAP found that Perseke's risk assessment and SRB report revealed that he did not qualify for a provisional discharge. Again, the evidence supports the CAP's findings of fact. MSOP considered the factors related to a provisional discharge from commitment, including "whether specific conditions exist to provide a reasonable degree of protection to the public and to assist the committed person in adjusting to the community." Jorgenson stated that Perseke lacks insight into his treatment needs and that "without a deep understanding of his offense dynamics, offense cycle, and specific methods to prevent such behavior in the future, there is not sufficient evidence to say he no longer has remaining criminogenic needs." Jorgenson noted that Perseke has historically continued to reoffend when he is without intervention and that "his criminogenic needs have not been adequately addressed." For these reasons, Jorgenson stated that "without further understanding what underlies his presentation in conjunction with his history, Mr. Perseke requires continued institutionalization in his current environment." Jorgenson stated that Perseke's "level of risk suggests a higher level of intervention is necessary as compared to the average offender." Jorgenson also stated that "continued security is critical."

Based on these assessments, MSOP stated that a provisional discharge from commitment "would not provide a reasonable degree of safety to the public." MSOP specifically cited to Perseke's "risk profile, antisocial personality construct, lack of insight, use of problematic coping mechanisms, unwillingness to collaborate with professionals, treatment interfering behaviors, and insufficient internal resources." Jorgenson stated that outpatient treatment or other housing options would not be sufficient to protect the public, nor would it give Perseke the treatment he needs.

The CAP's findings of fact support its conclusion that Perseke is not entitled to a provisional discharge.¹ The CAP concluded that a provisional discharge was not appropriate because Perseke is "not capable of making an acceptable adjustment to open society." The CAP's findings of fact support this conclusion. We therefore affirm the CAP's decision adopting the SRB's recommendation.²

Affirmed.

¹ Perseke also petitioned for discharge from commitment. "[T]he criteria for a provisional discharge are more lenient than the criteria for a [full] discharge." *Larson v. Jesson*, 847 N.W.2d 531, 535-36 (Minn. App. 2014). Therefore, a petitioner's failure to make a case for provisional discharge means that he cannot succeed on his petition for full discharge. *Id.* at 536.

² The commissioner argues that Perseke's arguments are forfeited. *Kahn* instructs that a district court's review of a referee's order "is not a prerequisite to [appellate] review," but instead alters the scope of review on appeal. 547 N.W.2d at 428. We decline to deem Perseke's arguments forfeited, but we limit our review to whether the record supports the findings of fact and whether the findings of fact support the CAP's conclusions of law. *Id.*