

*This opinion is nonprecedential except as provided by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
A24-1714**

In the Matter of the Civil Commitment of: Shawn Jamison.

**Filed March 24, 2025
Affirmed
Florey, Judge***

Commitment Appeal Panel
File No. AP23-9129

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Considered and decided by Ede, Presiding Judge; Harris, Judge; and Florey, Judge.

NONPRECEDENTIAL OPINION

FLOREY, Judge

Appellant challenges the denial of his petition for transfer from a secure facility to community preparation services, arguing that the Commitment Appeal Panel clearly erred in determining that transfer was not appropriate. We affirm.

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

FACTS

Between 2000 and 2002, appellant Shawn Michael Jamison was convicted of fifth-degree criminal sexual conduct for sexually touching a four-year-old girl and second-degree criminal sexual conduct for having repeated sexual contact with a ten-year-old girl.

In February 2012, Jamison was indeterminately civilly committed to the Minnesota Sex Offender Program (MSOP) as a sexually dangerous person. He appealed his commitment to this court on the grounds that the commitment violated his right to substantive due process. *In re Civ. Commitment of Jamison*, No. A12-0692, 2012 WL 4476644, at *1 (Minn. App. Oct. 1, 2012). We affirmed his commitment. *Id.* at *2-3.

MSOP is a three-phase program. Phase I “focuses primarily on general self-management, adherence to program rules and treatment-interfering behaviors and beliefs.” Phase II “focuses on the client’s offending patterns and the identification and resolution of underlying issues and motivations related to the offending behaviors.” Phase III “is the transitional phase of treatment and focuses on deinstitutionalization and community reintegration.” Jamison has been in phase II since December 2021. He resides at MSOP-Moose Lake.

In June 2022, Jamison petitioned the Special Review Board (SRB) for a reduction in custody, seeking discharge from civil commitment, provisional discharge, or transfer from a secure facility to community preparation services (CPS). *See* Minn. Stat. § 253D.27, subd. 2 (2024) (permitting a committed person to petition for a reduction in

custody).¹ CPS refers to “specialized residential services or programs operated or administered by [MSOP] outside of a secure treatment facility.” Minn. Stat. § 246B.01, subd. 2a (2024). The services “are designed to assist civilly committed sex offenders in developing the appropriate skills and resources necessary for an eventual successful reintegration into a community.” *Id.* Respondents Wright County and Commissioner of Human Services opposed Jamison’s petition.

In August 2023, after a hearing, the SRB made findings and recommended to grant the petition for transfer and deny the petition for provisional discharge and discharge from civil commitment. *See* Minn. Stat. § 253D.27, subd. 3(a) (2024) (providing that the SRB “shall hold a hearing on each petition before issuing a recommendation and report”).

The commissioner timely petitioned the Commitment Appeal Panel for rehearing and reconsideration of the SRB’s recommendation to grant transfer.² *See* Minn. Stat. § 253D.28 (2024) (authorizing a petition for rehearing and reconsideration before a judicial appeal panel, which considers the petition de novo). Accordingly, a court examiner was appointed to do a full evaluation.

The panel held a hearing in August 2024. Jamison testified on his own behalf and called a DHS risk assessor. The commissioner called the clinical court services director

¹ We cite the most recent version of Minn. Stat. § 253D.27, subd. 2 because it has not been amended in relevant part. *See Interstate Power Co. v. Nobles Cnty. Bd. of Comm’rs*, 617 N.W.2d 566, 575 (Minn. 2000) (stating that, generally, “appellate courts apply the law as it exists at the time they rule on a case”). For the same reason, we also cite the current versions of other statutes cited in this opinion.

² Jamison also petitioned for rehearing and reconsideration of the SRB’s recommendation to deny provisional discharge and discharge, but he withdrew his petition.

and the examiner the panel appointed. The panel also received exhibits, including expert reports and treatment notes.

Dr. Matthew Edwards, the DHS risk assessor, described two risk assessment reports that he prepared: an initial report in 2023, in anticipation of the SRB hearing, and an updated report in May 2024, in anticipation of the panel hearing. In the initial report, Dr. Edwards concluded that Jamison did not meet the criteria for transfer. In the updated report, Dr. Edwards “cautiously opine[d] [that] Mr. Jamison minimally meets criteria for transfer to CPS.”

Dr. Edwards described Jamison’s treatment trajectory as “solid.” Based on his review of Jamison’s history, Dr. Edwards explained that Jamison had gradually reengaged with treatment and that by 2021, Jamison “was pretty much back on board.” Dr. Edwards observed that, at around the same time, Jamison was having fewer disciplinary issues. Jamison had shown an “ability to manage increasingly stressful and challenging situations” without losing progress on his treatment. And, in Dr. Edwards’s view, if Jamison were transferred to CPS, he could be around “a group of positive peers who are more treatment minded” to “encourage him in the direction that he needs to go.” Dr. Edwards also testified that a treatment that Jamison may benefit from—eye movement desensitization and reprocessing (EMDR)—is unavailable at Moose Lake; it was only available at the St. Peter facility or through CPS.

At the same time, Dr. Edwards acknowledged that Jamison did not present a “straightforward clear case . . . for someone who is appropriate for CPS” because he has a “concerning” identification with a “group of considerably negative minded folks up at

Moose Lake” who “[h]e considers his family.” Dr. Edwards described a problematic attitude that Jamison holds on to:

As I mentioned in my report, he calls his room a cell. He calls his roommate a cellie. He refers to security counselors as guards. There’s a lot of old criminal mentality that’s still stuck. That does not bode well when you think about someone’s ability to make consistent prosocial choices. And it doesn’t support the idea that authority is someone that you can trust. Or the treatment team members are someone that . . . have your best interests in mind. It undermines the potential for him to consistently engage in prosocial behaviors. It undermines some of his potential ability to make progress in his treatment when he struggles with, can I trust my therapist; I don’t like my therapist; she doesn’t take the time to meet with me.

Relating that behavior to the appropriateness of transfer, Dr. Edwards testified that “anyone who’s holding onto the criminal code going into CPS is gonna face challenges.” And his view was that Jamison has “trauma that he still has to work on” that “has the potential to dysregulate him emotionally considerably” and potentially “lead to some behavioral issues.” Dr. Edwards noted that Jamison’s peer group was persistently described by providers as “anti-treatment,” “all pretty angry,” and “reactive.” According to Dr. Edwards, while Jamison stated that he considers the group his “family” and reports that they “offer him a sense of belonging and safety, to describe them as prosocial supports in the truest sense is an overstatement.”

Christopher Schiffer, the clinical court services director at MSOP, also testified. His role encompasses making recommendations and reports to the panel. Schiffer testified that Jamison has made a notable shift to being more active in treatment and pursuing sobriety but that he still has issues with “antisociality,” externalizing blame and being influenced

by his “antisocial companions.” Schiffer clarified that arousal management treatment is available at MSOP-St. Peter but not MSOP-Moose Lake. He further testified that Jamison’s needs would be best met at a secured facility, whether at MSOP-Moose Lake or St. Peter. Moose Lake provides talk therapies that are used to treat trauma.

The final expert the panel heard from was Dr. Amanda Powers, a panel-appointed examiner. She interviewed Jamison, reviewed records, analyzed his sexual recidivism risk, and issued a report. Dr. Powers opined that Jamison needs EMDR and arousal management treatment, which are available at CPS or MSOP-St. Peter (another secure treatment facility) but not at MSOP-Moose Lake. Yet Dr. Powers concluded that Jamison’s “transfer cannot be accomplished with a reasonable degree of safety to the public.” Her basis for this conclusion was that “Jamison’s current treatment progress is indicative of individuals who have not yet acquired treatment knowledge and implementation that would mitigate risk in the lower direction.” She noted that Jamison does not pose an elopement risk and would “not have unsupervised access to potential victims at CPS.” She also identified a number of unmanaged dynamic risk factors, including Jamison’s sexual deviance and sexual preoccupation, non-compliance with supervision, emotional identification with children, and negative social influences. And although Dr. Powers said that MSOP-St. Peter would meet Jamison’s needs better than MSOP-Moose Lake because it provided EMDR therapy, she testified that she did not believe that Jamison’s needs could best be met at CPS.

Jamison also testified on his own behalf. He testified that he has been sober from alcohol since 2018. He testified that he has been engaged with his group treatment but does not attend the optional Alcoholics Anonymous group because he feels it was not a good

fit. Jamison testified that he has not been offered EMDR at MSOP-Moose Lake. He has not done individual assignments with his therapist on trauma work, but he has started writing short stories about his traumatic incidents. Jamison disclosed that he regularly writes to three people who are at CPS, which he finds encouraging. He had a close relationship with his prior therapist and has adjusted to his new therapist. And Jamison testified that he ultimately believed that he was prepared to deal with the stress of getting treatment while under less supervision at CPS and that he had no intention of harming anyone.

The panel determined that it was not appropriate to transfer Jamison to CPS. Although the panel recognized that Jamison had made some progress in treatment, it determined that he needed additional treatment in a secured facility before a transfer to CPS would be safe and clinically effective. Accordingly, the panel denied Jamison's petition for transfer to CPS.

Jamison appeals.

DECISION

This appeal raises a single issue: whether the panel clearly erred by denying Jamison's request to be transferred to CPS. We review the panel's decision for clear error. *In re Civ. Commitment of Kropp*, 895 N.W.2d 647, 650 (Minn. App. 2017), *rev. denied* (Minn. June 20, 2017). When reviewing factual findings for clear error, appellate courts view the evidence in the light most favorable to the findings, do not find their own facts, do not reweigh the evidence, and do not reconcile conflicting evidence. *In re Civ. Commitment of Kenney*, 963 N.W.2d 214, 221-22 (Minn. 2021).

Many of the panel’s findings were based on its evaluation of the expert testimony it received at the hearing. We “generally . . . defer to [the panel’s] evaluation of expert testimony.” *In re Civ. Commitment of Fugelseth*, 907 N.W.2d 248, 256 (Minn. App. 2018) (quotation omitted), *rev. denied* (Minn. Apr. 17, 2018). The panel “is not bound by the recommendations of the experts, unless the experts’ testimony is so positive as to exclude all doubt as to the matter on which they are given.” *Kenney*, 963 N.W.2d at 225 (quotation omitted). The panel may reach a conclusion contrary to the experts’ unanimous recommendation if the conclusion is supported by “other evidence in the record as a whole—such as treatment records, lay or clinical testimony, or parts of an expert’s report or testimony.” *Id.*

The panel may grant a request to transfer out of a secure facility, but only if it finds that transfer is appropriate. Minn. Stat. § 253D.29, subd. 1(a) (2024). The petitioner bears the burden to demonstrate appropriateness by a preponderance of the evidence. Minn. Stat. § 253D.28, subd. 2(e) (2024). “In evaluating whether a petitioner has demonstrated the appropriateness of transfer by a preponderance of the evidence, ‘[t]he panel must address the statutory factors.’” *Foster v. Jesson*, 857 N.W.2d 545, 549 (Minn. App. 2014) (alteration in original) (quoting *Piotter v. Steffen*, 490 N.W.2d 915, 919 (Minn. App. 1992), *rev. denied* (Minn. Nov. 17, 1992)). The factors are:

- (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 other treatment program 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)(1)-(5) (2024).

Here, in its memorandum, the panel addressed each of the statutory factors and determined that transfer would not be appropriate. The panel explained that, although Jamison is doing well in his treatment at Moose Lake, he did not meet his burden to prove that transfer was appropriate by a preponderance of the evidence. The panel “found Dr. Powers most credible and persuasive as to [Jamison’s] clinical progress and present treatment needs and how [Jamison] requires the security and institutionalization of a secure treatment setting for continued progress.” The panel noted that Jamison had “work to do on his antisociality that will make him a better candidate for CPS in the future,” but that “this work is best done inside a secure perimeter.”

In challenging the panel’s determination that transfer was not appropriate, Jamison’s arguments fall into two categories: (A) those relating to clinical progress, present need for treatment, and the treatment program that would best suit Jamison’s needs, *see* Minn. Stat. § 253D.29, subd. 1(b)(1), (4), and (B) those relating to Jamison’s need for security to accomplish continuing treatment, need for continued institutionalization, and whether transfer can be accomplished with a reasonable degree of safety, *see* Minn. Stat. § 253D.29, subd. 1(b)(2), (3), (5). We address them in turn.

A. Clinical progress and treatment needs

Jamison posits that he “has clearly demonstrated positive clinical progress in treatment,” but his treatment needs are not being met at MSOP-Moose Lake because he needs services that are not offered there. He advances three arguments in support of this position.

First, Jamison argues that the panel clearly erred “when it determined that MSOP-St. Peter is the best and most appropriate treatment location.” We disagree that the panel made that determination. Rather, the panel considered Dr. Edwards and Dr. Powers’ opinion that MSOP-St. Peter was the most appropriate location for Jamison, but the panel did not itself reach that conclusion. More to the point, the panel was not empowered to transfer Jamison to MSOP-St. Peter because that request was outside the scope of Jamison’s petition for a reduction in custody. *See* Minn. Stat. § 253D.27, subd. 1(b) (2024) (“‘[R]eduction in custody’ means transfer out of a secure treatment facility, a provisional discharge, or a discharge from commitment.”). The panel found it “very disturbing” that treatments that could meet Jamison’s needs, such as EMDR and arousal management, were not offered at MSOP-Moose Lake. But the issue before the panel was not which secure treatment facility is best for Jamison; the issue was whether transfer to CPS was appropriate. The panel recognized this limitation on its authority.

Second, Jamison contends that the panel clearly erred because “[i]t is undisputed that Jamison’s treatment needs can be met at CPS.” But this argument does not establish clear error. A panel is not required to transfer a client solely because CPS can meet their needs better than a secure facility. The statute requires the panel to consider other factors. In determining whether transfer is appropriate, the panel must “consider[] . . . the person’s clinical progress and present treatment needs” and the treatment program that can best meet those needs among three other factors. Minn. Stat. § 253D.29, subd. 1(b). The panel did so here.

Moreover, the record reasonably supports the panel's conclusion Jamison's treatment needs cannot be most effectively met at CPS at this time. Although the record established that CPS offers services that are within Jamison's present treatment needs and are unavailable at MSOP-Moose Lake, the panel concluded that Jamison's work of getting past "his antisociality" and reducing his risk to reoffend "is best done inside a secure perimeter." This evaluation of Jamison's social preparedness is reasonably supported by the record as a whole. For example, Dr. Edwards testified that Jamison has an "old criminal mentality" and that "anyone who's holding onto the criminal code going into CPS is gonna face challenges." And in his updated report, Dr. Edwards wrote that Jamison "is not an ideal candidate for CPS" and that clients who are not ready for CPS "risk jeopardizing their own progress and that of their peers." *See Kenney*, 963 N.W.2d at 225 (suggesting that parts of an expert's report or testimony may be used as evidence to support the panel's conclusion, even if that conclusion differs from the expert's ultimate opinion). Thus, the panel did not clearly err in finding that Jamison must continue his treatment in a secured facility until he is ready for CPS.

Third, Jamison argues that the panel clearly erred in relying on Dr. Powers' opinion despite rejecting two components of her testimony: (1) that MSOP offered Jamison a lateral transfer to MSOP-St. Peter, and (2) that Jamison could destabilize if administered EMDR and arousal management treatment. We are not persuaded.

As we explained above, the panel may rely on "parts of an expert's report or testimony" in making its determination, and it is not error to discount portions of expert opinions where those opinions conflict with other portions of the record. *Kenney*, 963

N.W.2d at 225 (citing *In re Civ. Commitment of Duvall*, 916 N.W.2d 887, 894-95 (Minn. App. 2018)). Rather, the panel’s rejection of only the unsupported portions of Dr. Powers’ testimony—which Jamison himself characterizes as a product of the panel’s “careful[] review” of the record—demonstrates that it thoughtfully weighed the evidence and even reconciled some conflicting evidence in Jamison’s favor. And Jamison mischaracterizes the panel’s evaluation of Dr. Powers’ EMDR destabilization prediction. Jamison states that “the panel did not agree that [destabilization] was highly likely to occur.” But the panel did not express disagreement—it merely “not[ed] that it did not base its decision [on the fact that] that there is a ‘high likelihood’ [Jamison] could destabilize” because of EMDR and certain other treatments. Because the panel appropriately considered Jamison’s clinical progress and treatment needs in evaluating the appropriateness of transfer to CPS, we discern no error relating to the panel’s determinations on these factors.

B. Security, need for institutionalization, and public safety

We turn now to Jamison’s arguments relating to security, need for institutionalization, and public safety. *See* Minn. Stat. § 253D.29, subds. 1(b)(2), (3), (5).

Jamison argues that the panel clearly erred by applying the incorrect legal standard in stating, “[I]f his treatment needs were different he could be transferred without risk to the public safety,” because the statute does not require a risk-free transfer—only that transfer be “accomplished with a reasonable degree of safety for the public.” Minn. Stat. § 253D.29, subd. 1(b)(5). The commissioner responds that the panel cited the proper legal standard in the final paragraph, which makes it “clear that the Panel’s prior reference to ‘without risk to the public’ is not the legal standard it applied.”

We discern no clear error here. By saying that the transfer could be risk-free if Jamison's treatment needs were different, the panel did not imply that it misunderstood the legal standard to *require* a lack of risk. And the panel's recitation of the correct standard, in addition to its appropriate analysis under that standard, assures us that the panel's finding on this factor was not clear error. Moreover, the panel's statement does not seem to suggest that it concluded that the risk was so great as to preclude transfer; it seemed more focused on Jamison's treatment needs. That is consistent with its conclusion that his treatment would be "best done inside a secure perimeter."

Finally, Jamison argues that the panel clearly erred in finding that the transfer was inappropriate because "the record as a whole, and numerous findings made by the [p]anel, undercut the [panel's] ultimate conclusion" on three factors: the need for security to accomplish continuing treatment; the need for continued institutionalization; and whether transfer can be accomplished with a reasonable degree of safety to the public. *See* Minn. Stat. § 253D.29, subd. 1(b)(2)-(3), (5). Jamison relies on evidence that he would have more prosocial peers at CPS; that CPS has more services available to address institutionalization; that Jamison's compliance with rules has improved, as has his focus on recovery; that he has maintained his sobriety and developed skills to help him avoid relapse; that the actuarial assessments suggest that his recidivism risk is not heightened; and that Jamison is not an elopement risk, nor would he have access to his victim pool at CPS. In response, the commissioner characterizes Jamison's argument as a call for this court to improperly reweigh evidence.

Although Jamison is correct that there is evidence supporting the appropriateness of transfer, the question before us is whether the evidence on the whole reasonably supports the panel's decision. *See Kenney*, 963 N.W.2d at 222. We conclude that it does. Two of the three experts testified that it would be inappropriate for Jamison to be transferred to CPS. Dr. Powers' opinion was informed by a risk assessment that accounted for Jamison's present actuarial recidivism risk of sexual re-offense of 22.7% in the next five years. And Dr. Powers testified that persons in Jamison's risk pool (i.e., children) are present at CPS and are not always escorted as they are at Moose Lake. These safety concerns reasonably support the panel's conclusion that transfer was inappropriate.

In sum, while there is conflicting evidence about the appropriateness of Jamison's transfer, the evidence on the whole reasonably supports the panel's nuanced determination that the preponderance of the evidence does not support a transfer to CPS "at this time." The panel therefore did not clearly err in denying Jamison's petition for transfer.

Affirmed.