

*This opinion is nonprecedential except as provided by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
A24-1879**

In the Matter of the Civil Commitment of: Brad Stevens.

**Filed June 2, 2025
Affirmed
Slieter, Judge**

Commitment Appeal Panel
File No. AP23-9079

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(for appellant Brad Stevens)

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

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Goodhue County)

Considered and decided by Larson, Presiding Judge; Slieter, Judge; and Florey,
Judge.*

NONPRECEDENTIAL OPINION

SLIETER, Judge

Appellant challenges the judicial appeal panel’s first-phase denial of his petition for discharge, provisional discharge or transfer, from his indeterminate civil commitment to the Minnesota Sex Offender Program (MSOP) as a sexually dangerous person. Because

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

appellant failed to present *prima facie* evidence entitling him to provisional discharge, or discharge, and because he failed to prove by a preponderance of the evidence that he is entitled to a transfer, we affirm.

FACTS

Appellant Brad Ronald Stevens was indeterminately civilly committed to the MSOP as a sexually dangerous person in 2005. This is Stevens's fifth appeal involving his civil commitment. In his first two appeals, we affirmed the district court's denial of his motions for dismissal. *See In re Commitment of Stevens*, No. A10-1554, 2011 WL 691855 (Minn. App. Mar. 1, 2011) (affirming the denial of a motion to vacate commitment), *rev. granted* (Minn. May 17, 2011) *and appeal dismissed* (Minn. Aug. 18, 2011); *In re Commitment of Stevens*, No. A15-2054, 2016 WL 3376062 (Minn. App. June 20, 2016) (affirming the denial of a motion for injunctive relief). In his third and fourth appeals, we affirmed the appeal panel's denials of Stevens' petitions for discharge. *See In re Civ. Commitment of Stevens*, No. A17-0716 (Minn. App. Sept. 5, 2017) (affirming dismissal of a petition for a full discharge); *In re Commitment of Stevens*, No. A21-0270, 2021 WL 3852781 (Minn. App. Aug. 30, 2021) (affirming the dismissal of a petition for provisional or full discharge).

In February 2022, Stevens petitioned the Special Review Board (SRB) for a full discharge, a provisional discharge, or a transfer to community preparation services (CPS). The Minnesota Commissioner of Human Services and Goodhue County opposed the petition. The SRB recommended that the appeal panel deny Stevens's petition. Stevens petitioned the appeal panel for rehearing and reconsideration of his petition.

Stevens presented testimony from four witnesses: the director of the MSOP forensic-evaluation department, the MSOP forensic evaluator, the MSOP clinical supervisor, and himself. The parties stipulated to all 20 exhibits, which included 11 from Stevens and nine from the commissioner. Stevens's exhibits consisted of letters from clergy in the Church of Scientology as well as the results of assignments he completed for the church. The commissioner's exhibits included the appeal-panel-appointed doctor's "Focused Review Report" that recommended denial of Stevens' petition, along with other medical reports from his treatment team.

At the close of Stevens's case, the commissioner and county moved for dismissal pursuant to Minn. R. Civ. P. 41.02(b). In its order, the appeal panel concluded that, as to discharge, Stevens failed to allege a *prima facie* case that he is entitled to a full or provisional discharge. The appeal panel also concluded that, as to his transfer request, Stevens failed to demonstrate by a preponderance of evidence that transfer is appropriate.

Stevens appeals.¹

DECISION

A person who is committed as a sexually dangerous person may petition the SRB for a reduction in custody. Minn. Stat. § 253D.27, subd. 2 (2024). In the event of an adverse ruling from the SRB, the committed person may seek a rehearing and reconsideration from the appeal panel. Minn. Stat. § 253D.28, subd. 1(a) (2024). Once the committed person completes presentation of evidence in support of the petition, the

¹ Goodhue County did not participate in this appeal.

commissioner may move to dismiss the petition pursuant to rule 41.02(b) of the rules of civil procedure. *See Coker v. Jesson*, 831 N.W.2d 483, 489-91 (Minn. 2013) (addressing motions to dismiss in the context of petitions for discharge).

The statutory burdens placed on committed persons petitioning for a discharge or a provisional discharge are different from those put on committed persons petitioning for transfer. Thus, different standards apply when a commitment appeal panel evaluates whether the petitioner made a *prima facie* case for the relief sought. *See Foster v. Jesson*, 857 N.W.2d 545, 548-49 (Minn. App. 2014) (addressing these differences). On a petition for discharge or provisional discharge, the committed person “bears the burden of going forward with the evidence, which means presenting a prima facie case with competent evidence to show that the person is entitled to the requested relief.” Minn. Stat. § 253D.28, subd. 2(d) (2024). The burden on the committed person is a “burden of production,” not persuasion. *Coker*, 831 N.W.2d at 486. On a motion to dismiss a discharge petition at the close of the petitioner’s case, the appeal panel must “view the evidence . . . in a light most favorable to the committed person.” *Id.* at 491.

By contrast, on a petition for transfer, the person seeking the transfer has the burden of establishing “by a preponderance of the evidence that transfer is appropriate.” Minn. Stat. § 253D.28, subd. 2(e) (2024). The committed person’s burden on a petition for transfer is thus one of both production and persuasion. *Foster*, 857 N.W.2d at 548. As a result of these two different types of burdens in proceedings before the appeal panel, we review the grant of a commissioner’s motion to dismiss a discharge petition *de novo*, while we review the findings of fact relating to a transfer petition for clear error. *Id.*

Petition for Discharge and Provisional Discharge

Because our *de novo* review leads us to conclude that Stevens’s petition does not meet the burden of production of evidence sufficient to support a provisional discharge, and he therefore cannot meet his burden of production supporting a full discharge, we begin and end with our consideration of his provisional-discharge petition.

A provisional discharge requires that the committed person be “capable of making an acceptable adjustment to open society.” Minn. Stat. § 253D.30, subd. 1(a) (2024). Additionally, the following factors must be considered when evaluating a petition for 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.

Minn. Stat. § 253D.30, subd. 1(b) (2024).

As we noted, the committed person “bears the burden of going forward with the evidence, which means presenting a *prima facie* case with competent evidence to show that the person is entitled to the requested relief.” Minn. Stat. § 253D.28, subd. 2(d). To satisfy this burden, the committed person must produce evidence that, if unopposed, would satisfy the criteria for provisional discharge. *Larson v. Jesson*, 847 N.W.2d 531, 535 (Minn. App. 2014). During the first-phase hearing, the appeal panel must view the evidence in the light most favorable to the committed person. *Coker*, 831 N.W.2d at 491. And the appeal panel

may consider only the evidence produced by the committed person. *In re Civ. Commitment of Poole*, 921 N.W.2d 62, 66 (Minn. App. 2018), *rev. denied* (Minn. Jan. 15, 2019). Failure to assert a *prima facie* case may warrant dismissal of the petition under Minn. R. Civ. P. 41.02(b). *Coker*, 831 N.W.2d at 489.

Based upon evidence stipulated to by the parties, the appeal panel received evidence from the MSOP treatment team that Stevens has refused to take part in any recommended sex-offender treatment.² As a result, Stevens’s treatment team cannot determine whether Stevens understands the circumstances surrounding his sexual misconduct which led to his commitment. For example, Stevens refuses to discuss his criminal offenses and instead talks generally about how his alcohol use may have contributed to his criminal acts. Therefore, his treatment team maintains that he remains in need of such treatment.

The only evidence Stevens presented was his own testimony in which he suggests that, because he completed assignments through the Church of Scientology, he has successfully taken part in appropriate treatment. But, by itself, this self-serving testimony does not demonstrate that Stevens is “capable of making an acceptable adjustment to open society.” Minn. Stat. § 253D.30, subd. 1(a). A person requesting provisional discharge must offer something beyond their own self-serving testimony to demonstrate that their treatment needs and risk meet the statutory criteria. *See Poole*, 921 N.W.2d at 68 (holding

² For purposes of this appeal, we assume evidence a petitioner stipulates to be admissible can be considered by an appeal panel when addressing whether the petitioner made a *prima facie* case for discharge or provisional discharge.

that uncorroborated conclusory assertions by a client are insufficient to avoid a motion to dismiss). Therefore, Stevens has not satisfied his burden of production.

The appeal panel concluded that, viewing the evidence submitted by Stevens and the evidence to which the parties stipulated in a light most favorable to Stevens, he failed to present a *prima facie* case showing that he is entitled to a provisional discharge. Our *de novo* review of the record leads us to conclude that the appeal panel correctly denied Stevens's petition for provisional discharge.

Because Stevens does not make a *prima facie* case for provisional discharge, he cannot meet a *prima facie* case for a full discharge. See *Larson*, 847 N.W.2d at 535-36 (holding that the provisional discharge criteria is more lenient than that for a full discharge).

Transfer to CPS

Under the clear-error standard of review, it is not proper for appellate courts to reweigh the evidence; rather, the appellate court's role is to review "the record to confirm that evidence exists to support the decision." *In re Civ. Commitment of Kenney*, 963 N.W.2d 214, 222 (Minn. 2021). This court defers to the appeal panel's evaluation of expert testimony. See *In re Civ. Commitment of Fugelseth*, 907 N.W.2d 248, 256 (Minn. App. 2018), *rev. denied* (Minn. Apr. 17, 2018).

"In evaluating whether a petitioner has demonstrated the appropriateness of transfer by a preponderance of the evidence, the panel must address the statutory factors." *Foster*, 857 N.W.2d at 549 (quotation omitted). 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).

The appeal panel considered the statutory factors and determined that Stevens did not “demonstrate by a preponderance of evidence that transfer to CPS is appropriate according to the statutory factors.” The appeal panel noted that Stevens’ “current clinical progress and present treatment needs are best met in his current setting,” and that he “continues to require the level of security and institutionalization with the MSOP.” The record supports the appeal panel’s findings and determination.

As to our review of the statutory factors and the record, we summarize the factors in two categories. The first category comprises evidence relating to clinical progress, present need for treatment, and the treatment program best suiting Stevens’s needs. *See* Minn. Stat. § 253D.29, subd. 1(b)(1), (4). The second category comprises evidence relating to Stevens’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).

Clinical Progress and Treatment Needs

The record supports the appeal panel’s finding that Stevens is a nonparticipant in the MSOP treatment program. According to the treatment team’s report, Stevens has not participated in treatment since 2005 except for a brief six-month period in 2021.

The treatment team expressed concerns that, because Stevens has not completed treatment, he currently does not understand the impact his criminal acts have had on his victims, which is necessary for a successful rehabilitation. Therefore, the treatment team concluded that Stevens continues to need treatment as recommended by the MSOP program.

Security, Need for Institutionalization, and Public Safety

As part of its determination that Stevens continues to need treatment in a secured facility to satisfy concerns for public safety, the appeal panel relied, in part, on the forensic examination of Stevens by one of his treating doctors. The doctor opined that Stevens does not meet the criteria for a transfer to CPS, presents a risk for sexual recidivism, and needs to remain in a secure facility for purposes of public safety. This opinion is consistent with the opinion provided by the court-appointed examiner who opined that Stevens does not meet the statutory criteria for transfer, has had no meaningful participation in the evidence-based treatment program at MSOP, and therefore must remain in a secure setting.

Stevens testified that he disagrees with the treatment team's findings and recommendations, but summarily disagreeing with the findings and recommendations is insufficient evidence to support a transfer. *See Poole*, 921 N.W.2d at 68 (holding that uncorroborated conclusory assertions by a client are insufficient to avoid a motion to dismiss).

In sum, the appeal panel evaluated the evidence relevant to transfer with the statutory factors listed in Minn. Stat. § 253D.29, subd. 1(b). Because the record supports the appeal panel's findings and determination that the preponderance of the evidence does

not support a transfer to CPS, the appeal panel did not clearly err in denying Stevens's petition for transfer.

Finally, we address Stevens's main argument regarding the appeal panel's denial of his petition for a reduction in custody. Stevens claims that the appeal panel did not properly consider that he is a member of the Church of Scientology which, as suggested by the Scientology clergy letters, does not believe it is appropriate to participate in any form of group therapy as recommended by the MSOP.

Stevens does not claim that the commitment statute is unconstitutional. Instead, he argues that the appeal panel did not recognize his right to refuse the recommended sex-offender treatment when it violates his religious beliefs and when considering his requested relief. We are not persuaded.

The record demonstrates that the appeal panel explicitly considered Stevens's religious practice. Stevens testified at length about his membership with the Church of Scientology and his beliefs. And the appeal panel received several exhibits detailing the Church of Scientology and its beliefs as it relates to sex-offender treatment. However, the appeal panel also heard from Stevens's treatment team that they have attempted to find commonalities between his religious beliefs and the treatment goals of MSOP and that those attempts have been resisted by Stevens. *See Kenney*, 963 N.W.2d at 221 ("We have repeatedly stated that clear-error review does not permit an appellate court to 'weigh the evidence as if trying the matter *de novo*.'"). Therefore, the appeal panel considered Stevens's concerns as it relates to his religious beliefs but, as noted, carefully considered

the evidence which supports its determination that Stevens failed to meet his burden of demonstrating that he is entitled to a transfer.

Affirmed.