RECORD IMPOUNDED

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-2761-22

IN THE MATTER OF THE CIVIL COMMITMENT OF B.S., SVP-053-00.

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Argued May 21, 2024 – Decided June 14, 2024

Before Judges Enright and Paganelli.

On appeal from the Superior Court of New Jersey, Law Division, Mercer County, Docket No. SVP-053-00.

Michael Thomas Mangels, Deputy Public Defender, argued the cause for appellant B.S. (Jennifer Nicole Sellitti, Public Defender, attorney; Michael Thomas Mangels, on the briefs).

Stephen J. Slocum, Deputy Attorney General, argued the cause for respondent State of New Jersey (Matthew J. Platkin, Attorney General, attorney; Melissa H. Raksa, Assistant Attorney General, of counsel; Stephen J. Slocum, on the brief).

PER CURIAM

Appellant, B.S.,[1] challenges the April 10, 2023 order denying his request for a promotion in his treatment phase at the State of New Jersey Special Treatment Unit (STU).[2] We affirm, substantially for the reasons set forth by Judge Patrick J. Bartels in his well-reasoned written opinion.

I.

We summarize the pertinent facts and procedural history from the record. B.S. is now fifty years old. At age fifteen, he was adjudicated delinquent for sexually assaulting his four-year-old stepsister two to three times a week for several months. Thereafter, he was enrolled in the Pinelands Adolescent Sex Offenders program—where he failed to respond to treatment—and the Vision Quest program—where he remained until he turned eighteen and his probationary term ended.

In March 1995, B.S. was arrested and charged with: second-degree sexual assault, N.J.S.A. 2C:14-2(b); second-degree endangering the welfare of a child,

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[1] We use initials to refer to appellant because records pertaining to civil commitment proceedings under the Sexually Violent Predator Act (SVPA) are deemed confidential under N.J.S.A. 30:4-27.27(c) and are excluded from public access per Rule 1:38-3(f)(2).

[2] The STU is the State's designated facility for the custody, care, and treatment of sexually violent predators.

N.J.S.A. 2C:24-4(a); and fourth-degree lewdness, N.J.S.A. 2C:14-4(b)(1). His victim was his six-year-old cousin. After B.S. pled guilty to second-degree sexual assault and his remaining charges were dismissed, he was sentenced to a five-year term at the Adult Diagnostic and Treatment Center, required to comply with Megan's Law, N.J.S.A. 2C:7-1 to -23, and ordered to have no contact with the victim. Less than three years later, he was discharged and civilly committed to Ann Klein Forensic Center. In March 1999, he was transferred to Ancora Psychiatric Hospital and was discharged from that facility six months later, over the objections of his treatment team.

A month after his release from Ancora, B.S. violated the terms of discharge by failing to register under Megan's Law, and residing with another child molester. After moving into the home of a woman and her two young children, he violated his conditional discharge by again failing to register under Megan's Law. These violations triggered B.S.'s return to Ancora in October 1999. In April 2000, he was civilly committed to the STU under the SVPA, N.J.S.A. 30:4-27.24 to -27.38.

In 2017, as a result of a court order, the STU devised a conditional discharge plan for B.S. He commenced supervised furloughs in the community in August 2018. In February 2019, he submitted to a furlough polygraph which

showed significant reactions regarding pornography use. When confronted, B.S. admitted he watched an erotic movie and was aware of its content before watching it. He later denied viewing the movie.

B.S.'s furlough process was reinstated in May 2019, but two months later, it was discovered he accessed pornography on his phone on multiple occasions. His access involved real time internet shows with chat capability. In August 2019, B.S.'s discharge planning and furloughs were suspended pending a court hearing. In January 2020, the trial court recommitted B.S. to the STU.

In March 2021, B.S. was placed in the Modified Activities Program (MAP)[3] after he was found in possession of a cellphone, an item considered contraband at the STU. Five months later, B.S. was removed from MAP status. However, in December 2021, he returned to MAP status after he was found in possession of a cellphone and charger. He was removed from MAP status in May 2022.

[3] MAP, "a component of the clinical treatment program at the STU that focuses on stabilizing disruptive or dangerous behaviors," is a behavior-related treatment modality. M.X.L. v. N.J. Dep't of Hum. Servs./N.J. Dep't of Corr., 379 N.J. Super. 37, 45 (App. Div. 2005). "MAP is not a punishment to those involuntarily committed, but a necessary part of the entire treatment regimen to rehabilitate those committed to a return to the community." Id. at 48.

B.S. admitted having the first cellphone for a period of six months and the second cellphone for a period of five months. He also conceded he used the cellphones to access pornography and direct women to perform specific sexual acts, despite the fact his furloughs were previously suspended based on his viewing pornography. Moreover, he confirmed he knew watching pornography was against the rules at the STU.

In October 2022 and January 2023, the STU Treatment Progress Review Committee (TPRC) reported that B.S "present[ed] as highly likely to recidivate if not confined to a secure facility such as the STU." The TPRC further concluded B.S. "did not make any treatment progress during the current review period," and recommended that he not be promoted to Phase 4 of treatment but rather, "be demoted to Phase 2 of treatment."[4]

[4] As noted in the Residents' Guide to the STU, the treatment phases are as follows: Phase 1 involves orientation, as new residents adapt to being civilly committed; Phase 2 represents the "rapport-building" phase, as residents begin to engage in treatment and are expected to comply "with at least the majority of prescribed elements of treatment"; Phase 3, which includes Phases 3A and 3B, represents core sex-offender specific treatment; Phase 4 involves a resident "applying and 'living' the concepts and principles learned in the '[c]ore [p]hase'" and "it is in Phase 4 that detailed discharge planning will be accomplished"; and Phase 5 provides for transition into the community, including the commencement of furloughs.

On February 13, 2023, B.S. was scheduled to appear in court for his annual review hearing, as required under the SVPA. Before the review hearing proceeded, B.S. stipulated the State established by clear and convincing evidence that he: (1) committed a predicate sexual offense; (2) possessed a mental abnormality and a personality disorder; and (3) was likely to sexually reoffend and should remain committed at the STU. Based on this stipulation, Judge Bartels found B.S.'s "continued civil commitment at the STU remain[ed] appropriate."

Although B.S.'s continuing commitment was no longer at issue, at B.S.'s request, the judge agreed on February 13 to conduct "a treatment review hearing to review B.S.'s phase placement at the STU," and consider B.S.'s contention that he should be reinstated to Phase 3A of treatment, rather than remain demoted to Phase 2. The State called Eugene Dunaev, Psy.D., and B.S. called Christopher P. Lorah, Ph.D., to testify on this issue. The parties also stipulated an expert report from another State witness, Marta Pek Scott, M.D., would be

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Pertinent to this appeal, the Residents' Guide states that "[t]hroughout Phase 3A, [r]esidents are expected to maintain a high level of motivation, participation, and authenticity in treatment."

admitted into evidence without Dr. Scott testifying. Additionally, B.S. testified at the hearing.

According to Dr. Scott's report, B.S. met the "criteria for the diagnosis of [p]edophilic [d]isorder," a "diagnosis [that] is persistent, . . . does not spontaneously remit, and . . . predispose[d B.S.] for future acts of sexual violence." Dr. Scott also diagnosed B.S. with "[o]ther [s]pecified [p]ersonality [d]isorder (with antisocial and borderline traits)." She concluded B.S. "ha[d] a history of engaging in deceitfulness and lying for personal gain," and "exhibit[ed] impulsivity and [an] inability to follow rules while on furloughs and within the STU." Further, Dr. Scott opined, "with a reasonable degree of medical certainty, that [B.S.] suffer[ed] from a mental abnormality that affect[ed] his cognitive, emotional[,] and volitional capacity in a manner that result[ed] in serious difficulty with controlling his sexually dangerous behavior and predispose[d] him to commit future acts of sexual violence." Therefore, she concluded he was currently "at high risk to reoffend if not confined to a secure treatment facility[,] such as the STU."

Dr. Scott also reported that when she interviewed B.S., "[h]is insight into his sex offenses and the consequences of his behavior on others and himself appeared to be poor." She stated B.S. told her, "I don't see nothing wrong with

watching porn as long as it's adults. Nothing wrong with it. It's just an institutional rule." Additionally, he said he was "'pissed off and angry' about the decision" to demote him to Phase 2. Thus, Dr. Scott concluded:

> it appeared that [B.S.] was unable to appreciate why violating a rule of his choosing would be a problem in general. He insisted that sex offender treatment at the STU d[id] not provide him with any further benefits. Additionally, he did not feel the need to work on his history of rule violations, and examine its relation to his sexual offending history.

Dr. Scott also opined B.S.'s

> blatant disregard for the conditions imposed upon him after his first conditional discharge from Ancora hospital in 1999, and his most recent, repeated noncompliance with institutional rules even when he was [on] the verge of a potential discharge suggest that he does not have the internal controls that are required to keep him safe in the community. Despite his lengthy tenure at the STU[,] his understanding of his sexual offending dynamics remains rudimentary. He is unlikely to cooperate with a conditional discharge plan.

When Dr. Dunaev testified at the February 13, 2023 hearing, he stated B.S. "was demoted from [P]hase 3A to [P]hase 2," in part, because B.S.'s treatment team concluded B.S. was "holding onto . . . negative points of view regarding treatment." The treatment team also determined B.S. was "unmotivated, belligerent at times, angry, [and] not interested in taking a module that was suggested by them."

Dr. Dunaev found B.S.'s "level of arousal" was problematic as it had "remained relatively unchanged" over "several review periods." The doctor further opined B.S. was "still holding onto some unhealthy views about sex, women, and his prior offenses, and . . . [was] still very much preoccupied sexually at the STU."

Dr. Dunaev testified it was "significant" that B.S. secured two contraband cellphones, and "also the length of time [B.S. had the phones] was significant." Dr. Dunaev explained,

> [t]he first [cellphone B.S.] had for six months and the second phone he[] had for five months. . . . [S]o, if you think about it, that's almost a year in treatment . . . . with him being distracted . . . at the very least, . . . and, at the most, him being sexually preoccupied and focusing on . . . the wrong things[.] . . . And a year of him not being transparent and compliant.

The doctor also stated B.S. "went back into porn[ography] very quickly and . . . had these phones for an entire year . . . . So, . . . he[was] acting out on his sexual impulses, . . . [and wa]s becoming more risky." Further, the doctor opined B.S.'s use of "two different phones for a year, and . . . masturbating to things on it, without telling anybody" was "a clear example of his internal checks failing."

After concluding B.S. "did[not] come forward, did[not] talk about the [cell]phones or his arousal," and "spent a year in secrecy, essentially," Dr. Dunaev opined B.S. "really need[ed] to go back to basics and . . . establish a healthier relationship with his treatment team where he c[ould] share things like that more openly. And rely more on them than . . . himself." Dr. Dunaev also stated B.S. was demoted to Phase 2 "to increase his level of transparency, so . . . the treatment team fe[lt] more comfortable with knowing where he [wa]s in treatment." The doctor clarified the "phase demotion . . . from 3A to 2" was "not a form of punishment," but rather "a form of . . . motivation" which would allow B.S. to "[f]ocus on [his] personal maintenance contract[,] . . . . [his] arousals[,] . . . [and] the red flags."

Dr. Lorah testified next and did not support B.S.'s demotion to Phase 2. Dr. Lorah was not persuaded that B.S.'s decision to access pornography was a significant risk factor warranting a phase demotion, considering B.S. viewed pornography involving adults, rather than minors. Dr. Lorah further stated, "I do[not] see [B.S.'s] looking at pornography[] as an indication of deviant sexual arousal."

B.S. was the last witness to testify, and his testimony was brief. He stated that during his time at the STU, he gained "a better understanding of why [he]

committed [his] crimes." Additionally, he testified that if released to the community, he would "prevent [him]self from reoffending" by first considering "why [he was] feeling the way [he was] feeling. Then [he] would reach out to [his] supports and [his] groups." When asked how often he found himself "overwhelmed by thoughts of viewing pornography," B.S. responded, "[n]ot often."

On April 10, 2023, Judge Bartels entered an order continuing B.S.'s commitment at the STU and maintaining B.S.'s placement in Phase 2. In a written opinion accompanying the order, the judge explained the State proved "by clear and convincing evidence, and . . . [B.S.] so stipulate[d], that . . . [B.S. wa]s highly likely to reoffend if he [wa]s discharged from the [STU]." Further, the judge found "B.S. . . . failed to prove, by a preponderance of evidence, that he should be placed in Phase 3A of treatment," and "[a]s a result, B.S. should remain in Phase 2 of treatment."

In assessing Dr. Scott's report, as well as testimony from Drs. Dunaev and Lorah, the judge "place[d] more weight" on the opinions offered by Drs. Scott and Dunaev. He found the State's experts "ha[d] a greater familiarity with B.S. and his treatment progress," whereas Dr. Lorah's testimony and report "only detail[ed] one interaction between himself and B.S." The judge also concluded

B.S. "show[ed] a deficient understanding in how his consumption and active participation in pornography . . . affected his treatment." The judge found that while a resident at the STU, B.S. "continued to access and consume pornography" and "[d]espite being punished for his actions, B.S. . . . show[ed] no signs of recognizing why his porn[ography] consumption [wa]s counterintuitive to his treatment."

Finally, Judge Bartels stated:

> [t]he [c]ourt does not believe that B.S. [h]as been an active participant in his treatment and has not shown a willingness to comply with the rules established by the STU. Throughout his time at the STU, B.S. has been described as a "passive participant" in group settings. During the 2021 review period, B.S.'s participation in treatment was described as "superficial" and his work on assignments was "underdeveloped and incomplete." During the current review period, B.S. "did minimal work with regards to his own interpersonal issues and offending dynamics" and made "minimal to no progress with regards to the treatment goals outlined on his treatment plan and prior TPRC reports." In 2021, B.S. had . . . furloughs suspended after he was found to be watching porn[ography]. Despite this suspension, B.S. continued watching porn[ography] because[, as he stated,] "[a]t that point[,] I did not care. . . . [T]hey already suspected me anyway." . . .
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> . . . The [c]ourt is troubled by B.S.'s low regard for the rules at the STU and his inability to recognize how his consumption of pornography [a]ffects his

> treatment. B.S. has continued to consume and actively engage in pornography despite being aware of the STU rules against doing so. . . . [B]oth parties presented evidence demonstrating these issues. While the parties disagree on how these issues influence B.S.'s phase placement, it is clear . . . they have an effect on his advancement in treatment.

II.

On appeal, B.S. raises the following overlapping arguments: (1) the April 10, 2023 order should be vacated "because the trial court erroneously assigned the burden of proof to B.S. in establishing that the State had placed him in the incorrect phase of treatment"[5]; (2) "[a]t regularly scheduled review hearings, the State must prove that an individual is in need of restraints, and the appropriate level of restraints"; (3) "[t]he error in this case was a legal error by the trial court in interpreting the burden of proof and should be reviewed de novo"; and (4) "[t]he State should be estopped from asserting that phase of treatment is not a level of restraint."

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[5] Although B.S. contends the April 10, 2023 order should be vacated, he advances no argument regarding those portions of the April 10 order continuing his commitment at the STU and scheduling his 2024 review hearing. Therefore, any challenge to those provisions in the April 10 order is deemed waived. Pressler & Verniero, Current N.J. Court Rules, cmt. 5 on R. 2:6-2 (2024) ("It is, of course, clear that an issue not briefed is deemed waived.").

We begin with some threshold principles to provide context for our opinion. "The scope of appellate review of a commitment determination is extremely narrow." In re Civ. Commitment of R.F., 217 N.J. 152, 174 (2014) (quoting In re D.C., 146 N.J. 31, 58 (1996)). "The judges who hear SVPA cases generally are 'specialists' and 'their expertise in the subject' is entitled to 'special deference.'" Ibid. (citing In re Civ. Commitment of T.J.N., 390 N.J. Super. 218, 226 (App. Div. 2007)). Moreover, we "give deference to those findings of the trial judge which are substantially influenced by [the judge's] opportunity to hear and see the witnesses and to have the feel of the case, which a reviewing court cannot enjoy." State v. Nuñez-Valdéz, 200 N.J. 129, 141 (2009) (quoting State v. Elders, 192 N.J. 224, 244 (2007)). Therefore, "an appellate court should not modify a trial court's determination either to commit or release an individual unless 'the record reveals a clear mistake.'" R.F., 217 N.J. at 175 (quoting D.C., 146 N.J. at 58). However, when an appeal presents issues of law, "the relevant standard of review is de novo." In re Civ. Commitment of D.Y., 218 N.J. 359, 373 (2014).

The Legislature's purpose in enacting the SVPA was "to protect other members of society from the danger posed by sexually violent predators." In re Commitment of J.M.B., 197 N.J. 563, 571 (2009) (citing N.J.S.A. 30:4-27.25).

Therefore, "[t]he SVPA authorizes the involuntary commitment of an individual believed to be a 'sexually violent predator' as defined by the Act. The definition of 'sexually violent predator' requires proof of past sexually violent behavior through its precondition of a 'sexually violent offense.'" In re Commitment of W.Z., 173 N.J. 109, 127 (2002). The SVPA also requires that the person "suffer[] from a mental abnormality or personality disorder that makes the person likely to engage in acts of sexual violence if not confined in a secure facility for control, care[,] and treatment." Ibid. (quoting N.J.S.A. 30:4-27.26). "[T]he mental condition must affect an individual's ability to control his or her sexually harmful conduct." Ibid.

"[C]ommitment proceedings under the SVPA are civil in nature." In re Civ. Commitment of D.L., 351 N.J. Super. 77, 90 (App. Div. 2002). Evidence at commitment hearings "generally consist[s] of extensive psychological or psychiatric testimony, as well as evidence of actuarial risk assessments." Ibid. "A trial judge is 'not required to accept all or any part of [an] expert opinion'" because the decision to commit "is 'a legal one, not a medical one, even though it is guided by medical expert testimony.'" R.F., 217 N.J. at 174 (alteration in original) (quoting D.C., 146 N.J. at 59, 61). Therefore, "[t]he final decision whether a person previously convicted of a sexually violent offense is highly

likely to sexually reoffend 'lies with the courts, not the expertise of psychiatrists and psychologists.'" Ibid. (quoting D.C., 146 N.J. at 59).

The same standard that supports the initial involuntary commitment of a sex offender under the SVPA applies to the annual review hearing. See In re Civ. Commitment of E.D., 353 N.J. Super. 450, 452-53 (App. Div. 2002). Thus, an order of continued commitment under the SVPA, like an initial order, results from the State proving by "clear and convincing evidence that an individual who has been convicted of a sexually violent offense[] suffers from a mental abnormality or personality disorder, and presently has serious difficulty controlling harmful sexually violent behavior such that it is highly likely the individual will re-offend" if not committed to the STU. In re Commitment of G.G.N., 372 N.J. Super. 42, 46-47 (App. Div. 2004) (citing W.Z., 173 N.J. at 120); see also N.J.S.A. 30:4-27.32(a).

Generally, a committee's "release, even when the legal standard for commitment is no longer met, must proceed in gradual stages." E.D., 353 N.J. Super. at 455. Thus, "where the State is unable to justify the continued confinement of the committee," the "legislative intent" of the SVPA "is best effectuated by releasing the committee subject to intermediate levels of restraint." Id. at 456 (emphasis added).

Confinement by the State under the legal standard set forth in W.Z. "invokes a correlative statutory and constitutional duty of appropriate treatment where feasible, designed to permit ultimate release to the community." In re Commitment of K.D., 357 N.J. Super. 94, 97-98 (App. Div. 2003) (citations omitted). Therefore, the SVPA charges the Division of Mental Health Services with providing treatment for the committee.[6] Id. at 98-99. "Such treatment shall be appropriately tailored to address the specific needs of sexually violent predators." Id. at 99 (quoting N.J.S.A. 30:4-27.34(b)).

"A primary goal of the STU treatment program is to prepare civilly committed sexual predators to safely return to the community." M.X.L., 379 N.J. Super. at 45. To achieve that goal, the State "enjoys [wide latitude in developing treatment regimens] for sex offenders," understanding "[d]ecisions regarding the treatment program at the STU are based on judgments exercised

[6] "[T]he SVPA was amended . . . effective August 15, 2003, to require that regulations be promulgated jointly by the Commissioner of Human Services and the Commissioner of Corrections, . . . taking 'into consideration the rights of patients . . . [to] specifically address the differing needs and specific characteristics of, and treatment protocols related to, sexually violent predators.'" M.X.L., 379 N.J. Super. at 47 (second alteration in original) (quoting N.J.S.A. 30:4-27.34(d)). And In re Commitment of V.A., 378 N.J. Super. 1, 7 (App. Div. 2005) (V.A. II), we "directed that these regulations be adopted 'forthwith.'" M.X.L., 379 N.J. Super. at 48.

by qualified professionals." Id. at 48 (first alteration in original) (first quoting Kansas v. Hendricks, 521 U.S. 346, 368 n.4 (1997)).

"[C]ommittees have the right to present evidence" at review hearings "on the issue of whether or not they have been receiving appropriate treatment, especially in light of any particular disability which might exist." K.D., 357 N.J. Super. at 98. Also, "[t]here is nothing to preclude an attorney representing [a committee] from addressing a MAP placement that may have occurred between reviews and challenging whether it was appropriate to have placed [the committee] in MAP." M.X.L., 379 N.J. Super. at 49. In fact, in K.D., we concluded trial courts have "the inherent power to examine the conditions of confinement" and treatment recommended for an SVPA committee. Id. at 99.

But we also provided the following instruction:

> We certainly do not suggest that any individual commitment review hearing be converted into a challenge to the sexual offender's treatment program available routinely to the general population of committees under the SVPA . . . . Such a challenge must be brought in a plenary individual or class action in the regular trial courts, state or federal, and not in a particular committee's individual initial or annual review hearing under the SVPA, the purpose of which is to decide if confinement under the SVPA and W.Z. standards is proper.
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> [Id. at 99 (emphasis added).]

In anticipation of a committee challenging his or her treatment and "offer[ing] proof of reasonable alternatives," we also previously held:

> [The committee] must give proper notice of [their] intentions, with specifics, sufficiently in advance of the hearing to permit the State to meet this challenge. We add . . . that a committee under the SVPA need not wait a year for an annual review hearing to challenge [their] diagnosis and treatment, but may move at any time after the initial hearing for a prompt hearing on the claim of specific needs geared to the particular situation.
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> [Id. at 99-100 (emphasis added).]

The principles we outlined in K.D. apply with equal force to this matter. Therefore, B.S. was required to challenge his treatment phase in a separate plenary action. And as the movant, he was obliged to, as he did here, notify the State in advance of the hearing about the reasons for his challenge so the State was prepared to meet his arguments about his treatment phase placement.

Further, consistent with the principles set forth in K.D., we reject B.S.'s argument that simply because Judge Bartels accommodated a hearing for B.S.'s treatment challenge the same day the issues to be addressed at B.S.'s annual review hearing resolved, the judge's accommodation shifted the burden of proof from B.S. to the State to demonstrate whether B.S.'s current treatment phase was appropriate. Indeed, to accept B.S.'s argument that "[i]t is only when an individual challenges the level of restraint outside of a regularly scheduled

review that the burden would shift to the committee" would be to sanction his decision to ignore our holding in K.D. as to the purpose of the annual review hearing and our instruction that a treatment challenge "must be brought in a plenary individual . . . action[,] . . . and not in a particular committee's individual initial or annual review hearing." Id. at 99 (emphasis added). Therefore, we are persuaded that a committee seeking to challenge his or her treatment or treatment phase at a treatment review hearing, like other movants in civil matters who affirmatively seek relief, bears the burden to establish entitlement to the relief the committee seeks. See, e.g., Schaffer v. Weast, 546 U.S. 49, 51 (2005).

Our determination that B.S. bears the burden to show why he is entitled to a modification of his treatment phase also finds support from an analogous discussion in In re Civ. Commitment of V.A, 357 N.J. Super. 55 (App. Div. 2003) (V.A. I).[7] In V.A. I., we "envision[ed] a comprehensive treatment program in which the restraints on individual liberties associated with institutional confinement are gradually relaxed, eventually leading to outright release into the community." Id. at 64 (emphasis added). But we also stated, it is "the committee [who] must demonstrate successful adjustment to successive reductions of restrictions within the structured environment of a secured facility

[7] V.A. I was decided one day prior to K.D., in January 2003.

as a prerequisite to consideration for a conditional release." Ibid. (emphasis added).

By way of further analogy, we note that in State v. Fields, 77 N.J. 282, 303-04 (1978), where a committee was found not guilty by reason of insanity, the Court explained that although a commitment review hearing allows for the determination of the level of restraint on the liberty of the committee, "[t]he committee remains free to challenge the propriety of those restraints at any time in the interim between the scheduled periodic review hearings." (Emphasis added). Importantly, the Court noted, "[a]t any such committee-initiated review proceeding, the burden of proof is on the committee. As the moving party, the committee must demonstrate by a preponderance of the evidence that under the applicable criteria [the committee's] request for the modification . . . of those restraints . . . should be granted."[8] Id. at 304 (emphasis added).

[8] As our Court recently noted, "[t]he preponderance of the evidence standard is the least difficult standard of proof to vault." N.J. Div. of Child Prot. & Permanency v. J.R.-R., 248 N.J. 353, 376 (2021). We also note that in a civil proceeding, a movant's burden of proof is generally by a preponderance of evidence. Liberty Mut. Ins. Co. v. Land, 186 N.J. 163, 169 (2006); see also Biunno, Weissbard & Zegas, Current N.J. Rules of Evidence, cmt. 5.1 on N.J.R.E. 101(b)(1) (2023-24).

In sum, we discern no basis to second-guess Judge Bartels's determination that it was B.S.'s burden to establish by a preponderance of evidence he should be promoted to Phase 3A, and based on the competent credible evidence in the record, B.S. failed to satisfy this burden.

Having considered B.S.'s remaining arguments, we have determined they are without sufficient merit to warrant discussion in a written opinion. R. 2:11-3(e)(1)(E).

Affirmed.