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collateral order doctrine. We conclude that this claim is without merit.

CONCLUSION

We conclude that because the district court has not entered a final order, we lack appellate jurisdiction over this appeal. We therefore dismiss.

APPEAL DISMISSED.

GERRARD, J., not participating in the decision.
WRIGHT, J., not participating.

IN RE INTEREST OF S.J., ALLEGED TO BE A DANGEROUS SEX OFFENDER. S.J., APPELLANT, V. MENTAL HEALTH BOARD OF THE FOURTH JUDICIAL DISTRICT, APPELLEE.

810 N.W.2d 720

Filed March 16, 2012. No. S-11-314.

1. **Mental Health: Judgments: Appeal and Error.** The district court reviews the determination of a mental health board de novo on the record. In reviewing a district court's judgment, an appellate court will affirm unless it finds, as a matter of law, that clear and convincing evidence does not support the judgment.
2. **Constitutional Law: Due Process.** The determination of whether procedures afforded an individual comport with constitutional requirements for procedural due process presents a question of law.
3. **Judgments: Appeal and Error.** On questions of law, a reviewing court has an obligation to reach its own conclusions independent of those reached by the lower courts.
4. **Due Process.** The Due Process Clause applies when government action deprives a person of liberty or property; accordingly, when there is a claimed denial of due process, a court must consider the nature of the individual's claimed interest.
5. ____. A claim that one is being deprived of a liberty interest without due process of law is typically examined in three stages. The question in the first stage is whether there is a protected liberty interest at stake. If so, the analysis proceeds to the second stage, in which it is determined what procedural protections are required. Upon the resolution of that issue, the analysis moves on to the third and final stage, in which the facts of the case are examined to ascertain whether there was a denial of that process which was due.
6. **Due Process: Mental Health: Convicted Sex Offender.** A liberty interest is implicated if a subject is committed to inpatient treatment pursuant to the Sex Offender Commitment Act.

7. **Due Process: Notice.** Due process does not guarantee an individual any particular form of state procedure. Instead, the requirements of due process are satisfied if a person has reasonable notice and an opportunity to be heard appropriate to the nature of the proceeding and the character of the rights which might be affected by it.
8. **Due Process: Administrative Law: Recusal: Presumptions: Proof.** Due process requires a neutral, or unbiased, adjudicatory decisionmaker. Such decisionmakers serve with a presumption of honesty and integrity. A party seeking to disqualify an adjudicator because of bias or prejudice bears the heavy burden of overcoming the presumption of impartiality.

Appeal from the District Court for Douglas County: GARY B. RANDALL, Judge. Affirmed.

Thomas C. Riley, Douglas County Public Defender, and Zoë R. Wade for appellant.

Jeffrey J. Lux, Deputy Douglas County Attorney, for appellee.

HEAVICAN, C.J., CONNOLLY, STEPHAN, MCCORMACK, and MILLER-LERMAN, JJ., and SIEVERS and CASSEL, Judges.

MILLER-LERMAN, J.

NATURE OF CASE

S.J. appeals the order of the district court for Douglas County which affirmed the order of the Mental Health Board of the Fourth Judicial District (the Board) committing S.J. as a dangerous sex offender. The court rejected S.J.'s arguments that his due process rights had been violated and concluded that the State had met its burden to prove by clear and convincing evidence that S.J. was a dangerous sex offender and that continued inpatient treatment was the least restrictive alternative available. We affirm.

STATEMENT OF FACTS

The Douglas County Attorney filed a petition with the Board alleging that S.J. was a dangerous sex offender within the meaning of Nebraska's Sex Offender Commitment Act (SOCA), Neb. Rev. Stat. § 71-1201 et seq. (Reissue 2009). Following an initial hearing held April 30, 2009, the Board found that S.J. had been convicted of two sex offenses, that he suffered from the mental illness pedophilia, that such illness made him likely

to engage in repeat acts of sexual violence, and that he was substantially unable to control his criminal behavior. The Board therefore concluded that S.J. was a dangerous sex offender. But the Board rejected the inpatient treatment plan recommended by the State because it found that inpatient treatment was too restrictive and not warranted by the evidence. The Board ordered the county attorney and the public defender to develop an outpatient treatment plan; the Board indicated it would seek assistance from the Department of Health and Human Services (DHHS) in developing an outpatient program.

At a July 2, 2009, review hearing, it was reported that despite extensive efforts, an appropriate outpatient program had not been found due to problems with cost and availability of providers. The Board therefore ordered S.J. to be conditionally placed at the Norfolk Regional Center (NRC) for inpatient treatment but ordered DHHS to undertake all necessary efforts to place S.J. in a suitable outpatient program. On October 29, it was reported to the Board that S.J. was still being held in inpatient treatment at NRC. The Board ordered DHHS to continue searching for suitable outpatient treatment and ordered that if an appropriate outpatient plan was not arranged by December 28, the commitment would be dismissed.

On December 10, 2009, NRC staff who had evaluated S.J. filed a report with the Board in which they collectively opined that S.J. presented a high risk of recidivism and that the least restrictive treatment for him was continued inpatient treatment at NRC. The Board therefore set a hearing for January 12, 2010.

At the January 12, 2010, hearing, a psychologist from NRC testified that during testing at NRC, several additional risk factors came to light that had not been noted in previous testing of S.J. and that such additional factors raised S.J.'s risk to reoffend to high compared to the medium risk at which he had previously been assessed. The psychologist testified that such factors warranted therapeutic attention and opined that the least restrictive alternative for S.J. which would provide appropriate therapy was inpatient treatment. A psychiatrist from NRC also testified at the hearing and concurred in the opinion that inpatient treatment was the least restrictive alternative for S.J.

The psychiatrist testified that S.J.'s high risk to reoffend "really waives" the option of outpatient treatment and that an inpatient alternative was required for effective treatment. Following the hearing, the Board concluded that inpatient treatment at NRC was the least restrictive alternative presently "available" and inpatient commitment was ordered.

S.J. appealed the Board's January 12, 2010, order to the district court for Douglas County. He asserted that his procedural due process rights, his substantive due process rights, and his right to an adjudication before an impartial decisionmaker had been violated. He also asserted that the Board erred when it found by clear and convincing evidence that he was a dangerous sex offender and that inpatient treatment was the least restrictive treatment alternative.

In its order filed March 20, 2011, as an initial matter, the district court noted its awareness of § 71-1209(6) of SOCA which provides that inpatient treatment should "only be considered as a treatment alternative of last resort." The court reviewed the procedures and protections required under SOCA and concluded that such procedures "provide subjects with a meaningful opportunity to be heard regarding their commitment as a dangerous sex offender, both prior to and after that determination is made." The district court concluded that SOCA provided adequate procedural due process in connection with commitment decisions thereunder.

As to the instant case, the court noted that S.J. made no claim that he had been denied any of the procedures required by SOCA. The court specifically rejected S.J.'s argument that SOCA violates procedural due process because it treats inpatient and outpatient treatment as equivalent alternatives, thus allowing commitment to either program based on what is available. The court disagreed with S.J.'s reading of SOCA and found that SOCA did not authorize the Board to arbitrarily order treatment solely on the basis of availability but instead required the Board to consider all treatment alternatives and order the appropriate available treatment that imposed the least restraint on liberty. The court also rejected S.J.'s argument that SOCA does not provide procedural due process because the State elects to make only the most restrictive level

of treatment available. The court found that SOCA's provision that the Board order the least restrictive treatment alternative did not mean that the State must make less restrictive alternatives available or pay for such alternatives and that such provision was not a denial of due process.

With regard to the least restrictive treatment alternative, the district court distinguished *In re Interest of O.S.*, 277 Neb. 577, 763 N.W.2d 723 (2009), in which this court reversed the district court's affirmance of a commitment order because the State presented no evidence regarding alternative treatment options. In contrast to *In re Interest of O.S.*, the court found that in the instant case, "the Board had an abundance of evidence before it regarding the various treatment alternatives offered in communities throughout Nebraska, as well as the programs available through DHHS."

The court concluded that no substantive due process violation occurred, because the infringement on S.J.'s liberty was narrowly tailored to serve a compelling state interest in rehabilitating S.J. and protecting the community. The court found that continued inpatient treatment at NRC was the least restrictive treatment alternative available. The court noted that although the Board initially ordered outpatient treatment, additional risk factors came to light during therapy which indicated that inpatient treatment was necessary. Upon a de novo review of the record, the court found, based on evidence which included opinions of mental health professionals, that inpatient treatment was the least restrictive alternative available for the appropriate treatment of S.J. The court concluded, therefore, that the infringement of S.J.'s liberty interest was narrowly tailored.

The court next concluded that SOCA complied with the constitutional requirement of an impartial decisionmaker. The court rejected S.J.'s argument that SOCA was unconstitutional because it provided for commitment decisions to be made by the Board rather than by a court. The court reasoned that the Board could be impartial even if it was not a court and noted that S.J. made no allegation that the Board was biased. The court further noted that SOCA provided "generous procedures for judicial review of the Board's decisions."

The court finally found that the record contained clear and convincing evidence to support the Board's finding that S.J. was a dangerous sex offender. The court interpreted the definition of "[d]angerous sex offender" in Neb. Rev. Stat. § 83-174.01 (Reissue 2008), which included references to a subject's being "likely to engage in repeat acts of sexual violence" and "substantially unable to control his or her criminal behavior," to mean that an individual's propensity to commit sex offenses "coupled with an inability or unwillingness to control that propensity" would justify civil commitment. The court concluded that the record contained clear and convincing evidence that S.J. was both "'likely to engage in repeat acts of sexual violence'" and "'substantially unable to control his criminal behavior'" and that the Board's finding that S.J. was a dangerous sex offender was not erroneous.

Based on the evidence and the opinions of mental health professionals, the court found that the record contained clear and convincing evidence to support the Board's determination that inpatient treatment at NRC was the least restrictive treatment alternative available.

Having rejected S.J.'s assignments of error, the court affirmed the Board's commitment order.

S.J. appeals.

ASSIGNMENTS OF ERROR

As framed by S.J., he claims that the district court erred when it concluded that (1) his substantive due process rights were not violated when the Board ordered him to an inpatient treatment program after it had initially determined that outpatient treatment was appropriate, (2) SOCA did not violate procedural due process when it permitted commitment to a treatment program that was more restrictive than necessary based solely on availability, (3) SOCA did not violate procedural due process when it allowed commitment by a Board that contained only one legally trained member, (4) there was clear and convincing evidence that S.J. was substantially unable to control his criminal behavior, and (5) there was clear and convincing evidence that inpatient treatment was the least restrictive available alternative.

STANDARDS OF REVIEW

[1] The district court reviews the determination of a mental health board de novo on the record. *In re Interest of S.C., ante* p. 294, 810 N.W.2d 699 (2012). In reviewing a district court's judgment, an appellate court will affirm unless it finds, as a matter of law, that clear and convincing evidence does not support the judgment. *Id.*

[2,3] The determination of whether procedures afforded an individual comport with constitutional requirements for procedural due process presents a question of law. *State v. Hotz*, 281 Neb. 260, 795 N.W.2d 645 (2011). On questions of law, a reviewing court has an obligation to reach its own conclusions independent of those reached by the lower courts. *Id.*

ANALYSIS

Supplemental Transcript Should Not Be Considered on Appeal Because Evidence Contained Therein Was Not Before the Board and the District Court When They Made the Decisions Being Appealed.

We note first that the Board filed a supplemental transcript in this court containing materials that the Douglas County Attorney submitted to the Board after the Board entered the January 12, 2010, order from which the appeal to the district court was taken. S.J. filed with this court a motion to strike the supplemental transcript in which he asserts that none of these filings "appear in the record from the hearings concluded on January 12, 2010, from which this appeal was taken." Before this appeal was moved to this court's docket on a petition to bypass, the Nebraska Court of Appeals overruled the motion but reserved ruling on whether the materials were properly before the appellate court. We now rule that they are not.

We note that the materials in question were not provided to the Board prior to its decision and therefore were not considered by the Board when it reached its decision of January 12, 2010, from which the appeal to the district court was taken. We further note that the materials in question were not admitted in the appeal to the district court and that the district court did not reference such materials in its order affirming the Board's commitment order.

The district court considered S.J.'s appeal de novo on the record. See *In re Interest of S.C., supra*. We recently distinguished between an appeal conducted as a "trial de novo" and an "appeal de novo on the record" in *Doe v. Board of Regents, ante* p. 303, 317, 809 N.W.2d 263, 274 (2012), in which we stated:

> "'When an appeal is conducted as a "trial de novo," as opposed to a "trial de novo on the record," it means literally a new hearing and not merely new findings of fact based upon a previous record. A trial de novo is conducted as though the earlier trial had not been held in the first place, and evidence is taken anew as such evidence is available at the time of the trial on appeal.'"

(Quoting *Koch v. Cedar Cty. Freeholder Bd.*, 276 Neb. 1009, 759 N.W.2d 464 (2009).) The district court's review of the propriety of the Board's decision of January 12, 2010, was properly limited to consideration of the previous record made before the Board prior to the Board's decision. Consideration of materials that found their way into the Board's files after the Board's decision are not properly considered by a district court in its de novo review on the record of a mental health board appeal such as the instant case, nor are such materials proper for our consideration of the district court's ruling.

We therefore conclude that the materials in the supplemental transcript are not properly before us on appeal, and we will not consider those materials in our review of the district court's determinations.

Clear and Convincing Evidence Supported Finding That S.J. Was Substantially Unable to Control His Behavior.

We first consider S.J.'s assignments of error regarding the sufficiency of evidence to support the district court's findings; we note that our resolution of these assignments of error makes consideration of certain other assignments of error unnecessary. S.J. first asserts that the district court erred when it found that there was clear and convincing evidence that S.J. was substantially unable to control his criminal behavior. We affirm the court's ruling.

We note that before committing a person under SOCA, the Board must find "clear and convincing evidence that the subject is a dangerous sex offender." § 71-1208. See, also, § 71-1209. We have observed that "Section 71-1203(1) of SOCA incorporates the definition of '[d]angerous sex offender' found in § 83-174.01(1) . . . ." *In re Interest of D.H.*, 281 Neb. 554, 558, 797 N.W.2d 263, 267 (2011). "Dangerous sex offender" is defined in § 83-174.01(1) to include a person who (1) suffers from a mental illness which makes the person likely to engage in repeat acts of sexual violence, (2) has been convicted of one or more sex offenses, and (3) is substantially unable to control his or her criminal behavior. S.J. does not dispute the findings with regard to the first two requirements but asserts that the evidence failed to establish that he was substantially unable to control his criminal behavior.

S.J. notes that the definition of "dangerous sex offender" requires distinct findings that a mental illness makes the person likely to engage in repeat acts of sexual violence and that the person is substantially unable to control his or her criminal behavior. S.J. argues that because the two are distinct requirements, they must mean something different, and that "substantially unable to control his or her criminal behavior" cannot mean that the person is merely "likely to engage in repeat acts of sexual violence." See § 83-174.01. S.J. posits that "substantially unable to control his or her criminal behavior" distinguishes between ordinary recidivists who are merely likely to engage in repeat acts and those who cannot control their desire to commit sexually violent acts.

We note that the two requirements are distinguished from one another in § 83-174.01, which, in subsection (2), defines "likely to engage in repeat acts of sexual violence" to refer to a person's propensity, whereas subsection (6) provides that "[s]ubstantially unable to control his or her criminal behavior means having serious difficulty in controlling or resisting the desire or urge to commit sex offenses." The first refers to a person's propensity, while the second refers to a person's ability to control that propensity. Both requirements were established in the record, and we, therefore, reject S.J.'s contention that the second component was not established by the evidence.

The Board in its April 30, 2009, order and the district court in its order affirming the commitment noted the testimony of a clinical psychologist, which testimony supported the finding that S.J. was a dangerous sex offender. The clinical psychologist testified that she believed that S.J. was substantially unable to control his criminal behavior. In this regard, she noted that even after he was subjected to legal sanctions for his first offense, S.J. committed a subsequent offense. She further noted that S.J. committed two offenses in homes where other adults were present and that in one instance, he returned the same night to sexually assault the victim a second time. She testified that S.J. had not exhibited behavioral controls and that he had not received treatment to develop such controls. Such testimony supports a finding that S.J. had "serious difficulty in controlling or resisting the desire or urge to commit sex offenses" and that he is substantially unable to control his criminal behavior. See § 83-174.01(6).

On appeal, S.J. points to other portions of the clinical psychologist's testimony and contends that such testimony undermines her opinion regarding his ability to control his behavior. However, the district court considered that the Board saw and heard the clinical psychologist's testimony and observed her demeanor and the court gave weight to the Board's judgment regarding her credibility. We also give great weight to the Board's judgment as to credibility, see *In re Interest of J.R.*, 277 Neb. 362, 762 N.W.2d 305 (2009), and we therefore agree with the district court's determination that there was clear and convincing evidence to support the finding that S.J. was substantially unable to control his criminal behavior. We reject this assignment of error.

Clear and Convincing Evidence Supported Finding That Inpatient Treatment Was the Least Restrictive Alternative.

S.J. next claims that the district court erred when it found that there was clear and convincing evidence before the Board that inpatient treatment was the least restrictive alternative. We reject this assignment of error.

S.J. asserts that the Board originally determined that outpatient treatment was appropriate and that the Board ordered

the more restrictive inpatient treatment only because it was the only treatment available and outpatient treatment was not available. This assertion is contrary to the evidence.

In the April 30, 2009, order, the Board concluded that inpatient treatment was too restrictive and that outpatient treatment was appropriate, and in the July 2 order, the Board ordered S.J. to be conditionally placed at NRC until an appropriate outpatient treatment program could be identified. However, by the time of the issuance of the January 12, 2010, order from which the appeal was taken, NRC staff had examined S.J. on an inpatient basis and determined that inpatient treatment was required based on additional risk factors that had come to light and that had not been noted in previous evaluations. Therefore, at the time the Board ordered inpatient treatment on January 12, there was clear and convincing evidence that inpatient rather than outpatient treatment was appropriate. Because outpatient treatment was not appropriate, it was not a viable alternative, and inpatient treatment was the least restrictive alternative. Although the Board had earlier expressed frustration at the limited treatment options available, the Board did not order inpatient treatment on January 12 merely because there was no less restrictive alternative available.

S.J. also argues that the evidence failed to establish that inpatient treatment was the least restrictive alternative, because the NRC staff who testified that inpatient treatment was appropriate testified that they did not have knowledge of other treatment programs. S.J. cites *In re Interest of O.S.*, 277 Neb. 577, 763 N.W.2d 723 (2009), in which this court reversed the affirmance of a commitment order because the State presented no evidence regarding alternative treatment options. By contrast, in this case, although the NRC staff did not have knowledge of other alternatives, the State presented evidence regarding treatment alternatives through other sources. The district court stated that "the Board had an abundance of evidence before it regarding the various treatment alternatives offered in communities throughout Nebraska, as well as the programs available through DHHS." Based on the evidence noted, we conclude that the record contained clear and convincing evidence that inpatient treatment at NRC was the least restrictive

alternative and that the Board and the district court did not err in so finding.

We Need Not Consider Certain of S.J.'s Due Process Claims With Regard to SOCA.

S.J. assigns error to the district court's rejection of certain due process challenges he made regarding the application of SOCA in his case. Two of his challenges were (1) that his substantive due process rights were violated when the Board ordered him to an inpatient treatment program after it had earlier determined that outpatient treatment was appropriate and (2) that SOCA violates procedural due process in that it permits commitment to a treatment program that is more restrictive than necessary based solely on availability. These challenges are based on S.J.'s assertion that the Board ordered S.J. to an inpatient treatment despite concluding that a less restrictive outpatient treatment was the appropriate treatment and that SOCA permitted the Board to order S.J. to treatment that was more restrictive than necessary based solely on the fact that less restrictive treatment was not available. These assertions are not supported by the facts or the law and arguments based on these faulty assertions are without merit.

We do not analyze these due process issues because they are not supported by the record in this case. As we concluded above, there was clear and convincing evidence to support the district court's determination that inpatient treatment as ordered by the Board was the appropriate treatment option for S.J. Although the Board initially determined that outpatient treatment was indicated, by the time of the January 12, 2010, order, the Board concluded based on the evidence then before it, that inpatient treatment was the appropriate treatment and that outpatient treatment would not meet S.J.'s needs. The choice of inpatient treatment was based on what was appropriate for S.J., and the Board did not order S.J. to inpatient treatment because no appropriate less restrictive treatment option was available.

S.J.'s first two due process challenges were premised on the faulty basis that the Board ordered S.J. to a more restrictive

than necessary treatment option based solely on availability. As to the first challenge asserting in part that the Board actually determined a less restrictive treatment was warranted, the basis for this claim is inaccurate, and we reject this assignment of error. Further, we need not consider whether there would be a due process violation if in fact S.J. had been ordered into treatment that was more restrictive than necessary based solely on availability.

As to the second due process challenge involving SOCA's provisions, we note that contrary to S.J.'s assertion that SOCA invites the Board to commit an offender to a more restrictive alternative than is necessary, SOCA instead provides in § 71-1209(6) that a "treatment order by the mental health board under this section shall represent the appropriate available treatment alternative that imposes the least possible restraint upon the liberty of the subject" and that "[i]npatient hospitalization or custody shall only be considered as a treatment alternative of last resort." While the statute refers to "available" treatment, it also makes clear that the treatment ordered must be "appropriate" and must impose the least possible restraint and that inpatient treatment is to be considered a treatment alternative of last resort. Contrary to S.J.'s claim, SOCA does not invite placement based solely on availability, and in any event, as applied to this case, placement was not ordered based solely on availability.

SOCA's Provision Regarding the Composition of the Board Is Consistent With Due Process Requirements.

S.J. also claims that the district court erred when it concluded that SOCA's provision allowing commitment by a Board that contained only one legally trained member did not violate procedural due process. S.J. was committed by the Board, whose composition was consistent with the requirements of SOCA, and therefore this due process challenge, unlike the two just discussed, is properly presented on the facts of this case. However, we reject S.J.'s argument that the statutory composition of the Board violated his due process rights.

Pursuant to Neb. Rev. Stat. § 71-915(2) (Supp. 2011),

> Each mental health board shall consist of an attorney licensed to practice law in this state and any two of the following but not more than one from each category: A physician, a psychologist, a psychiatric nurse, a licensed clinical social worker or a licensed independent clinical social worker, a licensed independent mental health practitioner who is not a social worker, or a layperson with a demonstrated interest in mental health and substance dependency issues.

Under § 71-915(3), "[a]ny action taken at any mental health board hearing shall be by majority vote."

S.J. argues that the statutory composition of the Board violates due process requirements in a commitment determination. S.J. contends that such determination should be made by a court and asserts that statutes in other states related to placement decisions require a court determination. He further argues that the composition of the Board creates a risk of deprivation of constitutional rights, because a majority of the Board consists of members who are not legally trained and the Board order need not be unanimous.

[4,5] The Due Process Clause applies when government action deprives a person of liberty or property; accordingly, when there is a claimed denial of due process, a court must consider the nature of the individual's claimed interest. *In re Interest of S.C., ante* p. 294, 810 N.W.2d 699 (2012). A claim that one is being deprived of a liberty interest without due process of law is typically examined in three stages. The question in the first stage is whether there is a protected liberty interest at stake. If so, the analysis proceeds to the second stage, in which it is determined what procedural protections are required. Upon the resolution of that issue, the analysis moves on to the third and final stage, in which the facts of the case are examined to ascertain whether there was a denial of that process which was due. *Id.*

[6] Our first query then is whether there is a protected liberty interest at stake. Under SOCA, the Board decides whether a subject should be committed to inpatient or outpatient treatment. Clearly, a liberty interest is implicated if a subject is

committed to inpatient treatment. See *Vitek v. Jones*, 445 U.S. 480, 100 S. Ct. 1254, 63 L. Ed. 2d 552 (1980) (commitment to mental hospital produces massive curtailment of liberty and, in consequence, requires due process protection). Because a protected liberty interest is at stake, appropriate due process is required in connection with the commitment decision involving S.J. under SOCA.

[7] We next consider what procedural protections are required in connection with the commitment decision. Due process does not guarantee an individual any particular form of state procedure. Instead, the requirements of due process are satisfied if a person has reasonable notice and an opportunity to be heard appropriate to the nature of the proceeding and the character of the rights which might be affected by it. *Slansky v. Nebraska State Patrol*, 268 Neb. 360, 685 N.W.2d 335 (2004). We must therefore consider whether SOCA's provision regarding the composition of the Board meets the requirements of due process.

[8] S.J. argues that the composition of the Board under SOCA does not meet due process requirements, because the decision is not made by a court but instead is made by the Board and a majority of the members are not trained in the law. We have not held that such decisions must be made by a court in order to meet due process requirements. Instead, we have stated that due process requires a neutral, or unbiased, adjudicatory decisionmaker. *In re Interest of A.M.*, 281 Neb. 482, 797 N.W.2d 233 (2011). Such decisionmakers serve with a presumption of honesty and integrity. *Id.* A party seeking to disqualify an adjudicator because of bias or prejudice bears the heavy burden of overcoming the presumption of impartiality. *Id.*

S.J. makes no convincing argument that the Board as composed pursuant to SOCA would inherently be biased or prejudiced, and we find no reason that the Board would be biased or prejudiced because of its statutory composition. We further reject S.J.'s argument that the Board could not properly make a commitment decision because a majority of the members are not trained in the law. Due process does not require that initial decisions be made by a court or other legally trained persons.

We note in this regard that although a commitment decision is initially made by the Board, SOCA provides for judicial review of the Board's treatment orders. See § 71-1214. Therefore, SOCA provides those subject to a commitment order the opportunity to present legal arguments to a court. We conclude that the district court did not err when it rejected S.J.'s due process challenge.

CONCLUSION

We first note that, as determined above, the materials contained in the supplemental transcript were not considered by the Board in making its commitment decision nor properly considered as evidence in the district court on appeal; we therefore did not consider such materials in our review of the district court's decision. We conclude that the record before the Board and properly before the district court contained clear and convincing evidence to support the findings of the Board as affirmed by the district court that S.J. was substantially unable to control his criminal behavior and that inpatient treatment was the least restrictive alternative. We reject S.J.'s due process challenges to the proceedings before the Board under SOCA. We therefore affirm the judgment of the district court which affirmed the Board's commitment order.

AFFIRMED.

WRIGHT, J., not participating.

SOUTHWIND HOMEOWNERS ASSOCIATION, A CORPORATION, APPELLEE, V. DAVID BURDEN AND WILAI BURDEN, HUSBAND AND WIFE, APPELLANTS.

810 N.W.2d 714

Filed March 16, 2012. No. S-11-373.

1. **Summary Judgment.** Summary judgment is proper if the pleadings and admissible evidence offered at the hearing show that there is no genuine issue as to any material facts or as to the ultimate inferences that may be drawn from those facts and that the moving party is entitled to judgment as a matter of law.
2. **Restrictive Covenants: Intent.** Restrictive covenants are to be construed so as to give effect to the intentions of the parties at the time they agreed to the covenants.