

**COURT OF APPEALS
DECISION
DATED AND FILED**

April 22, 2008

David R. Schanker
Clerk of Court of Appeals

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

Appeal No. 2007AP2703

Cir. Ct. No. 2006ME3680

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT I**

IN THE MATTER OF THE MENTAL COMMITMENT OF CATHERINE M.:

MILWAUKEE COUNTY,

PETITIONER-RESPONDENT,

v.

CATHERINE M.,

RESPONDENT-APPELLANT.

APPEAL from an order of the circuit court for Milwaukee County:
VICTOR MANIAN, Judge. *Affirmed.*

¶1 WEDEMEYER, J.¹ Catherine M. appeals from an order for involuntary medication and treatment. Catherine claims that the evidence presented was insufficient to support the issuance of the order. Because the facts and circumstances of this case support the trial court's decision to enter the order, this court affirms.

BACKGROUND

¶2 Catherine suffers from a mental illness and was committed for treatment in October 2006. In April 2007, the commitment order was extended for a year, and Catherine was released to outpatient treatment. In May 2007, she was re-detained on the basis that she refused to take her prescribed medications. The County petitioned the court seeking an order to administer medication to Catherine.

¶3 A hearing on the petition was held on June 8, 2007. The County presented testimony from Dr. Joanne Bloomstein, who was the attending psychiatrist on the unit where Catherine was hospitalized. Dr. Bloomstein testified that Catherine suffered from bipolar affective disorder with manic episodes and psychotic features. Dr. Bloomstein stated that she had discussed the advantages and disadvantages of the medication with Catherine, but Catherine refused to take any medication. The doctor opined that Catherine is not capable of expressing an understanding of the advantages and disadvantages of the medication and is incompetent to refuse medication at this time. The medication Dr. Bloomstein wants to administer is Abilify.

¹ This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2) (2005-06).

¶4 Dr. Margaret Goldman also testified at the hearing. Dr. Goldman was Catherine's private psychiatrist, who treated Catherine when she was not hospitalized. Dr. Goldman disagreed with Dr. Bloomstein's diagnosis and treatment plan. Dr. Goldman indicated that the medications recommended by Dr. Bloomstein should not be administered to Catherine because Catherine has the metabolic syndrome, which would be made worse if she was given Abilify. Dr. Goldman believed Catherine would benefit from a drug like Klonopin. Catherine also testified at the hearing. She testified that she was refusing her prescribed medication based on Dr. Goldman's advice and she was concerned about the side effects like excessive weight gain around her abdomen. Catherine testified that she was aware of the difference in opinion between Dr. Bloomstein's diagnosis, medication, and treatment plan and that of Dr. Goldman's. She decided to follow the advice of Dr. Goldman. Catherine admitted that she has a mental illness, but believes she does not need to take medication for it. At the conclusion of the hearing, the trial court found that Catherine was not competent to refuse medication or treatment and granted the requested administration of the medication order. An order for involuntary medication and treatment was entered on November 16, 2007. Catherine now appeals from that order.

DISCUSSION

¶5 Catherine contends that the trial court applied the wrong standard for determining competency and that the County failed to prove she was incompetent to refuse medication or treatment. She contends that the standard set forth in WIS. STAT. § 51.61(1)(g)⁴ (2005-06)² was not followed. Citing *Virgil D. v. Rock*

² All references to the Wisconsin Statutes are to the 2005-06 version unless otherwise noted.

County, 189 Wis. 2d 1, 11, 542 N.W.2d 894 (1994), Catherine argues that the County failed to establish that she was incompetent to refuse medication. In *Virgil*, the supreme court held that § 51.61(1)(g)4 is to be strictly followed and “clearly establishes only one standard to evaluate a patient’s competency to refuse medication, that is, whether the patient is able to express an understanding of the advantages and disadvantages of, and the alternatives to, accepting medication or treatment.”

¶6 The trial court found that Catherine was not competent to refuse medication, ruling:

Well, this certainly is a difficult issue ... where two doctors disagree on not only the medication but on the diagnosis and therefore the prognosis and the need for the medication...

The issue is whether the patient is competent to refuse medication or treatment. She’s basing -- the basis of her testimony, she’s basing her refusal to take medication on the advice of her personal psychiatrist who has given her some reasons for refusing the medication and that’s what her belief apparently is.

....

Dr. Bloomstein has testified that without the medication that she’s prescribing, her stay here is going to be indefinite and that she’s concerned that she’s going to relapse into a situation where she could be of harm to herself or others. Again, Dr. Bloomstein is the treating physician while she’s here in the hospital. It seems to me that while she’s here and being treated as an inpatient, Dr. Bloomstein’s diagnosis and recommendation for medication is the appropriate one, whether Dr. Goldman agrees with it or not.

Miss M. has refused to accept the medication on the basis of her belief that she’s not suffering from a mental illness that requires medication. In April she was diagnosed as having a psychiatric disorder not otherwise specified, maybe paranoid schizophrenia according to the notes on the court file. And now Dr. Bloomstein says she believes she’s suffering from a bipolar effective disorder

with manic features. ... I'm satisfied and I find that she's not competent to refuse medication or treatment based on that belief that is not consistent with the treating psychiatrist's opinion and belief that her continued refusal to take the medication is -- could result in her continued inpatient stay here and could otherwise result in serious physical harm to herself or others and therefore I am going to order that the medication be approved.

¶7 In reviewing whether the trial court erred in issuing the involuntary medication order, this court is asked to review whether the finding is clearly erroneous. WIS. STAT. § 805.17(2). After reviewing the record in this case, this court concludes that the evidence was sufficient to support the trial court's finding that Catherine was not competent to refuse medication or treatment. Thus, the trial court finding was not clearly erroneous.

WISCONSIN STAT. § 51.61(1)(g)4 provides:

[A]n individual is not competent to refuse medication or treatment if, because of mental illness ... and after the advantages and disadvantages of and alternatives to accepting the particular medication or treatment have been explained to the individual, one of the following is true:

- a. The individual is incapable of expressing an understanding of the advantages and disadvantages of accepting medication or treatment and the alternatives.
- b. The individual is substantially incapable of applying an understanding of the advantages, disadvantages and alternatives to his or her mental illness ... in order to make an informed choice as to whether to accept or refuse medication or treatment.

¶8 Although Catherine is correct that the trial court's decision references the dispute between the two psychiatrists, we are not convinced that the ultimate finding made was clearly erroneous. The trial court's decision noted that the appropriate standard, despite the two conflicting psychiatrist's opinions, was "whether [Catherine] understands the alternatives and benefits and the benefits of

treatment that's being offered her, the advantages and disadvantages.” Thus, the trial court applied the correct standard.

¶9 The trial court found that Catherine did not understand the advantages and disadvantages, nor was she able to understand that her current mental state required medication. The trial court's finding is supported not only by Dr. Bloomstein's testimony, but also by the testimony of Catherine herself. Catherine testified about the side effects of Zyprexa, not Abilify. The record reflects that when Dr. Bloomstein tried to discuss the advantages and disadvantages of Abilify with Catherine, she refused to engage in any conversation because Catherine “does not believe that she has a mental illness necessitating medication.”

¶10 Further, although Catherine did express reasons for not wanting to take Zyprexa, she did not discuss Abilify, nor did she express any understanding of the *advantages* of taking medication. The statutory language is clear that to be competent to refuse medication, you must be able to express an “understanding of the advantages and disadvantages of accepting medication.” WIS. STAT. § 51.61(1)(g)4; *Virgil D.*, 189 Wis. 2d at 11-14. Thus, there is sufficient evidence in the record to support the trial court's finding that Catherine is not competent to understand the advantages and disadvantages relating to taking the recommended medication. Accordingly, this court affirms the trial court's finding.

By the Court.—Order affirmed.

This opinion will not be published. See WIS. STAT. RULE 809.23(1)(b)4.

