COURT OF APPEALS
DECISION
DATED AND RELEASED

November 27, 1996

NOTICE

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

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

No. 96-2290-FT

STATE OF WISCONSIN **IN COURT OF APPEALS**
DISTRICT IV

IN THE MATTER OF THE MENTAL CONDITION OF WILLIAM S., ALLEGED TO BE MENTALLY ILL: COUNTY OF DANE,

Petitioner-Respondent,

v.

WILLIAM S.,

Respondent-Appellant.

APPEAL from an order of the circuit court for Dane County: JAMES W. KARCH, Judge. *Affirmed*.

DEININGER, J.[1] William S. appeals from an order recommitting him for twelve months to the Dane County § 51.42 Board for outpatient treatment. He claims that the trial court erred in not dismissing the recommitment proceedings because there was not a personal examination by two physicians, one of whom is a psychiatrist, pursuant to § 51.20(9)(a), STATS.

[1] This appeal is decided by one judge pursuant to § 752.31(2)(d), STATS.

William also claims that, as a result of the failure of the court-appointed psychiatrist to examine him personally, there was insufficient evidence to sustain the jury's verdict finding him mentally ill, dangerous and a proper subject for treatment. We reject both arguments and affirm.

BACKGROUND

William was originally committed to the Dane County § 51.42 Board for treatment under § 51.20, STATS., on January 9, 1995. The commitment was extended on July 6, 1995, and a petition to further extend the commitment was filed on November 30, 1995.

Although the record does not contain an order appointing examiners, the parties agree that the court did appoint Roger Rattan, a licensed psychologist, and Leslie Taylor, M.D., a psychiatrist, to examine William. Rattan and Taylor filed written reports with the court on December 26, 1995, and both testified at the jury trial on January 5, 1996. The county also presented testimony from William's treating psychiatrist, Charles Meyer, M.D., who had contact with William "every month or two" during the year preceding trial. Dr. Taylor's written report and her trial testimony indicated that she had not personally examined William in December of 1995. She based her report and testimony on a review of William's treatment records and on her own contact with William approximately a year prior. The two psychiatrists and the psychologist who testified at trial were unanimous in their opinions that William was mentally ill, dangerous if treatment were withdrawn and a proper subject for treatment. The jury, with one dissent on the question of dangerousness, found likewise.

Prior to trial, William moved to dismiss the recommitment proceedings because Dr. Taylor had not personally examined William coincident with the preparation of her December 26, 1995 court report. The trial court denied the motion. William presented no evidence. At the close of the petitioner's case he moved for a directed verdict "on the insufficiency of the evidence." The motion was premised in part on the fact that "there has to be two ... at least two doctors personally seeing the subject, and that one of them be a psychiatrist." The trial court denied the motion, based on its prior ruling that there "is no requirement that two doctors examine the individual" and based on

the court's determination that "there is sufficient evidence to support a jury's verdict in favor of the petition."

ANALYSIS

Interpretation and application of a statute is a question of law which we review de novo. ***State ex rel. Sielen v. Milwaukee Cir. Ct.***, 176 Wis.2d 101, 106, 499 N.W.2d 657, 659 (1993). To determine the meaning of a statute we first look to the plain language of the statute. "If the statute is clear on its face, our inquiry as to the legislature's intent ends and we must simply apply the language to the facts of the case." ***Interest of Peter B.***, 184 Wis.2d 57, 71, 516 N.W.2d 746, 752 (Ct. App. 1994). We do not look behind the plain and unambiguous language of a statute.

On an initial petition to commit a person for mental health treatment, § 51.20(9)(a), STATS., requires that two examiners be appointed to examine the individual. The examiners must be two psychiatrists, a physician and a psychologist, or two physicians, one of whom is preferably a psychiatrist. The examiners are directed to "personally observe and examine the subject individual" prior to making a written report to the court on their findings.

If the county department to whom an individual has been committed under § 51.20(13)(a)3., STATS., wishes to extend a commitment order, it must apply to the committing court. The court must then "proceed under subs. (10) to (13)" to hear the extension request. Section 51.20(13)(g)3. William concedes that the extension provisions make no express mention of § 51.20(9)(a), but claims that the requirement to appoint examiners must be read into the extension procedure.

William first argues that because many probate courts routinely appoint examiners on extension petitions, as this one did, § 51.20, STATS., is ambiguous. We disagree. The fact that some courts may choose to appoint examiners on extension petitions does not convert that choice into a statutory mandate or a plainly worded statute into an ambiguous one.

William next argues that we must read § 51.20(13)(g)3., STATS., within the context of the other subsections of § 51.20. We agree. "[T]he entire section of a statute and related sections are to be considered in its construction or interpretation: we do not read statutes out of context." ***Brandt v. LIRC***, 160 Wis.2d 353, 362, 466 N.W.2d 673, 676 (Ct. App. 1991), *aff'd*, 166 Wis.2d 623, 480 N.W.2d 494 (1992). In reviewing § 51.20, however, we find no support for implicitly incorporating § 51.20(9)(a) into the commitment extension procedure of § 51.20(13)(g)3.

Section 51.20(16), STATS., which permits a committed individual to request reexamination, expressly incorporates the § 51.20(9)(a) two-examiner requirement. Section 51.20(16)(e). Thus, William's argument that § 51.20(9)(a) must be implicitly read into all other relevant subsections of § 51.20 is not well-founded. If that were so, the legislature would not have found it necessary to specify the application of § 51.20(9)(a) to the § 51.20(16) reexamination procedure.

William maintains, however, that because § 51.20(3), STATS., which requires appointment of counsel for individuals involved in commitment proceedings, is generally applicable to all proceedings under § 51.20, we must give similar effect to § 51.20(9)(a). He argues that even though § 51.20(3) is not specifically mentioned in § 51.20(13)(g)3., it would be absurd to read the statute as not requiring the same assurance of representation for extensions as for initial commitments.

William is correct that a person subject to recommitment must be represented by counsel. The extension procedures required under § 51.20(13)(g), STATS., make express references to counsel for the subject individual: § 51.20(13)(g)2r. requires a copy of a department's extension evaluation and recommendation to be provided to "the individual's counsel"; the hearing procedure of § 51.20(10), which expressly applies to extensions makes numerous references to the subject individual's counsel, as do §§ 51.20(11) (right to jury trial) and 51.20(12) (right to open hearing), both of which also expressly apply to extensions. No similar references to the two-examiner requirement of § 51.20(9)(a) are found in these subsections. Absent any ambiguity, we will not read into a statute what the legislature has not written there. *See* ***La Crosse Lutheran Hosp. v. La Crosse County***, 133 Wis.2d

335, 338, 395 N.W.2d 612, 613 (Ct. App. 1986) ("We cannot rewrite [a statute] to meet [a party's] desired construction of it.").

Finally, William argues that if § 51.20(13)(g), STATS., is not read to incorporate the two-examiner requirement of § 51.20(9)(a), the petitioner is somehow improperly relieved of its burden to prove the elements necessary for recommitment.[2] He urges that we interpret the statute as providing only one way for the petitioner to meet its burden: by having examiners appointed under § 51.20(9)(a) and presenting their testimony in support of extension. This argument is flawed. Nowhere in § 51.20 is there a requirement that both (or even either) of the § 51.20(9)(a) examiners testify at a commitment hearing or trial. The only requirement is that the appointed examiners conduct examinations and report their findings to the court and counsel. A petitioner in an initial commitment proceeding may choose to present trial testimony from both of the examiners, only one, or from altogether different experts. The only requirements are that the individual's counsel be notified of petitioner's witnesses and their proposed testimony within a reasonable time before a final hearing, and that counsel have access to "all psychiatric and other reports" forty-eight hours prior to the hearing. Section 51.20(10)(a) and (b).

On his claim that there was insufficient evidence to extend his commitment, William acknowledges that he is arguing "the flipside of what has been the entire argument" regarding the application of § 51.20(9)(a), STATS., to extension proceedings. He asserts that "[w]hen there has not been two mental examinations, and no examination conducted by a psychiatrist on the subject, there cannot be a proper legitimate basis established" for a recommitment. The short answer to William's argument is that there was in fact testimony before the jury supporting his recommitment from a psychiatrist having recent contact with him, that of William's treating psychiatrist, Dr. Meyer, who had seen him "every month or two" for a year.

William would have this court hold that the only way a petitioner can meet its burden of proof for the recommitment of an individual is through

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[2] William also argues that the trial court's failure to dismiss the extension proceedings "defeated the spirit, intent and overall purpose of Chapter 51." This argument is not developed, however, and we therefore do not address it. *See* ***Reiman Assocs. v. R/A Advertising, Inc.***, 102 Wis.2d 305, 306 n.1, 306 N.W.2d 292, 294 (Ct. App. 1981).

the testimony, based on a recent examination, of a psychiatrist appointed via § 51.20(9)(a), STATS. Nothing in § 51.20(10) through (13) places such constraints on the petitioner's proof of the elements necessary for recommitment. Here, the petitioner presented testimony from three experts-two psychiatrists and a psychologist-all of whom were familiar with William through some combination of examination, treatment, or review of treatment records, and all of whom testified that William was mentally ill, dangerous if treatment were withdrawn and a proper subject for treatment. Their testimony, apparently accepted by the jury, provided a sufficient basis to enter the order appealed from.

By the Court.—Order affirmed.

This opinion will not be published. *See* RULE 809.23(1)(b)4, STATS.