COURT OF APPEALS DECISION DATED AND FILED

August 28, 1997

Marilyn L. Graves
Clerk, Court of Appeals
of Wisconsin

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* § 808.10 and RULE 809.62, STATS.

No. 97-0880-FT

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

IN THE MATTER OF THE MENTAL COMMITMENT OF JOHN L. N.:

LAFAYETTE COUNTY,

PETITIONER-RESPONDENT,

V.

JOHN L. N.,

RESPONDENT-APPELLANT.

APPEAL from an order of the circuit court for Lafayette County: MARK J. FARNUM, Judge. *Affirmed.*

DYKMAN, P.J.[1] John L.N. appeals from a trial court order committing him to the custody of the Lafayette County Human Services Board

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[1] This appeal is decided by one judge pursuant to § 752.31(2)(d), STATS. This is an expedited appeal under RULE 809.17, STATS.

pursuant to findings that he is mentally ill, a proper subject for treatment and dangerous. John claims that: (1) the trial court denied him due process of law by finding that he presents a substantial probability of harm to himself under § 51.20(1)(a)2.a, STATS., because that allegation had earlier been dismissed from the petition for involuntary commitment; and (2) the county failed to prove by clear and convincing evidence that he is dangerous. We conclude that the trial court did not deny John due process of law because it had grounds for the involuntary commitment order independent from those dismissed from the petition. Furthermore, we conclude that the trial court's finding that John is dangerous is not clearly erroneous. Accordingly, we affirm.

BACKGROUND

John is a diagnosed paranoid schizophrenic with a history of alcohol dependence. From October 12, 1995 to April 12, 1996, John received mental health treatment under an involuntary commitment order. On May 21, 1996, after the original commitment order had expired, Susan Tuescher, Sharon Farrey and Charles Dopke filed a petition for a new involuntary commitment, alleging that John was mentally ill, a proper subject for treatment and dangerous.

Upon John's motion, the court dismissed allegations that John would be a proper subject for commitment if treatment were withdrawn under § 51.20(1)(am), STATS., and that John was dangerous pursuant to § 51.20(1)(a)2.a because he evidenced a substantial probability of physical harm to himself as manifested by evidence of threats of or attempts at suicide or serious bodily harm. Remaining in the petition were allegations that John was dangerous pursuant to § 51.20(1)(a)2.b because he evidenced a substantial probability of physical harm to others as manifested by evidence of homicidal or other violent behavior, or by

evidence that others are placed in reasonable fear of violent behavior and serious physical harm to them, and that John was dangerous pursuant to § 51.20(1)(a)2.c because he evidenced such impaired judgment that there was a substantial probability of physical impairment or injury to himself.

Following a hearing, the trial court found that John was mentally ill, a proper subject for treatment and dangerous. With regard to dangerousness, the court found that John presents a substantial probability of physical harm to himself under § 51.20(1)(a)2.a, STATS., that John presents a substantial probability of physical harm to others under § 51.20(1)(a)2.b, and that John presents a substantial probability of physical impairment or injury to himself due to impaired judgment under § 51.20(1)(a)2.c. Pursuant to its findings, the court committed John to the custody of the county for involuntary treatment. John appeals from the commitment order.

DUE PROCESS

John argues that the trial court denied him due process of law when it concluded that he is dangerous under § 51.20(1)(a)2.a, STATS., because the court had earlier dismissed that allegation from the petition. We do not need to address this argument because the trial court also found that John was dangerous under § 51.20(1)(a)2.b and § 51.20(1)(a)2.c. When there is at least one sufficient ground to support the order, we need not discuss the others. ***Sweet v. Berge***, 113 Wis.2d 61, 66, 334 N.W.2d 559, 562 (Ct. App. 1983).

Under § 51.20(1)(a), STATS., a petition for involuntary commitment must allege that the subject of the petition is dangerous.[2] Section 51.20(1)(a)2 sets

[2] This requirement is subject to exceptions. *See* § 51.20(1), STATS.

forth five classifications of individuals who are "dangerous" and, therefore, appropriate subjects for involuntary commitment orders. For the court to order an involuntary commitment under this section, the court only needs to find an individual dangerous under one of these classifications. *See* ***id.***

The trial court did not base its involuntary commitment order solely on its finding that John presents a substantial probability of harm to himself under § 51.20(1)(a)2.a, STATS. It also based the order on its findings that John presents a substantial probability of physical harm to others under § 51.20(1)(a)2.b, and that John presents a substantial probability of physical impairment or injury to himself due to impaired judgment under § 51.20(1)(a)2.c. Because the trial court's order is sustainable on grounds other than those dismissed from the petition, the trial court did not deprive John of his due process rights.

CLEAR AND CONVINCING PROOF OF DANGEROUSNESS

John next argues that the county failed to prove by clear and convincing evidence that he is dangerous. Under § 51.20(13)(e), STATS, "[t]he petitioner has the burden of proving all required facts by clear and convincing evidence." We will not set aside the trial court's finding of dangerousness unless it is clearly erroneous. *See* § 805.17(2), STATS.

John argues that the trial court's findings of dangerousness under § 51.20(1)(a)2.a, b, and c, STATS., are all erroneous. Again, the trial court only needed to make one of these findings in order to commit John. Therefore, if we conclude that one of these findings is not clearly erroneous, the order is sustainable and we need not discuss the other findings. *See* ***Sweet***, 113 Wis.2d at 66, 334 N.W.2d at 562.

For an involuntary commitment under § 51.20(1)(a)2.c, STATS., the petitioner must prove that the individual is dangerous because the individual:

> Evidences such impaired judgment, manifested by evidence of a pattern of recent acts or omissions, that there is a substantial probability of physical impairment or injury to himself or herself. The probability of physical impairment or injury is not substantial … if reasonable provision for the subject individual's protection is available in the community and there is a reasonable probability that the individual will avail himself or herself of these services ….

Based on the evidence, we conclude that the trial court's finding of dangerousness under § 51.20(1)(a)2.c, STATS., is not clearly erroneous.

First, two of John's treating psychiatrists, Dr. John Roberts and Dr. Lewis Fulton, testified as to recent acts or omissions by John that evidenced impaired judgment. According to Dr. Roberts, during the period prior to the hearing, John did not want to take the prescribed 300 milligrams per day of his psychotropic medication, Clorazil. He agreed to take only 100 milligrams per day, which both Dr. Roberts and Dr. Fulton felt was inadequate to maintain John's mental stability. Dr. Roberts testified that at one point John did not take any Clorazil for three days. John admitted to consuming an indeterminate amount of alcohol during the two months prior to the commitment hearing, and Dr. Fulton believed there was a high likelihood that John drank alcohol during his prior commitment period.

Second, the psychiatrists testified as to how John's impaired judgment indicates a substantial probability of impairment or injury to himself. Dr. Roberts emphasized that when John is not taking his full dosage of psychotropic medicine, his paranoid delusions increase. The psychiatrists both addressed the mental health risks associated with not adhering to the prescribed medication treatment program. Dr. Roberts further expressed his concern that if

John uses alcohol, it could lead to such physical impairment and injuries as exacerbation of his liver damage and his alcohol-related pancreatitis and hepatitis. According to Dr. Roberts, John has been in drunk driving accidents in the past, and alcohol use has led to an exacerbation of John's psychiatric symptoms.

Third, the witnesses testified not only to their belief that John would not take advantage of services available in the community, but also gave evidence from which one could reasonably draw that conclusion. Susan Tuescher, John's primary contact person at human services and the protective payee of his disability benefits, testified that John had expressed displeasure in her handling of his money. In addition, Dr. Roberts stated that John's history of not completing alcohol treatment once a treatment order has expired increases the probability that John would not avail himself of the alcohol and other treatment programs and services available to him if he did not have the legal obligation to do so.

The trial court heard sufficient evidence on which to conclude that John is dangerous under § 51.20(1)(a)2.c, STATS. Its finding is not clearly erroneous. Accordingly, we affirm the order committing him to the custody of the county for treatment.

By the Court.—Order affirmed.

Not recommended for publication in the official reports. *See* RULE 809.23(1)(b)4, STATS.