

**COURT OF APPEALS
DECISION
DATED AND RELEASED**

NOTICE

August 28, 1997

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. 97-1216-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:
DANE COUNTY,**

PETITIONER-RESPONDENT,

v.

WILLIAM S.,

RESPONDENT-APPELLANT.

APPEAL from an order of the circuit court for Dane County:
MORIA KRUEGER, Judge. *Affirmed.*

DEININGER, J.¹ William S. appeals an order recommitting him for twelve months to the Dane County § 51.42 Board for outpatient treatment.² He

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

² This is an expedited appeal under RULE 809.17, STATS.

claims that there was insufficient evidence for the trial court to find him dangerous within the meaning of § 51.20(1)(a)2. and (am), STATS.,³ and thus to extend his commitment. Because we conclude that the trial court's finding that William presents a substantial risk of dangerousness to others if treatment were withdrawn, was not clearly erroneous, we affirm.

BACKGROUND

William, "while psychotic in 1972," killed his mother and was committed under § 971.17, STATS., until 1990. In 1994, he threatened to shoot a group home resident and was committed under § 51.20, STATS. The original outpatient commitment was extended in July 1995 and also in January 1996. In the instant action, Dane County sought to extend William's commitment for an additional twelve months.

The court appointed James Black, a psychologist, and Paula Colombo, a psychiatrist, to examine William and to make reports and recommendations to the court. Both filed written reports and testified at the extension hearing that William was mentally ill and a proper subject for outpatient treatment. They disagreed, however, on the risk of danger posed if William were to withdraw from treatment. Black's opinion was that the degree of risk was

³ Section 51.20(1)(a)2.b., STATS., requires a showing that "an individual is dangerous because he or she ... [e]vidences a substantial probability of physical harm to other individuals as manifested by evidence of recent homicidal or other violent behavior, or by evidence that others are placed in reasonable fear of violent behavior and serious physical harm to them, as evidenced by a recent overt act, attempt or threat to do serious physical harm." Paragraph (am) of the subsection, however, provides that in order to extend the commitment of an individual who has previously been committed under § 51.20, "the requirements of a recent overt act, attempt or threat to act under par. (a) 2. ... b. ... may be satisfied by a showing that there is a substantial likelihood, based on the subject individual's treatment record, that the individual would be a proper subject for commitment if treatment were withdrawn."

“moderate,” while Colombo testified that William’s risk to engage in dangerous behavior if not treated was “substantial.” Both concluded, however, that William was resistant to treatment and would likely discontinue his medications if not committed. Even though his evaluation of William’s risk of dangerousness differed from that of Colombo, Black testified that it was his opinion that William “should remain under an extension of his commitment.”

In its ruling from the bench, the trial court noted the discrepancy in the testimony of the examiners regarding William’s potential for dangerousness if not treated. The court acknowledged that Black’s credentials were perhaps more extensive than Colombo’s, but declined to accept Black’s determination that William’s risk of dangerousness was “moderate” as opposed to “substantial”:

[I] rely not only on [the 1972 killing of his mother], but I do rely on the incidents that were testified to in 1974 [sic-1994]. Now, there was a period and everyone seems to think ‘90 to ‘94 it may well be that [William] was not on medications. What happened when [William] was not on medications appears to be quite clear as well, that he substantially deteriorated in his ability to function even on the fringes of society without either causing violence or threatening violence and I do note that the violence that was threatened, and it’s not contested, was through the use of a firearm.... I think that’s about as good an example as we can have as to what happens if medication is not taken. We have [William], himself, saying that it would be his intention to stop his medications if he were not under a court order to continue these medications.

The court concluded:

We know this is an individual who can get so detached from reality so as to, in his own mind, justify the taking of a human life. So I believe that I am not without solid foundation in finding this substantial risk.

The court subsequently entered an order extending William's commitment to the Dane County § 51.42 Board for twelve months of outpatient treatment "with conditions," and an order for involuntary medication and treatment.

ANALYSIS

The County's burden is to show the elements required for an extension of William's commitment by "clear and convincing evidence." Section 51.20(13)(e), STATS. The trial court's determination that William poses a substantial risk of danger to others if not treated is a factual finding that will not be disturbed on appeal unless it is "clearly erroneous." Section 805.17(2), STATS.⁴ We must affirm the trial court unless its finding is contrary to the great weight and clear preponderance of the evidence. *Noll v. Dimiceli's, Inc.*, 115 Wis.2d 641, 643, 340 N.W.2d 575, 577 (Ct. App. 1983). We conclude that the trial court did not err in determining that there was clear and convincing evidence in the record that William posed a substantial risk of danger to others if treatment were withdrawn.

The report and testimony of Dr. Colombo, by itself, would constitute sufficient evidence to sustain the trial court's finding on William's dangerousness. William does not argue that Colombo, a resident psychiatrist at U.W. Hospital and Clinics for one and one-half years, was not competent to express her professional opinions regarding William's mental illness and propensity for dangerousness. Rather, he argues that Black's opinions were better founded and should have been accepted by the trial court. The weight and credibility to be accorded the

⁴ Section 805.17(2), STATS., provides in relevant part: "Findings of fact shall not be set aside unless clearly erroneous, and due regard shall be given to the opportunity of the trial court to judge the credibility of the witnesses."

testimony of witnesses at trial, however, is a matter within the province of the trier of fact. *Mullen v. Braatz*, 179 Wis.2d 749, 756, 508 N.W.2d 446, 449 (Ct. App. 1993). This is true for experts as well as lay witnesses. *See* WIS J I—CIVIL 260.⁵

The trial court could well conclude that the evidence in the record regarding William’s treatment history, and his past violent acts and threats, rendered Colombo’s assessment of a “substantial” risk of dangerousness more credible than Black’s opinion that the risk was only “moderate.” In addition, Black himself recommended that William’s commitment be extended. We cannot conclude that the trial court’s finding was clearly erroneous.

By the Court.—Order affirmed.

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

⁵ The pattern instruction reads as follows:

Usually witnesses can testify only to facts they know.

But, a witness with expertise in a calling (specialty) may give an opinion in that calling (specialty). In determining the weight to be given an opinion, you should consider the qualifications and credibility of the expert and whether reasons for the opinion are based on facts in the case. Opinion evidence was admitted in this case to help you reach a conclusion. You are not bound by any expert’s opinion.

(In resolving conflicts in expert testimony, weigh the different expert opinions against each other and consider the relative qualifications and credibility of the experts and the reasons and facts supporting their opinions.)