COURT OF APPEALS
DECISION
DATED AND FILED

November 3, 1998

Marilyn L. Graves
Clerk, Court of Appeals
of Wisconsin

No. 98-1987-FT

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

IN THE MATTER OF THE MENTAL COMMITMENT OF GREY C.B.

BROWN COUNTY,

PETITIONER-RESPONDENT,

V.

GREY C.B.,

RESPONDENT-APPELLANT.

APPEAL from a judgment of the circuit court for Brown County: EUGENE F. MC ESSEY, Judge. *Affirmed.*

HOOVER, J. Grey C.B. appeals a trial court judgment extending his involuntary commitment for one year under § 51.20(13)(g)(1) and (3), STATS. He claims that the trial court erred by denying his motion to exclude any testimony relating to acts leading to previous commitments. Grey asserts that testimony

regarding past acts leading to previous commitments is not a part of the treatment record under § 51.20(1)(am). This court disagrees and therefore affirms.

Grey C.B. was originally committed under ch. 51, STATS., in October 1988. In November 1997, after several repeated six-month and one-year recommendations, the State applied for an extension of his commitment under § 51.20(13)(g)(1) and (3), STATS.

Before trial on the latest recommitment petition, Grey brought a motion to exclude past acts leading to prior commitments claiming that it was not included in his treatment record. He argued that "to go that far back is too remote in time and it would be unduly prejudicial to [him] to be relative to its probative value." The trial court denied Grey's motion. After a jury trial, he was recommitted for another year. Grey appeals the trial court's denial of his motion to exclude his past acts leading to prior commitments.

An extension for commitment is petitioned under § 51.20(13)(g)3, STATS.:

> If the court determines that the individual is a proper subject for commitment as prescribed in sub. (1)(a)1. and evidences the condition under sub. (1)(a)2. or (am) or is a proper subject for commitment as prescribed in sub. (1)(ar) or (av), it shall order judgment to that effect and continue the commitment. The burden of proof is on the county department or other person seeking commitment to establish evidence that the subject individual is in need of continued commitment.

Section 51.20(1)(am) provides:

> If the individual has been the subject to inpatient treatment for mental illness, developmental disability or drug dependency immediately prior to commencement of the proceedings as a result of a voluntary admission or a

> commitment or placement ordered by a court under this section or s. 55.06 or 971.17 or ch. 975, or if the individual has been the subject of outpatient treatment for mental illness, developmental disability or drug dependency immediately prior to commencement of the proceedings as a result of a commitment ordered by a court under this section or s. 971.17 or ch. 975, the requirements of a recent overt act, attempt or threat to act under par. (a)2.a. or b., a pattern of recent acts or omissions under par. (a)2.c. or e. or recent behavior under par. (a)2.d. 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. (Emphasis added.)

Both of the State's witnesses at trial agreed that based on Grey's treatment record and commitment history, he would be a proper subject for commitment if treatment were withdrawn.[1]

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[1] The State presented two expert witnesses at trial: Gerald J. Wellens, a licensed clinical psychologist, and Josefina Rodriguez-Pojas, a psychiatrist. The following colloquy occurred between the State and Wellens:

> Q Doctor, then based upon Grey [C.B.'s] actual treatment record and his commitment history, do you believe to a reasonable degree of certainty that there's a substantial likelihood that if treatment were withdrawn, in other words, his commitment was allowed to expire and Grey was left to his own devices, would he again become a proper subject for commitment?
>
> A Yes. In my clinical judgment, yes.
>
> Q Doctor, were you aware that Grey has been committed on separate commitment orders at least three times in the past?
>
> A Yes.
>
> Q Okay. And are you aware, Doctor, that his present commitment that we're asking for the recommitment of today that that actually has been recommitted several times since 1993?
>
> A That's my understanding. Yes.
>
> Q Doctor, when, I believe, the first time Grey was committed was 1988, that commitment expired after six months and a

(continued)

Grey claims that an "individual's treatment record" as stated in § 51.20(1)(am), STATS., does not include evidence in relation to his prior commitments. Grey relies on the definition of records contained in § 51.30(1)(b), STATS., in making his argument:

> "Treatment records" include the registration and all other records concerning individuals who are receiving or who at any time have received services for mental illness, developmental disabilities, alcoholism, or drug dependence which are maintained by the department, by county departments under s. 51.42 or 51.437 and their staffs, and by treatment facilities. Such records do not include notes or records maintained for personal use by an individual providing treatment services for the departments, a county department under s. 51.42 or 51.437, or a treatment facility if such notes or records are not available to others.

Because statutes relating to the same subject matter may be considered in construing statutory provisions, this court will utilize the definition of "treatment record" in § 51.30 in its analysis. *See* ***Newport Condo. Ass'n v. Concord-Wisconsin***, 205 Wis.2d 577, 583, 556 N.W.2d 775, 778 (Ct. App. 1996).

> couple months later he was again committed just like in my scenario. Does that indicate to you the likelihood that Grey would again stop his treatment and need commitment again?
>
> A Yes. As a matter of fact he clearly tells me – told me that if he were not forced to take his medication by a court order he would stop taking it immediately.

The colloquy between the State and Pojas was as follows:

> Q Doctor, in Grey's case, if he's been committed, if this is the fourth commitment order he's been under, is the likelihood in your opinion that he would again become dangerous to the point where he could be committed again if treatment were withdrawn?
>
> A Yes. Yes.

First, to determine what encompasses a "treatment record" under § 51.20(1)(am), STATS., this court must engage in statutory interpretation. Construction of a statute or its application to a particular set of facts is a question of law this court reviews de novo. ***Minuteman, Inc. v. Alexander***, 147 Wis.2d 842, 853, 434 N.W.2d 773, 778 (1989). The primary purpose of statutory construction and interpretation is "to ascertain and give effect to the intent of the legislature," and our first resort is to the language of the statute itself. ***Kelley Co. v. Marquardt***, 172 Wis.2d 234, 247, 493 N.W.2d 68, 74 (1992). If the words of the statute convey the legislative intent, our inquiry ends. ***Id***. In construing the statute, this court's primary objective is to achieve a reasonable construction that will effectuate the statutory purpose. The aim of statutory construction is to ascertain the intent of the legislature. ***In re W.R.B.***, 140 Wis.2d 347, 351, 411 N.W.2d 142, 143 (Ct. App. 1987). "We must presume the legislature intended an interpretation that advances the objective of the statute." ***Novak v. Madison Motel Assos.,*** 188 Wis.2d 407, 414, 525 N.W.2d 123, 125-26 (Ct. App. 1994).

In re W.R.B., 140 Wis.2d at 351, 411 N.W.2d at 143, discusses the legislature's intent in enacting § 51.20(1)(am), STATS.:

> The clear intent of the legislature in amending sec. 51.20(1)(am), Stats., was to avoid the "revolving door" phenomena whereby there must be proof of a recent overt act to extend the commitment but because the patient was still under treatment, no overt acts occurred and the patient was released from treatment only to commit a dangerous act and be recommitted. The result was a vicious circle of treatment, release, overt act, recommitment. The legislature recognized the danger to the patients and others of not only allowing for, but requiring, overt acts as a prerequisite for further treatment.

For this court to hold that one's treatment record does not include prior acts leading to past commitments would completely defy the legislative purpose in

enacting § 51.20(1)(am). If the trier of fact was prohibited from hearing evidence relating to Grey's history of commitments and recommitments for almost a ten-year period of time, it would be deprived of highly relevant evidence to the issue whether he would be a proper subject for commitment if treatment were withdrawn. This is particularly true if all evidence of prior acts up to a year before his recommitment hearing was prevented from being heard at trial, which is what trial counsel argued. To interpret the statute as Grey suggests would lead to absurd and unreasonable results. *See* ***Nelson v. McLaughlin***, 211 Wis.2d 487, 496, 565 N.W.2d 123, 128 (1997).

Moreover, concluding that evidence of prior acts leading to past commitments is part of one's treatment record is also consistent with the definition of "treatment record" under § 51.30, STATS., which defines "treatment record" as "the registration and *all other records* concerning individuals who are receiving *or who at any time have received* services for mental illness." (Emphasis added.) The definition of "treatment records" encompasses records in relation to individuals who have "at any time" received services for mental illness. This would include prior commitment records. The definition is not limited to current treatment. Obviously, Grey's prior commitment records contained information on the prior acts that led to his previous commitments.

Moreover, the State's expert witnesses would not have been able to review and testify to information regarding his past acts if the records were for personal use by an individual providing treatment services and not available for other persons to review under § 51.30, STATS. If the experts testified that they were familiar with the treatment records and testified to past events, those past events were necessarily gleaned from the treatment record, which would include

the basis for commitment, the act of dangerousness on which the commitment was ordered and the treatment provided.

Accordingly, this court concludes that the definition of "treatment record" under § 51.20(1)(am), STATS., includes evidence of prior acts leading to past commitments.

By the Court.—Judgment affirmed.

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