

**COURT OF APPEALS
DECISION
DATED AND FILED**

September 29, 1999

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. 99-1580-FT

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT II**

**IN THE MATTER OF THE MENTAL
COMMITMENT OF EDWIN B.:**

SHEBOYGAN COUNTY,

PETITIONER-RESPONDENT,

v.

EDWIN B.,

RESPONDENT-APPELLANT.

APPEAL from an order of the circuit court for Sheboygan County:
TIMOTHY M. VAN AKKEREN, Judge. *Affirmed.*

NETTESHEIM, J. Edwin B. appeals from an order authorizing the involuntary administration of psychotropic medication pursuant to § 51.61(1)(g), STATS. Edwin contends that the evidence does not support the trial court's finding

that he was not competent to refuse medication pursuant to subd. (1)(g)4 of the statute. We disagree. We uphold the order.

The relevant facts are not in dispute. At all material times, Edwin was subject to a ch. 51, STATS., commitment as a mentally ill person. Sheboygan County sought an extension of the commitment. The trial court appointed Dr. Charles Cahill to evaluate Edwin for purposes of the extension proceedings. Cahill was not Edwin's treating physician, but he had followed Edwin's treatment since at least 1992.

Section 51.61(1)(g)4, STATS., provides:

For purposes of a determination under subd. 2. or 3., an 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. [Emphasis added.]

When Cahill met with Edwin to conduct the evaluation and to provide him the advice required by the statute, Edwin would not allow Cahill to explain the statutory provisions. Cahill had, however, explained these provisions to Edwin about two months earlier in a prior meeting.

Based upon his observations of Edwin, Cahill opined that Edwin was not competent to refuse medication. On December 15, following a jury trial, Edwin's ch. 51, STATS., commitment was extended for one year. Based upon

Cahill's testimony, the trial court determined that Edwin was not competent to refuse medication and the court authorized Edwin's physician to involuntarily administer medications. Edwin appeals, contending that Cahill did not comply with the provisions of § 51.61(1)(g)4, STATS.

When Cahill interviewed Edwin, he was fully prepared to deliver the statutory information, and he attempted to do so. However, Edwin would not permit Cahill to accomplish this task. That failing cannot be attributed to Cahill or the County. We acknowledge that in *Virgil D. v. Rock County*, 189 Wis.2d 1, 524 N.W.2d 894 (1994), the supreme court held that § 51.61(1)(g)4, STATS., must be strictly followed and that it specifies only one standard for determining whether a patient is competent to refuse medication. See *Virgil D.* 189 Wis.2d at 9-12, 524 N.W.2d at 897-98. However, *Virgil D.* did not present the problem posed by this case where the patient's own conduct frustrates an attempt to comply with the statute.

Section 51.61, STATS., is entitled "Patients rights." The statute obviously exists for the benefit of patients committed pursuant to ch. 51. Common sense teaches that a patient will not be heard to complain that the statute has not been followed where the patient's own conduct frustrated an attempt to follow the statute.

By the Court.—Order affirmed.

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

