COURT OF APPEALS DECISION DATED AND FILED

December 7, 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. 99-2270

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

IN THE MATTER OF THE MENTAL COMMITMENT OF MATTHEW W.G.:

BROWN COUNTY,

PETITIONER-RESPONDENT,

V.

MATTHEW W.G.,

RESPONDENT-APPELLANT.

APPEAL from an order of the circuit court for Brown County: PETER J. NAZE, Judge. *Affirmed.*

¶1 PETERSON, J. Matthew G. appeals an order for his involuntary mental commitment under § 51.20, STATS. He claims the trial court failed to consider that his primary need was treatment for substance abuse rather than

mental illness. Because the court applied the correct legal standard and that the evidence was sufficient to support the court's decision, the order is affirmed.

¶2 Matthew was committed following a hearing in May of 1999. The State presented the testimony of one expert: Dr. Chandra Bommakanti, Matthew's treating psychiatrist.[1] Bommakanti diagnosed Matthew as suffering from chronic undifferentiated schizophrenia and polysubstance abuse/dependence. She testified Matthew was a proper person for treatment and recommended he remain at Unit 7 of the Brown County Mental Health Center and continue taking psychotropic medications. In her opinion, Unit 7 was the least restrictive facility for Matthew's treatment needs at that time. As to his substance abuse, she testified that his assessment at the mental health center recommended outpatient counseling and attendance at Narcotics Anonymous meetings.

¶3 The trial court ordered a six-month commitment to the appropriate Brown County Department under § 51.42, STATS. It further ordered that Unit 7 at Brown County Mental Health Center was the maximum level of inpatient facility that may be used for Mathew's treatment.

¶4 For the purpose of this appeal, Matthew does not contest the findings that he is mentally ill, dangerous and a proper person for treatment, all of which are required under § 51.20, STATS. Rather, he challenges the specific disposition

[1] We are troubled by Matthew's recitation of the contents of two reports by Drs. Slightam and Wolf. The reports were filed because the court appointed the doctors to examine Matthew. *See* § 51.20(9), STATS. However, neither doctor testified at trial and neither report was offered as an exhibit into evidence. Therefore, the contents of the reports could not have been considered by the trial court. *See* ***In re R.S.***, 162 Wis.2d 197, 206-208, 470 N.W.2d 260, 263-64 (1991). Thus, Matthew's recitation in his brief of the contents of the reports is entirely inappropriate.

ordered.[2] He claims that under § 51.20 the trial court must consider the "primary need" of a subject when that person has been diagnosed as both mentally ill and suffering from alcohol or drug abuse. According to Matthew, the evidence showed that his primary need is treatment for substance abuse.

¶5 In support of his argument, Matthew cites ***In re Shaw***, 87 Wis.2d 503, 275 N.W.2d 143 (Ct. App. 1979), where the court reviewed a protective placement under ch. 55, STATS. *See **id***. at 517-18, 275 N.W.2d at 150-51. The court noted that the relevant statute authorizing protective placement required a finding that the person had a "primary need" for residential care and custody. *See **id***. at 514, 275 N.W.2d at 149. The court concluded that "[t]his dictates a finding that [the person's] primary need is for protective placement rather than for active treatment or protective services." ***Id***.

¶6 Matthew analogizes this language to his case and argues that the circuit court's order must be reversed because a contrary approach "requires a court to order an involuntary commitment for mental illness treatment even if the most pressing need of a particular patient is drug or alcohol treatment …." He claims that if a person's primary need is substance abuse treatment rather than mental illness treatment, the court should order that specific treatment.

¶7 First, the mental commitment statute is different from the protective placement statute. The protective placement statute explicitly requires a finding of

[2] Matthew's attorney suggests something nefarious by writing that the court's factual findings were signed by Judge Naze "in spite of the fact that reserve Judge Wiebusch presided over the May 13, 1999, hearing." Judge Wiebusch was apparently on a general assignment. When the time for the assignment terminated, he had no further authority to act; he could not have legally signed the findings. It was entirely appropriate for Judge Naze to sign the findings.

primary need. *See* § 55.06(2)(a), STATS. The mental commitment statute contains no such requirement.

¶8 Second, Matthew's argument ignores the unambiguous statutory scheme. Under § 51.20, STATS., responsibilities are clearly divided between the court and county department. In an involuntary commitment case, the court: (1) orders commitment to the care and custody of the county department, *see* § 51.20(13)(a)3, STATS.; (2) designates the facility which is to receive the person into the mental health system, *see* § 51.20(13)(c)1, STATS.; and (3) designates the maximum level of inpatient facility, *see* § 51.20(13)(c)2, STATS. The county department then arranges for treatment in the least restrictive manner consistent with the requirements of the person. *See* § 51.20(13)(c)2, STATS. Nowhere does the statute contemplate the court being involved in designating the specific treatment. That decision is left to the county department.

¶9 We have specifically acknowledged this division of responsibility. ***In re J.R.R.***, 145 Wis.2d 431, 427 N.W.2d 137 (Ct. App. 1988) involved the question of whether § 51.20, STATS., allows a court to specify the treatment method to be utilized by the treatment facility. We observed that the statute requires the court to designate the maximum level of inpatient facility for treatment. Treatment decisions beyond this "are properly reserved for medical authorities. Recognizing this, the statutes require and permit the [county department], through its treatment facilities and personnel, to make these medical judgments." ***Id***. at 437, 427 N.W.2d at 140.

¶10 Even if Matthew's legal interpretation of the statute were correct, the evidence does not support his argument. In fact, no evidence was offered that suggested that Matthew's primary need was substance abuse treatment.

Bommakanti, the only expert who testified, said that stabilization of Matthew through the use of psychotropic medication was of first importance. She testified that the assessment he received at the mental health center recommended outpatient counseling and Narcotics Anonymous meetings. This evidence hardly supports an argument that substance abuse is Matthew's primary need.[3]

By the Court.—Order affirmed.

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

[3] In the absence of the inappropriate reference to the contents of the reports of the court-appointed experts, Matthew's arguments, quite frankly, border on being frivolous.