COURT OF APPEALS
DECISION
DATED AND FILED

December 18, 2012

Diane M. Fremgen
Clerk of Court of Appeals

Appeal No. 2012AP1737 **Cir. Ct. No. 2012ME841**

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

IN THE MATTER OF THE MENTAL COMMITMENT OF CHERI V.:
MILWAUKEE COUNTY,

PETITIONER-RESPONDENT,

V.

CHERI V.,

RESPONDENT-APPELLANT.

APPEAL from an order of the circuit court for Milwaukee County: JOHN F. FOLEY, Judge. *Reversed.*

¶1 Cheri V. appeals the order committing her involuntarily under WIS. STAT. § 51.20 for six months for inpatient treatment in a Milwaukee County facility. The commitment order was entered after a bench trial, following which the trial court in an oral decision found "by clear and convincing evidence" that Cheri V. was then currently "mentally ill and that mental illness is certainly

treatable and currently treatable on a short-term basis." The trial court also determined in its oral decision and without further elucidation that Cheri V. "is dangerous to herself or to others." The trial court ordered Cheri V. committed for "a period of -- not to exceed six months." Cheri V. claims on appeal that there was no evidence that she was dangerous to herself or to others. We agree, and reverse.[1]

I.

¶2 The testimony before the trial court was brief. Cheri V. went voluntarily to the County mental-health facility because, as she testified at the hearing, she felt that she was "being followed by people on Facebook," and that she believed that the facility "would probably be the safest place" to "get away from people trying to run me over." Cheri V. said she was being "harassed because some of the people who were trying to hurt me out there are checking themselves in here." A veteran, although, she told the trial court, "not a war veteran," she said that she would "rather just go and get outpatient treatment at the VA through -- with the psychiatrist there."

¶3 The registered nurse who admitted Cheri V. to the County mental-health facility testified that when Cheri V. "came into the unit, she's very upset, very angry." While the nurse was "trying to do the initial assessment," Cheri V.

[1] Milwaukee County makes a perfunctory argument that the appeal is moot because more than six months have passed since the trial court's March, 2012, order of commitment. A matter is moot only "when its resolution will have no practical effect on the underlying controversy." ***State ex rel. Olson v. Litscher***, 2000 WI App 61, ¶3, 233 Wis. 2d 685, 688, 608 N.W.2d 425, 427. The commitment order indicates that it continues to affect Cheri V. even though the actual commitment may have expired. The appeal thus is not moot.

began "walking in front of the nursing station and real agitated, highly suspicious." The nurse explained what Cheri V. did then:

> So she start, you know getting near one of my patients, actually one of the male peers, and start finger pointing on the peer. And you know, accusing also the peer and the RN male in the unit staff that he was -- that they are harassing her. And I cannot redirect her. She was extremely agitated.
>
> Q And when you said she was finger pointing on the male peer, can you describe what the peer looked like to you?
>
> A Well, she get near by my -- the patient is standing. The male peer is standing in front of the nursing station. She just walked nearby. My patient, who is my patient, and start finger pointing on him. And he was -- she was mentioning about names and everything. So my -- the -- my patient was surprised what she talking about. And she was just really getting near to him. And I'm kind of concerned about, you know, her safety, the safety of my other patients. So I have to do something to stop her from doing that because I'm afraid he -- she would be hurt.
>
> Q And what, if anything, led you to have that concern with the other patient?
>
> A Well, it's because, you know, the unit we have, they have history of, you know, aggressive assaultive behavior. And I am just concerned about her safety.

The nurse then put Cheri V. "in restraints to -- to, you know, to help her be safety and the rest of my patients' sake."

¶4 A forensic psychiatrist appointed by the trial court to examine Cheri V. had interviewed Cheri V. for approximately thirty-five minutes and reviewed her medical records. He opined that Cheri V. had "a psychotic disorder and/or borderline personality disorder" with "some paranoid delusions," and that she was a proper subject for treatment. He testified that she was taking her

medications and that inpatient treatment was the least restrictive alternative. As we have seen, the trial court ordered her committed for inpatient treatment.

II.

¶5 Cheri V. concedes for the purposes of this appeal that there was sufficient trial evidence "that she was mentally ill and a proper subject for treatment." Our review of the dangerousness aspect of this appeal would, if the trial court had made findings of fact rather than merely expressing its conclusion, been in two stages. Normally, we give substantial deference to the trial court's findings of fact, but, of course, review *de novo* the trial court's legal conclusions. *See* ***K.N.K. v. Buhler***, 139 Wis. 2d 190, 198, 407 N.W.2d 281, 285 (Ct. App. 1987). The trial made no findings of fact in connection with whether Cheri V. was dangerous, however, and merely opined briefly that she was and, therefore, should be committed. Thus, our review is *de novo*.

¶6 A person may not be involuntarily committed under Wisconsin law unless he or she is, as material here, "mentally ill," WIS. STAT. § 51.20(1)(a)1., *and* one of the following things are proven by clear and convincing evidence, *see* WIS. STAT. § 51.20(13)(e) ("The petitioner has the burden of proving all required facts by clear and convincing evidence."):

> The individual is dangerous *because* he or she does any of the following:
>
> a. Evidences a substantial probability of physical harm to himself or herself as manifested by evidence of recent threats of or attempts at suicide or serious bodily harm.
>
> b. Evidences 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. In this subd. 2.b., if the petition is filed under a court order under s. 938.30(5)(c)1. or (d)1., a finding by the court exercising jurisdiction under chs. 48 and 938 that the juvenile committed the act or acts alleged in the petition under s. 938.12 or 938.13(12) may be used to prove that the juvenile exhibited recent homicidal or other violent behavior or committed a recent overt act, attempt or threat to do serious physical harm.

c. 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 under this subd. 2.c. 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, if the individual may be provided protective placement or protective services under ch. 55, or, in the case of a minor, if the individual is appropriate for services or placement under s. 48.13(4) or (11) or 938.13(4). The subject individual's status as a minor does not automatically establish a substantial probability of physical impairment or injury under this subd. 2.c. Food, shelter or other care provided to an individual who is substantially incapable of obtaining the care for himself or herself, by a person other than a treatment facility, does not constitute reasonable provision for the subject individual's protection available in the community under this subd. 2.c.

d. Evidences behavior manifested by recent acts or omissions that, due to mental illness, he or she is unable to satisfy basic needs for nourishment, medical care, shelter or safety without prompt and adequate treatment so that a substantial probability exists that death, serious physical injury, serious physical debilitation, or serious physical disease will imminently ensue unless the individual receives prompt and adequate treatment for this mental illness. No substantial probability of harm under this subd. 2.d. exists if reasonable provision for the individual's treatment and protection is available in the community and there is a reasonable probability that the individual will avail himself or herself of these services, if the individual may be provided protective placement or protective services under ch. 55, or, in the case of a minor, if the individual is appropriate for services or placement under s. 48.13(4) or (11) or 938.13(4). The individual's status as a minor does not automatically establish a substantial

> probability of death, serious physical injury, serious physical debilitation or serious disease under this subd. 2.d. Food, shelter or other care provided to an individual who is substantially incapable of obtaining the care for himself or herself, by any person other than a treatment facility, does not constitute reasonable provision for the individual's treatment or protection available in the community under this subd. 2.d.
>
> e. For an individual, other than an individual who is alleged to be drug dependent or developmentally disabled, after the advantages and disadvantages of and alternatives to accepting a particular medication or treatment have been explained to him or her and because of mental illness, evidences either incapability of expressing an understanding of the advantages and disadvantages of accepting medication or treatment and the alternatives, or substantial incapability 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; and evidences a substantial probability, as demonstrated by both the individual's treatment history and his or her recent acts or omissions, that the individual needs care or treatment to prevent further disability or deterioration and a substantial probability that he or she will, if left untreated, lack services necessary for his or her health or safety and suffer severe mental, emotional, or physical harm that will result in the loss of the individual's ability to function independently in the community or the loss of cognitive or volitional control over his or her thoughts or actions. The probability of suffering severe mental, emotional, or physical harm is not substantial under this subd. 2.e. if reasonable provision for the individual's care or treatment is available in the community and there is a reasonable probability that the individual will avail himself or herself of these services or if the individual may be provided protective placement or protective services under ch. 55. Food, shelter, or other care that is provided to an individual who is substantially incapable of obtaining food, shelter, or other care for himself or herself by any person other than a treatment facility does not constitute reasonable provision for the individual's care or treatment in the community under this subd. 2.e. The individual's status as a minor does not automatically establish a substantial probability of suffering severe mental, emotional, or physical harm under this subd. 2.e.

WISCONSIN. STAT. § 51.20(1)(a)2. (emphasis added).

¶7 As seen from our recitation of the facts adduced at the trial, however, *there is absolutely no evidence* that *any* of the statutory prerequisites were met—yelling at and pointing a finger at another person, irrespective of how dangerous that other person might be, does not, unless there is evidence that the subject of a potential commitment order is trying to goad that other person *in order to* have that other person kill or harm the subject (as in "suicide by cop") is not such evidence. Additionally, there was no evidence that Cheri V. threatened or intended to harm anyone else. Further, there was no evidence even implicating subsections d and e. Accordingly, we reverse the trial court's order involuntarily committing Cheri V.

By the Court.—Order reversed.

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