

**COURT OF APPEALS
DECISION
DATED AND FILED**

July 16, 2014

Diane M. Fremgen
Clerk of Court of Appeals

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 WIS. STAT. § 808.10 and RULE 809.62.

Appeal No. 2014AP851-FT

Cir. Ct. No. 2003ME120B

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT II**

IN THE MATTER OF THE MENTAL COMMITMENT OF VERMETRIAS W.:

KENOSHA COUNTY,

PETITIONER-RESPONDENT,

v.

VERMETRIAS W.,

RESPONDENT-APPELLANT.

APPEAL from an order of the circuit court for Kenosha County:
CHAD G. KERKMAN, Judge. *Affirmed.*

¶1 REILLY, J.¹ Vermetrias W. appeals from an order extending her mental health commitment. Vermetrias argues that the evidence was insufficient to prove that she would go off of her medication and become dangerous if she were not under continued commitment. We disagree. Although Vermetrias has a long history of controlling her illness, recent events support the court's finding that she was not ready to be released from her commitment.

BACKGROUND

¶2 Vermetrias has been diagnosed with bipolar disorder, for which she has been taking medication and seeing a psychiatrist over the past decade. Vermetrias was placed under a commitment order in June 2013 after exhibiting manic behavior. Kenosha County thereafter petitioned to have Vermetrias's commitment extended for twelve months so that she could continue to be monitored due to her lack of insight into her mental illness and also moved for an involuntary medication order.

¶3 At the hearing on the County's petition, Vermetrias's treating psychiatrist for the past six years, Dr. James B. Christenson, testified in support of extending her commitment. Christenson testified that Vermetrias had been admitted twice over the past year for psychiatric symptoms, that she was still exhibiting symptoms that affected her insight into her illness, and that her lack of insight posed a risk to her continued compliance with treatment. He testified to a reasonable degree of medical and psychiatric certainty that Vermetrias would be a proper subject for commitment if treatment were withdrawn.

¹ This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(d) (2011-12). All references to the Wisconsin Statutes are to the 2011-12 version unless otherwise noted.

¶4 Vermetrias testified that she had voluntarily admitted herself for treatment after her medication “stopped working.” She testified that she had been taking her medication after her release from the hospital and would continue to take her medication and receive care from Christenson if released from her commitment. She testified that she had received medication and psychiatric care for most of the past ten years as treatment for her disorder without being under a commitment order.

¶5 The County argued for the extension of commitment and an involuntary medication order to ensure that Vermetrias continued to receive medication and treatment, contending that her recent hospitalizations demonstrated the danger of her not receiving treatment. Vermetrias argued that her success over the previous ten years showed that she would seek treatment without a commitment order, despite recent lapses due to medication changes. The court ordered that Vermetrias’s commitment be extended for twelve months on an outpatient basis, finding that Vermetrias suffers from a major mental illness, is a proper subject for treatment, and is dangerous to herself and potentially others when ill. The court denied the County’s request for an involuntary medication order. Vermetrias appeals.

STANDARD OF REVIEW

¶6 Vermetrias contends the County did not meet its burden to prove that she is dangerous pursuant to WIS. STAT. § 51.20(1)(a)2., (1)(am). In evaluating whether the County met its burden, we accept the circuit court’s findings of fact unless clearly erroneous, but independently evaluate how those facts apply to the law and how to interpret the statute. *Outagamie Cnty. v. Melanie L.*, 2013 WI 67, ¶¶38-39, 349 Wis. 2d 148, 833 N.W.2d 607.

DISCUSSION

¶7 Before an involuntary mental health commitment may be extended, a court must find clear and convincing evidence that the individual is mentally ill and a proper subject for treatment and 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.” WIS. STAT. § 51.20(1)(a)1., (1)(am), (13)(e). An individual is a proper subject for commitment if he or she poses a danger to himself or herself or to others. *See* § 51.20(1)(a)2. Vermetrias does not challenge the court’s findings that she is mentally ill and a proper subject for treatment, only that she poses a danger without the commitment order.

¶8 WISCONSIN STAT. § 51.20(1)(am) recognizes that an individual who is currently under a commitment order is still receiving court-ordered treatment and is unlikely to commit the kind of “overt act” that would prove him or her to be dangerous in order for that commitment to be extended. *State v. W.R.B.*, 140 Wis. 2d 347, 351, 411 N.W.2d 142 (Ct. App. 1987). Thus, instead of requiring the County to prove that Vermetrias is dangerous through the commission of a recent, overt act, the statute requires the County to prove there is a “substantial likelihood,” based on her treatment history, that Vermetrias will become dangerous if the commitment ends. Vermetrias contends that as her history shows that she would not voluntarily end treatment and Christenson testified she would become dangerous only when “ill” or “off medication,” the County has not proved that she would become dangerous if her commitment ended.

¶9 We agree that Vermetrias’s many years of voluntary treatment and success in dealing with her illness are commendable and bode well for her future.

But the court also received testimony about Vermetrias’s recent manic episodes resulting in her hospitalization and commitment, that she still suffers from symptoms that include a lack of insight into her illness, and that this lack of insight presents a heightened risk of noncompliance with her medication needs. While “substantial likelihood” is a high bar, it does not demand absolute certitude. Given the dangerous behavior that Vermetrias recently exhibited and acknowledged, and given Christenson’s unrefuted opinion testimony, the court had clear and convincing evidence that Vermetrias poses a danger to herself and others if treatment is withdrawn at this time.

¶10 We commend the parties for their cogent and persuasive arguments in this matter as well as Judge Kerkman for his thoughtful consideration of the facts and for crafting an order that did as much as was required and no more. While the extension of the commitment is a restriction on Vermetrias’s liberty interests, we conclude that the court imposed the least intrusive means of addressing Vermetrias’s mental health needs at this time.

By the Court.—Order affirmed.

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

