COURT OF APPEALS
DECISION
DATED AND FILED

July 15, 2015

Diane M. Fremgen
Clerk of Court of Appeals

Appeal No. 2014AP2845 **Cir. Ct. No. 2014ME45**

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

IN THE MATTER OF THE MENTAL COMMITMENT OF M. M. L.:

WALWORTH COUNTY DEPARTMENT OF HEALTH & HUMAN SERVICES,

PETITIONER-RESPONDENT,

V.

M. M. L.,

RESPONDENT-APPELLANT.

APPEAL from orders of the circuit court for Walworth County: JAMES L. CARLSON, Judge. *Affirmed*.

¶1 NEUBAUER, P.J.[1] M. M. L. appeals from an order for involuntary commitment and from an order for involuntary medication. M. M. L. argues that there was insufficient evidence to find her dangerous under the third standard, WIS. STAT. § 51.20(1)(a)2.c. M. M. L. argues that the circuit court erred in allowing a court-appointed examiner to testify about hearsay statements made by M. M. L.'s family members and contained in her treatment and detention records. The circuit court did not err. These statements were taken from records that were part of the basis for the court-appointed examiner's report and opinion and of the type usually relied on by experts in his field. The examiner's reliance on these statements was permissible under WIS. STAT. § 907.03. While M. M. L. argues that the circuit court could not find dangerousness without independent evidence of recent acts and omissions manifesting impaired judgment, we conclude that the court could rely on the expert's conclusion regarding this ultimate issue. *See* WIS. STAT. § 907.04. The County presented sufficient evidence to establish dangerousness. We affirm.

BACKGROUND

¶2 On April 21, 2014, M. M. L.'s aunt called the police to come and pick up M. M. L. because she had psychiatric problems, the family could no longer care for her, and she was unable to care for herself. Officer William W. Walser responded to the call and found M. M. L. lying on the couch. M. M. L.'s aunt, Kimberly, told Walser that M. M. L. had not been eating regularly, did not bathe or change her clothes, and had been locking herself in the

[1] This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(d) (2013-14). All references to the Wisconsin Statutes are to the 2013-14 version unless otherwise noted.

bathroom and talking to her grandfather, who had died eight years earlier. Furthermore, related the aunt, M. M. L. had been telling people that her grandfather had been a transvestite, that she herself used to be a boy, and that people talk to her using codes in her head. Kimberly told Walser that M. M. L. walks around aimlessly at night in a short, tight skirt and that the family was afraid something was going to happen to her.

¶3 Walser asked M. M. L. if she was willing to go to Health and Human Services to talk to a caseworker. M. M. L. responded no, that she was fine. Walser reported that M. M. L. would repeatedly say, in a slow tone of voice, "I have a question" and would ask "if we were being 100% truthful." Walser reported that M. M. L.'s questions were very off topic, that it did not appear she was capable of caring for herself, that she seemed extremely confused, and "did not appear to know what was going on around her." Walser requested a rescue squad with a cot, and M. M. L. got on the cot only after being told she would be placed on the cot if she refused. At the hospital, M. M. L. grabbed a folder, thinking it was about her case, and would not let go of it; Walser had to "physically remove" it from her hands. It took staff "quite some time" to talk M. M. L. into giving a blood sample. She only consented "because it was going to be forced by staff members and M. M. L. did not want anyone close to her or touching her." Ten days earlier, M. M. L. had been hospitalized in Milwaukee county, but had been released after three days.

¶4 There was a probable cause hearing on April 24, 2014. Four witnesses testified for the County: (1) Dr. Ahmed Numaan, M. M. L.'s treating psychiatrist at Waukesha Memorial Hospital, who opined that M. M. L. suffers from mental illness that is treatable and because of her mental health issues was unable to care for herself and was posing a risk to herself and others; (2) Walser;

(3) Kimberly; and (4) Melissa Davis, who had previously helped find a successor guardian for M. M. L. after M. M. L.'s grandmother could no longer serve in that capacity and was helping find a new guardian again at the time of the hearing. Davis also testified that M. M. L.'s boyfriend had contacted her in early April to tell her that M. M. L. could no longer live with him and his father because M. M. L. was "causing too many disruptions with police contact." The circuit court determined that there was probable cause to find "dangerousness to self and to others."

¶5 After the probable cause hearing, but prior to the final hearing, the court received written reports from two court-appointed doctors. Dr. Robert H. VerWert, a psychologist, reviewed M. M. L.'s treatment records, including the emergency detention report, the police report and the psychiatric notes from Waukesha Memorial Hospital inpatient unit by Numaan. VerWert also examined M. M. L. personally and stated that the reports were consistent with what he observed. VerWert noted that M. M. L. suffered from compulsions, depression or manic trends, and persecutory and paranoid trends. VerWert noted disorganized speech and grossly disorganized thinking, concluding that the degree of disorder of thought, mood and perception were all severe, as was the degree of impairment of M. M. L.'s judgment, behavior, capacity to recognize reality and ability to meet the ordinary demands of life. VerWert noted that hospital records from April 22 to 24 related previous behavior where M. M. L. "had reportedly been wandering around in the neighborhood ringing people's doorbells and knocking on people's doors." VerWert related that Numaan's diagnoses included pervasive developmental disorder, mood disorder not otherwise specified, and mild mental retardation. VerWert reported that Numaan had listed M. M. L.'s functioning level as very low "and at a 35 on a 100 point scale." Regarding

dangerousness, VerWert stated that M. M. L. presents "a probability of physical impairment or injury to self because of impaired judgment manifested by evidence of a pattern of recent acts or omissions."

¶6 Dr. Robert Rawski, a psychiatrist, reviewed M. M. L.'s treatment records and conducted a psychiatric interview of M. M. L. Rawski opined that M. M. L. suffered from "Psychotic Disorder, Not Otherwise Specified," which "is a treatable mental illness featuring a substantial disorder of thought, mood and perception that grossly impairs [her] judgment, behavior, capacity to recognize reality and the ability to meet the ordinary demands of life." Rawski noted, "Guardianship was obtained at some point in the past and provided by an outside agency that is currently under some type of investigation." Rawski related that M. M. L.'s grandmother had reported that M. M. L. "had been demonstrating odd, impulsive behavior for a couple of weeks." Like VerWert, Rawski related the ringing bells and knocking on doors, adding that this had led police to emergently detain her. M. M. L. had been observed at the hospital pulling out her hair and balling it up. M. M. L. reported to Rawski that she has been unemployed since age nineteen and has been supported by SSI benefits for "being disabled." Regarding dangerousness, Rawski stated that M. M. L. "represents an acute risk of harm to herself secondary to judgment impaired by disorganized thought, resulting in an inability to satisfy her basic needs for shelter and safety."

¶7 At the final hearing, Rawski was the only witness to testify on behalf of the County. He testified that he reviewed the emergency detention and supplemental reports as well as medical records from Waukesha Memorial Hospital, where M. M. L. was hospitalized. He met with M. M. L. for about thirty-five or forty minutes. He concluded that M. M. L.

> poses a substantial risk to herself, secondary to her acute psychosis, she has been twice detained now over the last month for disorganized behavior reflective of impaired judgment that places her at risk of victimization in the community as well as an inability to even converse with individuals about her basic needs much less satisfy them.

Rawski opined that M. M. L. was dangerous under the third and fourth standards. *See* WIS. STAT. § 51.20(1)(a)2.c., d. Rawski's testimony included several references to statements made by family members about M. M. L.'s recent actions. In response to M. M. L.'s counsel's hearsay objection, Rawski indicated that the information regarding the family members' statements was from the collateral reports and the emergency detention paperwork that he routinely relies upon in making his report. The court allowed Rawski's testimony.

¶8 The circuit court found that M. M. L. was dangerous under the third standard, WIS. STAT. § 51.20(1)(a)2.c., and ordered involuntary commitment and involuntary medication. The circuit court indicated that the specific behaviors underlying the finding of dangerousness were "the taking of proper nourishment, being a hazard and going out into the community is dangerousness to herself." M. M. L. appeals.

DISCUSSION

¶9 M. M. L. argues that the County did not present sufficient evidence of dangerousness. As part of that argument, M. M. L. maintains that the circuit

court impermissibly relied on testimony from the probable cause hearing. Furthermore, M. M. L. argues that Rawski's testimony about family members' statements was inadmissible hearsay. M. M. L. argues that there was insufficient evidence of dangerousness because without this hearsay testimony there was no independent evidence of recent acts and omissions showing such impaired judgment that there is a substantial probability of physical impairment or injury to M. M. L. or others. *See* WIS. STAT. § 51.20(1)(a)2.c.

Standard of Review

¶10 To order an involuntary civil commitment under WIS. STAT. § 51.20, the circuit court must find that the subject individual is (1) mentally ill, (2) a proper subject for treatment, and (3) dangerous. Sec. 51.20(1)(a)1., 2. The County must prove each fact by clear and convincing evidence. Sec. 51.20(13)(e). Whether the County has met its burden is a mixed question of law and fact. ***K.N.K. v. Buhler***, 139 Wis. 2d 190, 198, 407 N.W.2d 281 (Ct. App. 1987). On review, we uphold the circuit court's findings of fact unless they are clearly erroneous. WIS. STAT. § 805.17(2). Whether the facts fulfill the statutory standard is a question of law we review de novo. ***Buhler***, 139 Wis. 2d at 198. "No motion challenging the sufficiency of the evidence as a matter of law to support a verdict, or an answer in a verdict, shall be granted unless the court is satisfied that, considering all credible evidence and reasonable inferences therefrom in the light most favorable to the party against whom the motion is made, there is no credible evidence to sustain a finding in favor of such party." WIS. STAT. § 805.14(1).

Sufficiency of the Evidence

¶11 M. M. L. argues that the County did not carry its burden in showing that M. M. L. is dangerous. Under the third standard for dangerousness, an individual is dangerous because he or she "[e]vidences 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 or other individuals." WIS. STAT. § 51.20(1)(a)2.c.

¶12 As noted above, both VerWert and Rawski opined in their written reports that M. M. L. was dangerous. There, VerWert opined that M. M. L. was dangerous under the third standard, WIS. STAT. § 51.20(1)(a)2.c., and Rawski's opinion combined elements from both the third and the fourth standards. *See* § 51.20(1)(a)2.d. (including inability to satisfy basic needs for nourishment, medical care, shelter, or safety). Regarding the underlying pattern of acts and omissions, Rawski stated:

> The information about her current episode dates back only a couple of weeks, indicating a significant escalation in bizarre and disorganized behavior, delusional remarks, observations of response to hallucinations, and thought disorganization, putting her at risk when through walking the streets aimlessly at night and being too disorganized in thought to make her basic needs known, much less satisfy them.
>
> ….
>
> At the current time, [M. M. L.] represents an acute risk of harm to herself secondary to judgment impaired by disorganized thought, resulting in an inability to satisfy her basic needs for shelter and safety.

VerWert concluded that M. M. L. was "dangerous because he/she presents a probability of physical impairment or injury to self because of impaired judgment

manifested by evidence of a pattern of recent acts or omissions." Both VerWert and Rawski were court-appointed examiners, *see* § 51.20(9)(a)1., whose written reports were filed with the court and were part of the record, *see* § 51.20(9)(a)5., and upon whose reports the court could rely.

Probable Cause Testimony

¶13 M. M. L. takes the position that the circuit court impermissibly and explicitly relied on hearsay statements given during testimony at the probable cause hearing in its finding of dangerousness. The County argues that such reliance is permissible because both hearings were in front of the same judge, M. M. L. was represented by the same counsel, and the probable cause witnesses were subject to cross-examination.

¶14 The transcript of the final hearing shows that the circuit court did not rely on testimony from the probable cause hearing. Here is what the circuit court said:

> [T]he sole question here is whether she's a proper subject for involuntary treatment. That's the issue. We have one expert psychiatrist, Dr. Rawski. He can look at the information that the Court heard in the temporary hearing that there was probable cause that she should have involuntary treatment just as I looked at it and found probable cause. I don't think you have to traipse those people in here, have those people come in here again to testify to the things that brought her to the attention of the court.

The circuit court does not say that it relied on the probable cause testimony at the final hearing. The court indicates that it relied on the testimony at the probable cause hearing to determine probable cause. The comment about bringing all the witnesses back refers to the hearsay issue and Rawski's reliance on hearsay statements in the underlying records, which we discuss next.

Hearsay Statements

¶15 Rawski was the only witness to testify at the final hearing about M. M. L.'s dangerousness. M. M. L. argues that the acts and omissions upon which Rawski based his conclusion of dangerousness were taken from inadmissible hearsay statements of family members. M. M. L. acknowledges that an expert may rely on hearsay in forming an opinion, *see* WIS. STAT. § 907.03, but maintains that this does not transform the underlying facts into admissible evidence. *See* ***State v. Coogan***, 154 Wis. 2d 387, 399-400, 453 N.W.2d 186 (Ct. App. 1990). The County responds that Rawski's reliance on family members' statements taken from records he reviewed in making his report was permissible under § 907.03. And Rawski gave reasons for his conclusion that M. M. L. is dangerous to herself, including that M. M. L. was wandering aimlessly in the night, was not bathing or changing her clothes, was eating poorly, was communicating with a deceased grandfather, and was hearing people talk to her in code in her head. Rawski also relied on information provided by law enforcement that M. M. L. was acutely disorganized in thought, very guarded, and not making any sense.

¶16 The transcript of the final hearing shows that the circuit court did not rely on the underlying hearsay in Rawski's report except as the basis for Rawski's conclusions. The court references the hearsay statements as parts of records that Rawski took into account in making his report.

> She was dangerous to herself because she was going out in certain attire in the evening. And that she hadn't been eating and lost some weight. Various things that were clear about her behaviors. That there was parental—parents who had both been suffering from some type of mental disease or disorder. And so I think the doctor in taking that into consideration, made the determination that indeed she was a danger to herself—there was dangerousness based on

> what he determined to be unusual mannerisms, paranoid expressions, again, drifted away, walked away.… His database was a psychiatric interview, a review of the emergency detention and supplemental reports, a review of medical records from WMH, Waukesha Memorial Hospital. There were reports, again, it may be hearsay, but it's in the reports from the grandmother that she was talking with her grandfather who has been deceased for some time. And the hospital records are gathered from family members. Both parents suffer from severe psychiatric illness.…
>
> So I … really have no question or doubt that she suffers from a mental illness and I guess he's saying right now he's not willing to specify what it is…. That it was treatable. And he thought the treatment Risperdal had some positive effects and would continue to have positive effects, but that … it would be not wise to have that done in the community based on past experiences particularly. So, I do believe that this condition presents a dangerousness … under [WIS. STAT. § 51.20(1)(a)c.].

¶17 Rawski could rely on the hearsay statements in M. M. L.'s treatment and detention records. *See* WIS. STAT. § 907.03 ("If of a type reasonably relied upon by experts in the particular field in forming opinions or inferences upon the subject, the facts or data need not be admissible in evidence in order for the opinion or inference to be admitted."); ***Milbauer v. Transport Emps. Mut. Benefit Soc'y***, 56 Wis. 2d 860, 866, 203 N.W.2d 135 (1973) (expert could rely on facts contained in the records and testify as to opinion therefrom).

> [S]ince in their daily practice physicians normally rely on the facts and opinions of other experts, courtroom testimony, when based on the medical observations and findings of others, is sufficiently reliable to permit medical conclusions. This exception to the hearsay rule comports with accepted standards of medical practice. Moreover, in this case, the conclusions of the psychiatrists were based not only on the opinions of others but upon their personal observations of [the subject individual] …. The testimony was admissible under the rules of evidence of this state and was reliable.

Strelecki v. Firemans Ins. Co. of Newark, 88 Wis. 2d 464, 477, 276 N.W.2d 794 (1979) (citation omitted). WISCONSIN STAT. § 51.20(9)(a)5. itself indicates that "[t]he subject individual's treatment records shall be available to the examiners."

¶18 In this case, Rawski's conclusions were based not only on the facts in M. M. L.'s detention and treatment records, including the opinions of other doctors, but also upon Rawski's own personal observations of M. M. L. *See* ***Walworth Cnty. v. Therese B.***, 2003 WI App 223, ¶16, 267 Wis. 2d 310, 671 N.W.2d 377. Rawski offered M. M. L. an opportunity to respond to and explain the family reports, and concluded that the reports of bizarre and disorganized behavior, delusional remarks, hallucinations, and thought disorganization, which put her at risk, were consistent with his own observations. VerWert did the same. Rawski was subject to cross-examination, including questioning on the bases of his opinion. *See* WIS. STAT. § 51.20(5); ***Therese B.***, 267 Wis. 2d 310, ¶¶7, 20. M. M. L. could have called her family members to testify, or she could have engaged her own expert to contradict Rawski's conclusion. Sec. 51.20(9)(a)3. Additionally, the circuit court could have excluded Rawski's report if it found that the report was grounded on unreliable sources. ***Therese B.***, 267 Wis. 2d 310, ¶8. M. M. L. does not argue that the reports and records upon which Rawski relied were not "of a type reasonably relied upon by experts in the particular field." WIS. STAT. § 907.03. The circuit court's findings do not show that it relied on the underlying hearsay facts, but rather that it relied on Rawski's dangerousness/impaired judgment conclusions based on these facts. Under WIS. STAT. § 907.04, Rawski was allowed to give an opinion on the ultimate issue to be decided by the trier of fact—whether M. M. L. was dangerous.

CONCLUSION

¶19 The County carried its burden to show that M. M. L. was dangerous to herself under WIS. STAT. § 51.20(1)(a)2.c. Both examiners opined in their written reports that M. M. L. was dangerous, with VerWert specifying dangerousness under § 51.20(1)(a)2.c. Rawski opined in his written report that M. M. L. "represents an acute risk of harm to herself secondary to judgment impaired by disorganized thought." At the final hearing, Rawski testified that M. M. L. fit the dangerousness standards of both the third and fourth standards, § 51.20(1)(a)2.c. and d. Rawski explained his professional conclusion and the factual underpinnings he relied upon. M. M. L. argues that the circuit court could not find dangerousness without independent evidence of recent acts and omissions manifesting impaired judgment as relayed by the family members in the detention and police reports. We conclude that it is permissible to rely on the expert's observations and conclusion regarding this ultimate issue. *See* WIS. STAT. § 907.04. We affirm the court's order for involuntary commitment.

¶20 M. M. L. makes no argument regarding the court's order for involuntary medication. We affirm this as well.

By the Court.—Orders affirmed.

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