COURT OF APPEALS
DECISION
DATED AND FILED

June 3, 2015

Diane M. Fremgen
Clerk of Court of Appeals

Appeal No. 2014AP2945 **Cir. Ct. No. 2009ME219**

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

IN THE MATTER OF THE MENTAL COMMITMENT OF JAMES H.:

KENOSHA COUNTY,

PETITIONER-RESPONDENT,

V.

JAMES H.,

RESPONDENT-APPELLANT.

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

¶1 REILLY, J.[1] James H. appeals the extension of his involuntary mental health commitment, arguing that Kenosha County did not show that he is dangerous or would become dangerous if treatment were withdrawn. We affirm.

¶2 James has been diagnosed with chronic paranoid schizophrenia. James has been hospitalized multiple times in the last several decades; at one point, he was admitted to the Mendota Mental Health Institute after threatening people at a movie theater. He has been committed since 2009, when he attacked other residents at his nursing home during a time when he was refusing medication. The County petitioned for an extension of James's commitment in May 2014.

¶3 James's treating psychiatrist was the only witness to testify at the extension hearing. In addition to testifying that James has a mental illness and is a proper subject for treatment, the psychiatrist testified that James's "history of noncompliance" with taking his medication and "episodes of agitation and behavior" caused him to believe that James poses "a substantial probability of physical harm to others if untreated." If treatment were withdrawn, according to the psychiatrist, James would be "a definite candidate for treatment. And without commitment he's not going to take his medications." At numerous times over the years, including within the year prior to the extension hearing, James's condition has deteriorated as a result of his refusal to take court-ordered medication to the point where James had to be taken to the hospital for treatment.

[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.

¶4 The court ordered that James's commitment be extended for another year. James appeals.

¶5 We apply two standards of review to a circuit court's commitment decision: We uphold the court's findings of fact unless they are clearly erroneous, but we independently review whether those facts meet the statutory requirements. ***K.N.K. v. Buhler***, 139 Wis. 2d 190, 198, 407 N.W.2d 281 (Ct. App. 1987).

¶6 The extension of an involuntary mental health commitment under WIS. STAT. § 51.20 requires the circuit court to find clear and convincing evidence that the individual is mentally ill and is 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." Sec. 51.20(1)(a)1., (1)(am). An individual is a proper subject for commitment if he or she evidences a substantial probability of physical harm to others. *See* § 51.20(1)(a)2.b.

¶7 On appeal, James does not challenge the court's findings that he is mentally ill and a proper subject for treatment. He contends only that the County failed to provide clear and convincing evidence that he would become dangerous if treatment were withdrawn. In support of this argument, James points out that there was no evidence presented at the hearing establishing any recent acts of violence against others. He also argues that his psychiatrist's testimony that he "could be a danger to others" is insufficient to show that there is a substantial probability he will physically harm others if his commitment is not extended. James's arguments do not persuade us.

¶8 While we agree that the hearing testimony did not establish that James is dangerous due to any "recent overt act," WIS. STAT. § 51.20(1)(a)2.b.,

that is not the standard for a commitment extension. Section 51.20(1)(am) eliminates the requirement for evidence of "a recent overt act" under § 51.20(1)(a)2., in recognition that a person who is currently committed and receiving treatment is unlikely to act in the same manner that would subject him or her to an initial commitment. Section 51.20(1)(am)'s alternative standard is intended to "avoid the 'revolving door' phenomena whereby there must be proof of a recent overt act to extend the commitment but because the patient was still under treatment, no overt acts occurred and the patient was released from treatment only to commit a dangerous act and be recommitted." ***State v. W.R.B.***, 140 Wis. 2d 347, 351, 411 N.W.2d 142 (Ct. App. 1987). The County need not show that James was recently violent toward others.

¶9 We also disagree with James that the County did not meet its burden that there is a substantial likelihood, based on his treatment record, that he would become dangerous if treatment were withdrawn. *See* WIS. STAT. § 51.20(1)(am). According to James's psychiatrist, James has a long history of denying his mental illness and his need for medication. This denial has led James to refuse to take his medication, which in turn has led to deterioration significant enough to require recent hospitalization. During times of such refusal he has threatened the safety of others. There is clear and convincing evidence to support the court's extension of James's mental health commitment.

By the Court.—Order affirmed.

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