COURT OF APPEALS
DECISION
DATED AND FILED

September 23, 2015

Diane M. Fremgen
Clerk of Court of Appeals

Appeal No. 2015AP504 **Cir. Ct. No. 2011ME54B**

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

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

KENOSHA COUNTY,

PETITIONER-RESPONDENT,

V.

C.M.M.,

RESPONDENT-APPELLANT.

APPEAL from an order of the circuit court for Kenosha County: JASON A. ROSSELL, Judge. *Affirmed.*

¶1 NEUBAUER, C.J.[1] C.M.M. appeals the circuit court's order committing her under WIS. STAT. ch. 51 and the circuit court's order for involuntary administration of medication.[2] C.M.M. argues that there was insufficient evidence to find her dangerous pursuant to WIS. STAT. § 51.20(1)(a)2.d. We disagree and affirm.

BACKGROUND

¶2 C.M.M.'s commitment came about after several interventions regarding C.M.M.'s mental health and well-being, including three hospitalizations. On August 8, 2014, a city of Kenosha police officer responded to a call reporting disorderly conduct at C.M.M.'s address. The responding officer reported that C.M.M. stated that she was bipolar, had not taken her medication for three days, was throwing items out the window of her trailer, having hallucinations, and was unable to care for herself. A supplemental investigation report indicated that C.M.M. was walking barefoot over broken glass, causing injury to her feet, and that she seemed very confused and paranoid. She appeared to be seeing and talking to people who were not there. She was trying to talk on a cell phone that had no battery. C.M.M. was unable to concentrate on finding a pair of shoes and kept picking up random objects and asking, "What the hell is this?" The officer took C.M.M. to St. Luke's Hospital under an emergency detention. The detention

[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.

[2] In her brief, C.M.M. requests that we dismiss both the order for commitment and the order for involuntary medication and treatment. However, C.M.M. indicates that the sole issue in this case is whether the County proved by clear and convincing evidence that C.M.M. is dangerous. C.M.M. indicates in her notice of appeal that she is appealing "an order." We therefore characterize this as an appeal from "an order."

led to a stipulated hold open agreement, dated August 13, 2014, under which C.M.M. stipulated to a finding of probable cause under WIS. STAT. § 51.20(1) and agreed to comply with treatment conditions, including taking all prescribed medications and refraining from ingesting any controlled substances. *See* § 51.20(8)(bg). If C.M.M. failed to comply, she agreed that the court could issue an order to detain her at an inpatient treatment facility. *See* § 51.20(8)(bm). C.M.M. was released into the community with a case manager.[3]

¶3 Soon thereafter, on August 28, 2014, C.M.M. was taken in on another emergency detention. Police responded to a call from Kenosha Memorial Hospital requesting a WIS. STAT. ch. 51 subject hold. Upon arrival at C.M.M.'s residence, the officer spoke with C.M.M., who told him she was paranoid and had seen someone running around her home. She stated that she was walking around her home naked, and she began crying. She stated that she did not want to "blow her brains out" and that she had the feeling to do so earlier in the day. C.M.M. was taken to Winnebago Mental Health Institute. Drug tests showed that C.M.M. had been taking benzodiazepines, cocaine, and marijuana. Because of this noncompliance with the hold open agreement, Kenosha County requested that the court revoke the agreement and set the case for a final hearing. At that hearing, one of the court-appointed doctors did not find dangerousness, so the motion to

[3] The County asserts that C.M.M. was released into the community with a case manager, but provides no record cite. C.M.M.'s subsequent history demonstrates that she must have been released.

revoke the agreement was abandoned, and C.M.M. was again released on September 11, 2014, subject to the hold open agreement.[4]

¶4 On September 18, 2014, C.M.M. was again detained, this time after appearing barefoot at Kenosha Human Development Services and sitting in the lobby, talking incoherently. When asked if she was taking her required medication, she indicated that she was not. She appeared "unable to meet her basic needs and [was] not currently in touch with reality." She again tested positive for cocaine and marijuana. The County again requested revocation of the hold open agreement. The court appointed Drs. Sangita Patel and Jagdish Dave to evaluate C.M.M. and draft reports. The court received both reports, and Patel testified at the hearing. Details of the substance of the reports and testimony will be set forth below as needed. The court found C.M.M. a proper subject for commitment under WIS. STAT. § 51.20(1)(a)2.d., entered an order to that effect, and entered an order for involuntary medication.

DISCUSSION

Standard of Review

¶5 Our review of the circuit court's decision on commitment and involuntary medication and treatment has two steps. First, we uphold the circuit court's findings of fact unless they are clearly erroneous. ***K.N.K. v. Buhler***, 139 Wis. 2d 190, 198, 407 N.W.2d 281 (Ct. App. 1987). Second, whether those facts fulfill the requirements of the statute is a question of law we review de novo. ***Id.***

[4] Again, the County asserts these facts without citation to the record. It is clear from the subsequent facts that C.M.M. was released, and C.M.M. does not dispute the County's recitation of facts.

> 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).

Statutory Requirements

¶6 To involuntarily commit an individual for treatment, the County must prove by clear and convincing evidence that the individual is mentally ill, is a proper subject for treatment, and is dangerous. WIS. STAT. § 51.20(1)(a), (13)(e). There are five standards under which the County may show dangerousness. Sec. 51.20(1)(a)2.a.-e. The court found C.M.M. to be dangerous under the fourth standard—§ 51.20(1)(a)2.d. To prove dangerousness under the fourth factor, the County must show that the individual

> [e]vidences 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.

Id.

Sufficiency of the Evidence

¶7 C.M.M. does not challenge the court's findings that she is mentally ill and a proper subject for treatment; she argues that the County did not proffer sufficient evidence to prove dangerousness. In particular, C.M.M. maintains that

"the County proffered absolutely no evidence of any recent overt acts or omissions that would support such a finding." The County responds that the record is replete with instances in which C.M.M. "refused to take her medicines, sought street drugs which, in the doctor's opinion, exacerbated her mental illness, and put herself in harm's way." We agree with the County.

¶8 C.M.M.'s acts demonstrate such impaired judgment that there is a substantial probability of physical impairment or injury to herself. Patel testified that C.M.M. is unable to carry out codirected meaningful conversation, her thoughts are disorganized, and she displays paranoia. C.M.M.'s mood is labile; at one moment she can be sobbing, crying, or wailing and the next moment laughing. Her capacity to recognize reality is grossly impaired such that she would not be able to determine if she was having hallucinations. Her mental disorder grossly impairs her behavior. Before one detention, she came to ask help from her social worker, but arrived barefoot. When asked why she was not taking her medication, she responded that it was locked in her car, along with her keys. Patel testified "there's clearly no problem solving." She displays paranoia, but is unable to recognize the paranoia. Patel opined that C.M.M. was unable to meet the ordinary demands of life. Patel told the court she does not believe C.M.M. is capable of recognizing her condition and seeking help. Patel noted that C.M.M. had required three hospitalizations within the previous six to eight weeks and was "barely able to remain in the community." When asked whether living at home would present a substantial probability that C.M.M. could die or suffer serious injury or be debilitated such that it would seriously affect her health, Patel responded, "I would be concerned about her safety, about her judgment, about her concentration. She is so impaired she's likely to leave the heating parts or leave the stove on or cause some burns and all that. Yeah, I would be concerned." Patel also noted that

C.M.M. has been seeking benzodiazepines and abusing cannabis, and has tested positive for cocaine. Patel noted in her report that C.M.M. was "totally noncompliant with medications and this combined with the substance abuse, is worsening her mental condition." She noted that C.M.M. "has been repeatedly requiring attention from the law enforcement or care providers and due to the nature of her mental illness she cannot be adequately stabilized in the community." Ultimately, Patel concluded that, because of C.M.M.'s mental illness, C.M.M. "is unable to meet the ordinary demands of life, requiring management in a structured setting to meet her daily needs." Patel recommended commitment and court-ordered psychotropic medication, opining that C.M.M. was incompetent to refuse such medication.[5] Dave echoed Patel's recommendations.

¶9 Several recent acts show that C.M.M. is "unable to satisfy basic needs … without … treatment so that a substantial probability exists that death [or] serious physical injury … will imminently ensue unless the individual receives prompt and adequate treatment." WIS. STAT. § 51.20(1)(a)2.d. When picked up on an emergency detention, she was walking over broken glass with bare feet. She violated her hold open agreement by using illicit drugs and refusing to take her prescribed medications. She has admitted to suicidal ideation. Again and again, C.M.M. has shown through her refusal to comply with treatment that she is putting herself at risk for death or serious injury if she does not get

[5] In her reply brief, C.M.M. relies on Patel's September 3, 2014 report. The September 3 report was submitted to the court pursuant to the final hearing scheduled for September 8, 2014, which was the hearing on the first request for revocation of the hold open. Patel's September 3, 2014 report did not find dangerousness, and the motion to revoke was abandoned. Then, Patel wrote a subsequent report, dated September 29, 2014, pursuant to the subsequent request to revoke. This is the report upon which the court relied on at the October 1, 2014 final hearing.

treatment. The County has shown by clear and convincing evidence that C.M.M. is dangerous under the fourth standard. We affirm.

By the Court.—Order affirmed.

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