COURT OF APPEALS
DECISION
DATED AND FILED

October 1, 2015

Diane M. Fremgen
Clerk of Court of Appeals

Appeal No. 2015AP799 **Cir. Ct. No. 2013ME400**

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

IN THE MATTER OF THE MENTAL COMMITMENT OF T. B.:

DANE COUNTY,

PETITIONER-RESPONDENT,

V.

T. B.,

RESPONDENT-APPELLANT.

APPEAL from orders of the circuit court for Dane County: DAVID T. FLANAGAN III, Judge. *Affirmed.*

¶1 KLOPPENBURG, P.J.[1] T. B. appeals an order of commitment, an order for involuntary medication and treatment, and an order denying

[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.

postdisposition relief. T. B. argues that the circuit court erred in denying his postdisposition motion to vacate the order for commitment because, according to T. B., the circuit court "lost competency to adjudicate [his] case when it failed to make a verbatim record of [his] probable cause hearing, as mandated by WIS. STAT. § 51.20(5)," and the issue is not moot. For the reasons set forth below, I reject T. B.'s argument and affirm the orders.

BACKGROUND

¶2 T. B. was detained on November 4, 2013 pursuant to a Dane County petition for examination under WIS. STAT. § 51.20(1)(a)2.e.

¶3 The court commissioner held a probable cause hearing on November 6, 2013. The hearing was not recorded by audio recording or stenographic transcription. The hearing minutes indicate that T. B. refused to attend the hearing, and that Dr. Erik Knudson testified at the hearing. The court commissioner found that there was probable cause to believe that T. B. is "dangerous under § 51.20(1)(a)2.e."

¶4 After a final commitment hearing, the circuit court found that T. B. is mentally ill, a proper subject for treatment, and dangerous to himself. Accordingly, the circuit court ordered T. B. committed for a six-month period and ordered the involuntary administration of medication and treatment during the period of commitment.

¶5 T. B. filed a motion for postdisposition relief pursuant to WIS. STAT. § 809.30(2)(h). The circuit court denied the motion on the basis of mootness, because T. B. was no longer subject to the original order of commitment, but

rather, was subject to a subsequent order for extension of commitment based upon a stipulation between T. B. and the County.

DISCUSSION

¶6 T. B. argues that the circuit court erred in denying his postdisposition motion to vacate the order for commitment because, according to T. B., the circuit court "lost competency to adjudicate [his] case when it failed to make a verbatim record of [his] probable cause hearing, as mandated by WIS. STAT. § 51.20(5)," and the issue is not moot. The County argues that the stipulated extension of T. B.'s commitment renders his appeal moot; and that T. B. is not entitled to a verbatim record of his probable cause hearing, because the probable cause hearing is excepted from the reporting requirement under Wisconsin Supreme Court Rule 71.01(2)(a). Assuming without deciding that the appeal is not moot, T. B.'s argument nevertheless fails because T. B. is not entitled to a "verbatim record" of his probable cause hearing before a court commissioner.

¶7 This appeal requires interpretation of Wisconsin statutes. "Statutory interpretation is a question of law that [this] court reviews de novo." ***State v. West***, 2011 WI 83, ¶21, 336 Wis. 2d 578, 800 N.W.2d 929.

¶8 Statutory language is construed based on its common and ordinary meaning. ***Ervin v. City of Kenosha***, 159 Wis. 2d 464, 484, 464 N.W.2d 654 (1991). If the language is plain and unambiguous, the analysis stops there. ***Kangas v. Perry***, 2000 WI App 234, ¶8, 239 Wis. 2d 392, 620 N.W.2d 429. In conducting this analysis, statutory language is not read in isolation but as it relates to the statute as a whole. ***Id.*** "[W]e look only to the plain language, purpose, context, and structure of the statutes." ***Gister v. American Family Mut. Ins. Co.***, 2012 WI 86, ¶9, 342 Wis. 2d 496, 818 N.W.2d 880.

¶9 I begin with the pertinent section of the involuntary commitment for treatment statute, WIS. STAT. § 51.20(5), titled "Hearing requirements," which reads:

> The hearings which are required to be held under this chapter shall conform to the essentials of due process and fair treatment including the right to an open hearing, the right to request a closed hearing, the right to counsel, the right to present and cross-examine witnesses, the right to remain silent and the right to a jury trial if requested under sub. (11)…. All proceedings under this chapter *shall be reported as provided in SCR 71.01*.

(Emphasis added.)

¶10 Wisconsin Supreme Court Rule 71.01 defines "reporting" as "making a verbatim record." The rule enumerates five exceptions to the reporting requirement, including, as pertinent here, any "proceeding before a court commissioner that may be reviewed de novo." SCR 71.01(2)(a).

¶11 The County relies upon WIS. STAT. § 757.69(8) to support its contention that the probable cause proceeding here qualifies for the "proceeding before a court commissioner" exception under SCR 71.01(2)(a). That statute reads:

> Any decision of a circuit court commissioner shall be reviewed by the judge of the branch of court to which the case has been assigned, upon motion of any party. Any determination, order, or ruling by a circuit court commissioner may be certified to the branch of court to which the case has been assigned, upon a motion of any party for a hearing de novo.

¶12 The two statutes and rule cited above are unambiguous as applied to T. B. Here, the probable cause hearing was held by a court commissioner, and under WIS. STAT. § 757.69(8), the court commissioner's decision shall be

reviewed de novo by the circuit court upon a motion by T. B. or the County. Accordingly, the probable cause hearing was a "proceeding before a court commissioner that may be reviewed de novo," and was excepted from the reporting requirement in WIS. STAT. § 51.20(5) under SCR 71.01. Thus, T. B. is not entitled to a verbatim record of the probable cause hearing before the court commissioner, and the circuit court did not lose competency to adjudicate this case.

¶13 I now turn to two arguments by T. B. contrary to the above statutory interpretation. First, T. B. argues that the "procedure" of having to request a second probable cause hearing before a circuit court judge in order to receive a verbatim record of a probable cause hearing is "impractical and unmanageable in light of the limited resources and expanding workload of the circuit courts." However, T. B. fails to explain why the asserted effect on the circuit courts' workload matters. Therefore, I do not address this argument further. *See* ***State v. Pettit***, 171 Wis. 2d 627, 646, 492 N.W.2d 633 (Ct. App. 1992) ("We may decline to review issues inadequately briefed.").

¶14 Second, T. B. argues that WIS. STAT. § 757.69(8) does not apply because WIS. STAT. § 51.20(7) sets a specific timeline for only one probable cause hearing. According to T. B., there cannot be a second probable cause hearing before the circuit court to review the first probable cause hearing de novo because the timeline specified under § 51.20(7) is silent as to a second probable cause hearing. T. B. cites ***State v. Gillespie***, 2005 WI App 35, 278 Wis. 2d 630, 693 N.W.2d 320, to support his contention that WIS. STAT. § 51.20(7)'s silence as to any second probable cause hearing must mean that "no such right exists." However, ***Gillespie*** does not support that legal proposition.

¶15 The issue in ***Gillespie*** was whether a defendant in a criminal case was entitled to a second preliminary examination under WIS. STAT. § 757.69(8) where the legislature "expressly addresse[d] in [another statute in the Criminal Procedure Code] the circumstances under which a second preliminary examination can be held." 278 Wis. 2d 630, ¶8. This court concluded that the statute in the Criminal Procedure Code "specifically limits the availability of a second preliminary examination [to a specific factual scenario] and precludes Gillespie's request for a de novo hearing under the more general WIS. STAT. § 757.69(8)." ***Id.***, ¶11. Unlike in ***Gillespie***, WIS. STAT. § 51.20(7) does not specifically limit the availability of a second probable cause hearing. Therefore, § 51.20(7) does not preclude a request for a de novo hearing under § 757.69(8).[2]

¶16 In sum, T. B. fails to show that he is entitled to a verbatim record of the probable cause hearing before the court commissioner.

CONCLUSION

¶17 For the reasons set forth above, I affirm the circuit court's order denying T. B.'s motion for postdisposition relief pursuant to WIS. STAT. § 809.30(2)(h).

[2] T. B. also cites ***Milwaukee County v. Louise M.***, 205 Wis. 2d 162, 555 N.W.2d 807 (1996) in support of his argument that a probable cause hearing before a court commissioner cannot be reviewed de novo by the circuit court. To the contrary, our supreme court in that case held that "the circuit court does have authority to review a court commissioner's order finding probable cause to proceed in an involuntary commitment action." ***Id.*** at 178. Although ***Louise M.*** precedes WIS. STAT. § 757.69(8), this holding is consistent with current statutes.

By the Court.—Orders affirmed.

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