COURT OF APPEALS
DECISION
DATED AND FILED

October 12, 2016

Diane M. Fremgen
Clerk of Court of Appeals

Appeal No. 2016AP43 **Cir. Ct. No. 2012ME234**

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

IN THE MATTER OF THE MENTAL COMMITMENT OF J.J.:

OUTAGAMIE COUNTY,

PETITIONER-RESPONDENT,

V.

J. J.,

RESPONDENT-APPELLANT.

APPEAL from orders of the circuit court for Outagamie County: MITCHELL J. METROPULOS, Judge. *Affirmed.*

¶1 SEIDL, J.[1] J.J. appeals an order extending his involuntary commitment and an order for involuntary medication. He contends there was insufficient evidence to support the orders. We disagree and affirm.

BACKGROUND

¶2 In 2012, after sending suicidal text messages, J.J. was involuntarily committed pursuant to WIS. STAT. ch. 51. The circuit court determined J.J. was not competent to refuse psychotropic medication or treatment and ordered that J.J. be subject to involuntary medication. The commitment and involuntary medication orders were extended several times.

¶3 In 2015, a jury found that J.J. met the requirements for involuntary commitment, and the circuit court ordered that his involuntary commitment be extended for twelve months. The court then again ordered that J.J. be subject to involuntary medication while he is involuntarily committed. J.J. now appeals his commitment and the involuntary medication order.

DISCUSSION

¶4 "In order to be subject to a [WIS. STAT.] ch. 51 involuntary commitment, a subject individual must meet three criteria: the subject individual must be 1) 'mentally ill'; 2) 'a proper subject for treatment'; and 3) 'dangerous' to themselves or to others." ***Fond du Lac Cty. v. Helen E.F.***, 2012 WI 50, ¶20, 340 Wis. 2d 500, 814 N.W.2d 179 (citations omitted). "A subject individual may be involuntarily committed under ch. 51 only when the county proves each of the[se]

[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.

elements" by clear and convincing evidence. ***Id.*** The same standard applies when: (1) the subject individual seeks release after having been already committed; or (2) the county seeks an extension of the subject individual's commitment. *See* WIS. STAT. § 51.20(13)(g)3, (16)(d).

¶5 When reviewing the sufficiency of the evidence to determine whether it supports the jury's verdict, we view the evidence in the light most favorable to sustaining the verdict. ***Outagamie Cty. v. Michael H.***, 2014 WI 127, ¶21, 359 Wis. 2d 272, 856 N.W.2d 603. "We 'review as a question of law whether the evidence presented to a jury is sufficient to sustain its verdict.'" ***Id.*** (citation omitted).

¶6 J.J. first argues there was insufficient evidence to support the jury's verdict that he was a proper subject for treatment under WIS. STAT. ch. 51. "In order to be a proper subject for treatment pursuant to an involuntary commitment under WIS. STAT. ch. 51, an individual must be capable of 'rehabilitation.'" ***Helen E.F.***, 340 Wis. 2d 500, ¶30 (citing WIS. STAT. § 51.01(17) (2009-10)). J.J. argues that Outagamie County's "witnesses concerned themselves with [his] symptoms and not any hope that [his] condition itself could be cured," and thus did not proffer sufficient evidence to demonstrate that he is capable of rehabilitation under ch. 51. The record belies this assertion. One expert witness specifically testified that J.J.'s *condition* is treatable, as opposed to his symptoms being merely manageable. It was the jury's function to determine witness credibility; and we will not substitute our judgment for that of the jury. *See* ***Radford v. J.J.B. Enters., Ltd.***, 163 Wis. 2d 534, 543, 472 N.W.2d 790 (Ct. App. 1991).

¶7 J.J. next argues there was insufficient evidence to support the circuit court's involuntary medication order under WIS. STAT. § 51.61(1)(g)4.b.[2] while he is involuntarily committed because: (1) no witness testified that he or she discussed alternative medications or treatments with J.J.; (2) Dr. Marshall Bales did not specifically identify *when* he explained to J.J. the advantages and disadvantages of the medications he is currently prescribed; and (3) the County's expert witnesses failed to testify with sufficient particularity regarding "J.J.'s ability to process information" and, instead, "simply disagreed with J.J. about whether [his] life would be better with or without psychotropic medications." Again, J.J.'s claims are not supported by the record.

¶8 First, Dr. Bales testified J.J. has been offered therapy services—an alternative to medication—but that J.J. has mostly refused this treatment. Thus, the jury could have reasonably concluded alternative treatments were discussed with J.J.

[2] WISCONSIN STAT. § 51.61(1)(g)4.b. states in relevant part:

> 4. For purposes of a determination under subd. 2. or 3., an individual is not competent to refuse medication or treatment if, because of mental illness, developmental disability, alcoholism or drug dependence, and after the advantages and disadvantages of and alternatives to accepting the particular medication or treatment have been explained to the individual, one of the following is true:
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> ….
>
> b. The individual is substantially incapable of applying an understanding of the advantages, disadvantages and alternatives to his or her mental illness, developmental disability, alcoholism or drug dependence in order to make an informed choice as to whether to accept or refuse medication or treatment.

¶9 Second, Dr. Bales testified that he "reviewed with J.J. … many, many times the advantages and disadvantages of the medications" J.J. is currently prescribed. There is no requirement that Dr. Bales identify specifically when he explained the advantages or disadvantages of the medication to J.J. *See* ***Winnebago Cty. v. B.C.***, No. 2015AP1192-FT, unpublished slip op., ¶17 (WI App Oct. 14, 2015) ("While it would have been better if [the doctor] had provided more specific details as to precisely when she discussed the advantages and disadvantages of [the] medications with [the patient], the fact that such specificity was not provided does not mean the County failed to meet its burden of proof that the required explanations in fact were provided ....").[3]

¶10 Finally, multiple witnesses testified that J.J. denies he has a mental illness. Where a "person cannot recognize that he or she has a mental illness, logically the person cannot establish a connection between his or her expressed understanding of the benefits and risks of medication and the person's own illness." ***Outagamie Cty. v. Melanie L.***, 2013 WI 67, ¶72, 349 Wis. 2d 148, 833 N.W.2d 607. Therefore, there was sufficient evidence for the circuit court to: (1) conclude that J.J. was not competent to refuse psychotropic medication or treatment; and (2) order that J.J. be subject to involuntary medication. *See* ***B.C.***, No. 2015AP1192-FT, unpublished slip op., ¶20 (testimony that respondent did not believe he was suffering from a mental illness supported involuntary medication order under WIS. STAT. § 51.61(1)(g)4.b.).

[3] *See* WIS. STAT. RULE 809.23(3)(b) (unpublished, authored decisions issued on or after July 1, 2009, may be cited for persuasive value).

By the Court.—Orders affirmed.

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