COURT OF APPEALS
DECISION
DATED AND FILED

April 18, 2017

Diane M. Fremgen
Clerk of Court of Appeals

Appeal No. 2016AP1490 **Cir. Ct. No. 2016ME252A**

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

IN THE MATTER OF THE MENTAL COMMITMENT OF P. X.:

MARATHON COUNTY,

PETITIONER-RESPONDENT,

V.

P. X.,

RESPONDENT-APPELLANT.

APPEAL from an order of the circuit court for Marathon County: GREGORY B. HUBER, Judge. *Affirmed.*

¶1 STARK, P.J.[1] P.X. appeals an order extending his commitment under WIS. STAT. ch. 51. He argues Marathon County failed to show he was a proper subject for treatment under WIS. STAT. § 51.20(1)(a)1. We affirm.

BACKGROUND

¶2 P.X. was first placed under WIS. STAT. ch. 51 commitment and involuntary medication orders in 2012. Both orders were extended three times. P.X. was also subject to WIS. STAT. ch. 54 guardianship and WIS. STAT. ch. 55 protective placement orders. A recommitment hearing was held on the County's fourth petition to extend P.X.'s ch. 51 order on March 4, 2016.

¶3 At the hearing, John Coates, M.D., testified he diagnosed P.X. with "autism," "obsessive-compulsive disorder," and "mental retardation," all of which he termed "long-standing disorders" that met the statutory definitions of mental illness or developmental disability. Coates stated these disorders are "treatable with psychotropic medication and a restrictive support environment" in which P.X. was then confined. Coates opined P.X.'s WIS. STAT. ch. 51 commitment should be continued.

¶4 Coates also testified guardianship or protective placement orders may be appropriate because P.X. was "not apt to ever progress to a point where he could be treated in a less restrictive environment."[2] Coates testified he had not seen any "major advances" as a result of P.X.'s treatment and confinement in a

[1] This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2) (2015-16). All references to the Wisconsin Statutes are to the 2015-16 version.

[2] Coates was evidently unaware P.X. was already subject to both orders.

safe facility. He observed P.X.'s "behavior has become a little more controlled[,] but … basically he cannot communicate. … [h]e will continue to have this obsessive compulsive destructive behavior, and I don't think that's changed."

¶5 Doctor Nicholas Starr, a licensed psychologist, testified he diagnosed P.X. with autism, pica, obsessive-compulsive disorder, and intellectual disabilities after examining him and reviewing his records. Starr determined P.X. was a proper subject for treatment because his conditions "can be helped and supported with medications and therapeutic services that will have to be rather extensive due to his level of [permanent cognitive] disability." Starr opined these treatments would keep P.X. safe because the medication would provide "a calming effect" and keep P.X. from engaging in dangerous or aggressive behavior in response to his obsessions. Starr recommended the WIS. STAT. ch. 51 commitment be extended because he understood that P.X.'s guardianship order could not ensure he received involuntary medication.

¶6 Starr acknowledged P.X. had engaged in certain harmful behaviors while he was under medication, such as eating paint or wall material. When questioned whether P.X.'s condition would improve, Starr explained, "The conditions will not change; however, the symptoms will lessen, which has occurred … there had been two months where he had not aggressed toward other people and two months where he had not injured himself."

¶7 P.X.'s social worker testified she requested continuing his WIS. STAT. ch. 51 order due to the need for orders authorizing involuntary medication and emergency behavioral placement. She also testified there were plans to return P.X. to the community in a specialized placement within the next six months, due to P.X.'s improved behavior.

¶8 The circuit court concluded the County met its burden to prove P.X. was a proper subject for WIS. STAT. ch. 51 involuntary commitment. The court found the psychotropic medication P.X. was currently taking "is not available under his current [WIS. STAT. ch. 55] placement order, has a calming effect on him, … [and] helps ameliorate his symptoms," including his tendencies to "engage[] in destructive behavior" and harm himself. The court subsequently entered an order extending P.X.'s commitment and an order authorizing involuntary medication on March 4, 2016. P.X. appeals the commitment order.

DISCUSSION

¶9 P.X. disputes only whether the County proved by clear and convincing evidence, *see* WIS. STAT. § 51.20(13)(e), that he was "a proper subject for treatment" under § 51.20(1)(a)1. Review of a commitment order presents a mixed question of fact and law. The circuit court's findings of fact will not be set aside unless they are clearly erroneous. ***Outagamie Cty. v. Melanie L.***, 2013 WI 67, ¶¶38-39, 349 Wis. 2d 148, 833 N.W.2d 607. Application of those findings to the relevant statutory standard and interpretation of the statute are questions of law reviewed independent of the circuit court's conclusions. ***Id.***, ¶39.

¶10 In ***Fond du Lac County v. Helen E.F.***, 2012 WI 50, ¶23, 340 Wis. 2d 500, 814 N.W.2d 179, our supreme court concluded an individual who suffered from Alzheimer's disease was a proper subject for protective placement under WIS. STAT. ch. 55 rather than placement under a WIS. STAT. ch. 51 commitment. The court explained the circumstances under which an individual has rehabilitative potential and is thus a proper subject for treatment under WIS. STAT. § 51.20(1)(a):

> If treatment will "maximize[e] the[ ] individual functioning and maintenance" of the subject, but not "help[ ] in controlling or improving their disorder[ ]," then the subject individual does not have rehabilitative potential, and is not a proper subject for treatment. However, if treatment will "go beyond controlling ... activity" and will "go to controlling [the] disorder and its symptoms," then the subject individual has rehabilitative potential, and is a proper subject for treatment.

Helen E.F., 340 Wis. 2d 500, ¶36 (citations omitted; alterations in original). Under the facts of that case, our supreme court noted the individual's neurodegenerative disorder was "incurable and untreatable" and could at best "be ameliorated with psychotropic medication." ***Id.***, ¶¶37-38.

¶11 P.X. argues he is not capable of rehabilitation as understood under ***Helen E.F.*** He claims the evidence at the hearing established that his disorders are permanent and that his medication only calms or controls his behavior. As a result, he maintains the only purpose served by his WIS. STAT. ch. 51 commitment is to keep him "safe" rather than improve his disorders.

¶12 We reject this argument. WISCONSIN STAT. ch. 51 commitment is not improper merely because P.X.'s disorders may be "long-standing." "An individual with an incurable physical or mental illness or disability may still be considered capable of rehabilitation and able to benefit from treatment in the sense that symptoms can be controlled and the ability to manage the illness ameliorated." *See* ***C.J. v. State***, 120 Wis. 2d 355, 360, 354 N.W.2d 219 (Ct. App. 1984). Moreover, P.X. misses the point when he claims that keeping him "safe," as Starr testified, "does not equate with being capable of rehabilitation." Here, the circuit court's findings that P.X.'s disorders were treatable, and his safety was improved as a result, are supported by the evidence. Unlike the subject's disorder in ***Helen E.F.***, both doctors testified P.X.'s disorders and manifested symptoms,

not just the disturbances he caused, could be controlled and improved through medication and a proper living environment. *See* ***Helen E.F.***, 340 Wis. 2d 500, ¶¶7, 38. Indeed, Starr and the social worker testified P.X. had shown progress and his symptoms had recently improved under commitment. Coates may have appeared skeptical about the effectiveness of P.X.'s treatment, but he too testified P.X.'s behavior was "more controlled" by medication. Accordingly, we conclude P.X. was a proper subject for treatment under ch. 51.[3]

By the Court.—Order affirmed.

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

[3] Having resolved this issue, we need not address P.X.'s argument that his WIS. STAT. ch. 55 commitment potentially allows involuntary medication and confinement. *See* ***Turner v. Taylor***, 2003 WI App 256, ¶1 n.1, 268 Wis. 2d 628, 673 N.W.2d 716 (appellate courts need only address dispositive issues).