COURT OF APPEALS
DECISION
DATED AND FILED

May 1, 2018

Sheila T. Reiff
Clerk of Court of Appeals

Appeal No. 2018AP145-FT **Cir. Ct. No. 2016ME75**

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

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

LANGLADE COUNTY,

PETITIONER-RESPONDENT,

V.

D. J. W.,

RESPONDENT-APPELLANT.

APPEAL from orders of the circuit court for Langlade County: GREGORY E. GRAU, Reserve Judge. *Affirmed.*

¶1 SEIDL, J.[1] D.J.W. appeals circuit court orders extending his WIS. STAT. ch. 51 involuntary recommitment for twelve months and reimposing involuntary medication and treatment on an inpatient basis. *See* WIS. STAT. §§ 51.20(13)(g)1., 51.61(1)(g)4. D.J.W. argues the court erred in concluding Langlade County presented sufficient evidence of his dangerousness under § 51.20(1)(am). We reject D.J.W.'s argument and affirm.

BACKGROUND

¶2 On January 30, 2017, D.J.W. was first placed under an order committing him to the care and custody of the County for six months and an order for involuntary medication. On June 16, 2017, the County filed a Petition for Recommitment of D.J.W. This petition was based upon an evaluation of D.J.W.'s treatment record completed by the North Central Health Services Board (the Board), which was established by the County pursuant to WIS. STAT. § 51.42. The Board recommended an extension of D.J.W.'s commitment for one year and continuation of his involuntary medication order.

¶3 At a July 18, 2017 hearing on the County's petition, the Board's written evaluation of D.J.W.'s treatment record was received into evidence along with the report of circuit court appointed expert, Dr. John Coates. The court heard testimony from Coates and D.J.W. The court found that D.J.W. suffered from a mental illness, that his condition was treatable, and that the treatment in place was "actually working." The court further determined that there was a substantial

[1] This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2) (2015-16), and it has been expedited under WIS. STAT. RULE 809.17 (2015-16). All references to the Wisconsin Statutes are to the 2015-16 version unless otherwise noted.

likelihood that D.J.W. would become a proper subject for commitment if treatment were withdrawn. The court concluded that the County had met its burden of proof and entered orders extending D.J.W.'s inpatient commitment for twelve months, and for his involuntary medication and treatment. D.J.W. now appeals.

DISCUSSION

¶4 For an individual to be involuntarily committed under WIS. STAT. ch. 51, a petitioner must prove by clear and convincing evidence that the individual is mentally ill, a proper subject for treatment, and dangerous. *See* WIS. STAT. §§ 51.20(1)(a)1.-2., 51.20(13)(e). When the petitioner moves to extend a commitment under § 51.20(13)(g)3., those same standards apply. *See* § 51.20(1)(am). However, when extending a previous commitment, § 51.20(1)(am) allows the petitioner to prove the dangerousness element by showing "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."

¶5 On appeal, D.J.W. only challenges the circuit court's determination of dangerousness. When reviewing a circuit court's decision to impose involuntary commitment and medication, we do not set aside the court's findings of fact unless they are clearly erroneous. ***Outagamie Cty. v. Melanie L.***, 2013 WI 67, ¶39, 349 Wis. 2d 148, 833 N.W.2d 607. We must accept reasonable inferences from the facts available to the court. ***Id.*** Application of those facts to the relevant statutory standard and interpretation of statutory provisions are questions of law that we review independently. ***Id.***

¶6 Coates' opinions provided at trial and in his report were made to a reasonable degree of medical probability. Coates diagnosed D.J.W. with

schizophrenia based upon review of D.J.W.'s treatment records. Coates determined, from those records, that D.J.W. had experienced significant delusions over the past three years due to this illness, including D.J.W.'s report of having seen the devil and experiencing auditory hallucinations. Coates took note of instances in the treatment record indicating D.J.W. caused "property damage." Coates also described the circumstances that culminated in D.J.W.'s initial commitment in 2016:

> [D.J.W.] was admitted after he violated a settlement agreement. And he was very, very delusional. He actually had quit a job because he thought he was the Messiah and sent from God to save humanity. And he was hearing voices on a daily basis and thought that others could hear his thoughts.
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> …
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> I said that [D.J.W. thought that others could hear his thoughts] because … he did not believe he was mentally ill but rather a psychic. And at that time, too, he was using marijuana on a daily basis.

¶7 Coates opined that D.J.W. would become dangerous if treatment were withdrawn, on the basis that D.J.W. would be unable to care for himself or properly socialize if that occurred. Coates testified that D.J.W.'s schizophrenia was responding to treatment, and he recommended that D.J.W. be medicated on an outpatient basis. However, Coates also testified that D.J.W.'s "judgment is currently still impaired" despite the treatment.

¶8 Coates further opined that D.J.W. was incapable of refusing medication or making an informed choice regarding treatment. While D.J.W. acknowledged to Coates that he had schizophrenia, Coates testified that D.J.W. nevertheless believed "the medication is actually the problem, not his illness." Coates predicted D.J.W. would, as a result of his impaired judgment, be "apt to

have exacerbation of his illness" and experience greater delusions because he would not seek treatment.

¶9 D.J.W. testified that while he "understood" he had been diagnosed with schizophrenia, he "d[id]n't necessarily agree with" that diagnosis. He stated that he found his medication unhelpful. D.J.W. denied that he ever threatened or attempted to harm anyone else or himself, and he expressed his opinion that he had not "done anything to justify being put under a commitment." D.J.W. also testified he believed he was "the Messiah," and he explained his mission was to "invent a way out of" global warming.

¶10 Based upon this evidence, we conclude the circuit court's finding of D.J.W.'s dangerousness under WIS. STAT. § 51.20(1)(am) was not clearly erroneous. The circuit court found the symptoms D.J.W. experienced due to his schizophrenia to be "significant" and emphasized: "[I]n trying to put a qualitative assessment on how serious his delusion and hallucinations are, one of the things I take into account is [D.J.W.]'s belief that he is the Messiah. That is a significant disturbance of perception." The court also accepted Coates' opinion by finding that D.J.W.'s hallucinations and delusions, given their severity, "would take their course" and "put his judgment and perception in such a place that he would be a significant danger to himself" if treatment were withdrawn. Moreover, the court determined that D.J.W. was incapable of understanding the advantages and disadvantages of accepting treatment, given Coates' opinion that D.J.W. would refuse medication and D.J.W.'s admission that he was not "convinced that he suffers from … schizophrenia" despite his diagnosis. These findings satisfy the standard of dangerousness under § 51.20(1)(am), namely that there was a substantial likelihood D.J.W. would become a proper subject for commitment if treatment were withdrawn.

¶11 We reject D.J.W.'s argument that the County failed to satisfy its burden of proof. D.J.W. emphasizes evidence showing that: (1) D.J.W. had lost employment before he was committed; (2) he applied for and received disability benefits because of his disorder after having been committed; (3) he was relying on family members for housing but was ultimately not homeless; and (4) he did not demonstrate any homicidal or suicidal behaviors while committed. From that evidence, D.J.W. argues that merely "losing employment and relying on the assistance of the government and family is insufficient evidence of statutory dangerous[ness]" under WIS. STAT. § 51.20(1)(am).

¶12 The premise of D.J.W.'s argument appears to be that, without evidence of any threatening or violent behavior, there cannot be sufficient evidence that he is a danger to himself or others. However, WIS. STAT. § 51.20(1)(am) does not require additional proof of recent overt threats or violent behavior to support a recommitment order. *See* ***State v. W.R.B.***, 140 Wis. 2d 347, 351, 411 N.W.2d 142 (Ct. App. 1987). Rather, the definition of dangerousness on a recommitment petition places "the emphasis … on the attendant consequence to the patient should treatment be discontinued." ***M.J. v. Milwaukee Cty. Combined Cmty. Servs. Bd.***, 122 Wis. 2d 525, 531, 362 N.W.2d 190 (Ct. App. 1984). The petitioner may prove dangerousness to support extending a commitment under § 51.20(1)(am) by showing a substantial likelihood, based on the individual's treatment record, that the individual would be a proper subject for commitment if treatment were withdrawn. As this court has explained, the legislature enacted § 51.20(1)(am) to avoid "revolving door" scenarios where an individual is released from a commitment, during which no overt acts occurred as a result of treatment, but then commits a dangerous act and is recommitted to be treated. ***W.R.B.***, 140 Wis. 2d at 351.

¶13 The circuit court did not err in its findings and conclusions by crediting D.J.W.'s treatment record and Coates' testimony and opinion that D.J.W. would become a proper subject for commitment if involuntary commitment and treatment were withdrawn.

By the Court.—Orders affirmed.

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