COURT OF APPEALS
DECISION
DATED AND FILED

February 6, 2014

Diane M. Fremgen
Clerk of Court of Appeals

Appeal No. 2013AP1380 **Cir. Ct. No. 2012ME111**

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

IN THE MATTER OF THE MENTAL COMMITMENT OF LINDA S. D.:

WOOD COUNTY,

PETITIONER-RESPONDENT,

V.

LINDA S. D.,

RESPONDENT-APPELLANT.

APPEAL from an order of the circuit court for Wood County: NICHOLAS J. BRAZEAU, JR., Judge. *Affirmed*.

¶1 LUNDSTEN, J.[1] Linda S.D. appeals an order of the circuit court extending her mental health commitment for a period of twelve months. She challenges the circuit court's determination that the County met its burden of proof at the hearing extending her commitment. She contends that the County failed to produce evidence of dangerousness. As I understand her more specific arguments, however, Linda S.D. is actually making a statutory interpretation argument pertaining to WIS. STAT. § 51.20(1). I reject her argument, and affirm the order.

Background

¶2 Linda S.D. was the subject of an emergency detention in June 2012 and a six-month inpatient commitment order in July 2012 under WIS. STAT. ch. 51. In November 2012, the County petitioned to extend her commitment.

¶3 At the extension hearing, the County presented the sole expert witness, Dr. Justin Knapp. Dr. Knapp testified that Linda S.D. was diagnosed with schizoaffective disorder bipolar type and an anxiety disorder. The County hoped to transition Linda S.D. to an outpatient setting, but this depended on whether she took medications as prescribed. According to Dr. Knapp, Linda S.D. suffered from "significant delusions and gross impairment in her overall functioning" whenever she failed to fully adhere to recommended treatment.

¶4 The court found Dr. Knapp's testimony to be credible. The court found that Linda S.D. suffered from a mental illness and was a proper subject for treatment, and further found that, "[w]ith regard to dangerousness, I think you do

[1] This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(d) (2011-12). All references to the Wisconsin Statutes are to the 2011-12 version unless otherwise noted.

meet the standard that you would be a proper subject for commitment if treatment were withdrawn." The court concluded that Linda S.D.'s commitment should be extended by twelve months.

Discussion

¶5 As an initial matter, I address a potential question of mootness. The appellate briefing in this case was complete approximately ten months into Linda S.D.'s twelve-month commitment. That commitment has now expired. Thus, the issue in this appeal has at least arguably become moot.

¶6 An appellate court generally will not consider moot issues unless certain criteria are met. *See* ***State ex rel. Olson v. Litscher***, 2000 WI App 61, ¶3, 233 Wis. 2d 685, 608 N.W.2d 425. Those criteria include that the issue (1) is one of great public importance; (2) is one that has occurred frequently; (3) is likely to arise again; or (4) will likely be repeated but evade appellate review because the appellate review process cannot be completed, or even undertaken, in time to have a practical effect on the parties. ***State v. Morford***, 2004 WI 5, ¶7, 268 Wis. 2d 300, 674 N.W.2d 349.

¶7 Neither Linda S.D. nor the County has submitted a position on the issue of mootness. Assuming for purposes of argument that the issue here meets one or more of the criteria above, I would still affirm for the reasons that follow.

¶8 Linda S.D. argues that the County failed to produce evidence of dangerousness. As I understand her more specific arguments, however, Linda S.D. is primarily making a statutory interpretation argument based on WIS. STAT. § 51.20(1)(a)2. and (1)(am). Her argument goes to the statutory standard for dangerousness at an extension hearing. The interpretation of a statute is a question

of law that an appellate court reviews de novo. *See* ***Knight v. Milwaukee Cnty.***, 2002 WI 27, ¶14, 251 Wis. 2d 10, 640 N.W.2d 773.

¶9 WISCONSIN STAT. § 51.20(1)(a)2. sets forth five tests for dangerousness upon initial commitment. Each test requires some evidence of "recent" conduct. *See* § 51.20(1)(a)2.a.-e.

¶10 WISCONSIN STAT. § 51.20(1)(am) addresses commitment extensions. The statute specifies that the § 51.20(1)(a)2. requirement of evidence of "recent" conduct "may be satisfied by a showing that there is 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." Section 51.20(1)(am).

¶11 Linda S.D. argues that WIS. STAT. § 51.20(1)(am) removes only the requirement of evidence of *recent* conduct. She argues that, under § 51.20(1)(am), the County still "*need[s] to present some evidence of prior dangerous behavior* and show that, absent commitment, such behavior is likely to arise again" (emphasis added).

¶12 The County argues that the statute does not require any evidence of prior dangerous behavior. The County argues that this would be tantamount to re-litigating the issue of dangerousness from the initial commitment hearing.

¶13 I agree with the County. Under WIS. STAT. § 51.20(1)(am), the County may show dangerousness by showing that "there is 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." As the circuit court recognized, it makes no sense to require the County to re-prove past dangerousness at each subsequent extension hearing.

¶14 This interpretation of the statute is consistent with its purpose: "to allow extension of a commitment when the patient's condition has not improved enough to warrant discharge." *See* ***M.J. v. Milwaukee Cnty. Combined Cmty. Servs. Bd.***, 122 Wis. 2d 525, 530-31, 362 N.W.2d 190 (Ct. App. 1984). "[T]he emphasis is on the attendant consequence to the patient should treatment be discontinued." ***Id.*** at 531.

¶15 In her reply brief, Linda S.D. appears to refine her argument. She argues that, even if no evidence of prior dangerous conduct is required, the County must still prove dangerousness somehow. This is true as far as it goes, but Linda S.D.'s argument does not come to grips with the fact that WIS. STAT. § 51.20(1)(am) specifies what the mode of proof may be at an extension hearing: The county may prove dangerousness by showing that "there is 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." Implicit in § 51.20(1)(am) is that an individual who would be a "proper subject for commitment" if treatment is withdrawn is by definition an individual who would be dangerous if treatment is withdrawn.

¶16 Linda S.D. does not develop an argument that the evidence is insufficient in light of the County's correct interpretation of the statute. On the contrary, she concedes that Dr. Knapp testified that Linda S.D. would be a proper subject for commitment if treatment were withdrawn.[2]

[2] Linda S.D. points out in a footnote in her brief-in-chief that Dr. Knapp actually stated in his testimony that Linda S.D. would be a proper subject for "treatment" (instead of a proper subject for "commitment") if treatment is withdrawn. Linda S.D. does not, however, develop an alternative argument that this testimony was insufficient under the County's interpretation of the statute. I therefore need not address the topic. I choose to note, however, that reading (continued)

¶17 It may be that Linda S.D. means to argue that, even under the County's interpretation of the statute, Dr. Knapp's testimony was lacking in foundation or was otherwise too conclusory. If so, this argument is undeveloped. I therefore address it no further. *See* ***State v. Pettit***, 171 Wis. 2d 627, 646-47, 492 N.W.2d 633 (Ct. App. 1992) (court of appeals need not consider inadequately developed arguments).

Conclusion

¶18 For all of the reasons stated, I affirm the circuit court's order extending Linda S.D.'s mental health commitment.

By the Court.—Order affirmed.

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

Dr. Knapp's testimony in context suggests that, most likely, either there was a transcription error or Dr. Knapp misspoke and meant to say that Linda S.D. would be a proper subject for "commitment" if treatment were withdrawn. Certainly this is how the circuit court understood Dr. Knapp's testimony, given its findings. What follows is the pertinent exchange between the County's counsel and Dr. Knapp at the extension hearing:

> Q Do you have an opinion, Doctor, if in fact treatment were withdrawn for [Linda S.D.], that she would become a proper subject for *commitment* again?
>
> A *Yes, I do*.
>
> Q Okay. And that opinion is?
>
> A That, yes, she would become a proper subject for *treatment* again were appropriate *treatment* withdrawn.

(Emphasis added.)