COURT OF APPEALS DECISION DATED AND FILED

January 27, 2015

Diane M. Fremgen
Clerk of Court of Appeals

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. ***See*** **WIS. STAT. § 808.10 and RULE 809.62.**

Appeal No. 2014AP1911

Cir. Ct. No. 1983ME30A

STATE OF WISCONSIN

IN COURT OF APPEALS
DISTRICT III

IN THE MATTER OF THE MENTAL COMMITMENT OF LORI D.:

OUTAGAMIE COUNTY,

PETITIONER-RESPONDENT,

V.

LORI D.,

RESPONDENT-APPELLANT.

APPEAL from an order of the circuit court for Outagamie County: MICHAEL W. GAGE, Judge. *Affirmed*.

¶1 STARK, J.[1] Lori D. appeals her commitment order under WIS. STAT. ch. 51, alleging there was insufficient evidence to support a finding that she was dangerous to herself. We affirm.

BACKGROUND

¶2 On February 5, 2014, a statement of emergency detention for Lori D. was filed by Appleton police sergeant Katherine Vanderheiden, and the circuit court found probable cause for her continued detention at a hearing on February 7. A final WIS. STAT. ch. 51 hearing was held February 17 to determine whether Lori should be involuntarily committed.

¶3 Kathleen Nyman testified that she had worked as a social worker in Outagamie County's Community Support Program for almost twenty years, and had worked with Lori for approximately eighteen years. At the time of the final hearing, Lori was fifty years old and had been diagnosed with mental illness at age eighteen. Lori had been working part time as a cab driver for seven years and was living independently. She had been managing her disorders and was stable while on a drug called Clozaril, but in December 2013 her psychiatrist removed Lori from that medication due to weight gain. Lori and her doctor were working on the medication change on an outpatient basis, but Lori began to decompensate. On January 9, 2014, Lori was voluntarily admitted to St. Elizabeth Hospital. She was discharged on February 4.

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

¶4 Several hours after she was discharged from St. Elizabeth Hospital, Lori called for a ride from the taxicab company for which she worked. Her co-worker Paul DeLabio testified that when he arrived to retrieve Lori an individual approached requesting to share the taxi. DeLabio testified Lori swore at the man, telling him to "get the fuck away from her fucking cab[.]" DeLabio testified this was uncharacteristic behavior from Lori, whom he described as "always … very polite, soft-spoken, quiet[,]" and whom he had "never heard … swear …." DeLabio drove Lori to Walgreens, intending to return after he was done with his next fare. When he completed his shift some hours later, Lori was at the cab company headquarters with two police officers and a third co-worker.

¶5 Vanderheiden testified she was dispatched to the Fox Valley Cab office on February 5 at 4:45 a.m. Vanderheiden is a Crisis Intervention Team officer trained to deal with persons with mental illnesses. Vanderheiden testified that when she arrived at the Fox Valley Cab office, Lori "appeared to be quite manic and unstable. … She was telling me things that didn't make any sense in the real world, like, for example, that she could charge her dead cell phone by holding it up to a cold window …." Vanderheiden stated that she was aware that an element of dangerousness must be proven when conducting an emergency detention, and that she "believed Lori was unable to make sound judgments to care for herself because of her illness." She described Lori's stated intention to spend the night at a local inn, despite having no credit card and only two dollars in her possession. Vanderheiden also testified that while Lori did not make any threats of harm to herself or harm to others, the temperature was in the single-digit range, yet Lori was wearing a "fall-weight jacket …. She didn't have a hat. She had a pair of hiking shoes but only one shoelace … and she had a large rip in her pants …." On cross-examination, Vanderheiden was asked if Lori indicated

whether she was willing to seek treatment. Vanderheiden answered, "She wanted to seek treatment on her own terms … saying she would go to Fond du Lac or Bellin on her own time as long as she could do an investigation into which doctor she wanted to see on her own time." On redirect, Vanderheiden stated, "I didn't feel that [her terms] were [reasonable]…. She also talked about how her doctor told her that her medications were only taken as needed rather than something that she needed to take every day consistently."

¶6 Nyman testified that, "[w]hen Lori is prescribed the right combinations of medications, she does wonderfully, and she's able to function. She's able to hold down a job. She's able to live independently." Nevertheless, Nyman opined, "Lori is not ready to live again independently on her own in the community. I do feel that her judgment still remains impaired." When asked whether she believed there was "a reasonable provision of services within the community that she would avail herself of other than inpatient commitment[,]" Nyman responded, "At this point, no." She explained Lori "continues to have her medications adjusted, and we need to continue to monitor her mental status and behaviors." Nyman continued:

> For Lori, it's important [to have medications adjusted in an inpatient setting] because … when she decompensates, she decompensates rather quickly and loses insight. We tried to do the change of medications on an outpatient basis with Dr. Rowell.
>
> You know, Lori and I were – she was very cooperative with me. We sat many times and talked about the risks she was taking with wanting to come off the Clozaril, you know, but I supported her on that. That's what she wanted to do.
>
> However, she lost insight into being able to care for herself. Her judgment became impaired. So now we need to do that on an inpatient basis to adjust the medications to keep her safe.

¶7 One of the two court-appointed psychiatrists also testified at the final hearing. Doctor Indu Dave testified Lori suffered from schizoaffective disorder, bipolar type, and that Lori's judgment was impaired to the point of concern for her safety. She opined Lori was in need of commitment. The other court-appointed psychiatrist, Dr. Marshall Bales, indicated in his written report, "with a reasonable degree of medical certainty that [Lori's] mental illness causes her to be so gravely disabled that she is unable to satisfy her basic needs for medical care, psychiatric care, shelter, and safety."

¶8 The circuit court found the County met its burden to prove by clear, satisfactory and convincing evidence that Lori suffered from a mental illness, and that her mental illness was treatable. The court further found Lori was a danger to herself. In evaluating whether Lori demonstrated such impaired judgment to rise to the level of dangerousness under section WIS. STAT. 51.20(1)(a)2.c.,[2] the court

[2] The court referred to WIS. STAT. § 51.20(1)(c), but from the court's language, it is clear the court analyzed Lori's dangerousness under § 51.20(1)(a)2.c., which provided, in relevant part, that an individual is dangerous when he or she:

> Evidences such impaired judgment, manifested by evidence of a pattern of recent acts or omissions, that there is a substantial probability of physical impairment or injury to himself or herself. The probability of physical impairment or injury is not substantial under this subd. 2.c. if reasonable provision for the subject individual's protection is available in the community and there is a reasonable probability that the individual will avail himself or herself of these services, if the individual may be provided protective placement or protective services under ch. 55 ….

As reflected in the language above, at the time Lori was detained, the version of WIS. STAT. § 51.20(1)(a)2.c. in effect only required a showing of "a substantial probability of physical impairment or injury to himself or herself." Effective March 29, 2014, the statute was amended to include the phrase, "or other individuals." 2013 Wis. Act 158, § 11.

first referred to DeLabio's testimony that Lori's erratic behavior was a cause for concern. The court also considered

> the more specific observations of the officer at a kind of higher level of insight based on training and some overall observations of [Lori]. She's not dressed for the weather. She's somewhat disheveled. Her appearance isn't normal. She's delusional about who is around and about her. She has plans to go to a location but no means to as a practical matter carry out those plans.
>
> So there's, you know, a number of acts, a number of circumstances that in the court's view add up to a substantial probability that she's likely to injure herself.
>
> Ordinary people are concerned about her welfare, coworkers. Trained people such as the police are … concerned about her welfare. And the behavior itself is suggestive of the fact that she's not only making irrational decisions, but some of these decisions are based on delusions.
>
> So there is impaired judgment to that extent, and it in the court's view is established by clear and convincing evidence.

¶9 The court then evaluated whether reasonable provision for Lori's protection was available in the community, and determined it was not. The court explained, "what is clear from the doctor's testimony is that a period of inpatient monitoring to stabilize the medication regime is necessary, and Ms. Nyman who has long and extensive experience confirms that, that a period of inpatient confinement is necessary." The court concluded that there was, by clear and convincing evidence, "impaired judgment of the degree required [and] that reasonable provision for the individual's protection is not available in the

community until there's a stabilization of the medication regime on an inpatient basis." Lori appeals the commitment order.[3]

DISCUSSION

¶10 Lori argues the evidence presented at the commitment hearing was insufficient to justify her commitment. In order to involuntarily commit Lori, the burden was on the County to prove by clear and convincing evidence that she was mentally ill, a proper subject for treatment, and dangerous to herself. *See* WIS. STAT. §§ 51.20(1)(a), 51.20(13)(e).

¶11 Whether the County has met its burden is a mixed question of fact and law. We will uphold the circuit court's factual findings unless they are clearly erroneous. ***K.N.K. v. Buhler***, 139 Wis. 2d 190, 198, 407 N.W.2d 281 (Ct. App. 1987). We will also accept the circuit court's reasonable inferences from the facts available to it. ***Outagamie Cnty. v. Melanie L.***, 2013 WI 67, ¶38, 349 Wis. 2d 148, 833 N.W.2d 607. However, we independently review the application of the facts to statutory commitment requirements. ***K.N.K.***, 139 Wis. 2d at 198.

¶12 Lori concedes there was sufficient evidence to prove she was mentally ill and a proper subject for treatment. However, she asserts the facts adduced at her hearing did not satisfy the standard for dangerousness under WIS. STAT. § 51.20(1)(a)2.c. That subsection required the County prove that Lori "evidence[d] such impaired judgment, manifested by evidence of a pattern of recent acts or omissions, that there is a substantial probability of physical

[3] The court found the record did not support the administration of psychotropic medication regardless of consent, which is not appealed.

impairment or injury to herself." WIS. STAT. § 51.20(1)(a)2.c. The probability of physical impairment or injury is not substantial "if reasonable provision for [Lori's] protection is available in the community and there is a reasonable probability that she will avail herself of those services." ***Id.***

¶13 Lori first contends the evidence concerning her behavior on a single night did not constitute a "pattern of recent acts or omissions" evidencing a substantial probability of physical impairment or injury. Second, she argues if there was any probability of physical impairment or injury, it was not substantial. She asserts her history of cooperation in following doctor's orders and her previous compliance with taking medication, coupled with her willingness to voluntarily accept appropriate services in the community on an inpatient or outpatient basis, precluded her commitment.

A. Pattern of recent acts or omissions

¶14 Lori argues her behavior on one night did not constitute a pattern of acts or omissions creating a substantial probability of physical impairment or injury. She concedes her behavior was symptomatic of her mental illness but contends it did not rise to the level of dangerousness necessary for an involuntary commitment. Lori emphasizes that she was using buses and cabs for transportation the evening of February 4, and that she knew to call her co-workers for help. As a result, she asserts there was no real concern about her well-being. She acknowledges she "exhibited some abnormal behavior" but insists her behavior was merely erratic, not dangerous.

¶15 We disagree with Lori's argument that her behavior on one night did not constitute a pattern of behavior sufficient for commitment. There is nothing in the commitment statute that provides a pattern of acts or omissions must take

place over a particular period of time. What is required is a pattern of behavior evidencing impaired judgment. The term "pattern" is not defined within the statute. When statutory language is undefined, it is "given its common, ordinary, and accepted meaning[.]" ***State ex. rel. Kalal v. Circuit Court for Dane Cnty.***, 2004 WI 58, ¶45, 271 Wis. 2d 633, 681 N.W.2d 110. The common, ordinary, and accepted meaning of an undefined statutory term "may be ascertained from a recognized dictionary." ***State v. Morse***, 126 Wis. 2d 1, 4, 374 N.W.2d 388 (Ct. App. 1985) (citing ***State v. Wittrock***, 119 Wis. 2d 664, 670, 350 N.W.2d 647 (1984)). A "pattern" is defined as "a reliable sample of traits, acts, or other observable features characterizing an individual[,]" WEBSTER'S THIRD NEW INT'L DICTIONARY 1657 (unabr. 1993), or "[a] mode of behavior or series of acts that are recognizably consistent." BLACK'S LAW DICTIONARY 1308 (10th ed. 2014).

¶16 Here, the record supports the circuit court's finding that Lori's behavior on February 4 and 5 consistently evidenced delusional thinking that would likely lead to her physical impairment or injury. The court chronologically detailed the events that led to Lori's initial confinement, noting: Lori had been released from voluntary commitment less than twenty-four hours before; she had unusual and erratic interactions with her co-worker and the police over a period of several hours; Lori made delusional statements to the officers; she expressed her belief her medications could be taken as needed; she was insistent on going to a motel without money; and she was dressed improperly given the below-freezing temperature. In addition, despite the fact that Lori professed a willingness to seek treatment voluntarily, she had no reasonable insight into how that would be accomplished. These findings are supported by the record and are not clearly erroneous.

¶17 Lori was not detained based on a single person's solitary observation or an isolated incident. Rather, the court heard substantial testimony about Lori's delusional behavior from witnesses deemed credible given their relationships with Lori, including a co-worker and her longtime social worker. A law enforcement officer trained to deal with mentally ill persons testified that Lori's behavior was manic and delusional. The professionals who evaluated Lori were in agreement that, as Dr. Bales wrote, Lori's "mental illness cause[d] her to be so gravely disabled that she is unable to satisfy her basic needs for medical care, psychiatric care, shelter, and safety." After independent application of the circuit court's factual findings to the statutory requirements, we conclude the County provided clear, satisfactory and convincing evidence of a pattern of behavior on Lori's part showing such impaired judgment that there was a substantial probability of physical impairment or injury to herself. *See* WIS. STAT. § 51.20(1)(a)2.c.

B. Reasonable provision for protection available in the community

¶18 Lori also argues the probability of physical impairment or injury was not substantial because there were services available for her protection in the community and there was a reasonable probability that she would avail herself of those services. She contends that the County elicited testimony focused solely on whether Lori would avail herself of outpatient treatment in the community, but failed to discuss whether Lori would avail herself of voluntary inpatient treatment in the community. Lori claims the evidence shows she would have availed herself of the necessary services for her protection. She argues the events of February 4 and 5 transpired just after she had been prematurely discharged after voluntarily availing herself of inpatient treatment; that she has a history of cooperation with treatment providers and compliance with her medications; and that she told one of

the court-appointed psychiatrists that she needed to be in inpatient treatment "to right [her] meds."

¶19 We first observe the County has conceded the issue of whether the statutory language "available in the community" includes voluntary inpatient treatment. However, under WIS. STAT. § 51.20(1)(a)2.c, before the circuit court was required to determine if Lori would avail herself of services in the community, be they inpatient or outpatient, it was first required to determine if reasonable provision for Lori's protection was available in the community. WIS. STAT. § 51.20(1)(a)2.c. Only if the evidence shows there were reasonable services available for Lori's protection in the community do we then determine if she would have voluntarily availed herself of them.

¶20 The circuit court found Lori's judgment was impaired to such a degree that reasonable services for her protection were not available in the community until Lori was stabilized. The record supports this finding. When asked whether there were services within the community that would be sufficient to care for Lori other than commitment, Dr. Dave stated, "No. Once she's medicated and medications are monitored, she does very well." Nyman testified that reasonable provision for Lori's protection was unavailable in the community at that point in time. She testified that Lori needed more than treatment; she required commitment until her medications were stabilized.

¶21 No evidence was presented that inpatient treatment was available to Lori in the community. The court-appointed doctors and Lori's longtime social worker testified, unequivocally, that Lori required commitment. The court relied heavily on the testimony of the professionals, concluding, "[W]hat is clear from the doctor's testimony is that a period of inpatient monitoring to stabilize the

medication regime is necessary, and Ms. Nyman who has long and extensive experience confirms that, that a period of inpatient confinement is necessary." We agree, relying on the court's findings of fact, that reasonable services for Lori's protection were not available in the community. As a result, we need not consider whether Lori would have voluntarily availed herself of community services for her protection.

¶22 Accordingly, we affirm the circuit court's commitment order.

By the Court.—Order affirmed.

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