COURT OF APPEALS
DECISION
DATED AND FILED

August 3, 1999

Marilyn L. Graves
Clerk, Court of Appeals
of Wisconsin

No. 98-0576

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

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

v.

ANTHONY D.B.,

DEFENDANT-APPELLANT.

APPEAL from an order of the circuit court for Milwaukee County: TIMOTHY G. DUGAN, Judge. *Affirmed.*

Before Fine, Schudson and Curley, JJ.

SCHUDSON, J. Anthony D.B. appeals from the trial court order finding him not competent to refuse medication and granting authority for involuntary medication. He claims the trial court lacked authority to order the involuntary administration of psychotropic medication to a person committed under chapter 980, STATS. We conclude, however, that because Anthony, by

virtue of being committed under chapter 980, was a "patient" under § 51.61(1), STATS., and because Anthony was afforded all the "substantial rights" he would have enjoyed had he received his involuntary medication hearing under chapter 51 rather than chapter 980, the trial court's order was appropriate. Therefore, we affirm.

BACKGROUND

Anthony D.B. was involved in two separate legal proceedings germane to the issues on appeal. First, in 1989, Anthony pled guilty to second degree sexual assault, in violation of § 940.225(2)(a), STATS., and was sentenced to six years' imprisonment. Second, subsequent to his sexual assault conviction, Anthony was found not guilty by reason of mental disease or defect for a non-sexual offense, and was committed to Mendota Mental Health Institute under § 971.17, STATS.

On January 17, 1995, pursuant to § 980.02(1)(b)1, STATS., the State filed a petition alleging that Anthony was a sexually violent person[1] and requesting an order to detain him for a hearing to determine whether there was probable cause to believe he was a sexually violent person. The petition stated that Anthony had been convicted of a sexually violent offense and was within ninety days of the mandatory release date for that conviction. It alleged: "Anthony [] is presently suffering from a mental disorder which is either congenital or an

[1] The definition of a sexually violent person includes "a person who has been convicted of a sexually violent offense … and who is dangerous because he … suffers from a mental disorder that makes it substantially probable that the person will engage in acts of sexual violence." Section 980.01(7), STATS. Second degree sexual assault is a sexually violent offense. *See* § 980.01(6)(a). A mental disorder is "a congenital or acquired condition affecting the emotional or volitional capacity that predisposes a person to engage in acts of sexual violence." *See* § 980.01(2).

acquired condition affecting the emotional or volitional capacity that predisposes him to engage in acts of sexual violence; further, it is substantially probable that [he] will engage in acts of sexual violence."

The trial court reviewed the petition, found cause to believe that Anthony was eligible for commitment as a sexually violent person under § 980.05(5), STATS., and, pursuant to § 980.04(1), ordered him detained by the Department of Corrections and transferred to an approved detention facility.[2] At the hearing held pursuant to § 980.04(2), the court found "probable cause to believe that Anthony [] is a sexually violent person within the meaning of Wisconsin statute sec. 980.01(7)" and ordered that he be detained by the Department of Corrections and transferred to "Mendota Mental Institute for an evaluation as to whether he is a sexually violent person pursuant to Wisconsin Statute sec. 980.04(3)." Challenging the constitutionality of chapter 980, Anthony moved for dismissal of the petition and for pretrial release. The trial court granted Anthony's motion, ordered his release from custody, but stayed the order. Ultimately, this court reversed the trial court's order, based on the supreme court's decisions in ***State v. Carpenter***, 197 Wis.2d 252, 541 N.W.2d 105 (1995), and ***State v. Post***, 197 Wis.2d 279, 541 N.W.2d 115 (1995).[3]

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[2] "[T]he court shall order that the [subject of a § 980.02 petition] be transferred to a detention facility approved by the department." Section 980.04(1), STATS. Although this language has remained unchanged from the version of the statutory provision upon which the trial court relied in ordering Anthony's detention, the statutory definition of department has changed from "department of health and social services" to "department of health and family services" to reflect the department's official name change. *See* § 980.01(1), STATS., 1993-94 and 1995-96.

[3] In ***Carpenter***, the supreme court concluded: "[Chapter] 980 creates a civil commitment procedure primarily intended to protect the public and to provide concentrated treatment to convicted sexually violent persons, not to punish the sexual offender. Therefore, we hold that ch. 980 does not violate either the Ex Post Facto or the Double Jeopardy Clause." ***State v. Carpenter***, 197 Wis.2d 252, 258-59, 541 N.W.2d 105, 107 (1995). In ***Post***, the supreme court concluded "that chapter 980 withstands constitutional challenge in that it violates neither the (continued)

At a pretrial status conference, defense counsel advised the court that there was reason to believe Anthony was not competent to proceed. Pursuant to § 971.14(2), STATS., the court ordered that Anthony be examined for competency. At the competency hearing, Dr. David Mays, the medical director of adult and forensic services at Mendota, testified that he was Anthony's treating psychiatrist and had performed the competency evaluation. He testified that Anthony carried diagnoses of paranoid schizophrenia, paraphilia (not otherwise specified), and alcohol abuse, and that Anthony's degree of competence was dependent on his medication. The court found Anthony competent to proceed.

Anthony waived his right to a jury trial and, on April 1, 1997, he was adjudicated a sexually violent person. Pursuant to § 980.06(1), STATS., he was "committed to the custody of the Department of Health and Family Services for control, care and treatment until such time as he is no longer a sexually violent person." The court ordered Anthony returned to Mendota pending a dispositional hearing. At the dispositional hearing, the court found Anthony appropriate for placement in a secure facility. Anthony's placement was scheduled to take place on or about January 19, 1998, at the conclusion of his § 971.17 commitment for the non-sexual offense for which he had been found not guilty by reason of mental disease or defect. The court order for involuntary administration of psychotropic medication was due to expire at the end of Anthony's § 971.17 commitment.

In anticipation of the expiration of the order for involuntary medication, the State filed a motion for a new order for involuntary medication to begin concurrently with the chapter 980 placement. Following an evidentiary

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substantive due process nor the equal protection guarantees of the United States and Wisconsin constitutions." ***State v. Post***, 197 Wis.2d 279, 293-94, 541 N.W.2d 115, 118 (1995).

hearing and review of the briefs, the court granted the motion, noting that Anthony "has agreed that if the court has authority to order involuntary medication that the standards for such an order have been met as to him." Anthony now challenges the trial court's authority to order involuntary medication of a patient under chapter 980.

DISCUSSION

As a sexually violent person, Anthony was committed for "control, care and treatment," and his commitment was to continue "until such time as [Anthony] is no longer a sexually violent person." *See* § 980.06(1), STATS. Committed under chapter 980, STATS., Anthony fell under the definition of "patient" in § 51.61(1), STATS.: "any individual who is receiving services for mental illness, developmental disabilities, alcoholism or drug dependency, including any individual who is … detained, committed or placed under … ch. … 980." As a "patient," Anthony, subsequent to the entry of a final commitment order, has the right to refuse medication unless a court determines that he "is not competent to refuse medication or treatment or unless a situation exists in which the medication or treatment is necessary to prevent serious physical harm to [himself] or others." *See* § 51.61(1)(g)3, STATS.

The trial court found that "the court that commits a person under chapter 980 has authority to order involuntary medication if the statutory provisions in § 51.61(1)(g), Wis. Stats., are complied with." This court, however, has declared that "administration of medication against the will of an individual *may only be ordered through a ch. 51 proceeding*, even if that individual is incompetent to refuse medication." ***State ex rel. Roberta S. v. Waukesha County Human Servs. Dep't***, 171 Wis.2d 266, 278, 491 N.W.2d 114, 119 (Ct. App. 1992)

(emphasis added). At first glance, then, it would appear that the trial court's order for involuntary medication of Anthony under chapter 980 exceeded the explicit restriction of ***Roberta S.*** As Anthony argues, "[t]he correct procedure for issuing an involuntary medication order would have been to commence a proceeding under chapter 51 and to issue an involuntary medication order as a part of that proceeding." Accordingly, Anthony urges this court to nullify the trial court's order.

Anthony is not claiming that the trial court's decision on involuntary medication would have been any different had the court held the hearing under chapter 51 rather than chapter 980. In fact, he fully concedes that if the court had authority to order involuntary medication, the evidence provided the basis for doing so.[4] Anthony contends, however, that the trial court lacked authority to order involuntary medication under chapter 980 and, further, "[b]ecause this lack of [the trial court's] competency renders the order invalid, the trial court's error in issuing it is prejudicial."

[4] Anthony, however, has never conceded that the circuit court followed the procedures mandated by chapter 51. Had he done so, this opinion's detailed discussion of whether the circuit court followed those procedures could have been condensed. Some discussion of that subject still would have been necessary, however, given the restriction explicitly declared in ***State ex rel. Roberta S. v. Waukesha County Human Servs. Dep't***, 171 Wis.2d 266, 278, 491 N.W.2d 114, 119 (Ct. App. 1992) ("[A]dministration of medication against the will of an individual may only be ordered through a ch. 51 proceeding, even if that individual is incompetent to refuse medication.").

Thus, although the concurring opinion's streamlined approach is attractive, and while that approach certainly is not incompatible with the analysis contained in this opinion, the concurring opinion's approach depends on an avoidance of the explicit restriction of ***Roberta S.*** *See* ***Cook v. Cook***, 208 Wis.2d 166, 190, 560 N.W.2d 246, 256 (1997) ("[T]he court of appeals may not overrule, modify or withdraw language from a previously published decision of the court of appeals.").

Whether a trial court has authority to order the involuntary administration of psychotropic medication under chapter 980 presents a question of law. We review questions of law *de novo*. *See* ***State v. Ludwigson***, 212 Wis.2d 871, 875, 569 N.W.2d 762, 764 (Ct. App. 1997). We conclude that a trial court has authority to order involuntary medication of a "patient," as defined in § 51.61(1), STATS., where, as here, the trial court proceeded under chapter 980 but afforded the patient all the "substantial rights" he would have enjoyed had the court proceeded under chapter 51.

Under § 805.18(1), STATS., a trial court "shall, in every stage of an action, disregard any error or defect in the pleadings or proceedings which shall not affect the substantial rights of the adverse party." Therefore, even assuming, *arguendo*, that by proceeding under chapter 980 rather than chapter 51, the trial court exceeded the restriction of ***Roberta S.***, we still must determine whether such an "error or defect in the … proceedings" affected Anthony's "substantial rights." To do so, we must consider the proceedings that took place in Anthony's case under chapter 980, in comparison to the relevant requirements of chapter 51.

The process of initiating involuntary commitment proceedings under chapter 51, STATS., requires the filing of a written petition for examination. Section 51.20(1), STATS. Anthony's commitment under chapter 980, STATS., was initiated by the filing of a written petition.

A petition complies with the requirements of § 51.20(1), STATS., if it alleges that a person: (1) "is mentally ill … and is a proper subject for treatment"; and (2) "is dangerous because he … evidences a substantial probability of physical harm to other individuals as manifested by evidence … that others are placed in reasonable fear of violent behavior and serious physical harm to them, as

evidenced by a recent overt act, attempt or threat to do serious physical harm." *See* § 51.20(1)(a)1, 2.b, STATS. Section 51.20(1)(am), STATS., provides this clarification:

> If the [subject of a § 51.20(1) petition] has been the subject of inpatient treatment for mental illness, developmental disability or drug dependency immediately prior to commencement of the proceedings as a result of … a commitment or placement ordered by a court under this section or s. 55.06 or 971.17 or ch. 975, … the requirements of a recent overt act, attempt or threat to act under par. (a)2.a. or b., a pattern of recent acts or omissions under par. (a)2.c. or e. or recent behavior under par. (a)2.d. 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.

In this case, the petition alleges that "Anthony [] is presently suffering from a mental disorder which is either congenital or an acquired condition affecting the emotional or volitional capacity that predisposes him to engage in acts of sexual violence; further, it is substantially probable that [he] will engage in acts of sexual violence." The petition states that "[Anthony's] history includes multiple allegations of sexual abuse against mentally disabled females … and auditory hallucinations telling him to hurt himself and others." It also notes that Anthony's medication includes Cogentin, Klonopin, Thorazine, Prolixin, and lithium, that he sometimes refuses his medication, and that he "has continued to have psychotic and aggressive features even when compliant with medication." Thus, the petition satisfies the requirements of § 51.20(1), STATS.

"Each petition for examination shall be signed by 3 adult persons, at least one of whom has personal knowledge of the conduct of the subject

individual." Section 51.20(1)(b), STATS. Section 51.20(1)(c), STATS., addresses further requirements:

> The petition shall contain the names and mailing addresses of the petitioners and their relation to the subject individual, and shall also contain the names and mailing addresses of the individual's spouse, adult children, parents or guardian, custodian, brothers, sisters, person in the place of a parent and person with whom the individual resides or lives. If this information is unknown to the petitioners or inapplicable, the petition shall so state…. The petition shall contain a clear and concise statement of the facts which constitute probable cause to believe the allegations of the petition. The petition shall be sworn to be true. If a petitioner is not a petitioner having personal knowledge as provided in par. (b), the petition shall contain a statement providing the basis for his or her belief.

The petition in this case states "the facts which constitute probable cause to believe the allegations of the petition" and provides the basis for the petitioner's beliefs; it does not otherwise comply with these requirements. Anthony, however, does not argue that such noncompliance denied him any "substantial rights" or was prejudicial in any way.

Section 51.20(2), STATS., discusses detention:

> Upon filing of a petition for examination, the court shall review the petition to determine whether an order of detention should be issued. The subject individual shall be detained only if there is cause to believe that the individual is … eligible for commitment …. Placement shall be made in a hospital which is approved by the department [of health and family services] as a detention facility ….

In this case, the trial court reviewed the petition, found cause to believe that Anthony was eligible for commitment, and ordered him detained by the Department of Corrections and transferred to an approved detention facility.

The court is required to "assure that the subject individual is represented by adversary counsel" at the time at which the petition is filed and

"shall refer the person to the authority for indigency determinations" if there is a claim or appearance of indigency. Section 51.20(3), STATS. In this case, the court ordered delivery to "the State Public Defender's Office a copy of these Findings and Order, and a copy of the Petition, thereby notifying the Public Defender of the nature, date, time and place of the probable cause hearing" and enabling Anthony to "avail himself of his right to counsel, if he is indigent and requests Public Defender [services]."

Section 51.20(7)(a), STATS., provides that a hearing "to determine whether there is probable cause to believe the allegations" contained in a petition filed under § 51.20(1) is to be held "within 72 hours after the individual arrives at the [detention] facility." Anthony's probable cause hearing was held within the mandated time frame.

Section 51.20(9)(a), STATS., states:

> If the court finds after the hearing that there is probable cause to believe the allegations under sub. (1), it shall appoint 2 licensed physicians specializing in psychiatry, or one licensed physician and one licensed psychologist, or 2 licensed physicians one of whom shall have specialized training in psychiatry, if available, or 2 physicians, to personally examine the subject individual.

Additional mandates are stated in § 51.20(10)(c), STATS.: "The court shall hold a final hearing to determine if the allegations specified in sub. (1) are true…. *The court shall, in every stage of an action, disregard any error or defect in the pleadings or proceedings that does not affect the substantial rights of either party*." (emphasis added).

In this case, the trial court found probable cause to believe the allegations stated in the petition and ordered that "the Department of Corrections

detain Anthony [] and transfer him within a reasonable time to the Mendota Mental Institute for an evaluation as to whether he is a sexually violent person." The court did not appoint specific individuals to be the examiners. Anthony, however, does not argue that the trial court's failure in this regard denied him any "substantial rights" or resulted in any prejudice.

A jury trial is not an absolute right for the subject of a petition for involuntary commitment under § 51.20. *See* § 51.20(11), STATS. At the final hearing, the trial court asked Anthony questions to determine his understanding of the proceedings and his awareness of his jury rights:

> THE COURT: [] Do you understand that you have a right to have a jury trial? That is, to have 12 people sitting in the jury box hear the testimony of all the witnesses. You understand that?
>
> [ANTHONY]: Yes, sir.
>
> THE COURT: And, that all 12 of them would have to agree on their verdict in order for me, in order for me to accept their verdict. You understand that?
>
> [ANTHONY]: Yes, sir.
>
> THE COURT: And, in a jury trial, the State would have to prove the elements of this commitment proceeding, which is that you have previously been convicted of a sexually violent offense. You are suffering from a mental disorder and that you are dangerous. They would have to prove those three things to the satisfaction of all 12 jurors if we had a jury trial. You understand that?
>
> [ANTHONY]: Yes, sir.
>
> THE COURT: And if they couldn't do that. If they couldn't convince all 12, then they wouldn't be able to prove the petition or the allegations in the petition. You understand that?
>
> [ANTHONY]: Yes, sir.
>
> THE COURT: By giving up your right to jury trial, you are telling me you want me to do that. You want me to listen to all the evidence and you want me to decide whether or not the State has proved the three parts of the allegation. You understand that?

> [ANTHONY]: Yes.
>
> THE COURT: Or the petition, I mean.
>
> [ANTHONY]: That's correct.
>
> THE COURT: Has anybody promised you anything or threatened you in any way to get you to give up your right to a jury trial?
>
> [ANTHONY]: No, sir.
>
> THE COURT: Have you talked this over with [your attorney]?
>
> [ANTHONY]: That's correct.

The court then addressed the waiver issue with the attorneys, verified the signature on the waiver form, and accepted the waiver:

> THE COURT: Counsel, are you satisfied your client understands his rights to jury trial in this matter and is giving up that right voluntarily and intelligently?
>
> [COUNSEL]: Yes, Your Honor. I'm satisfied.
>
> THE COURT: Does the State consent to jury waiver?
>
> [STATE]: Yes.
>
> THE COURT: There is a procedure where the Court also has a right to insist on a jury trial. However, I will agree with the request of the respondent to proceed with a court trial and I will accept the waiver. Is this your signature on the written waiver of jury form, [Anthony]?
>
> [ANTHONY]: Yes, it is.
>
> THE COURT: That will go in the file. This will be a court trial.

At the court trial, Dr. Diane Lytton, staff psychologist at Mendota, testified that Anthony's disorders satisfying the criteria for mental disorder under chapter 980, STATS., were "paraphilia and anti-social personality disorder," and that Anthony also had "a history of alcohol and poly substance abuse in a controlled environment." Asked to predict Anthony's dangerousness, she testified:

> Based on his history, it would be a fair bet to suggest he would be highly likely to return, for example[,] to the Milwaukee Mental Health complex and again, to attempt to have sex or to force sex with developmentally disabled people or people who have been discharged from the complex.
>
> What exactly he would do, I'm unable to predict that. But, I can predict with a fairly good likelihood of recurrence, more likely than not that [Anthony], based on his risk factors[5], his history, his patterns, long term patterns of behavior, that he is likely to recidivate in a sexually violent manner.

(footnote added). Dr. Lytton testified that she believed Anthony needed treatment for his mental disorders and that he fit "the criteria for commitment under Chapter 980." Concluding that the State had proved its case beyond a reasonable doubt, the court found Anthony "to be a sexually violent person under 980.05 of the Wisconsin Statutes," and committed him to Mendota, where he already was committed under § 971.17, STATS., pending a final hearing on disposition and placement.

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[5] Dr. Lytton identified the risk factors which led her to conclude there was a substantial probability that Anthony would engage in acts of sexual violence in the future:

> [H]is victims are outside of the family. That he has extensive history of non-sexual criminality. That he has used force during crimes, not just sexual crimes, but other crimes such as batteries. He has never been married. He has a substance abuse history. He has a personality disorder.
>
> Ones that I'm saying are the most research validated factors at the present time. He has failed on probation and parole. He is lacking in social competence. He has a brief grooming period for victims, which suggests that it may be difficult to supervise him in an outpatient setting.
>
> He had juvenile anti-social behavior. He has a relatively high degree of psychopathy, which means he is more likely a psychopath. He has, there are a large number of sexual assaults in his past.
>
> We look at both criminally prosecuted and non-prosecuted crimes and he has sexual preoccupation; meaning that he is preoccupied with sex.

At the dispositional hearing, the State argued that "secure placement is the only appropriate placement for [Anthony] at this time." Anthony's attorney conceded that "[a]s of this moment in time, I can't make a non-frivolous argument for a non-secure treatment facility" and stated, "I think it is appropriate to maintain him at Mendota." Even Anthony asked to remain at Mendota. Accordingly, the court committed Anthony to Mendota until the end of his § 971.17 commitment, and explained to him that he would then be placed "in another appropriate mental, secure mental health unit or facility [subject to his] statutory rights under the statute to re-examination, petition for supervised release and petition for discharge, all set out in the statute."

The rights of patients under Wisconsin's mental health act are enumerated in § 51.61, STATS. As previously noted, Anthony meets the definition of patient under § 51.61(1). Anthony's rights as a patient, subsequent to the entry of a final commitment order, include the following:

> to exercise informed consent with regard to all medication and treatment unless the … court … makes a determination, following a hearing, that the individual is not competent to refuse medication or treatment or unless a situation exists in which the medication or treatment is necessary to prevent serious physical harm to the individual or others…. The hearing under this subdivision shall meet the requirements of s. 51.20(5), except for the right to a jury trial.

Section 51.61(1)(g)3, STATS.

> 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, … 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:
>
> a. The individual is incapable of expressing an understanding of the advantages and disadvantages of accepting medication or treatment and the alternatives.

> b. The individual is substantially incapable of applying an understanding of the advantages, disadvantages and alternatives to his or her mental illness … in order to make an informed choice as to whether to accept or refuse medication or treatment.

Sections 51.61(1)(g)4.a-b, STATS. Even under a court order for involuntary medication, a patient has the right, at any time, to "be free from unnecessary or excessive medication." *See* § 51.61(1)(h), STATS.

In this case, at the hearing on the involuntary medication motion, the trial court heard telephonic testimony from Dr. Martha Rolli, a psychiatrist employed at Mendota. Asked for her opinion "to a reasonable degree of medical certainty as to whether or not [Anthony] is competent to make decisions concerning the risks and benefits of psychotropic medication," Dr. Rolli testified, "I believe he is not competent because of his delusional ideas and his inability to apply his knowledge about medications to himself." She also stated, "I believe that it is in [Anthony's] best medical interest to take medications because of his lack of ability to care for his—himself, take adequate nutrition, and the danger that he poses to himself by making himself vulnerable with his aggressive acts." Additionally, Dr. Rolli testified that "[Anthony's] almost completely nonfunctional without medication treatment."

No other witnesses were called. The court then requested briefing of two issues: (1) whether chapter 980, STATS., grants the trial court authority to order involuntary medication; and, if so, (2) whether the court should order involuntary medication for Anthony. After reviewing the briefs, the court granted the motion for involuntary medication, noting that Dr. Rolli had "attempted to explain the advantages, disadvantages, and alternatives of medication" to Anthony. The order declares that "[t]he evidence introduced by the state clearly and convincingly proves that [Anthony] is incapable of expressing an

understanding of the risks and benefits of and the alternatives to the proposed medication, suffers from a mental disorder, is a danger to himself or others if not on medication, and is a proper subject of treatment." The order also notes that Anthony "agrees that if the court has authority under Chapter 980 to order him involuntarily medicated, the testimony of Dr. Rolli establishes that he should be involuntarily medicated."

Anthony has suffered no prejudice. The trial court, though proceeding under chapter 980 rather than chapter 51, afforded Anthony all the substantial rights he would have received had the court held what would have been a virtually identical hearing under chapter 51. Thus, the trial court acted within its proper authority in ordering involuntary medication.

By the Court.—Order affirmed.

Recommended for publication in the official reports.

No. 98-0576(C)

FINE, J. *(opinion of the court).* "It is a general principle of appellate practice that a majority must have agreed on a particular point for it to be considered the opinion of the court." ***State v. Dowe***, 120 Wis.2d 192, 194, 352 N.W.2d 660, 662 (1984). Inasmuch as Judge Curley joins in this opinion, it, under ***Dowe***, is the opinion of the court.

The only issue presented by this appeal is, as phrased by Anthony D.B. in his appellate brief, whether the trial court had "authority to issue an order allowing the forcible administration of psychotropic medication to a person committed under chapter 980." Although we agree with the result reached by Judge Schudson's opinion, we disagree with its analysis.

Section 980.06(1), STATS., requires the court to commit "to the custody of the department [of health and family services] for control, care and treatment" anyone found to be "a sexually violent person." "[C]ontrol, care and treatment" encompasses, perforce, the administration of medication if appropriate. Thus, for example, chapter 980, STATS., requires any plan for supervised release into the community of those committed as sexually violent persons to consider their "need, if any, for," among other things, "medication." Section 980.08(5), STATS.

Under § 51.61, STATS., persons committed under chapter 980 "have the right to exercise informed consent with regard to all medication and treatment unless the committing court or the court in the county in which the individual is located ... makes a determination, following a hearing, that the individual is not competent to refuse medication or treatment." Section 51.61(1)(g)3, STATS. The circuit court here made this determination. Anthony D.B. notes in his brief before

this court that he "conceded in the trial court that he was a proper subject for a[n] involuntary medication order **if** the trial court had the authority to issue an involuntary medication order." (Bolding in original.) Moreover, Anthony D.B. does not contest that the trial court did follow the procedures mandated by § 51.61(1)(g), STATS. Thus, Anthony D.B. does not dispute the bases for the circuit court's order. That, as we see it, ends the inquiry; the circuit court's finding allows the department to treat Anthony D.B. with medication against Anthony D.B.'s wishes.[6]

[6] ***State ex rel. Roberta S. v. Waukesha County Human Servs. Dept.***, 171 Wis.2d 266, 491 N.W.2d 114 (Ct. App. 1992), was not a case where, as here, the legislature specifically applied provisions of chapter 51, STATS., to persons committed under a different statute. ***Roberta S.*** has absolutely nothing to do with the issue here.