COURT OF APPEALS DECISION DATED AND FILED

March 12, 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. 2014AP1469 **Cir. Ct. No. 2009ME19**

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

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

DANE COUNTY,

PETITIONER-RESPONDENT,

V.

P. H.,

RESPONDENT-APPELLANT.

APPEAL from an order of the circuit court for Dane County: SHELLEY J. GAYLORD, Judge. *Affirmed.*

¶1 KLOPPENBURG, J.[1] P.H. appeals an order of the circuit court extending her mental health commitment under WIS. STAT. § 51.20. P.H. argues that there was insufficient evidence upon which to order the extension of her mental health commitment because the testimony of the expert witnesses was based on "dated" information. I reject P.H.'s argument and affirm.

BACKGROUND

¶2 P.H. has been the subject of commitment orders under WIS. STAT. ch. 51 since February 2009. Most recently, her commitment was to outpatient treatment. In April 2014, the County filed a petition to extend P.H.'s most recent mental health commitment for a twelve-month period. The County alleged that P.H. is mentally ill and a proper subject for treatment, and that based on her treatment records, there is a substantial likelihood that she would be a proper subject for commitment if treatment were withdrawn. The County cited as grounds for recommitment P.H.'s "long history of noncompliance with mental health treatment" and the fact that P.H. "has stopped treatment when not on a commitment and has been found wandering the streets in sub-zero temperatures, without adequate clothing to protect her from the cold."

¶3 The court held a commitment extension hearing, at which two expert witnesses called by the County testified. At the conclusion of the hearing, the circuit court found that P.H. met the applicable statutory standards in that she suffers from a mental illness, that she is a proper subject for treatment, and that

[1] This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(d) (2013-14). All references to the Wisconsin Statutes are to the 2013-14 version unless otherwise noted.

"[h]er dangerousness is likely to be controlled with outpatient medication and conditions." Accordingly, the circuit court ordered P.H.'s outpatient commitment extended for twelve months.

DISCUSSION

¶4 As stated above, P.H. argues that there was insufficient evidence upon which to order the extension of her mental health commitment under WIS. STAT. ch. 51 because the testimony of the expert witnesses was based on "dated" information. For the reasons set forth below, I reject P.H.'s argument and affirm.[2]

¶5 The County bears the burden of proving by clear and convincing evidence that a person is in need of continued commitment. WIS. STAT. § 51.20(13)(e), (g)3. Here, where P.H. "has been the subject of outpatient treatment for mental illness ... immediately prior to commencement of the proceedings as a result of a commitment ordered by a court," the County must prove that: (1) P.H. is mentally ill; (2) P.H. "is a proper subject for treatment"; and (3) "there is a substantial likelihood, based on [her] treatment record, that

[2] P.H. also argues that the County did not prove that P.H. could not understand the advantages and disadvantages of psychotropic medication. The County responds that this showing applies in circumstances governed by other statutory provisions, but not here. P.H. does not cite to legal authority supporting her argument, and did not file a reply brief refuting the County's response. I reject her argument as both unsupported and conceded. *See* ***State v. Pettit***, 171 Wis. 2d 627, 646, 492 N.W.2d 633 (Ct. App. 1992) ("Arguments unsupported by references to legal authority will not be considered."); ***Stuart v. Weisflog's Showroom Gallery, Inc.***, 2006 WI App 109, ¶37, 293 Wis. 2d 668, 721 N.W.2d 127 ("An argument asserted by the respondent and not disputed by the appellant in the reply brief is taken as admitted.").

In addition, P.H. generally analogizes this case to ***Outagamie Cnty. v. Melanie L.***, 2013 WI 67, 349 Wis. 2d 148, 833 N.W.2d 607. However, ***Melanie L.*** concerned an extension of an involuntary medication order under WIS. STAT. § 51.61(1)(g)4.b. ***Melanie L.***, 349 Wis. 2d 148, ¶5. Here, P.H. appeals an extension of a commitment order under WIS. STAT. § 51.20. P.H. fails to explain how ***Melanie L.*** provides any guidance here.

[she] would be a proper subject for commitment if treatment were withdrawn." WIS. STAT. § 51.20(1)(a)1., (1)(am).[3] A person is a proper subject for treatment if the person is capable of rehabilitation through treatment that is able to control the person's disorder and its symptoms. *See* ***Fond du Lac Cnty. v. Helen E.F.***, 2012 WI 50, ¶¶30, 36, 340 Wis. 2d 500, 814 N.W.2d 179.

¶6 On review, this court will not disturb the circuit court's findings of fact unless they are clearly erroneous. ***K.N.K. v. Buhler***, 139 Wis. 2d 190, 198, 407 N.W.2d 281 (Ct. App. 1987). However, we review de novo whether the circuit court correctly applied the statutory requirements to those facts. ***Id.***

¶7 P.H. did not dispute before the circuit court, and does not dispute on appeal, that the County proved the first two elements required by the statute—that P.H. suffers from a mental illness and is a proper subject for treatment. However, P.H. appears to argue on appeal, as she did before the circuit court, that the evidence presented by the County is not sufficient to prove the third required element—that she would likely be a proper subject for commitment if treatment were discontinued—because the expert testimony that comprises that evidence focuses on the episodes of "decompensation" that she experienced prior to December 2012 and ignores her improvement since then.

¶8 P.H. does not explain whether she is arguing that the circuit court erred as a matter of law by relying in part on "dated" information from prior to

[3] WISCONSIN STAT. § 51.20(1)(am) specifies that, for persons subject to an immediately prior commitment, this third showing may satisfy the general requirement in WIS. STAT. § 51.20(1)(a)2.a. and b. that to be committed a person must also, in addition to being mentally ill and a proper subject for treatment, be dangerous because of recent behavior. WIS. STAT. § 51.20(1)(am); ***M.J. v. Milwaukee Cnty. Combined Community Servs. Bd.***, 122 Wis. 2d 525, 530, 362 N.W.2d 190 (Ct. App. 1984).

December 2012, or whether she is arguing that the circuit court made clearly erroneous findings unsupported by all the evidence presented. I therefore reject her argument as inadequately developed. *See* ***State v. Pettit***, 171 Wis. 2d 627, 646, 492 N.W.2d 633 (Ct. App. 1992) ("We may decline to review issues inadequately briefed" and arguments that "are not developed").

¶9 I also reject her argument because it ignores both the controlling legal standard and the entirety of the evidence presented in the record. As noted above, "Section 51.20(1)(am) provides that in a proceeding to extend a patient's commitment, the requirements of sec. 51.20(1)(a)2. that the acts or omissions relied on must be *recent* behavior may be satisfied by showing that there is a substantial likelihood, *based on the patient's treatment record*, that he or she would be a proper subject for commitment if treatment were discontinued." ***M.J. v. Milwaukee Cnty. Combined Community Servs. Bd.***, 122 Wis. 2d 525, 530, 362 N.W.2d 190 (Ct. App. 1984) (alteration in original and emphasis added); *see also* WIS. STAT. § 51.20(1)(am). Thus, the circuit court properly relied on expert testimony as to P.H.'s treatment record from prior to December 2012.

¶10 And, significantly, both expert witnesses also reviewed P.H.'s treatment record since December 2012. As shown below, both expert witnesses testified that, based on P.H.'s entire treatment record before and since December 2012, P.H. is a proper subject for treatment and there is a substantial likelihood that P.H. would be a proper subject for commitment if treatment were discontinued.

¶11 The first expert witness, Dr. Taylor, a physician with a specialty in psychiatry, testified that she reviewed P.H.'s treatment record and spoke with P.H.'s caseworker. She testified that P.H. was diagnosed with chronic paranoid

schizophrenia disorder, and that P.H. exhibits psychotic and manic symptoms. Dr. Taylor stated that P.H. is a proper subject for treatment for a mental illness because P.H. has done well with treatment over the past two years, and because "[P.H.] has been out of the hospital and been able to live in the community."

¶12 Dr. Taylor further testified that there is a substantial likelihood that P.H. will become a proper subject for commitment if treatment is withdrawn because of the following reasons:

> [P.H.] has made her dislike of taking medication and her belief that she doesn't need the medication known to all of [her] providers. And … everybody that has worked with [P.H.] expects that if the commitment were to be withdrawn, she would stop taking the medication. And if she were to stop taking her monthly injections, she would undoubtedly become psychotic and she would engage in the kind of behaviors that led to her being hospitalized in the past. And some of those behaviors include wandering around the neighborhood at night, sleeping on the front lawn.

¶13 The second expert witness, Dr. Lee, a psychologist, testified that he reviewed P.H.'s medical records and spoke with P.H.'s psychiatrist and case manager. He testified that P.H. suffers from paranoid schizophrenia. He also testified that P.H. is a proper subject for treatment for her mental illness because "when not treated [P.H.] does decompensate and behaves in ways that are dangerous to herself." Dr. Lee testified that "[w]hen [P.H.] is treated, she is reportedly functional … able to maintain her own home, take care of herself, [and] maintain her landscaping ...."

¶14 Dr. Lee testified that an extension of commitment was necessary because, "[d]espite being currently medicated and functioning, [P.H.] does not believe that she needs treatment and has a … long history[] of not taking her

medication or pursuing treatment without commitment," which results in her "decompensating and subsequently being recommitted."

¶15 Thus, both Dr. Taylor and Dr. Lee testified that they formed their opinions based on their review of P.H.'s treatment record to date, including both her episodes of "decompensation" before December 2012 and her improvement on medication since. I reject P.H.'s suggestion that, under the controlling legal standard, all of this testimony does not suffice to support the circuit court's finding that the County met its "burden of proof on [P.H.'s] being a proper subject for treatment" and for an extension of commitment.

CONCLUSION

¶16 For the reasons set forth above, I affirm the circuit court's order extending P.H.'s outpatient mental health commitment.

By the Court.—Order affirmed.

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