COURT OF APPEALS
DECISION
DATED AND FILED

March 26, 2015

Diane M. Fremgen
Clerk of Court of Appeals

Appeal No. 2014AP774 **Cir. Ct. No. 2013ME251**

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

IN THE MATTER OF THE MENTAL COMMITMENT OF J. N. B.:

ROCK COUNTY,

PETITIONER-RESPONDENT,

V.

J. N. B.,

RESPONDENT-APPELLANT.

APPEAL from an order of the circuit court for Rock County: DANIEL T. DILLON, Judge. *Affirmed.*

¶1 KLOPPENBURG, J.[1] J.N.B. appeals his involuntary commitment order under WIS. STAT. § 51.20. J.N.B. argues that there is insufficient evidence

[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.

to support a finding that he is a danger to himself.[2] I reject J.N.B.'s argument and affirm.

BACKGROUND

¶2 On October 23, 2013, Rock County Deputy Sheriff Jason Wescott filed a statement of emergency detention for J.N.B.

¶3 At the probable cause hearing, the County presented testimony from Deputy Sheriff Wescott, Deputy Sheriff Deremer, and one medical expert witness. Wescott testified that on October 23, 2013, J.N.B visited the Rock County Courthouse and asked to meet with the District Attorney. After J.N.B. was informed that the District Attorney was unavailable, J.N.B. became agitated and disruptive. Wescott and Deremer escorted J.N.B. out of the building. Both Wescott and Deremer testified that J.N.B. was angry and stepped into the street, where an oncoming vehicle had to "slam on the [brakes] to avoid hitting him." The medical expert witness testified that in his opinion J.N.B. "presented an impairment in judgment" constituting a high probability of dangerousness. The circuit court found probable cause for J.N.B.'s continued detention.

¶4 At the final commitment hearing, the County presented testimony from two medical expert witnesses, and J.N.B. testified on his own behalf. The circuit court found the expert witnesses to be "far more credible than [J.N.B.]."

[2] J.N.B. also argues that there is insufficient evidence to find that J.N.B. is a danger to others. Because I conclude that the circuit court properly found that J.N.B. is a danger to himself, I do not consider whether the evidence is sufficient to find that J.N.B. is a danger to others. *See* ***Sweet v. Berge***, 113 Wis. 2d 61, 67, 334 N.W.2d 559 (Ct. App. 1983) ("Because we have determined that there is at least one sufficient ground to support the order, we need not discuss the others.").

The circuit court further found that J.N.B. is "mentally ill" and "is a danger at least to himself," and that the least restrictive placement for J.N.B. is inpatient treatment in a locked facility. Accordingly, the circuit court ordered J.N.B. committed for a six-month period.

DISCUSSION

¶5 The County bears the burden of proving by clear and convincing evidence that J.N.B. requires an involuntary mental health commitment. WIS. STAT. § 51.20(13)(e). Specifically, the County must prove that J.N.B. is: (1) mentally ill, (2) "a proper subject for treatment," and (3) dangerous. *See* WIS. STAT. § 51.20(1)(a). J.N.B does not dispute that, in his case, the first two prongs are satisfied—he is mentally ill and he is a proper subject for treatment. J.N.B. argues only that the evidence is insufficient to prove the third prong, that he is dangerous.

¶6 There are five standards under which the County may demonstrate that J.N.B. is dangerous. *See* WIS. STAT. § 51.20(1)(a)2.a.-e. The circuit court's oral ruling suggests that the circuit court found there was a substantial probability that J.N.B. is a danger to himself within the meaning of § 51.20(1)(a)2.c., which reads:

> The individual is dangerous because he or she … [e]vidences 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 or other individuals.

J.N.B. argues that the single incident in which he "stood in the middle of the street in front of an oncoming car" is not sufficient evidence of a "*pattern* of recent

acts."[3] As explained below, I reject J.N.B.'s argument because it ignores the entirety of the evidence presented in the record.

¶7 Whether the County has met its burden is a mixed question of fact and law. 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). "Because a circuit court is better positioned to decide the weight and relevancy of the testimony, an appellate court 'must also give substantial deference to the [circuit] court's better ability to assess the evidence.'" ***Weiss v. United Fire & Cas. Co.***, 197 Wis. 2d 365, 388-89, 541 N.W.2d 753 (1995) (quoted source omitted). We review de novo whether the circuit court correctly applied the statutory requirements to those facts. ***K.N.K.***, 139 Wis. 2d at 198.

¶8 Here, the County presented ample evidence demonstrating that J.N.B. is dangerous because he 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." *See* WIS. STAT. § 51.20(1)(a)2.c.

¶9 Two medical expert witnesses testified at the final commitment hearing. The first, Dr. Matthew Felgus, who specializes in psychiatry and addiction, testified that J.N.B. is "currently in a manic state with psychotic

[3] J.N.B. also argues that there is no evidence of a substantial probability that he will harm himself, because there is no "indication that [he] *intended* to cause himself any harm by walking into the middle of the street." J.N.B. fails either to develop, or to cite any legal authority in support of, the argument that the County must demonstrate that he *intended* to cause himself harm, and therefore, I do not consider this argument. *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.").

symptoms," that J.N.B. has "extremely impaired judgment," and that there is a "pattern of dangerous behavior." Dr. Felgus based his opinion on several factors, including the incident when J.N.B. "walk[ed] out into the road [and] stood in the middle lane of traffic in front of an oncoming car that could very easily have hit him had that driver not had to brake hard to avoid hitting him," as well as Dr. Felgus's interview with J.N.B., and J.N.B.'s behavior on a medical unit. Dr. Felgus testified that, during J.N.B.'s hospitalization, J.N.B. "had periods of agitation [and] ha[d] been intrusive to other patients on the unit." Dr. Felgus testified that J.N.B.'s pattern of behavior connected with his believing his delusions was concerning. The County also presented a report by Dr. Felgus from his interview with J.N.B., in which Dr. Felgus indicated that J.N.B. is dangerous because he presents a substantial probability of physical impairment or injury to himself due to his impaired judgment.

¶10 The second expert witness, Dr. Leslie Taylor, a physician with a specialty in psychiatry, testified that she believed J.N.B. "is a danger to himself or to others based on his mental illness." Dr. Taylor referred to J.N.B.'s believing his delusions as contributing to his being dangerous. The County also presented a report by Dr. Taylor from her interview with J.N.B., in which Dr. Taylor concluded that "[J.N.B.] suffers from a substantial disorder of thought and mood that grossly impairs his behavior and his judgment." The report indicated that "[J.N.B.] has caused numerous disturbances that have led to police contact in Janesville over the last few months"; that he "was escorted out of the building on 2 occasions"; that when he "left the courthouse he walked into traffic and a vehicle had to brake to avoid hitting him." The report further indicated that J.N.B. presents a "substantial" risk of being dangerous to himself or others if not treated for that illness.

¶11 J.N.B. testified on his own behalf. The circuit court found his answers nonresponsive and too complicated to follow. The circuit court found the expert witnesses' testimony "far more credible."

¶12 As stated above, "[b]ecause a circuit court is better positioned to decide the weight and relevancy of the testimony, an appellate court 'must also give substantial deference to the [circuit] court's better ability to assess the evidence.'" ***Weiss***, 197 Wis. 2d at 388-89 (quoted source omitted). The circuit court found the testimony of the expert witnesses to be credible and afforded their testimony greater weight. Both experts testified that J.N.B. suffers from impaired judgment and referenced a pattern of behavior that demonstrates that impaired judgment. Both experts concluded that J.N.B.'s impaired judgment presents a substantial probability or risk of physical impairment, injury, or dangerousness to himself based on their review of records and their interviews of J.N.B. J.N.B. did not present any expert testimony to counter these conclusions based on J.N.B.'s impaired judgment as manifested by his recent pattern of behavior. Thus, I reject J.N.B.'s argument that, under the controlling legal standard, all of this testimony does not suffice to support the circuit court's finding that J.N.B. "is a danger at least to himself" within the meaning of the statute.

CONCLUSION

¶13 For the reasons set forth above, I affirm the circuit court's order committing J.N.B. to inpatient mental health treatment for a period of six months.

By the Court.—Order affirmed.

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