COURT OF APPEALS
DECISION
DATED AND FILED

September 23, 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. 2015AP1469-FT **Cir. Ct. No. 2015ME65**

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

IN THE MATTER OF THE MENTAL COMMITMENT OF M.L.G.:

OZAUKEE COUNTY,

PETITIONER-RESPONDENT,

V.

M.L.G.,

RESPONDENT-APPELLANT.

APPEAL from orders of the circuit court for Ozaukee County: SANDY A. WILLIAMS, Judge. *Affirmed*.

¶1 REILLY, P.J.[1] M.L.G. appeals orders for his mental commitment and involuntary medication on the grounds that there is insufficient evidence that he is dangerous and that he is substantially incapable of making an informed choice about his medication. We affirm.

BACKGROUND

¶2 A statement of emergency detention was filed with the circuit court after M.L.G. was stopped by a Port Washington police officer for driving twenty miles an hour above the speed limit. M.L.G. told the officer "that he was rushing home as he felt he was about to slip into diabetic shock." M.L.G. was transported to a hospital where he stated that he was receiving disturbing messages from a former coworker who "was trying to convince him to sexually assault women." He also told the officer that although he had been diagnosed with schizophrenia, he did not believe that diagnosis to be correct, and that he had stopped taking his medication.

¶3 At M.L.G.'s final hearing, clinical psychologist Joan Kojis, who examined M.L.G. and reviewed his medical records, testified that she believed that M.L.G. had nonspecified psychosis and was potentially schizophrenic. She recommended treatment with antipsychotic medication and possible short-term residence in a group home. Kojis testified that when she explained the advantages and disadvantages of medication to M.L.G., he was "very adamant" that he did not want to take medication "[a]nd believed that he would possibly get diabetes if he took medication." She testified that she advised M.L.G. that some antipsychotic

[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.

medications "do require blood sugar monitoring so he's correct that the diabetes is a potential problem with some medications. But his blood sugar is fine and it's not going to be a problem for him." She said she was concerned about his delusions and that there was a potential that he could hurt someone based on these delusional thoughts.

¶4 Forensic psychiatrist Robert Rawski testified that based on a review of M.L.G.'s records, he believed that M.L.G. represented a harm to himself or to others due to his delusions. Rawski testified that distress from these delusions "impairs [M.L.G.'s] ability to drive safely and to resist command hallucinations to sexually assault certain individuals." Rawski noted that M.L.G. had a previous sexual assault conviction, was a registered sex offender, had previous episodes of acute psychosis, and has refused to take medication to treat symptoms that have manifested in criminal behavior and a fixation on women over the years. "[W]e have a pretty clear pattern of untreated mental illness resulting in behaviors that … wind up being considered dangerous," Rawski testified.

¶5 Following this testimony, the court found that M.L.G. posed a substantial risk of harm and was incompetent to refuse medication, and signed orders for his commitment and involuntary medication. M.L.G. appeals.

STANDARD OF REVIEW

¶6 In reviewing whether sufficient evidence supports orders for commitment and involuntary medication, we will not disturb a circuit court's factual findings unless they are clearly erroneous and accept all reasonable inferences from the facts in the record that support those findings. ***Outagamie Cty. v. Melanie L.***, 2013 WI 67, ¶38, 349 Wis. 2d 148, 833 N.W.2d 607. We independently evaluate whether the facts meet the statutory standard. ***Id.***, ¶39.

DISCUSSION

¶7 Before a person can be involuntarily committed for treatment, he or she must be mentally ill and a proper subject for treatment. WIS. STAT. § 51.20(1)(a)1. As is relevant to this appeal, M.L.G. also had to "[e]vidence[] 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 … other individuals." Sec. 51.20(1)(a)2.c. The County had the burden of establishing these elements with clear and convincing evidence. Sec. 51.20(13)(e).

¶8 Once these statutory requirements for commitment were met, the County also had the burden to prove that M.L.G. was not competent to refuse medication. In this case, that meant showing that "after the advantages and disadvantages of and alternatives to accepting" antipsychotic medication were explained to him, M.L.G. was "substantially incapable of applying an understanding of the advantages, disadvantages and alternatives to his … mental illness … in order to make an informed choice as to whether to accept or refuse medication …." *See* WIS. STAT. § 51.61(1)(g)4.b.

¶9 M.L.G. argues that the evidence was insufficient to establish that he was dangerous under WIS. STAT. § 51.20(1)(a)2.c. or that he was substantially incapable of applying his understanding of antipsychotic medication to his mental illness under WIS. STAT. § 51.61(1)(g)4.b. We disagree.

¶10 As to M.L.G.'s dangerousness, the County presented evidence of recent acts and omissions that M.L.G. was refusing to take his medication and that this was causing him to have delusions and behave in an unsafe manner. M.L.G.'s delusions impaired his judgment such that he believed he was slipping into

diabetic shock and was experiencing "command hallucinations" urging him to sexually assault women. The County also presented the testimony of expert witnesses who opined that that there was a risk of injury to himself and others as M.L.G.'s impaired judgment already had caused him to exceed the speed limits while driving and in the past had caused him to engage in behavior that was both criminal and disturbing. From this pattern of paranoia and increasing distress, the court had sufficient evidence that M.L.G. was experiencing "such impaired judgment … that there is a substantial probability of physical impairment or injury to himself … or other individuals." *See* WIS. STAT. § 51.20(1)(a)2.c.; *see also* ***Outagamie Cty. v. Michael H.***, 2014 WI 127, ¶39, 359 Wis. 2d 272, 856 N.W.2d 603.

¶11 As to whether M.L.G. is substantially incapable of applying his understanding of his treatment options to his mental illness, the County presented evidence that M.L.G. needs antipsychotic medication and refuses to voluntarily take this medication. Although Kojis testified that M.L.G. correctly identified an adverse side effect of his medication, i.e., that it could potentially increase his blood sugar levels, the ability to rattle off side effects is not the same as having the ability to apply that understanding to the person's own mental illness. *See* ***Melanie L.***, 349 Wis. 2d 148, ¶74. M.L.G. showed he was substantially incapable of applying his understanding of his medication by refusing to take his medication based on a false belief he was experiencing elevated blood-sugar levels and had diabetes.

By the Court.—Orders affirmed.

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