COURT OF APPEALS DECISION DATED AND FILED

October 14, 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. 2015AP1192-FT

Cir. Ct. No. 2015ME102

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

IN THE MATTER OF THE MENTAL COMMITMENT AND ORDER FOR INVOLUNTARY MEDICATION AND TREATMENT OF B.C.:

WINNEBAGO COUNTY,

PETITIONER-RESPONDENT,

V.

B.C.,

RESPONDENT-APPELLANT.

APPEAL from an order of the circuit court for Winnebago County: THOMAS J. GRITTON, Judge. *Affirmed.*

¶1 GUNDRUM, J.[1] B.C. appeals from an order for involuntary medication following a hearing to extend his involuntary commitment.[2] He contends there was insufficient evidence to support the order. We disagree and affirm.

BACKGROUND

¶2 On March 6, 2014, B.C., an inmate in the Wisconsin Prison System, was involuntarily committed for a year. On February 16, 2015, Winnebago County filed a petition to extend B.C.'s commitment. A hearing was held on the petition on March 3, 2015.

¶3 Dr. Michele Andrade, a psychiatrist at the Wisconsin Resource Center, and B.C. were the only witnesses to testify at the hearing. Andrade confirmed that she was "presently involved" in treating B.C. and had been treating him for several years; she had a "recent opportunity" to do a mental status evaluation on B.C. and last saw him on February 26, 2015; and based upon her recent evaluation, as well as her "entire dealings with" B.C., she believed to a reasonable degree of medical certainty that he suffered from schizophrenia. Andrade confirmed that in her opinion B.C. had a disorder in "thought and perception," and was significantly impaired in these areas when he was not under a treatment order. She testified:

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[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.

[2] In his notice of appeal, B.C. also appealed the court's order extending his commitment. In his briefing to this court, however, B.C. has limited his appeal to only the involuntary medication order.

> [H]e was disorganized, stating things in answer to my questions such as, it is common for staff to act out on areas that I have trouble with, and when I asked him about that he would say things like it's about getting my barbarian straight reading and communicating. He also had stated that he was being, quote, harassed in many forms, plagued with food a lot whenever I exercise.

She confirmed that this was consistent with prior contact she had with B.C. and indicated that B.C.'s disordered thought and perception "[g]rossly" impaired his "capacity to understand reality." She also confirmed that the treatment B.C. was receiving was helping some, but he continued to be a proper subject for treatment and was "presently in need of treatment"; recent and previous attempts with less restrictive alternatives than a commitment, "such as the voluntary administration of medication, perhaps group therapy, individual therapy," and other resources were unsuccessful; and based upon B.C.'s "treatment history, treatment record," if treatment were withdrawn, B.C. would become a proper subject for commitment, adding that B.C. had demonstrated this "in even the recent past being off of medications."

¶4 Andrade testified that under the involuntary medication order B.C. was subject to at the time of the hearing, he was "taking Abilify, oral dosing with an intermuscular backup if he refuses the oral." She testified that advantages of Abilify for B.C. were that it "will decrease his delusional thought process" and "help with some of the problems he has had thinking that his mail has been tampered with." She added that "[i]n the past he has thought that the guards were sexually acting out and placing semen in his food and infecting his food with hepatitis and HIV." She confirmed that Abilify would "clear his thinking." The "primary disadvantages" of Abilify are "[l]ong term, movement disorders" and another potential side effect is "[s]edation," but that Abilify is a "balanced medication." Andrade testified that she explained to B.C. the advantages and

disadvantages of Abilify, and confirmed that he cannot "apply an understanding of those advantages and disadvantages to his own condition so as to make an informed choice." Andrade also explained to B.C. that there were other suitable psychotropic medications but that they would have similar side effects. Andrade further testified that B.C. "does not believe he has a mental illness."

¶5 On cross-examination, Andrade stated she has worked with B.C. since June 2013 and has met with and examined him "[a]t least once a month if not more" since then. Andrade confirmed that she had "recently … done a mental status examination" of B.C. She reiterated that B.C. would make statements that did not make sense, like "it is about getting my barbarian straight … and communicating." She also acknowledged that there was approximately a two-year period, in 2011 and 2012, when B.C. was not on psychotropic medication.

¶6 Andrade confirmed that B.C. is "incapable of expressing an understanding of the disadvantages and advantages of accepting treatment and alternatives" and that she "had a conversation with him regarding that" "over time at different meetings through the time" she began seeing B.C. in June 2013. Andrade testified that she knew B.C. did not understand the advantages and disadvantages "[b]ecause he still does not believe he is mentally ill and he still does not believe that he needs medication."

¶7 B.C. also testified at the hearing. When asked "what effect has [Abilify] had on you," B.C. responded, "It has given me problems with my communication skills, speech impediment. I have slight motor skill problems. High blood pressure. Blurred vision. I had irregular blood sugar levels recently. I have problems with reading and studying. Dyslexia. Frequent spells of the flu and that is about it." B.C. acknowledged having had a conversation with Andrade

regarding "the medications," and he stated Andrade told him medications would benefit him "because they would lower the audacity of the thought process" and informed him of potential disadvantages, telling him the medication could cause "severe motor skill problems" and "dexterity issues." When asked if "these medications, specifically Abilify, controls symptoms that you experience," B.C. responded:

> I am aware of psychotropics and where they are designed to suppress dopamine, dopamine secretions in the brain, and this would cause motor skill problems, problems with your immune system, heart disease, kidney disease because—I would say compound chemicals that help promote these functions in the body, and because of this I have been having effects from this hormone deficiency.

When asked if there were any other reasons he believed he did not need to be on Abilify, B.C. responded:

> The fact that I will be at risk for circulatory disease and immune system deficiency and tumors, epileptic seizures that would occur from dopamine suppression. I feel that the harm outweighs this fictitious good that the doctor is describing. She is saying I have issues with communicating. That wasn't an issue until the medication where I would lose the ability to interact with those I'm communicating with and finding the words to communicate. It wasn't an issue until the medications.

B.C. stated he was not on medications from 2010 to 2012, and during this time he would meet "once a month" with a psychiatrist but he was not examined and "not being monitored really." He further testified:

> I was suffering from schizophrenia and the ability to govern my mental health went down and the alternatives to medication—it was only an issue with regard to retaliating on my food because of a recent incident that my brother had interacting with the courts.
>
> And I guess they wanted me to be less defensive where I wouldn't be able to communicate with my brother about the crude and unusual punishment I was being put through

> and I guess they favored medication as sort of a weapon tactic and that would be the reason why they sought for commitment.

B.C. stated that during this 2010 to 2012 time period he did discuss medications with a psychologist, but not a psychiatrist, but the psychologist would just ask him why he did not like to take medications "and they kind of took my word for it at the time."

¶8 On cross-examination, B.C. reconfirmed his belief that "high blood pressure, blurred vision, difficulty reading and studying, symptoms like dyslexia, frequent spells of the flu," were side effects he experienced as a result of Abilify, and that the medication would also cause heart and kidney disease. B.C. stated he still believed guards were putting items in his food prior to his original commitment: "Because of a recent lawsuit they had started to harass us in different forms. In food, in my mail. Those were two of the places."

¶9 After B.C. testified, Andrade was again called to the witness stand. She testified that Abilify would not cause high blood pressure, blurry vision, frequent spells of the flu, or heart or kidney disease. On cross-examination she testified that even a combination of Abilify with Lisinopril and Vitamin D—both of which B.C. was also taking—would not cause the side effects of which B.C. was complaining. When asked how she knew this for certain, Andrade responded, "Because I have taken courses in pharmacology."

¶10 B.C. submitted to the circuit court a letter he had written. Before ruling, the court indicated it had read the letter, in which B.C. states his belief that he is "currently not suffering from a chemical imbalance in the brain" and is "developmentally sound in the upkeep of my mental, physical and affectionative systematics."

¶11 The circuit court found, based upon clear and convincing evidence, that B.C. was suffering from a mental illness, schizophrenia, was a proper subject for treatment, less restrictive means for treating B.C. had been attempted but were unsuccessful, and B.C. had been fully informed by Andrade about treatment and medication needs. It also found that B.C. did not believe he was suffering from a mental illness and that he believed Abilify was causing side effects "that the medication is not known to cause or create." The court found that B.C. "needs medication" and that he did not understand "what the medication does to benefit him." The court signed an order that same day stating that B.C. "is not competent to refuse psychotropic medication or treatment" because he "is substantially incapable of applying an understanding of the advantages, disadvantages and alternatives to his … condition in order to make an informed choice as to whether to accept or refuse psychotropic medications." The court then entered orders extending B.C.'s commitment and providing for involuntary medication. B.C. appeals.

DISCUSSION

¶12 "The County bears the burden of proving [B.C.] incompetent to refuse medication by clear and convincing evidence." *See* ***Outagamie Cty. v. Melanie L.***, 2013 WI 67, ¶37, 349 Wis. 2d 148, 833 N.W.2d 607 (citing WIS. STAT. § 51.20(13)(e)). When reviewing a circuit court's involuntary medication order, we will uphold the court's factual findings unless they are clearly erroneous, and we accept all reasonable inferences from the facts before that court. *See* WIS. STAT. § 805.17(2); ***Melanie L.***, 349 Wis. 2d 148, ¶38. In determining whether the County satisfied its burden of proof, we must apply the facts to the standard in WIS. STAT. § 51.61(1)(g)4., the statute at issue in this case. We do this independently of the circuit court. ***Melanie L.***, 349 Wis. 2d 148, ¶39.

¶13 WISCONSIN STAT. § 51.61(1)(g)4. provides in relevant part:

> [A]n individual is not competent to refuse medication ... if, because of mental illness, ... and after the advantages and disadvantages of and alternatives to accepting the particular medication ... have been explained to the individual, one of the following is true:
>
> ....
>
> 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 ….

B.C. contends the County "failed to sufficiently establish that B.C. was incompetent to refuse medications." Specifically, he asserts that the doctor "may have given [him] the statutorily required explanation. However, the record does not reflect *when* that explanation was provided." Additionally, B.C. complains that the record "did not establish that B.C. was unable to make a connection between the advantages and disadvantages of medication and B.C.'s mental illness." We conclude the County met its burden of proof.

When explanation was given

¶14 B.C. relies heavily upon our supreme court's decision in ***Melanie L.*** In that case, the court stated that the statutorily required explanation about the advantages and disadvantages of the medication at issue "should be timely, and, ideally, it should be periodically repeated and reinforced. Medical professionals and other professionals should document the timing and frequency of their explanations so that, if necessary, they have documentary evidence to help establish this element in court." ***Melanie L.***, 349 Wis. 2d 148, ¶67. B.C. complains that the record "does not reflect *when* that explanation was provided" to

B.C. in this case, "[t]here was no documentation of the same as required by ***Melanie L.***," and "[n]o reasonable inferences could be drawn from the record that Dr. Andrade engaged B.C. in a timely discussion about recommended medications that demonstrated that he was incompetent to refuse them." We disagree with B.C.'s view of the record.

¶15 To begin, the ***Melanie L.*** court did not say "documentation" of when the explanation was given is "required" at a hearing; rather, the court stated that professionals "should" document the timing and frequency of explanations in case they should need documentary evidence to help establish in court when explanations were given. This is not a mandate dictating that there always must be documentation presented in court, especially when, as in this case, B.C. never challenged Andrade's somewhat general assertions at the hearing as to when B.C. received the explanations. Indeed, we find no suggestion in the record that the timing of the explanations were not documented by Andrade or other professionals. There may well have been documentation of when the explanations were given to B.C., but such documentation just was not presented in court. ***Melanie L.*** does not suggest an involuntary medication order would be inappropriate due to a lack of documentation being presented in court regarding the timing of the explanations.

¶16 Andrade confirmed that she was "presently involved" in treating B.C., had been treating him since June 2013, examined B.C. "[a]t least once a month if not more," had a "recent opportunity" to do a mental status evaluation on B.C., and last saw him on February 26, 2015, which was a week before the hearing. She stated that her conversation with B.C. regarding the advantages and disadvantages of Abilify and other medications occurred "over time at different meetings throughout the time" she saw B.C. since June 2013. This process is

consistent with ***Melanie L.***'s suggestion that discussion about the advantages and disadvantages of relevant medications should be "periodically repeated and reinforced." *See* ***id.***

¶17 While it would have been better if Andrade had provided more specific details as to precisely when she discussed the advantages and disadvantages of Abilify and other medications with B.C., the fact that such specificity was not provided does not mean the County failed to meet its burden of proof that the required explanations in fact were provided, as B.C. himself appears to acknowledge in his briefing. As stated, Andrade clearly testified that she had an ongoing professional relationship with B.C., seeing him "[a]t least once a month if not more" since June 2013, and that she discussed the advantages and disadvantages with B.C. "over time at different meetings." There is no requirement that B.C. be provided the required explanations within a certain number of days prior to a hearing. The circuit court found that B.C. had been "fully informed about treatment needs, medication needs, all of the other things that go along with that by the doctor" and there was sufficient evidence presented to support the conclusion—again, which was unchallenged at the hearing—that B.C. was provided the required explanations and in a sufficiently timely manner since Andrade began seeing him in June 2013.

B.C.'s "lack of connection" between the advantages and disadvantages of medication and his mental illness

¶18 Andrade testified that B.C. suffers from schizophrenia and confirmed he had a disorder in "thought and perception" and was significantly impaired in these areas when he was not under a treatment order. She indicated that B.C.'s disordered thought and perception "[g]rossly" impaired his "capacity to understand reality." Most compellingly, B.C. himself testified as to a laundry list

of detrimental side effects he believed were caused by Abilify, while Andrade testified clearly that Abilify did not cause such side effects. Additionally, B.C. apparently did not believe the potential advantages of Abilify to him, referring to such advantages as a "fictitious good." The court found Andrade more credible regarding what side effects are or are not caused by Abilify, and stated, "I think [B.C.'s belief that Abilify caused side effects that it is 'not known to cause or create'] are what [Andrade] is indicating are the issues of [B.C.] not being able to understand the advantages of the medication."

¶19 The record supports the circuit court's conclusion that B.C. did not understand "what the medication does to benefit him." Further, the record demonstrates B.C. 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," WIS. STAT. § 51.61(1)(g)4., because his belief as to the advantages and disadvantages is so askew from the actual advantages and disadvantages, despite Andrade discussing them with him. Simply put, if a person does not understand the actual advantages and/or disadvantages related to the use of a particular medication, that person cannot apply an understanding of those advantages and/or disadvantages "in order to make an informed choice as to whether to accept or refuse medication." *See* § 51.61(1)(g)4.b.

¶20 The circuit court also found that B.C. did "not believe that he is suffering from a mental illness," a finding which is supported by Andrade's testimony and B.C.'s letter submitted to the court at the hearing. As our supreme court stated in ***Melanie L.***, "[i]t may be true that if a person cannot recognize that he or she has a mental illness, logically the person cannot establish a connection

between his or her expressed understanding of the benefits and risks of medication and the person's own illness." ***Melanie L.***, 349 Wis. 2d 148, ¶72.

¶21 For the foregoing reasons, we affirm.

By the Court.—Order affirmed.

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