COURT OF APPEALS
DECISION
DATED AND FILED

February 23, 2000

Cornelia G. Clark
Acting Clerk, Court of Appeals
of Wisconsin

No. 99-2743-FT

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

IN THE MATTER OF THE MENTAL COMMITMENT OF ANDREW C.H.:

SHEBOYGAN COUNTY,

PETITIONER-RESPONDENT,

V.

ANDREW C.H.,

RESPONDENT-APPELLANT.

APPEAL from an order of the circuit court for Sheboygan County: JAMES J. BOLGERT, Judge. *Affirmed.*

¶1 NETTESHEIM, J.[1] Andrew C.H. appeals from an order extending his commitment pursuant to WIS. STAT. § 51.20(13)(g)3. He contends that the

[1] This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(d) (1997-98). All references to the Wisconsin Statutes are to the 1997-98 version.

evidence at the extension hearing does not support the extension order. We affirm the order.

Facts

¶2 On July 8, 1999, Sheboygan County filed a petition seeking to extend a prior extension order entered against Andrew.[2] The petition alleged that Andrew was mentally ill and that he represented a danger if treatment were withdrawn.

¶3 Dr. Charles Cahill, a psychiatrist, was one of the witnesses at the extension hearing. Although Cahill was not then treating Andrew, he had known Andrew for approximately fifteen years and had been Andrew's attending physician in the past.[3] Cahill spoke with Andrew before the hearing and had reviewed Andrew's treatment records.

¶4 A summary of Cahill's testimony follows. For many years, Andrew has suffered from paranoid schizophrenia, a serious and progressive mental disorder. In addition, Andrew has a severe, long-standing chemical dependency that is presently in a state of abstinence because of his commitment. Many times over the years of his illness, Andrew has done very destructive things to himself that resulted in medical care and repeated commitment. In the past, Andrew has demonstrated a pattern of noncompliance with his medication program that

[2] Actually, the face of the petition represents that the extension sought is from a commitment order entered on July 16, 1998, suggesting that the present proceeding is an initial extension. However, a letter attached to the petition from the Division of Community Programs states that Andrew was originally committed on January 18, 1996. Andrew appears to concede this point since his appellate brief states, "[The 1996] commitment was apparently extended several times, with the most recent commitment due to expire on July 16, 1999."

[3] Andrew's present treating physician was out of the country at the time of the extension hearing.

required his continued commitment. If treatment were withdrawn, there is a substantial likelihood that Andrew would again become a proper subject for treatment or commitment. Cahill concluded that Andrew's commitment should be extended.

¶5 In answer to the trial court's questions about Andrew's medication program, Cahill stated that Andrew's medications included Haldol, "the most potent antipsychotic on the market … and … [one] that's given for people with refractory illness who need that kind of intensive care just to keep the psychosis in some kind of check."

¶6 Kenneth Plummer, Andrew's social worker, also testified. He stated that Andrew has not committed any harmful behavior in the last few months, but also noted that Andrew is in "a very structured environment." Andrew has a tendency to go off his treatment and medication program. The last time this occurred was in October 1998, after Andrew's most recent commitment in July 1998. As a result of this episode, Andrew was jailed and then returned to the commitment facility.

¶7 Based on this evidence, the trial court extended the commitment order. Andrew appeals.

Discussion

¶8 WISCONSIN STAT. § 51.20(13)(g)3 authorizes a county department to apply for extension of a commitment. This statute, in turn, invokes the procedures of subsecs. (10) to (13) governing an initial commitment. The County is obligated to prove the facts necessary to support a commitment extension by clear and convincing evidence. *See* § 51.20(13)(e).

¶9 As applied to this case, the County had to establish that Andrew was mentally ill. *See* WIS. STAT. § 51.20(1)(a)1. Andrew does not dispute this element. The County had to further establish that Andrew was dangerous. *See* § 51.20(1)(a)2. To satisfy this element, the County ordinarily would have been required to establish that Andrew had engaged in the conduct set out in subd. (1)(a)2. But in a case such as this, where Andrew has been the subject of inpatient treatment for mental illness immediately prior to the instant proceedings, these proof requirements are relaxed. Instead, the element of dangerousness is established by "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." Section 51.20(1)(am). Andrew challenges the sufficiency of the evidence as to this element.

¶10 When reviewing a commitment order, a trial court's findings of fact are not overturned unless clearly erroneous. *See* ***K.N.K. v. Buhler***, 139 Wis. 2d 190, 198, 407 N.W.2d 281 (Ct. App. 1987); *see also* WIS. STAT. § 805.17(2). However, we view the higher and ultimate question regarding the necessity for commitment as one of law because it involves the application of the facts as found by the trial court to the statutory test for commitment. *See* ***K.N.K.***, 139 Wis. 2d at 198. We review questions of law independently, although we value a trial court's ruling on such a matter. *See* ***Scheunemann v. City of West Bend***, 179 Wis. 2d 469, 475, 501 N.W.2d 163 (Ct. App. 1993).

¶11 Andrew's principal argument is that the evidence focused too little on his experience since the most recent extension in July 1998 and too much on his mental health history prior to that time. If the evidence had properly focused on the immediate past, Andrew argues that Plummer's testimony shows a positive adjustment and no need for the extension of his commitment. Andrew points to

Plummer's testimony that he had not engaged in any violent or harmful behavior during the few months prior to the hearing and that his past pattern of verbal and physical outbursts was under control.

¶12 We disagree with Andrew's reading of the evidence. We first note that the law does not prohibit evidence of the subject's mental health history or behavior prior to the most recent commitment or extension. To the contrary, WIS. STAT. § 51.20(1)(am) expressly requires the trial court to assess the effects of the withdrawal of treatment. Therefore, the testimony of Cahill and Plummer on this point was very relevant to the issue of dangerousness.

¶13 Andrew's argument that this evidence was too remote really travels to the weight of the evidence. That question, however, is a matter uniquely addressed to the discretion of the trial court in its role as fact finder. *See* ***Lellman v. Mott***, 204 Wis. 2d 166, 172, 554 N.W.2d 525 (Ct. App. 1996).

¶14 Here, Andrew presented a long history of serious mental illness and substance abuse. His current medication included Haldol, which Cahill described as the most potent anti-psychotic drug on the market, reserved for those with refractory[4] illness who need intensive care. He likewise presented a long history of destructive behavior, resulting in repeated medical care and commitment. He also demonstrated a pattern of noncompliance with his treatment and medication program, also producing the need for continuing medical care and commitment. We agree with the County that this evidence was very relevant to the issue of Andrew's current dangerousness and need for treatment.

[4] "Refractory" is defined as "**1:** resisting control or authority: STUBBORN, UNMANAGEABLE, PERVERSE … **2 a:** resistant to treatment or cure … **b:** unresponsive to stimulus." WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY 1909 (1993).

¶15 Moreover, the evidence in this case does address Andrew's conduct since the most recent extension order. Although the record does not explain the event in detail, Andrew went off his medication following the most recent extension, resulting in his incarceration and eventual return to the commitment facility in October.

¶16 Andrew also challenges Cahill's testimony because Cahill was not his treating physician. However, Cahill had known Andrew for fifteen years on a professional basis, had previously treated him and had read Andrew's treatment records prior to testifying. Again, this argument goes to the weight of the evidence and to the credibility of a witness. *See* ***id.***; *see also* WIS. STAT. § 805.17(2). We see nothing erroneous in the trial court's assessment of Cahill's testimony.

¶17 Andrew argues that the County's reliance on his past relapses as the basis for the extension order means that he will be perpetually committed. He argues: "[H]e cannot be released until he can prove that he will take his medication, and he cannot prove he will take the medication until he has the opportunity to do that outside the institution." We disagree for three reasons.

¶18 First, the evidence reveals that Andrew has not been perpetually committed. Rather, he has been committed repeatedly. This is a subtle, but important, distinction since it reveals, contrary to Andrew's argument, that there have been times in his history when he has been free of commitment, only to face further commitment because of his mental illness and concurrent dangerous behavior.

¶19 Second, Andrew assumes that the evidence, particularly the expert opinions, in future cases will be the same as in this case. We do not accept that

premise. Andrew's future adjustment to treatment may well prompt a different recommendation regarding the need for further commitment or extension.

¶20 Third, as we have already noted, WIS. STAT. § 51.20(1)(am) expressly contemplates the very kind of evidence about which Andrew complains.

Conclusion

¶21 We see no basis for upsetting the trial court's assessment of the credibility of the witnesses and the weight of the evidence. Therefore, the trial court's factual findings are not clearly erroneous. As such, the trial court properly determined that Andrew was dangerous and in need of further treatment.

By the Court.—Order affirmed.

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