COURT OF APPEALS
DECISION
DATED AND FILED

February 9, 2017

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. 2016AP613 **Cir. Ct. No. 2015ME125**

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

IN THE MATTER OF THE MENTAL COMMITMENT OF J. T.:

DODGE COUNTY,

PETITIONER-RESPONDENT,

V.

J. T.,

RESPONDENT-APPELLANT.

APPEAL from an order of the circuit court for Dodge County: STEVEN G. BAUER, Judge. *Affirmed*.

¶1 KLOPPENBURG, J.[1] J.T. appeals his involuntary commitment order under WIS. STAT. § 51.20.[2] J.T. argues that there was insufficient evidence to support the circuit court's finding that he was dangerous to others within the meaning of WIS. STAT. § 51.20(1)(a)2.b.[3] I reject his argument and affirm.

DISCUSSION

¶2 The County bore the burden of proving by clear and convincing evidence that J.T. required an involuntary mental health commitment. WIS. STAT. § 51.20(13)(e). Specifically, the County was required to prove that J.T. was: (1) mentally ill, (2) a proper subject for treatment, and (3) dangerous. *See* WIS. STAT. § 51.20(1)(a). J.T. does not dispute that the County proved that the first two prongs were satisfied—he was mentally ill, and he was a proper subject for treatment. J.T. argues only that the evidence was insufficient to prove the third prong, dangerousness.

¶3 There are five standards under which the County may meet its burden to prove dangerousness. *See* WIS. STAT. § 51.20(1)(a)2.a.-e. The circuit

---

[1] This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(d) (2015-16). All references to the Wisconsin Statutes are to the 2015-16 version unless otherwise noted.

[2] J.T. concedes that the six-month period of commitment for outpatient treatment ordered by the circuit court has expired. However, he notes that the commitment order also prohibited him from possessing a firearm and provided that the prohibition would "remain in effect until lifted by the court." The prohibition on firearm possession apparently has not been lifted. Accordingly, J.T.'s appeal from the commitment order is not moot. *See* ***State ex rel. Olson v. Litscher***, 2000 WI App 61, ¶3, 233 Wis. 2d 685, 608 N.W.2d 425 ("An issue is moot when its resolution will have no practical effect on the underlying controversy.")

[3] J.T. also argues that there was insufficient evidence to support a finding that he was dangerous to himself under WIS. STAT. § 51.20(1)(a)2.a. However, the circuit court found only that he was dangerous to others. Therefore, this opinion addresses only J.T.'s challenge to that finding under WIS. STAT. § 51.20(1)(a)2.b.

court ruled that the county proved that there was a substantial probability that J.T. was dangerous to others within the meaning of WIS. STAT. § 51.20(1)(a)2.b., which reads:

> The individual is dangerous because he or she … [e]vidences a substantial probability of physical harm to other individuals as manifested by evidence ... that others are placed in reasonable fear of violent behavior and serious physical harm to them, as evidenced by a recent overt act, attempt or threat to do serious physical harm.

¶4 The circuit court found that J.T. "was a substantial risk of harm to others [by] putting other people in reasonable fear for their safety based on what I consider threats against the governor in this case, physical threats." The court based this finding on evidence of threats in a letter attached to an email that J.T. had sent to a number of people just before he was detained. In the letter, after stating, "This man has to be stopped. This man is Gov. Scott Walker," J.T. stated:

> They have no clue what the[y] have done to me. They dishonored me to the worst degree. They have drawn first blood, I never left Viet Nam in my mind, they opened Pandora's Box and out is coming Rambo. I have accepted this miss[i]on as all the others before, I will protect my brothers and sister[]s from their own government if need be, my least worry is death, they haven't seen the likes of me explode in a long time. I will do whatever it takes to see this mission become successful. The military knows my abilities, they trained me. I hope you join me, or stand aside, this is your choice.
>
> I want immediate action, to correct this. Scott Walker held accountable ....
>
> I'm in my jungle uniform, sir, and on a mission. I don't take pris[]oners, and I hope Gov. Walker rots in hell. I will see him there.
>
> ... severe and immediate action is required.

In the email attaching the letter, titled "On My Mission," J.T. stated, "Tell Walker, I'm coming."

¶5 J.T. does not argue that the letter and email do not constitute sufficient evidence of a threat to support the circuit court's finding that he was dangerous to others. J.T. argues only that the court's finding must be reversed because (1) neither of the two physicians who testified at the commitment hearing opined that J.T. was dangerous, and (2) the threat found by the court was the constitutionally protected exercise of J.T.'s right to freedom of speech and freedom to petition the government. J.T's arguments miss their mark.

¶6 As to J.T.'s first argument, the circuit court did not rely on the physicians' testimony for the finding of dangerousness (as J.T. himself concedes). Rather, it relied on evidence of threats by J.T. from which others may reasonably fear serious physical harm, as expressly provided by WIS. STAT. § 51.20(1)(a)2.b. Our supreme court has held that a threat can be reasonably inferred from statements that indicate impending danger or harm. ***Outagamie Cty. v. Michael H.***, 2014 WI 127, ¶¶16, 34, 36-37, 359 Wis. 2d 272, 856 N.W.2d 603 (finding that a jury could reasonably infer a threat of suicide from an individual's statements that he was suicidal, though he could not explain what his plan was). J.T. does not dispute that a threat to harm others can be reasonably inferred from his statements here. His suggestion that expert testimony is required to support a finding of dangerousness is not developed with any support by legal authority; therefore, I do not consider it further. *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.").

¶7 J.T. makes his second argument for the first time in his reply brief, and I reject it on that basis. *See* ***Bilda v. County of Milwaukee***, 2006 WI App 57, ¶20 n.7, 292 Wis. 2d 212, 713 N.W.2d 661 ("It is a well-established rule that we do not consider arguments raised for the first time in a reply brief.") Moreover,

J.T. does not cite any legal authority to support the proposition that the rights he asserts include the making of threats to cause serious physical harm. Therefore, I also reject his argument as undeveloped. *See* ***Industrial Risk Insurers v. American Eng'g Testing, Inc.***, 2009 WI App 62, ¶25, 318 Wis. 2d 148, 769 N.W.2d 82 ("Arguments unsupported by legal authority will not be considered, and we will not abandon our neutrality to develop arguments." (citations omitted)).

CONCLUSION

¶8 For the reasons set forth above, I affirm the circuit court's order committing J.T. to outpatient 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.