

**COURT OF APPEALS
DECISION
DATED AND FILED**

June 2, 2005

Cornelia G. Clark
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. 2005AP436-FT

Cir. Ct. No. 2004ME43

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

WAUSHARA COUNTY,

PETITIONER-RESPONDENT,

V.

JEAN K. D.,

RESPONDENT-APPELLANT.

APPEAL from orders of the circuit court for Waushara County:
LEWIS R. MURACH, Judge. *Affirmed.*

¶1 DEININGER, P.J.¹ Jean K.D. appeals an order that committed her to the care and custody of the Waushara County Department of Human Services

¹ This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(d) (2003-04). All references to the Wisconsin Statutes are to the 2003-04 version unless otherwise noted.

for mental health treatment under WIS. STAT. § 51.20. She also appeals an order that permits medication and treatment to be administered to her, regardless of her consent, during the period of the commitment. Jean claims the trial court erred in entering these orders because the County presented insufficient evidence to support the necessary findings under § 51.20. We conclude that the record before the court at the final commitment hearing contains sufficient evidence to support its findings and orders.

BACKGROUND

¶2 A Waushara County sheriff's deputy placed Jean on emergency detention under WIS. STAT. § 51.15 after she told a Human Services social worker that "she had enough and she wanted to end it all. She said she didn't want to live anymore." The circuit court found probable cause to detain Jean pending a final commitment hearing, and it ordered examinations and reports by two psychiatrists.

¶3 Both examiners testified by telephone at the final hearing. The first psychiatrist testified that Jean was suffering from a "delusional disorder," which he described as a "treatable mental illness." The doctor also testified that Jean was "a proper subject for treatment," and that, in his professional opinion, she evidenced a "substantial probability of physical harm to herself." He based his opinion on Jean's dangerousness on her prior threats of suicide, a prior suicide attempt and her "impulsivity and the loss of judgment."

¶4 On the question whether Jean could knowingly refuse medication, the first examiner equivocated a bit. He testified that he didn't "think she understands the purpose of medication," but noted that she was able to discuss the side effects "very intelligently, but fairly superficially." The doctor also said that

Jean could “help on the decisions,” but that his professional opinion was that she was not “competent to refuse medications or treatments at this time.”

¶5 The second examiner, also a psychiatrist, testified that she had diagnosed Jean as suffering from “schizophrenia, chronic, paranoid type.” This doctor also concluded that Jean’s mental illness was treatable, and that Jean was a proper subject for treatment. The doctor also testified that Jean evidenced “a substantial probability of physical harm to herself,” and this was based on Jean’s “level of distress,” her recent threat of suicide communicated to the social worker, and the past history of a suicide attempt and threats.

¶6 The second examiner also testified to her professional opinion that Jean was unable to make informed decisions regarding whether to take various medications. The doctor stated that “she is not competent to make decisions regarding treatment on medication.” The doctor also testified that, in her opinion, Jean would be “likely to respond positively to the medications.”

¶7 Jean testified at the hearing. She told the court that she disagreed with the examining psychiatrists’ opinions and findings. She explained that she believed her current hospitalization was causing her condition to deteriorate, and she wished to go back to her home. She promised to take prescribed medications if released from the commitment. She further testified that, although she was unable to name all of her current medications, she was “comfortable” taking them, and understood that they “are necessary for [her] wellbeing.”

¶8 At the conclusion of the testimony, the County requested a six-month commitment order as well as an order for involuntary medication and treatment. Jean’s court-appointed counsel opposed the requests. The circuit court noted in its oral ruling that the two psychiatrists had placed different diagnostic

labels on Jean's condition but were unanimous in concluding that she was suffering from a treatable mental illness. The court also noted that both examiners had given their professional opinions that Jean was presently a danger to herself if not treated for her mental illness. As for Jean's ability to competently refuse therapeutic medications, the court concluded, based on the medical testimony, that Jean was not competent to refuse medications. Specifically, the court found that, although Jean may understand some aspects of her condition and the recommended treatment, she was unable to make "informed application of medication choices ... with regard to her treatment."

¶9 The court entered a six-month commitment order under WIS. STAT. § 51.20. It also ordered "involuntary medication and treatment ... during the period of commitment, or until further order of the court." Jean appeals these orders.²

ANALYSIS

¶10 Jean's claim of error is not well-articulated. Her brief contains a "statement of facts" and a "conclusion," but no intervening section denominated as argument. As her "statement of issues," Jean asserts that the "findings of the circuit court are not consistent with the testimony of the treating physicians, nor did the court properly consider [Jean's] very lucid testimony." Her conclusion contains similar assertions—that the trial court failed to consider "discrepancies"

² The commitment order was entered on October 12, 2004. Although not reflected in the record on appeal, the Waushara County register in probate has informed us that the commitment order was extended on April 6, 2005, for a period of one year. Accordingly, even though the initial six-month commitment has expired, Jean remains committed and the appeal is therefore not moot.

in the testimony of the two examining psychiatrists, and that it failed to consider Jean's "succinct and apparent credible testimony." Given the lack of legal argument articulating any other claim of error, we deem Jean's challenge to be to the sufficiency of the evidence to support the orders the court entered.

¶11 Under WIS. STAT. § 51.20, a court may order an individual committed for mental health treatment if it concludes that there is clear and convincing evidence that the person is mentally ill, a proper subject for treatment and dangerous because of, among other things, a substantial probability of physical harm to herself "as manifested by evidence of recent threats of or attempts at suicide." As we have described above, both examining psychiatrists testified to the presence of these elements, and the only evidence Jean presented to the contrary was her personal "disagreement" with those opinions. When a trial court sits as a trier of fact, it determines issues of credibility. *See Fidelity & Deposit Co. v. First Nat'l Bank*, 98 Wis. 2d 474, 485, 297 N.W.2d 46 (Ct. App. 1980). It is for the trier of fact and not this court to assess witness credibility. *Rohl v. State*, 65 Wis. 2d 683, 695, 223 N.W.2d 567 (1974). Accordingly, we conclude that the court did not err in finding that the County had presented clear and convincing evidence of the grounds for commitment.

¶12 As for the findings necessary to support an order for involuntary medication and treatment, WIS. STAT. § 51.61(1)(g)3 provides that, incident to a commitment order, a court may direct that the committed person not retain the right to refuse medication and treatment if the court determines, following a hearing, that the committed individual "is not competent to refuse medication or treatment." Again, as we have described above, both examining psychiatrists testified that Jean was not competent to make informed decisions regarding

medications, and the court so found. In short, we find nothing lacking in the court's findings or in the sufficiency of the evidence in the record to support them.

CONCLUSION

¶13 For the reasons discussed above, we affirm the appealed orders.

By the Court.—Orders affirmed.

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

