COURT OF APPEALS
DECISION
DATED AND FILED

February 2, 2010

David R. Schanker
Clerk of Court of Appeals

Appeal No. 2009AP2081 **Cir. Ct. No. 2006ME45**

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

IN THE MATTER OF THE MENTAL COMMITMENT OF ANNE R.:

SHAWANO COUNTY,

PETITIONER-RESPONDENT,

V.

ANNE R.,

RESPONDENT-APPELLANT.

APPEAL from an order of the circuit court for Shawano County: THOMAS G. GROVER, Judge. *Affirmed*.

¶1 BRUNNER, J.[1] Anne R. appeals an order extending her outpatient commitment to Shawano County for an additional twelve months.[2] The sole issue

[1] This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2). All references to the Wisconsin Statutes are to the 2007-08 version unless otherwise noted.

is whether Anne's recommitment was supported by sufficient evidence of future dangerousness under WIS. STAT. § 51.20(1)(am).[3] We conclude it was and affirm.

BACKGROUND

¶2 On August 28, 2006, Anne was ordered committed due to mental illness. Her commitment was extended on February 19, 2007, and again on February 6, 2008, and February 5, 2009.[4] Anne suffers from paranoid schizophrenia and has been treated throughout her commitment with psychotropic medication. Anne was found not competent to refuse medication at her initial commitment and at each extension.

¶3 Doctor John Coates, the sole expert for the County, was the only witness to testify at the February 5, 2009, recommitment hearing. Based on his testimony and a review of other records not introduced into evidence, the circuit court ordered Anne's commitment extended for an additional twelve months.

DISCUSSION

¶4 WISCONSIN STAT. § 51.20(13)(g)3. allows extension of WIS. STAT. ch. 51 mental health commitments. That provision requires continued commitment if the court determines that the individual (1) is a proper subject for commitment and (2) meets certain statutory conditions of dangerousness. A

[2] Anne also argues a separate order declaring her not competent to refuse medication should be reversed. That order was not identified in the notice of appeal and we will not consider Anne's arguments relating to it.

[3] All references to the Wisconsin Statutes are to the 2007-08 version unless otherwise noted.

[4] The February 6, 2008, and February 5, 2009, commitments were both ordered on an outpatient basis.

person is a proper subject for commitment if he or she is mentally ill and a proper subject for treatment. WIS. STAT. § 51.20(1)(a)1. Anne concedes she is a proper subject for commitment. The sole issue presented is whether the County presented sufficient evidence of dangerousness at the recommitment hearing.

¶5 An individual is dangerous if he or she meets any of five alternative criteria set forth in WIS. STAT. §§ 51.20(1)(a)2.a.-e.[5] Each criterion requires evidence of a recent overt act, attempt or threat to act, or a pattern of recent acts or omissions. However, in cases such as this, where the County seeks extension of an already-existing commitment order, the County need only show 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." *See* WIS. STAT. § 51.20(1)(am). This subsection was enacted to "avoid the 'revolving door' phenomenon whereby there must be proof of a recent overt act to extend the commitment but because the patient was still under treatment, no overt acts occurred and the patient was released from treatment only to commit a dangerous act and be recommitted." ***State v. W.R.B.***, 140 Wis. 2d 347, 351, 411 N.W.2d 142 (Ct. App. 1987).

¶6 "The burden of proof is upon the county department or other person seeking commitment to establish evidence that the subject individual is in need of continued commitment." WIS. STAT. § 51.20(13)(g)3. The county must prove all required facts by clear and convincing evidence. WIS. STAT. § 51.20(13)(e). On

[5] The five grounds for dangerousness set forth in these subsections are that the subject (a) poses a risk of physical harm to himself or herself; (b) poses a risk of physical harm to others; (c) suffers from impaired judgment that could lead to harm to self; (d) cannot fulfill the basic needs for nourishment, medical care, shelter, or safety; or (e) is incapable of giving informed consent about medication or treatment necessary to avoid suffering or severe mental, emotional, or physical harm.

review, the circuit court's factual findings will be upheld if they are supported by any credible evidence or reasonable inferences drawn from that evidence. ***Estate of Cavanaugh v. Andrade***, 202 Wis. 2d 290, 306, 550 N.W.2d 103 (1996). We will overturn the circuit court's factual findings only if they are clearly erroneous. ***K.N.K. v. Buhler***, 139 Wis. 2d 190, 198, 407 N.W.2d 281 (Ct. App. 1987). However, application of the facts to statutory recommitment requirements presents a question of law we review de novo. ***Id.***

¶7 Although the circuit court considered documents not formally admitted into evidence, evidence properly admitted supports the circuit court's recommitment order. Dr. Coates' testimony at the recommitment hearing clearly and convincingly established that Anne would be a proper subject for commitment if treatment were withdrawn. Coates stated Anne, whom he diagnosed and treated in the past, had a longstanding history of mental illness characterized by delusional thinking and emotional lability. When asked directly whether Anne would present a danger to herself or others if treatment were withdrawn, Coates noted such withdrawal previously led to hospitalization. He stated the psychotropic medications stabilized her condition, but noted her "history of noncompliance" and that "she doesn't believe she is mentally ill and has shown no [insight] into her illness." Finally, Coates opined that "if she discontinues those [medications], there is … pretty much a hundred percent chance that her symptoms would recur." Coates' testimony was sufficient to establish a

substantial likelihood that Anne would be a proper subject for commitment if treatment were withdrawn.[6]

By the Court.—Order affirmed.

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

[6] Anne argues testimony suggesting the withdrawal of treatment would aggravate an individual's mental condition cannot by itself support a finding a future dangerousness without risking indefinite commitment for those diagnosed with chronic mental illness. In other words, if we conclude the testimony in this case was sufficient, the County could indefinitely commit any person whose mental illness would worsen without treatment. She contends this result would be unacceptable. *See* ***State v. Dennis H.***, 2002 WI 104, ¶28, 255 Wis. 2d 359, 647 N.W.2d 851 ("A mental health commitment provision is overly broad … if by its terms it could reasonably be applied to commit mentally ill persons who are not in any way dangerous to themselves or others."). While her claim may have arguable merit, her passing reference to ***Dennis H.*** does not reflect the type of carefully developed argument contemplated by WIS. STAT. RULE 809.19(1)(e) that would be necessary for us to declare WIS. STAT. § 51.20(1)(am) facially overbroad. We will not abandon our neutrality to develop arguments. *See* ***M.C.I., Inc. v. Elbin***, 146 Wis. 2d 239, 244-45, 430 N.W.2d 366 (Ct. App. 1988).