COURT OF APPEALS DECISION DATED AND FILED

November 19, 2002

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. 01-2461

Cir. Ct. No. 96CF966242

STATE OF WISCONSIN

IN COURT OF APPEALS
DISTRICT I

IN RE THE COMMITMENT OF
WILLIAM L. MORFORD:

STATE OF WISCONSIN,

PETITIONER-RESPONDENT,

V.

WILLIAM L. MORFORD,

RESPONDENT-APPELLANT.

APPEAL from orders of the circuit court for Milwaukee County: DANIEL L. KONKOL, Judge. *Affirmed*.

Before Fine, Schudson and Curley, JJ.

¶1 PER CURIAM. William L. Morford appeals from the order granting the State's motion for reconsideration and committing him as a sexually

violent person to an institutional setting under WIS. STAT. § 980.06 (1999-2000).[1] Morford also appeals from the trial court's order denying his motion for reconsideration. He contends: (1) the proceedings were statutorily improper because the trial court was not authorized to revoke his supervised release; (2) the evidence was insufficient to prove that he was in need of further treatment at a secure facility; and (3) the trial court's order did not reflect its own decision on the State's motion for reconsideration.

¶2 We conclude that the trial court did not revoke Morford's supervised release pursuant to WIS. STAT. § 980.08(6m), but rather, granted the State's motion for reconsideration pursuant to WIS. STAT. § 806.07(1)(h). Accordingly, the trial court was statutorily authorized to commit Morford to an institutional setting. Further, we conclude that the evidence was sufficient to find him sexually violent, and that the trial court's order adequately reflected its decision on the matter. Therefore, the trial court is affirmed.

I. BACKGROUND.

¶3 In 1997, Morford was committed under WIS. STAT. ch. 980 as a sexually violent person to the Wisconsin Resource Center (WRC), a secure facility, despite the fact that his supervised release had been ordered. Morford was committed to a secure facility because there were no less-restrictive facilities available. In 1999, this court reversed the original commitment order, concluding that once it had been determined that his supervised release was appropriate, the court had no authority to order his continued confinement simply because there

[1] All references to the Wisconsin Statutes are to the 1999-2000 version unless otherwise noted.

was no less-restrictive facility willing to accept him. Accordingly, the matter was remanded for the trial court to require the State to locate a suitable placement.

¶4 The Department of Health and Family Services (DHFS) then began a search for an appropriate facility. Meanwhile, while DHFS looked for a suitable placement, Morford's case came up for two periodic reviews. Although Morford waived the reviews, the reports produced by the institution's doctors continually stated that Morford was not ready for supervised release and would likely reoffend if released. On May 4, 2000, the State brought a motion to reconsider Morford's supervised release pursuant to WIS. STAT. § 806.07.

¶5 While the proceedings on the State's motion for reconsideration were pending, another periodic review report was generated from the WRC. This report, drafted by Dr. Carole DeMarco, stated that Morford had made sufficient progress in treatment for the trial court to consider his supervised release. As part of this reevaluation, Dr. Michael Kotkin also submitted a report stating that Morford was ready for supervised release. However, a third report prepared by Dr. Donald Hands disputed the other doctors' findings and concluded that although Morford had made progress in his treatment, it was substantially probable that he would engage in further acts of sexual violence if released. Thus, Dr. Hands recommended that Morford remain in an institutional setting where he could receive further treatment.

¶6 Hearings on the State's motion for reconsideration were held on March 8, 2001, as well as May 7 and 8, 2001. At these hearings, the trial court heard testimony from all three doctors regarding Morford's progress and the likelihood of his further acts of sexual violence. Based on the testimony, the trial court concluded that Morford was still a sexually violent person and that there was

still a substantial probability that he would engage in future acts of sexual violence if not placed in institutional care. Accordingly, the trial court granted the State's motion for reconsideration and ordered that Morford be committed to the custody of DHFS for care and treatment in an institutional setting pursuant to WIS. STAT. § 980.06. Morford brought a motion for reconsideration, which the trial court denied.

II. ANALYSIS.

¶7 The issue concerns the applicability of WIS. STAT. § 806.07 to WIS. STAT. ch. 980 civil commitment proceedings. *Cf.* ***State v. Sprosty***, 2001 WI App 231, 248 Wis. 2d 480, 636 N.W.2d 213; ***State v. Williams***, 2001 WI App 155, 246 Wis. 2d 722, 631 N.W.2d 623. The application of § 806.07 to ch. 980 involves a question of law that we review *de novo*. *See* ***Williams***, 2001 WI App 155 at ¶9. However, a motion for relief from a judgment or an order is addressed to the discretion of the trial court. *See* ***Buchen v. Wisconsin Tobacco Co.***, 59 Wis. 2d 461, 465, 208 N.W.2d 373 (1973). Accordingly, we will find an erroneous exercise of discretion where the record demonstrates that the trial court applied the wrong legal standard, failed to exercise its discretion, or if the facts fail to support the trial court's conclusion. *See* ***Williams***, 2001 WI App 155 at ¶9.

¶8 Morford initially contends that once he was placed on supervised release pursuant to WIS. STAT. § 980.08, only DHFS had the power to petition to revoke his release pursuant to § 980.08(6m).[2] Thus, Morford concludes that

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[2] WISCONSIN STAT. § 980.08(6m) states, in relevant part:

(continued)

because DHFS did not file a petition to revoke his release, the trial court lacked the statutory authority to commit him to an institutional setting pursuant to WIS. STAT. § 980.06.[3] We disagree. We conclude that the trial court had the statutory authority under § 806.07 to grant relief from the original order placing Morford on supervised release.

¶9 Morford mischaracterizes the hearing below as a revocation proceeding, held pursuant to WIS. STAT. § 980.08, rather than a hearing on the State's motion for reconsideration, held pursuant to WIS. STAT. § 806.07. First, as

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> An order for supervised release places the person in the custody and control of the department…. A person on supervised release is subject to the conditions set by the court and to the rules of the department…. If the department alleges that a released person has violated any condition or rule, or that the safety of others requires that supervised release be revoked, he or she may be taken into custody under the rules of the department. The department shall submit a statement showing probable cause of the detention and a petition to revoke the order for supervised release…. The state has the burden of proving by clear and convincing evidence that any rule or condition of release has been violated, or that the safety of others requires that supervised release be revoked. If the court determines after hearing that any rule or condition of release has been violated, or that the safety of others requires that supervised release be revoked, it may revoke the order for supervised release and order that the released person be placed in an appropriate institution until the person is discharged from the commitment under s. 980.09 or until again placed on supervised release under this section.

[3] WISCONSIN STAT. § 980.06 states:

> If a court or jury determines that the person who is the subject of a petition under s. 980.02 is a sexually violent person, the court shall order the person to be committed to the custody of the department for control, care and treatment until such time as the person is no longer a sexually violent person. A commitment order under this section shall specify that the person be placed in institutional care.

admitted by Morford, DHFS did not file a petition to revoke his supervised release, a procedure required by both § 980.08(6m) and due process. *See* ***State v. Van Bronkhorst***, 2001 WI App 190, ¶¶7-8, 247 Wis. 2d 247, 633 N.W.2d 236. Second, on May 4, 2000, the State filed a motion entitled, "motion for reconsideration of supervised release." Third, and finally, at the outset of the evidentiary hearing held on this matter, the trial court informed the parties that they were proceeding on the "State's motion [ ] for reconsideration of the supervised release." Thus, we conclude that the proceedings in question were held in accordance with § 806.07 rather than § 980.08(6m). Accordingly, the trial court was statutorily authorized to review the order granting Morford's supervised release.

¶10 We also conclude that there were circumstances making it equitable to grant relief from the order placing Morford on supervised release. The trial court has broad discretion in deciding whether to reopen a judgment under WIS. STAT. § 806.07. *See* ***Johns v. County of Oneida***, 201 Wis. 2d 600, 607, 549 N.W.2d 269 (Ct. App. 1996). WISCONSIN STAT. § 806.07(1) states:

> **(1)** On motion and upon such terms as are just, the court, subject to subs. (2) and (3), may relieve a party or legal representative from a judgment, order or stipulation for the following reasons:
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> (a) Mistake, inadvertence, surprise, or excusable neglect;
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> (b) Newly-discovered evidence which entitles a party to a new trial under s. 805.15 (3);
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> (c) Fraud, misrepresentation, or other misconduct of an adverse party;
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> (d) The judgment is void;
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> (e) The judgment has been satisfied, released or discharged;

> (f) A prior judgment upon which the judgment is based has been reversed or otherwise vacated;
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> (g) It is no longer equitable that the judgment should have prospective application; or
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> (h) Any other reasons justifying relief from the operation of the judgment.

¶11 In ***Johns***, this court explained the function of the "catch-all" provision for reopening judgments contained in WIS. STAT. § 806.07(1)(h):

> Subsection (h) is written in broad terms and obviously extends the grounds for relief beyond those provided for in the preceding subsections…. The appropriate way to approach claims for relief under § 806.07(1)(h) is to apply the "extraordinary circumstances" test. Under this test, the court must consider whether extraordinary circumstances exist which justify relief in the interests of justice.

Johns, 201 Wis. 2d at 607 (citations omitted). "Extraordinary circumstances are those in which the sanctity of the final judgment is outweighed by the incessant command of the court's conscience that justice be done in light of *all* the facts." ***Sprosty***, 2001 WI App 231 at ¶17 (citations omitted) (emphasis in original). Moreover, courts must liberally construe WIS. STAT. § 806.07 to allow relief whenever appropriate to accomplish justice. ***Id.***

¶12 Morford contends that the evidence was insufficient to establish that he was still a "sexually violent person" in need of treatment in an institutional setting. The standard of review for sufficiency of the evidence to support a commitment under WIS. STAT. ch. 980 is the same as the standard of review for a criminal conviction. ***State v. Curiel***, 227 Wis. 2d 389, 417, 597 N.W.2d 697 (1999). The test on appeal is whether the evidence adduced, believed, and rationally considered was sufficient to prove beyond a reasonable doubt that the respondent is a "sexually violent person." *See* ***id.*** at 418-19. Thus, we will not

reverse a ch. 980 commitment unless the evidence, viewed most favorably to the State and the commitment, is so insufficient in probative value and force that it can be said as a matter of law that no trier of fact, acting reasonably, could have found the defendant to be a "sexually violent person" beyond a reasonable doubt. *See* ***State v. Marberry***, 231 Wis. 2d 581, 593, 605 N.W.2d 612 (Ct. App. 1999).

> "Sexually violent person" means a person who has been convicted of a sexually violent offense, has been adjudicated delinquent for a sexually violent offense, or has been found not guilty of or not responsible for a sexually violent offense by reason of insanity or mental disease, defect or illness, and who is dangerous because he or she suffers from a mental disorder that makes it substantially probable that the person will engage in acts of sexual violence.

WIS. STAT. § 980.01(7). "Substantially probable" means "much more likely than not." ***Curiel***, 227 Wis. 2d at 422. We reject Morford's argument and conclude that the evidence was sufficient to establish that he was still a "sexually violent person."

¶13 In granting the State's motion for reconsideration, the trial court relied primarily on the expert testimony of Dr. Hands. Dr. Hands testified that, as part of his evaluation, he consulted with staff members who were responsible for Morford's treatment, completed a structured risk analysis, and analyzed dynamic risk factors. The structured risk analysis is an assessment of an individual's likelihood to commit future sexual offenses based on a number of static factors including: (1) whether the subject had engaged in prior sex offenses; (2) whether the victims were within the subject's family; (3) whether the victims were of the same sex as the subject; (4) whether the subject was over the age of twenty-five; (5) whether there were any non-contact sex offenses; (6) whether the subject was married; (7) whether there was any violent behavior; and (8) the total number of

convictions for any sexually deviant behavior. Based on the structured risk assessment, Dr. Hands testified that Morford "was at a high risk to offend which translated to a 52 percent." Meaning that based on statistical analysis, "[fifty-two] percent of the people who resembl[ed] his profile reoffended within ten years of release."

¶14 Dr. Hands also analyzed dynamic predictive factors including: (1) whether the subject has any distorted attitudes about sexuality, particularly about whether children may be willing participants in sexual activity; (2) the level of the subject's psychological functioning in terms of adult relationships; *i.e.*, how a person relates to adults and manages to have their needs met with appropriate age partners; (3) the subject's ability to self-manage compulsions, temper, emotions and urges; and (4) deviance of sexual preference; *i.e.*, the subject's degree of variance in sexual urges from the norm, e.g., sex with children. Based on these dynamic factors, Dr. Hands testified that Morford continued to have "distorted sexual attitudes in place," and that "these attitudes have to do with attributing aspects of what might be considered consensual adult sexual relationships to the teenage boy victims who he tended to see as willing and … fully and equally participating."

¶15 Based on his overall assessment, Dr. Hands concluded Morford was not prepared for supervised release into the community. While Dr. Hands noted that Morford had made progress, and that the general results of his treatment were positive, he maintained, "[I]t's substantially probable that he will engage in acts of sexual violence in the future." Thus, Dr. Hands recommended that Morford remain in an institutional setting where he could receive further treatment.

¶16 Although Morford presented contradictory expert testimony, it is the trial court's task to sift and winnow the credibility of the witnesses and to determine what, if any, weight to give to a witness's testimony, including the testimony of expert witnesses. ***Curiel***, 227 Wis. 2d at 421. After our review of Dr. Hands' testimony, we cannot conclude that the evidence, viewed most favorably to the State and the commitment, is so insufficient in probative value and force that it can be said as a matter of law that no trier of fact, acting reasonably, could have found Morford to be a "sexually violent person." Accordingly, the trial court acted within its discretion in granting the State's motion for reconsideration.

¶17 Finally, Morford contends that the order committing him pursuant to WIS. STAT. § 980.06 was insufficient and incorrect. The order in question reads: "The Court finds that the State has shown by clear and convincing evidence that the Respondent is still a sexually violent person and that it is still substantially probable that the Respondent will engage in acts of sexual violence if not placed in institutional care." We conclude that the order is based on the evidence of record and applies the correct legal standard.

¶18 Based upon the foregoing, the trial court is affirmed.

By the Court.—Orders affirmed.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)5.