COURT OF APPEALS
DECISION
DATED AND FILED

January 29, 2014

Diane M. Fremgen
Clerk of Court of Appeals

Appeal No. 2013AP1983-FT **Cir. Ct. No. 1996ME642**

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

IN THE MATTER OF THE MENTAL COMMITMENT OF MICHAEL J. S.:

WAUKESHA COUNTY,

PETITIONER-RESPONDENT,

V.

MICHAEL J. S.,

RESPONDENT-APPELLANT.

APPEAL from an order of the circuit court for Waukesha County: MICHAEL O. BOHREN, Judge. *Affirmed.*

¶1 BROWN, C.J.[1] Michael J.S. appeals an order extending his commitment on the basis that his lack of recent dangerous behavior makes him statutorily ineligible to be forcibly medicated. Michael's argument contradicts case law holding that imminent acts are not required to sustain a commitment. We affirm.

Facts

¶2 Michael is a diagnosed schizophrenic and has been on a court-ordered commitment for thirty-five years, with the exception of a two-year period when the commitment was withdrawn. That two-year period ended in 1996, when Michael was committed under WIS. STAT. § 51.20 after an incident in which he drove his bicycle erratically on a highway and had a violent confrontation with police. In 1996 Michael relapsed when he had been off his medication for three months. Since 1996, Michael's commitment order has been extended numerous times, he has been under continuous medication, and he has exhibited no more dangerous behavior.

¶3 On February 15, 2013, Waukesha County filed another petition to extend Michael's commitment. Dr. Edmundo Centena testified that Michael required medication to control his schizophrenia. Dr. Centena stated that Michael's condition impairs his judgment, behavior, mood, and ability to meet the ordinary demands of life, and that Michael is dangerous as defined by the standard for commitment. Dr. Centena acknowledged that his testimony was based on past meetings with Michael and on collateral information because Michael has refused

[1] This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(d) (2011-12). All references to the Wisconsin Statutes are to the 2011-12 version.

to meet with him for the past thirteen years. Dr. Centena further testified that Michael is not capable of expressing an understanding of the advantages, disadvantages, and alternatives to psychotropic medication is not capable of applying any understanding to his own situation; and is incompetent to refuse medications due to his mental illness.

¶4 A mental health counselor with the Waukesha County Support Program also testified. The counselor stated that Michael has been late several times for his medication appointments but never more than five or six days late. The counselor also testified that Michael does not believe he needs medication and does not believe he is mentally ill.

¶5 In ruling to extend Michael's commitment, the trial court stated it was satisfied with Dr. Centena's opinion as to Michael's mental illness and that the State had met its burden of providing clear and convincing evidence that without treatment Michael would regress to the dangerous conduct and demeanor he exhibited in 1996. The court also stated that a "historical analysis" was appropriate because "we would expect [Michael] to not be acting out in dangerous ways based upon treatment and medications." The court expressed that Michael's failure to meet with his caregivers was not a bar to the caregivers expressing opinions about his dangerousness because "you can rely upon records and background to render such opinions." Michael now appeals the extension of his commitment.

Analysis

¶6 Under WIS. STAT. § 51.20, involuntary commitment for treatment is authorized if the circuit court determines that an individual is (1) mentally ill, (2) a proper subject for treatment, and (3) dangerous. Each of these prerequisites must

be shown by clear and convincing evidence. *See* WIS. STAT. § 51.20(1). Michael does not dispute that in his case, the first two prongs are satisfied: he is mentally ill and is a proper subject for treatment. But he argues that the evidence was insufficient to prove the third prong, dangerousness, because he has not exhibited any dangerous behavior since 1996. We review application of the facts to law de novo and we will not overturn the circuit court's findings of fact unless clearly erroneous. ***K.N.K. v. Buhler***, 139 Wis. 2d 190, 198, 407 N.W.2d 281 (Ct. App. 1987).

¶7 Michael claims that the evidence of his dangerousness was insufficient to show that it is "substantially probable … that withdrawing treatment … will make Michael a proper subject for commitment," because he has not engaged in any dangerous behavior in recent years, even though he has on occasion been four or five days late for his scheduled medication injections. However, the State is correct that case law clearly indicates that it is not necessary to prove dangerousness by recent acts or omissions:

> We find support for our conclusion in several supreme court precedents.… In rejecting the sufficiency of the evidence challenges, the court obviously had to apply the definition of dangerousness to the facts. The relevance of the timeframe for future dangerousness was therefore readily apparent, yet, nowhere in either discussion does the court refer to an "imminence" requirement.

State v. Olson, 2006 WI App 32, ¶7, 290 Wis. 2d 202, 712 N.W.2d 61 (interpreting WIS. STAT. ch. 980).

¶8 As the trial court stated, dangerousness can be determined by reference to past history. The issue of dangerousness is often a historical one. Michael implies that since he has not exhibited any dangerous behavior during the recent short lapses in his treatment regime, there is insufficient evidence of

dangerousness. However, Michael provides the court with no evidence, expert or otherwise, that a five or six-day delay in taking medication is proof that he can function without medication. Instead, Michael's pre-1996 relapse when he was off his medication for several *months* and Dr. Centena's testimony are both probative of a finding that he will revert to a dangerous demeanor if off of his medication for an extended period of time. As the State aptly points out,

> The clear intent of the legislature in amending [WIS. STAT. §] 51.20(1)(am), was to avoid the "revolving door" phenomena 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).

¶9 Michael also claims that Dr. Centena's testimony must be discounted because the doctor has not met with him for years. But it is Michael who has refused to meet with Dr. Centena for years. If a recent examination were a necessary precedent to a doctor giving his or her opinion in a forcible medication case, then a refusal to meet with the doctor would automatically entitle petitioners to freedom from having to take medication. This cannot be the law. Michael cannot turn his refusal to meet with Dr. Centena into evidence of his lack of dangerousness.

¶10 Under the law, historical dangerousness is sufficient to extend a commitment order. Evidence of recent dangerous behavior is not required. We agree with the circuit court that the medical and mental health professionals' opinions, presented at Michael's commitment hearing, were sufficient to establish dangerousness.

By the Court.—Order affirmed.

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