COURT OF APPEALS
DECISION
DATED AND FILED

November 19, 2026

Samuel A. Christensen
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. 2026AP1796 **Cir. Ct. No. 2003ME181**

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

IN THE MATTER OF THE MENTAL COMMITMENT OF R.P.S.:

GRANT COUNTY,

PETITIONER-RESPONDENT,

V.

R.P.S.,

RESPONDENT-APPELLANT.

APPEAL from orders of the circuit court for Grant County: LISA A. RINIKER, Judge. *Reversed*.

¶1 KLOPPENBURG, J.[1] R.P.S. appeals orders extending his commitment under WIS. STAT. ch. 51 and authorizing his involuntary treatment. R.P.S. argues that Grant County did not meet its evidentiary burden to show that he is dangerous, as that term is used in WIS. STAT. § 51.20(1)(a)2. Because the County did not adduce evidence showing that R.P.S. is dangerous, I reverse.

BACKGROUND

¶2 R.P.S. was initially committed in this case in December 2003, and his commitment has been extended ever since. This appeal is from proceedings that commenced in January 2026, when the County filed a petition for extension along with a report from a psychiatrist. The report opined that R.P.S. is dangerous under the standard established by WIS. STAT. § 51.20(1)(a)2.d. This standard is met where, due to mental illness, a person is "unable to satisfy basic needs for nourishment, medical care, shelter or safety without prompt and adequate treatment so that a substantial probability exists that death, serious physical injury, serious physical debilitation, or serious physical disease will imminently ensue unless the individual receives prompt and adequate treatment for this mental illness." Here, the report asserted that R.P.S. would become a proper subject for commitment under this standard if treatment were withdrawn.

¶3 At the hearing on its petition, the County called the psychiatrist as its sole witness and introduced her report as its sole exhibit. Between the testimony and the report, the County introduced evidence that R.P.S. has been committed

[1] This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(d) (2023-24). All references to the Wisconsin Statutes are to the 2023-24 version.

and psychiatrically hospitalized on many occasions from the 1970s to the present, that he has schizoaffective disorder, and that this condition is treatable.

¶4 Regarding dangerousness, the report noted that R.P.S. has been continuously treated "for the past number of years, and has had no episodes of dangerousness during this time." However, the report also stated that R.P.S. does not believe he has a mental illness and that it "seems clear" that he would stop taking his medications if not committed. According to the report, R.P.S. "[s]topping his medications could lead to psychiatric decompensation, and psychiatric decompensation has been associated in the past with dangerous behavior."[2] The report explained more specifically that the

> link between psychiatric decompensation and dangerousness in the recent past is difficult to establish. It is clear that years ago, psychiatric decompensation led to police contacts, involuntary commitment and hospitalization. If forced to choose, my opinion now is that treatment withdrawal is more likely than not to lead to some type of dangerousness, but uncertainty remains in my mind about exactly what that dangerousness would be and when it would occur.

¶5 In addition to referring to the "police contacts, involuntary commitment and hospitalization" from "years ago," the report made the following assertions about behavior by R.P.S. that could be regarded as dangerous: that he had a suicide attempt at some unspecified time in the past; and that he had "a history of aggression" including allegations that he had threatened a County employee in 2020 and, again at some unspecified "remote" time, had "stalk[ed]" a

[2] In psychology, "decompensation" means "a breakdown in an individual's defense mechanisms, resulting in progressive loss of normal functioning or worsening of psychiatric symptoms." *Decompensation*, APA DICTIONARY OF PSYCHOLOGY, https://dictionary.apa.org/decompensation (last visited Nov. 13, 2026).

social services worker, "apparently driving near the staff member's house." The report also noted that R.P.S. sometimes has "verbal outbursts," though he has had "no episodes whatsoever of physically dangerous or self-harming behavior" for some years. The report noted that R.P.S. currently lives alone with a dog and has occasional contact with his children and grandchildren.

¶6 At the hearing, asked to explain "in layman's terms" why she believed R.P.S. satisfied the WIS. STAT. § 51.20(1)(a)2.d. standard, the psychiatrist testified that R.P.S. receives "a lot of services" from the County in addition to medication, and that if he did not receive such services—if the County did not have staff communicating with and "looking in on" him—"there would be more concern about his … well-being…." The County asked if the psychiatrist agreed that "it's a closer case as far as whether he should be off the commitment than others. The fear, though, would be that he would likely then run into some problems if he were not on the medication, and he stated he won't take the medication because of all the side effects?" The psychiatrist agreed. R.P.S. also testified.

¶7 At the conclusion of the hearing, the circuit court stated that it was clear that R.P.S. has a mental illness and is treatable, and that "[t]he problem here is dangerousness." The court concluded:

> This is not a black and white case, but the evidence that I have in front of me is from a doctor who recognizes that there is not an overt act that would indicate [R.P.S.] is dangerous, yet she still checks the box which would indicate that he is a proper subject for commitment. There is no other doctor's testimony or evaluation to rely upon that would not be consistent with [the psychiatrist's] opinion.
>
> ….

> So I'm going to rely upon her report. I will continue the commitment for another year, and then see if [the psychiatrist] has a different opinion in a year or some other doctor might that I guess I can hang my hat on. So I'll continue it for another year with the involuntary medication order as well.

¶8 R.P.S. appeals.

DISCUSSION

I. General principles and standard of review

¶9 As with an initial commitment order, to secure an order recommitting a person under WIS. STAT. ch. 51, a petitioner must demonstrate that the person meets three criteria. First, the person must be mentally ill. WIS. STAT. § 51.20(1)(a)1. Second, the person's condition must be treatable. § 51.20(1)(a)1. Third, the person must be dangerous. § 51.20(1)(a)2.; ***Langlade County v. D.J.W.***, 2020 WI 41, ¶31, 391 Wis. 2d 231, 942 N.W.2d 277. A person is "dangerous" under ch. 51 if the person meets one or more of the five statutory standards laid out in § 51.20(1)(a)2.a.-e.

¶10 As noted, in this case the County sought to prove R.P.S. dangerous under the fourth statutory standard, WIS. STAT. § 51.20(1)(a)2.d. A person is dangerous under this standard if, due to mental illness, the person is "unable to satisfy basic needs for nourishment, medical care, shelter or safety" unless promptly and adequately treated, and this inability creates "a substantial probability … that death, serious physical injury, serious physical debilitation, or serious physical disease will imminently ensue" without prompt and adequate treatment. Because this proceeding concerns the extension of an existing commitment, the County was not obligated to prove this standard by "recent acts or omissions," but could instead show a "substantial likelihood, based on

[R.P.S.'s] treatment record, that [R.P.S.] would be a proper subject for commitment if treatment were withdrawn." § 51.20(1)(am).

¶11 "Substantial likelihood" in this context means the petitioner must show that the outcome is "much more likely than not." ***Marathon County v. D.K.***, 2020 WI 8, ¶¶35, 61, 390 Wis. 2d 50, 937 N.W.2d 901 (R. Bradley, J., concurring). The petitioner must make this showing by "clear and convincing evidence." WIS. STAT. § 51.20(13)(e).

¶12 In a WIS. STAT. ch. 51 proceeding, "[a] determination of dangerousness is not a factual determination, but a legal one based on underlying facts." ***D.J.W.***, 391 Wis. 2d 231, ¶47. Accordingly, appellate courts review a ch. 51 commitment using a mixed standard, upholding the circuit court's factual findings unless they are clearly erroneous, but independently deciding whether those facts satisfy the legal standard. ***Waukesha County v. J.W.J.***, 2017 WI 57, ¶15, 375 Wis. 2d 542, 895 N.W.2d 783.

II. The evidence that R.P.S. is dangerous was insufficient.

¶13 The issue on appeal is whether the circuit court had before it evidence tending to show a substantial probability that, if treatment were withdrawn, R.P.S. would become "unable to satisfy basic needs for nourishment, medical care, shelter or safety" and that this would in turn create a substantial likelihood of imminent death or serious physical harm.

¶14 R.P.S. argues that the psychiatrist's ambivalent opinions about dangerousness mean that the County did not carry its burden. As noted, her report stated that it was "difficult to establish" a link between decompensation and dangerousness for R.P.S. because his dangerous behavior had occurred years

prior; offered an opinion on dangerousness only "[i]f [the psychiatrist was] forced to choose"; and described dangerousness as "more likely than not" to occur, rather than "much more likely than not" as the standard requires. ***D.K.***, 390 Wis. 2d 50, ¶¶35, 61 (R. Bradley, J., concurring). But the circuit court, as factfinder, is not bound by an expert's opinion. ***Hughes v. Hughes***, 223 Wis. 2d 111, 128, 588 N.W.2d 346 (Ct. App. 1998). Accordingly, even if an expert through a report or testimony arguably opines that a person's likelihood of dangerousness is lower than what WIS. STAT. § ch. 51 requires for commitment, this opinion does not prevent a circuit court from reaching an independent conclusion that the likelihood is higher.

¶15 However, such an independent conclusion would have to be justified by the available evidence. Moreover, this evidence would have to justify not merely a conclusion that a person is "dangerous" in a general or colloquial sense, but in accord with one or more of the five definitions provided by WIS. STAT. § 51.20(1)(a)2. (as modified, or not, by the § 51.20(1)(am) mode of proof). ***D.J.W.***, 391 Wis. 2d 231, ¶¶30-34.

¶16 The County contends that it presented such evidence here. It argues that it submitted proof in a form typical for recommitment cases: first, a showing of particular dangerous behaviors linked to a person's mental condition in the past; second, a showing that the person's treatment under commitment is what has prevented or ameliorated the recurrence of such behavior; and third, a showing that absent commitment, the person is unlikely to continue treatment.

¶17 The County adduced evidence for the last two of these three propositions: that R.P.S. has a "documented history of decompensation upon loss of treatment"; and that R.P.S. will not continue to take psychiatric medication if he

is not under a commitment order. From these two findings, a factfinder could reasonably conclude that R.P.S. faces a substantial likelihood of decompensation in the absence of commitment.

¶18 The failure of evidence relates to the first step in the logical chain described above: evidence about prior dangerous behaviors by R.P.S. tied to his mental condition. Such evidence is necessary because the statutes permit commitment only upon a finding of dangerousness, not decompensation. That is, it is not enough to show that the end of R.P.S.'s commitment would likely lead to his decompensation; the County also had to show that this predicted decompensation would likely bring about one (or more) of the five forms of dangerousness established in the statute. *See* ***Trempealeau County v. S.K.***, No. 2025AP645, unpublished slip op., ¶¶15-16 (WI App Nov. 4, 2025) (evidence insufficient for commitment where subject was likely to decompensate but no showing of what dangerousness might result); ***Clark County v. R.D.S.***, No. 2022AP229, unpublished slip op., ¶14 (WI App Aug. 18, 2022) (petitioner obligated to adduce evidence as to "whether, and how" decompensation would create risk to self or others). The necessary link from decompensation to dangerousness is evidence that the person, when untreated, has a history of dangerous behavior. ***Outagamie County v. C.J.A.***, 2022 WI App 36, ¶17, 404 Wis. 2d 1, 978 N.W.2d 493

¶19 In support of its contention that a likelihood of R.P.S.'s decompensation would create a likelihood of dangerousness, the County cites one statement each from the psychiatrist's testimony and her report: that decompensation "has been associated in the past with dangerous behavior"; and that "treatment withdrawal is more likely than not to lead to some type of dangerousness."

¶20 These opinions, expressed by the psychiatrist, are insufficient to show that R.P.S. is dangerous under any of the five statutory standards, including that of WIS. STAT. § 51.20(1)(a)2.d. One of the ways WIS. STAT. ch. 51 guards against the unjustified deprivation of a person's liberty is that it does not permit commitment based on a vague or amorphous conclusion that a person is "dangerous." ***Winnebago County v. S.H.***, 2020 WI App 46, ¶17, 393 Wis. 2d 511, 947 N.W.2d 761 ("conclusory opinions parroting the statutory language without actually discussing dangerousness [] are insufficient to prove dangerousness in an extension hearing"). The evidence must meet one of the five standards.

¶21 What is missing from this case is any evidence that R.P.S. is likely to be dangerous in the manner specified by WIS. STAT. § 51.20(1)(a)2.d.: that he is likely to be "unable to satisfy basic needs for nourishment, medical care, shelter or safety" and that this, in turn, creates a substantial probability of death or serious injury, debilitation or disease. As noted, in a recommitment case, this type of showing is generally made by presenting evidence that the person has, in the past, demonstrated such an inability to provide for basic needs. *See* ***S.H.***, 393 Wis. 2d 511, ¶13 and n.6 ("Dangerousness in an extension proceeding can and often must be based on the individual's precommitment behavior, coupled with an expert's informed opinions and predictions …."). For example, in ***Sauk County v. S.A.M.***, 2022 WI 46, 402 Wis. 2d 379, 975 N.W.2d 162 (on which the County relies), our supreme court upheld a commitment based on a different statutory standard of dangerousness: that of § 51.20(1)(a)2.c. That standard requires a showing that, due to impaired judgment, the person has a "substantial probability of physical impairment or injury to one's self or others." ***S.A.M.***, 402 Wis. 2d 379, ¶4. The supreme court observed that S.A.M., before his commitment, had been homeless,

displayed signs of malnourishment, and suffered from trench foot due to a failure to change shoes for long periods of time. ***Id.***, ¶7. When combined with evidence that S.A.M. would not continue treatment absent commitment, the court found that this was a sufficient showing of dangerousness under § 51.20(1)(a)2.c. ***S.A.M.***, 402 Wis. 2d 379, ¶34.

¶22 Despite the County's reliance on ***S.A.M.***, it makes no argument that it presented the circuit court here with evidence analogous to the evidence in that case: evidence that R.P.S. has a history, due to mental illness, of an inability to provide for his own "nourishment, medical care, shelter or safety." There was no evidence presented that R.P.S. has ever had difficulty feeding himself, obtaining medical care, or maintaining shelter. Regarding the final listed item, "safety," although the County does not mention it in its brief, there was a statement in the psychiatrist's report that R.P.S. had, at some time in the past, attempted suicide. Although intentional harm to oneself is more directly addressed in another of the statutory dangerousness definitions, WIS. STAT. § 51.20(1)(a)2.a., such history might arguably also evidence a risk to a person's "safety" as that term is used in § 51.20(1)(a)2.d. But even allowing for this interpretation, a bare reference to a past suicide attempt is insufficient to carry the burden in a WIS. STAT. ch. 51 case. In this case, neither the report nor the testimony gave any further information about this alleged attempt, including, importantly, when it is said to have occurred. Given that R.P.S. has been committed multiple times beginning in the 1970s, this incident may have occurred 50 years ago or more. The total absence of information about this alleged event renders it "old enough, weak enough, [and] otherwise insufficient" to sustain a commitment under any dangerousness standard. *See* ***S.H.***, 393 Wis. 2d 511, ¶13 n.6.

¶23 The County argues that the psychiatrist's "inability to specify the exact form or timing of the harm is not a defect in the proof." It cites a statement from ***S.H.*** that "neither the statute nor the applicable case law requires an expert or circuit court to speculate on the precise course of an individual's impending decompensation by identifying specific future dangerous acts or omissions the individual might theoretically undertake without treatment." ***Id.***, ¶13. This is true, but in the same paragraph, ***S.H.*** also says that "a medical expert in a WIS. STAT. ch. 51 proceeding must 'link' [the expert's] testimony 'back to the standards in the statute,' such that the expert's misstatement of that standard, or the lack of any evidence supporting a legal conclusion, will render the testimony insufficient." ***Id.*** (quoted source omitted); *see also* ***C.J.A.***, 404 Wis. 2d 1, ¶17 (Wisconsin statutes protect constitutional right to freedom from unjustified commitment by "narrowly assess[ing] current dangerousness based on recent acts or specific instances of past dangerous behavior").

¶24 The problem in this case is not that the psychiatrist could not specify precisely when R.P.S. might behave dangerously, or exactly what form that behavior might take. Rather, the problem is that the County presented no evidence by the psychiatrist or another witness about R.P.S.'s prior conduct in sufficient detail from which the circuit court could reasonably find that it is much more likely than not that R.P.S. is currently dangerous. Here, the psychiatrist—who was the only witness the County presented—did not give any evidence, in her report or her testimony, that would support the legal conclusion that R.P.S. is dangerous under the applicable statutory standard, WIS. STAT. § 51.20(1)(a)2.d. If the psychiatrist here was unable to provide such evidence in admissible form, evidence from other sources—family members, County social services workers, law enforcement officers, or anyone with sufficient knowledge—might have

provided concrete examples of R.P.S.'s prior conduct that would have underpinned a finding of dangerousness under the statute. In the absence of such evidence, I am obligated to reverse R.P.S.'s commitment.

CONCLUSION

¶25 The orders extending R.P.S.'s commitment and ordering his involuntary medication are reversed.

By the Court.—Orders reversed.

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