

**COURT OF APPEALS
DECISION
DATED AND FILED**

October 15, 2014

Diane M. Fremgen
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. 2014AP1435-FT

Cir. Ct. No. 2013ME214

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT II**

IN THE MATTER OF THE MENTAL COMMITMENT OF STEVEN H.:

KENOSHA COUNTY,

PETITIONER-RESPONDENT,

V.

STEVEN H.,

RESPONDENT-APPELLANT.

APPEAL from an order of the circuit court for Kenosha County:
JASON A. ROSSELL, Judge. *Affirmed.*

¶1 NEUBAUER, P.J.¹ Steven H. appeals from an order for commitment. Steven argues that there was insufficient evidence to find him dangerous to others. We disagree and affirm the circuit court.

BACKGROUND

¶2 In November 2013, three staff members of the facility where Steven was living filed a petition for examination, indicating that Steven was mentally ill, a proper subject for treatment, and dangerous to himself or others. The petition indicated:

Subject states that the evil spirits tell him to kill people at times. Subject has had homicidal ideations about other residents at the facility where he resides. He has threatened to hurt a staff member Other residents have expressed concern for their own safety.

The petitioners attached letters detailing Steven’s concerning behavior, all three mentioning Steven’s “homicidal ideations.” On November 20, 2013, the court ordered a final hearing on the matter and appointed two doctors to examine Steven. The doctors both opined that Steven met the criteria for commitment. Both doctors noted Steven’s extensive history of psychiatric care, including at least twelve hospitalizations. Dr. J.R. Musunuru’s report also indicated that Steven denied he has schizophrenia and would not cooperate with taking his medications because he thought they were poisoning him. Musunuru opined in his report that Steven “is severely psychotic with hallucination, delusion [or] other symptoms indicating of schizophrenic illness.” Musunuru related Steven’s homicidal ideations, including his plans to kill a fellow resident at the facility

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 unless otherwise noted.

where Steven lived. Musunuru stated in his report that Steven “[e]vidences a substantial probability of physical harm to other individual[s] as manifested by violent or homicidal behavior or evidence that others are placed in reasonable fear of violent behavior and physical harm, as evidenced by recent overt act, attempt or threat to do such physical harm.”

¶3 At the November 22, 2013 commitment² hearing, Musunuru testified that he had interviewed Steven and based his testimony on that interview as well as his review of documents including chart notes, the petition attachments, notes from nurses, and a history and physical performed by a treating psychiatrist. He found that Steven suffers from schizophrenia and that the condition is treatable. Musunuru testified that Steven believes there are people residing at his facility who are eating children and that Steven wants to kill those people. Musunuru reaffirmed his conclusion in his report, opining, “He’s definitely a danger to others at this time.”

¶4 Jami Detjens, a social worker at the facility where Steven lived and one of the petitioners, also testified. She told the court that Steven “expresses some really agitated and homicidal ideations” and talks about “people that ... he needs to commit genocide against.” She described Steven yelling, swearing, and shaking his fists. She testified that, within the last year, Steven had hit a resident. Detjens said she had noticed Steven’s aggressive behavior toward other residents and that she had seen them in fear due to his behavior, agitation, and outbursts. Detjens told how Steven had made reference to wanting to harm specific people

² The transcript is entitled “Recommitment Hearing,” but the order does not indicate that this was an extension of commitment. The court and Steven’s attorney, at the postdispositional hearing, refer to the commitment, not the recommitment.

there. She told of a letter Steven wrote to a nurse at the facility, wherein he stated that it is his job to “bring final death.” The court found that Steven met the criteria for commitment under WIS. STAT. § 51.20(1)(a)2.b., “that others are in reasonable fear due to a threat of harm.” The court ordered Steven committed to a locked facility for six months. The court also entered an order for involuntary medication and treatment, which is uncontested on appeal.

ANALYSIS

¶5 Our standard of review of the circuit court’s decision on commitment is twofold. The circuit court’s findings of fact will be upheld unless clearly erroneous, but whether those facts meet the statutory requirements is a question of law we review de novo. *K.N.K. v. Buhler*, 139 Wis. 2d 190, 198, 407 N.W.2d 281 (Ct. App. 1987).

¶6 To involuntarily commit an individual for treatment, the County must prove by clear and convincing evidence that the individual is mentally ill, is a proper subject for treatment, and is dangerous. WIS. STAT. § 51.20(1)(a), (13)(e). Steven does not contest the first two prongs; he argues that the County did not prove dangerousness. Here, the standard for dangerousness was § 51.20(1)(a)2.b.,³ under which the County must show that the subject:

Evidences a substantial probability of physical harm to other individuals as manifested by evidence of recent homicidal or other violent behavior, or by evidence that others are placed in reasonable fear of violent behavior and

³ The circuit court also found that there were grounds to commit Steven under “the fifth standard,” or WIS. STAT. § 51.20(1)(a)2.e., but Steven does not contest this finding in his brief. Musunuru also opined there were grounds to commit Steven under § 51.20(1)(a)2.c. Given our conclusion that there is sufficient evidence under § 51.20(1)(a)2.b., we need not reach these grounds.

serious physical harm to them, as evidenced by a recent overt act, attempt or threat to do serious physical harm.

¶7 Steven argues that the evidence was insufficient to prove that he was a danger to others. Steven makes two arguments. First, Steven points to Detjens' testimony, pointing out that although she testified that Steven "made several comments about" a fellow resident, Steven had access to that resident and did not harm him. Second, Steven tells us that he never harmed Detjens, even though she took him places in her car as part of her job.

¶8 We need not go on at length to dispose of Steven's arguments. Steven does not contest petitioners' report of his homicidal ideations nor Musunuru's detail in his report that Steven told him he planned to kill a fellow resident. Steven seems to argue that his threats of homicidal behavior are not in themselves homicidal behavior because Steven has not carried out the threats. Steven's repeated statements that he wants to kill people, in light of his psychotic behavior, are homicidal behavior. With regard to Detjens, she found Steven threatening enough that she signed the petition for examination, even if she transported him in her car as part of her job. Steven does not deny any of the reports of homicidal ideation, which is telling.

¶9 Under WIS. STAT. § 51.20(1)(a)2.b., when determining if others are placed in reasonable fear of violent behavior, the court should focus on the mental state and objective acts of the subject. *R.J. v. Winnebago Cnty.*, 146 Wis. 2d 516, 521-22, 431 N.W.2d 708 (Ct. App. 1988). To satisfy § 51.20(1)(a)2.b., threats need not be made directly to the threatened person; threats to a third party are properly considered. *R.J.*, 146 Wis. 2d at 518, 522-23. Here, the court properly looked to Steven's mental state and objective acts, as reported by the appointed examining physicians and attested to by the witnesses at the hearing.

¶10 Even though we do not have direct testimony from other residents at Steven's facility, we have competent evidence that Steven targeted particular people who agitate him and who, he feels, deserve retribution. We have testimony from a social worker at the facility of reactions from other residents due to Steven's behavior. This is evidence in addition to statements Steven has made to the doctor and in letters and speech to Detjens. There is ample evidence of Steven's dangerousness to support the circuit court finding for commitment.

By the Court.—Order affirmed.

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

