COURT OF APPEALS
DECISION
DATED AND FILED

March 26, 1998

Marilyn L. Graves
Clerk, Court of Appeals
of Wisconsin

No. 97-3489

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

IN THE MATTER OF VERDA C.R.,
ALLEGED TO BE MENTALLY ILL:

SAUK COUNTY,

PETITIONER-RESPONDENT,

V.

VERDA C.R.,

RESPONDENT-APPELLANT.

APPEAL from an order of the circuit court for Sauk County: VIRGINIA A. WOLFE, Judge. *Affirmed.*

ROGGENSACK, J.[1] Verda C.R. appeals a mental commitment order authorizing the involuntary administration of certain medications. She

[1] This appeal is decided by one judge pursuant to § 752.31(2)(d), STATS.

claims that the evidence introduced at her commitment hearing was insufficient to establish that she was a danger to herself or others under any of the criteria listed under § 51.20(1)(a), STATS. For the reasons discussed within, this court disagrees and the order of the circuit court is affirmed.

BACKGROUND

On July 28, 1997, Sauk Prairie Police Officer William Richards responded to a call of a disturbance at Verda's address. Upon his arrival, Richards discovered Verda's clothing, dishes, foodstuffs, and other belongings piled up in the hallway outside of her apartment door. Verda informed Richards that she was going to put all of her things in a dumpster, because "that was a fortune told." Richards found Verda more agitated than she had been in prior contacts, and worried that she was in danger of harming herself since she had discarded all of the items in her apartment which she would need to take care of herself. Richards therefore took Verda into custody and filed a Statement of Emergency Detention.

On July 30, 1997, the circuit court held a probable cause hearing. It concluded that the testimony showed a substantial probability that Verda would harm herself, and granted the County's petition for a commitment evaluation. The County then detained Verda and had her examined by two mental health care providers. The first clinical psychologist, Dr. James Hobart, spent about seven to ten minutes speaking with Verda, who was uncooperative. He also reviewed her mental health records. He concluded that Verda suffered from a schizoaffective disorder which could impair her judgment and functioning. Although not licensed to prescribe drugs himself, Hobert believed that Verda's condition could be treated with certain psychotropic medications, and that otherwise, her condition was likely to progressively worsen.

A psychiatrist, Dr. James Thiel, also examined Verda and also concluded that she suffered from a schizoaffective disorder and possibly a bipolar disorder in manic phase, as well. He reasoned that her disorganized thought processes were a manifestation of psychosis, which could be treated with psychotropic medications administered in an in-patient setting, initially. He further opined that Verda could be a danger to herself, if medications were not administered, based on "her poor judgment, her poor insight, her quality of grandiosity and thinking" and because "she is unable to make reasonable judgments for herself." It was his medical opinion that she might place herself in danger simply by interjecting herself into someone's personal space, or by being unaware that a certain situation was dangerous.

On August 6, 1997, after the hearing on the petition, the court found that Verda suffered from a major mental illness that was treatable and that caused her to be a danger to herself under § 51.20(1)(a), STATS. It ordered her committed for a period of six months. The court also authorized placement in a secure in-patient facility and the involuntary administration of psychotropic medications, until such time as Verda would be able to participate in outpatient services. The commitment order was later extended an additional year for outpatient treatment. Verda concedes on appeal that she is mentally ill and could be treated, but disputes the circuit court's determination that she was dangerous to herself.

DISCUSSION

Standard of Review.

A commitment proceeding presents questions of fact as to what acts or omissions the subject of the commitment petition has committed and what those acts or omissions signify for the future. Section 51.20(1)(a), STATS.; *see also* ***M.J.***

v. Milwaukee County Combined Community Services Bd., 122 Wis.2d 525, 529, 362 N.W.2d 190, 193 (Ct. App. 1984) (treating the elements for commitment as questions of fact). We will not overturn a factual finding unless it is clearly erroneous. ***Noll v. Dimicelli's, Inc.***, 115 Wis.2d 641, 643, 340 N.W.2d 575, 577 (Ct. App. 1983). The issue of dangerousness is a mixed question of fact and law, as the court applies the facts found to the legal standard of the statute. *See* ***Wiederholt v. Fischer***, 169 Wis.2d 524, 530-31, 485 N.W.2d 442, 444 (Ct. App. 1992). When the court's legal conclusion is so intertwined with its factual findings, we give weight to the circuit court's legal conclusion. ***Id.***

Dangerousness.

Verda correctly points out that proof of dangerousness is a constitutional prerequisite to an involuntary commitment. ***O'Connor v. Donaldson***, 422 U.S. 563, 575 (1975). Specifically, the state or, as in this case, the county, bears the burden of proving by clear and convincing evidence that the subject of an involuntary commitment petition presents a danger to himself or herself or to others. ***State v. Randall***, 192 Wis.2d 800, 818, 532 N.W.2d 94, 100 (Ct. App. 1995). Under § 51.20(1)(a)2.c., STATS.,[2] an individual may be considered dangerous when he or she:

> Evidences such impaired judgment, manifested by evidence of a pattern of recent acts or omissions, that there is a substantial probability of physical impairment or injury to himself or herself. The probability of physical impairment or injury is not substantial under this subd. 2.c. if reasonable provision for the subject individual's protection is available in the community and there is a reasonable probability that the individual will avail himself or herself of these services …. Food, shelter or other care

[2] The County does not contend that other criteria for dangerousness, such as being suicidal or homicidal, were met in this case.

> provided to an individual who is substantially incapable of obtaining the care for himself or herself, by a person other than a treatment facility, does not constitute reasonable provision for the subject individual's protection available in the community under this subd. 2.c.

In this case, both doctors testified that they considered Verda's judgment to be impaired, based on their personal interviews with her, as well as her medical records. Still, Verda argues that, evidence of her impaired judgment notwithstanding, her single act of throwing out her belongings does not constitute a "pattern of recent acts or omissions" nor does it satisfy the substantiality requirement, within the meaning of this section. She asserts that the mental health care providers were unable to point to any other specific acts or omissions which supported their conclusion of a substantial probability that she would harm herself. However, the record does not support Verda's argument. Rather, the record, which includes the report of Dr. Hobart, shows other acts, e.g., that Verda had begun to complain about persons breaking into her apartment and stealing things. Also, she spent hundreds of dollars on clothing which she then gave away. Dr. Thiel observed Verda interject herself into conversations between others in an intrusive manner. In conjunction with Verda's refusal to voluntarily participate in future treatment, we conclude that the evidence was sufficient to satisfy the criteria of a substantial probability of impairment or injury as set forth in § 51.20(1)(a)2.c., STATS., despite the fact that she had not actually harmed herself in the past.

CONCLUSION

The dangerousness prong of the commitment statute, § 51.20(1)(a)c.2., STATS., does not require that a county wait until an individual has injured herself before taking protective action. A showing of acts or omissions

which indicate significantly impaired judgment may be sufficient to prove a substantial probability that such injury may occur. Verda has not shown that the circuit court's determination of dangerousness was in error. Therefore, we affirm.

By the Court.—Order affirmed.

This opinion will not be published in the official reports. *See* RULE 809.23(1)(b)4., STATS.