COURT OF APPEALS
DECISION
DATED AND FILED

April 30, 1998

Marilyn L. Graves
Clerk, Court of Appeals
of Wisconsin

No. 97-3680-FT

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

IN THE MATTER OF THE MENTAL COMMITMENT OF NOAH P.A.:

DODGE COUNTY,

PETITIONER-RESPONDENT,

V.

NOAH P.A.,

RESPONDENT-APPELLANT.

APPEAL from an order of the circuit court for Dodge County: DANIEL W. KLOSSNER, Judge. *Affirmed.*

ROGGENSACK, J.[1] Noah P.A. challenges his mental health recommitment on the grounds that the circuit court applied the wrong standard of

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

law and denied him due process, by interrupting his presentation of evidence and discussing the facts of another case. However, a review of the record demonstrates that the circuit court did apply the correct burden of proof, did consider the proper statutory factors, and did not deny Noah due process of law. Accordingly, Noah's recommitment order is affirmed.

BACKGROUND

On March 20, 1997, Noah P.A. was first committed under ch. 55, STATS., to the care and custody of Dodge County for a period of six months for treatment as an outpatient, after he reported that he was hearing voices from a radio which was not turned on, experiencing increased anxiety and feeling out of control. Noah reported that he feared he might hurt himself or his parents.

On September 11, 1997, the County filed a petition for an extension of Noah's commitment. At the hearing held September 17, 1997, Noah's treating psychiatrist, Dr. Kenneth Graupner, testified that Noah was mentally ill and that his illness was aggravated by marijuana use. He stated that the psychotic symptoms of Noah's illness could return if he stopped taking his psychotropic medications or continued using marijuana, and that urine screens indicated that Noah had not discontinued marijuana use. In Graupner's medical opinion, Noah's treatment record indicated a substantial likelihood that he would be a proper subject for commitment if treatment were discontinued.

Noah testified about his medication history. During his testimony, the court interrupted him with its own objection to the relevancy of his testimony. The court informed counsel that the main issue was the possibility of a recurrence of Noah's psychotic manifestation of mental illness due to his continued use of

controlled substances. The court then allowed counsel to proceed, but she asked only two more questions, neither of which addressed the drug issue.

On September 20, 1997, the circuit court granted the petition for recommitment based on Noah's continued mental illness and the deleterious effect of Noah's continued marijuana use on his ability to keep in touch with reality and to deal with his illness. The court found he was dangerous to himself and that he was a proper subject for treatment. It found that out-patient treatment was the least restrictive alternative and so ordered, until September 20, 1998. The court also analogized Noah's situation to another case in which a young man had killed his mother and a neighbor while under the influence of marijuana, but specifically noted that it was not making its decision based on the facts of that other case. The court implied, however, that Noah's commitment would likely continue until drug screens showed that Noah had quit smoking marijuana for an extended period of time.

DISCUSSION

Standard of Review.

This court reviews *de novo* the application of a statute to a set of facts. ***Maxey v. Redevelopment Authority of City of Racine***, 120 Wis.2d 13, 18, 353 N.W.2d 812, 815 (Ct. App. 1984). Generally, we will not disturb an evidentiary ruling on relevancy, so long as it was rationally made in accord with the proper legal standard and facts of record. ***State v. Migliorino***, 170 Wis.2d 576, 590, 489 N.W.2d 678, 683 (Ct. App. 1992). However, we will independently determine whether due process requirements have been satisfied. ***State v. Seeley***, 212 Wis.2d 75, 81-82, 567 N.W.2d 897, 901 (Ct. App. 1997).

Criteria for Recommitment.

The County had the burden to present clear and convincing evidence that Noah was mentally ill and a proper subject for commitment if treatment were withdrawn. Section 51.20(13)(e), STATS. Section 51.20(1)(am) provides in relevant part:

> [I]f the individual has been the subject of outpatient treatment for mental illness, developmental disability or drug dependency immediately prior to commencement of the proceedings as a result of a commitment ordered by a court under this section …, the requirements of a recent overt act, attempt or threat to act under par. (a)2.a. or b., a pattern of recent acts or omissions under par. (a)2.c. or e. or recent behavior under par. (a)2.d. may be satisfied by a showing that there is a substantial likelihood, based on the subject individual's treatment record, that the individual would be a proper subject for commitment if treatment were withdrawn.

Noah first argues that the circuit court applied the wrong burden of proof, based on its failure to mention the clear and convincing standard at any point in its decision. However, a circuit court "is not required to recite magic words" to set forth sufficient findings of fact. ***State v. Echols***, 175 Wis.2d 653, 672, 499 N.W.2d 631, 636 (1993). The facts of record in this case support an implicit finding that the County had met its burden by clear and convincing evidence. *See* ***id***.

First, Graupner's opinion that Noah was mentally ill was uncontroverted. Second, he testified that Noah would be a proper subject for commitment if treatment were withdrawn. Third, he opined that his continued use of marijuana could trigger a return of his psychosis even if he continued taking his medications. Therefore, Noah's testimony that he found the medications helpful and intended to continue taking them did not rebut the opinion of Graupner. The

combined facts that Noah had tested positive for marijuana during his commitment and that his treating psychiatrist believed marijuana use risked triggering a recurrence of his psychosis provided clear and convincing evidence that Noah was a proper subject for commitment.

Due Process.

One has a constitutional right not to be involuntarily committed without due process. ***C.S. v. Racine County***, 137 Wis.2d 217, 224, 404 N.W.2d 79, 83 (1987). Due process rights include a meaningful opportunity to be heard by a fair and impartial decision maker, before an involuntary commitment can occur. *See* ***State ex rel. Schaeve v. Van Lare***, 125 Wis.2d 40, 44 n.3, 370 N.W.2d 271, 274 n.3 (1985) *and* ***Guthrie v. WERC***, 111 Wis.2d 447, 454, 331 N.W.2d 331, 335 (1983).

Noah argues that the trial court manifested partiality and denied him a meaningful opportunity to be heard, when it raised a *sua sponte* objection to the relevance of his testimony and made reference to another case. We disagree. As discussed above, Noah's willingness to take medications was of marginal relevance to his need for recommitment because the psychotic manifestations of his illness could be triggered by marijuana use, even when medications were taken. Therefore, the circuit court did not erroneously exercise its discretion when it limited the presentation of evidence on that topic.

Furthermore, Noah made no offer of proof, and gives no indication on appeal, of the testimony he would have presented had the trial court not asked counsel to move along. It is therefore impossible for this court to evaluate whether Noah could have been prejudiced in any way by the court's interruption

of his direct examination. *See* ***Gainer v. Koewler***, 200 Wis.2d 113, 120, 546 N.W.2d 474, 477 (Ct. App. 1996).

Finally, the trial court's comments regarding the tragedy which occurred in another case do no more than help explain why the court chose to place weight on the doctor's testimony that marijuana use could trigger psychosis. The real life experiences of a fact finder may properly be used to judge credibility and assign weight to testimony. ***State ex rel. Cholka v. Johnson***, 96 Wis.2d 704, 713, 292 N.W.2d 835, 840 (1980). As the court itself recognized that the facts of the case at bar differed from the facts of the other case, we do not consider its mention of that case to have demonstrated partiality or bias toward Noah's position at the hearing.

CONCLUSION

Noah was given a meaningful opportunity to be heard on the issue of his recommitment. He did not present any evidence to controvert the clear and convincing evidence produced by the County that his continued marijuana use placed him in danger of a psychotic relapse, and thus made him a proper subject for commitment.

By the Court.—Order affirmed.

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