

**COURT OF APPEALS
DECISION
DATED AND FILED**

February 18, 2015

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. 2014AP2008-FT

Cir. Ct. No. 2013ME2080

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT I**

IN RE THE COMMITMENT OF AARON B.:

MILWAUKEE COUNTY,

PETITIONER-RESPONDENT,

V.

AARON B.,

RESPONDENT-APPELLANT.

APPEAL from an order of the circuit court for Milwaukee County:
KAREN E. CHRISTENSON, Judge. *Affirmed.*

¶1 NEUBAUER, P.J.¹ Aaron B. appeals from a circuit court order extending his mental health commitment for twelve months. The issue on appeal is whether Milwaukee County presented sufficient evidence to show that Aaron would be a proper subject for commitment if treatment were withdrawn. We conclude that the County met its burden of proving that Aaron would be a proper subject for commitment if treatment were withdrawn under § 51.20(1)(am). We affirm the circuit court's order.

BACKGROUND

¶2 Aaron was committed in July 2013, after an altercation in which he bit his caregiver's ear off. According to the police report, which was filed as part of the order for final hearing on commitment and copied to the parties and court-appointed experts as part of the notice of final hearing on that commitment, the altercation occurred following a doctor's appointment that was cut short when Aaron refused to cooperate. Some of the reasons for Aaron's doctor appointment that day are notable. First, Aaron needed treatment because he had torn out several of his own toenails, presumably with his teeth. Second, Aaron needed to submit a blood test for communicable diseases because he had bitten someone's wrist the day before. After numerous unsuccessful attempts to elicit Aaron's cooperation, his caregivers chose to end the appointment and take Aaron back to the group home.

¶3 The group returned to the car, and Aaron got into the backseat with one of the caregivers. Once in the car, Aaron refused to put on his seatbelt. After

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.

a brief discussion, the driver insisted that Aaron put on his seatbelt. Aaron responded by attacking the caregiver sitting next to him. The caregiver told the police—after being stabilized at a nearby hospital—that the attack had happened very fast. He said that Aaron lunged toward him and said, “[N]ow I got you.” The caregiver’s next recollection was seeing his ear in Aaron’s hand. Aaron handed the man’s ear back to him, and at the same time “Aaron was also ripping out his hair.” Police and paramedics were called to the scene, and Aaron was taken into custody on an emergency detention under WIS. STAT. § 51.15. Ultimately, the court found that Aaron was mentally ill, a proper subject for treatment, and dangerous to himself or others under WIS. STAT. § 51.20(1) or (1m). On November 1, 2013, the court committed Aaron for two months. *See* § 51.20(13).

¶4 In late December, the County filed a motion, pursuant to WIS. STAT. § 51.20(13)(g)3., seeking to extend Aaron’s commitment. On the same day, the “Milwaukee County 51.42 Board” also requested an extension of commitment. Supporting this request was a statement from one of Aaron’s treating physicians, indicating:

Patient can be extremely dangerous to himself or others when unstable. Patient does not have adequate understandings into his symptoms and behaviors, i.e. very poorly insightful. Patient has engaged in self-mutilation as well as causing injuries to others when ill. Medications and treatment do provide significant benefit to this patient.

¶5 An extension hearing was held on January 3, 2014. The court heard testimony from two doctors; both doctors testified that they were aware that Aaron bit off someone’s ear. Dr. Suraj Singh, a staff psychiatrist at the Milwaukee County Behavioral Health Division (BHD) and one of Aaron’s treating physicians, testified that he had interviewed Aaron many times, was familiar with Aaron’s

treatment record, and had consulted with other doctors about Aaron's case. Singh testified that Aaron was suffering from two variants of treatable mental illness: psychosis not otherwise specified and impulse control disorder, and suffered from cognitive impairment as well. Singh continued:

Well, in his case he's been complaining of auditory hallucinations. He also has impulse control issues ... he's not able to inhibit his behavior which sometimes results in aggression, both physical and verbal.

He also has self-injurious behavior. And in terms of when his demands are not met, he acts out. He pulls out his nails, scratches himself, and at times he has ... thrown furniture around, which ... result[s] in dangerous situations on the unit.

Singh testified that Aaron's behavior had shown overall improvement and that when Aaron takes his medication as prescribed, "he's calm. He's very much in control." Although Aaron's behavior had shown improvement, Singh's opinion was that Aaron should remain committed. Singh's "biggest concern would be if he stops taking medication, that might result in his return to the psychotic symptoms; secondly, impulse control might result in more incidents of aggressive nature." Singh noted that Aaron's treatment history showed "an increase in incidents of aggression overall and physical aggression when ... he stopped taking his medications." Singh believed that a locked, inpatient unit at BHD was the least restrictive placement for Aaron.

¶6 Dr. Judy Kisicki, a psychiatrist appointed by the court under WIS. STAT. § 51.20(9) to examine Aaron who was also appointed on the original commitment, met with Aaron several times, reviewed his treatment records, and consulted with others who were familiar with Aaron's case. Kisicki testified that Aaron 1) was suffering from a treatable mental illness, 2) was a proper subject for treatment, and 3) would be a proper subject for commitment if treatment were

withdrawn. She confirmed that while Aaron's violent outbursts had become less frequent, "he is even with these medications still experiencing violent outbursts and impulse control issues." When Kisicki was asked whether Aaron should be in a locked facility or a community-based facility, her response was that Aaron "needs a locked facility." Kisicki said she believed that if Aaron were released "he would become more agitated, more psychotic and would end up rehospitalized." She expressed concern regarding his ability to function outside the locked facility:

I would be concerned that he wouldn't take his medications, that he would not have the supervision that he currently has. He's on a one-to-one status while awake, and so he wouldn't have that behavioral control, so I believe that he would become more agitated, more psychotic and would end up rehospitalized.

¶7 The circuit court found the County had met its burden to show that Aaron is a proper subject for commitment, stating, "From the testimony of both doctors, the medications help manage his behavior. He certainly has demonstrated behaviors that are dangerous to both himself and others."

DISCUSSION

¶8 On review, 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).

¶9 In support of his appeal, Aaron argues that the County failed to establish that Aaron would become dangerous if treatment were withdrawn or that he was currently dangerous. We reject these arguments and hold that the County met its burden of showing by clear and convincing evidence that Aaron was

mentally ill, was a proper subject for treatment, and that, based on his treatment record, “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.” WIS. STAT. § 51.20(1)(a)1., (1)(am).

¶10 WISCONSIN STAT. § 51.20(1)(am) recognizes that committed individuals are unlikely to commit the types of overt acts that would render them subject to an initial commitment under § 51.20(1)(a)2. Thus, instead of requiring evidence of recent acts, § 51.20(1)(am) allows the County to meet its burden by showing “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.” This alternate standard for recommitment is meant 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).

¶11 The record in this case supports the circuit court’s finding that the County met its burden of proving that Aaron would be a proper subject for commitment under WIS. STAT. § 51.20(1)(am) if treatment were withdrawn. Kisicki testified that Aaron was suffering from a treatable mental illness, was a proper subject for treatment, and would be a proper subject for commitment if treatment were withdrawn. Her written report stated that Aaron “is a danger to [him]self and others.” Kisicki also testified that Aaron’s violent outbursts had not stopped and stated that he had recently torn out one of his fingernails. Aaron’s acts of self-mutilation are particularly concerning because they occurred while Aaron was subject to one-to-one supervision in a locked, acute care facility. That

level of supervision could not be maintained if Aaron were released into the community.

¶12 The court also referred to the written report of Dr. Sonya Trueblood, a psychologist appointed under WIS. STAT. § 51.20(9) to examine Aaron and make recommendations based on her findings. Trueblood was also appointed as an expert in the original commitment and was aware that Aaron had bitten his caregiver. Trueblood's report provides additional support for extending Aaron's commitment. Her report states that Aaron was a proper subject for treatment, that there was a substantial probability Aaron would harm himself or others, and that there was "a substantial likelihood that [he] would become a proper subject for commitment if treatment were withdrawn." She also reported that Aaron remains volatile, "intermittently engaging in self-mutilation and hurting others." Trueblood, like the two doctors who testified, asserted that Aaron should remain committed and that the "least restrictive environment remains medication and symptom management at BHD."

¶13 In sum, the circumstances of this case are precisely the sort contemplated by WIS. STAT. § 51.20(1)(am). The purpose of § 51.20(1)(am) is to prevent "revolving door" situations in which patients are released from commitment only to commit additional dangerous acts and then be recommitted. *See W.R.B.*, 140 Wis. 2d at 351. Indeed, such a scenario is exactly what Kisicki predicted would happen if Aaron were released. She testified that absent the close supervision and behavioral control, "he would become more agitated, more psychotic and would end up rehospitalized." While Aaron argues that there was no evidence in the record suggesting that he would quit taking his medication if not recommitted, the court could appropriately rely on the testimony of the doctors

that Aaron required a locked facility in order to ensure compliance with his treatment plan.

CONCLUSION

¶14 Based on our review of the record, we conclude that the County met its burden of proving that Aaron would be a proper subject for commitment under WIS. STAT. § 51.20(1)(am) if treatment were withdrawn. We affirm the circuit court's order extending Aaron's mental health commitment for a twelve-month period.

By the Court.—Order affirmed.

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

