

**COURT OF APPEALS  
DECISION  
DATED AND FILED**

**April 23, 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. 2014AP2469**

**Cir. Ct. No. 2001ME263**

**STATE OF WISCONSIN**

**IN COURT OF APPEALS  
DISTRICT IV**

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**IN THE MATTER OF THE MENTAL COMMITMENT OF THOMAS F. W.:**

**DANE COUNTY,**

**PETITIONER-RESPONDENT,**

**V.**

**THOMAS F. W.,**

**RESPONDENT-APPELLANT.**

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APPEAL from an order of the circuit court for Dane County:  
MORIA KRUEGER, Judge. *Affirmed.*

¶1 HIGGINBOTHAM, J.<sup>1</sup> We are asked to decide whether a jury had sufficient evidence to extend Thomas F.W.'s WIS. STAT. ch. 51 involuntary commitment. Thomas's appeal stems from circuit court orders entered on a jury verdict that extended his involuntary commitment and provided for involuntary medication. Thomas argues that the jury did not have sufficient evidence to find that he can be rehabilitated, as required for ch. 51 involuntary commitments. We disagree and affirm the circuit court.

### BACKGROUND

¶2 Thomas's initial WIS. STAT. ch. 51 involuntary commitment occurred in 2001. Dane County has successfully extended his commitment every year since his initial commitment. He has been committed at Mendota Mental Health Institute since 2004.

¶3 In 2014, the County filed a petition to extend Thomas's commitment. He requested and received a jury trial.

¶4 At trial, the County called Thomas's treating psychiatrist, Dr. Erik Knudson, and two independent psychiatric evaluators, Drs. Marshall Bales and Steven Elkind. All three testified that Thomas has a schizoaffective disorder and that his illness meets the definition of mental illness for the purposes of WIS. STAT. ch. 51 civil commitment. The experts also testified that Thomas experiences delusions and that he behaves aggressively and violently toward staff

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<sup>1</sup> This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(d) (2013-14). All references to the Wisconsin Statutes are to the 2013-14 version unless otherwise noted.

and other patients. All three experts testified that Thomas is a proper subject for treatment.

¶5 The jury found that Thomas met the statutory requirements for commitment: that he suffers from a mental illness, that he is a proper subject for treatment, and that he is dangerous to himself or others. The circuit court ordered an extension of commitment for twelve months and ordered involuntary medication. Thomas appeals.

## DISCUSSION

### 1. Standard of Review

¶6 When reviewing whether the evidence presented supports a jury verdict, we will sustain the verdict unless no credible evidence exists to support it. *Outagamie Cnty. v. Michael H.*, 2014 WI 127, ¶21, 359 Wis. 2d 272, 856 N.W.2d 603. Additionally, we view the evidence in a light “most favorably to sustaining a verdict.” *Id.*

¶7 This case also requires us to interpret the meaning of “treatment” in WIS. STAT. § 51.20(1)(a)1. “The interpretation of a statute is a question of law that we review de novo.” *Fond du Lac Cnty. v. Helen E.F.*, 2012 WI 50, ¶10, 340 Wis. 2d 500, 814 N.W.2d 179.

### 2. Involuntary Commitments Under WIS. STAT. § 51.20

¶8 WISCONSIN STAT. § 51.20 governs involuntary commitment for treatment. It requires the County to prove, by clear and convincing evidence, that an individual has a mental illness, is a proper subject for treatment, and is dangerous to himself or another person. WIS. STAT. § 51.20(1)(a), (13)(e).

Treatment is defined as “those psychological, educational, social, chemical, medical or somatic techniques designed to bring about rehabilitation of a mentally ill ... person.” § 51.1(17).

¶9 A person may be initially involuntarily committed for a period no longer than six months. WIS. STAT. § 51.20(13)(g)1. However, subsequent commitments may last up to one year. § 51.20(13)(g)1. The County must again meet the requirements of § 51.20(1)(a)—mental illness, a proper subject for treatment, and a danger to himself or others—to establish that the individual is in need of continued commitment. § 51.20(13)(g)3.

### 3. Sufficiency of the Evidence

¶10 Thomas does not dispute that the jury had sufficient evidence to determine that he has a mental illness or that he is dangerous. Instead, the only issue is whether the County presented sufficient evidence for the jury to conclude that he is a proper subject for treatment. He argues that the County failed to present evidence to allow for his continued commitment because it failed to meet the statutory definition of treatment. Namely, that it failed to prove that he is capable of rehabilitation. The County first argues that Thomas has not preserved his claim for appeal. Alternatively, it maintains that the jury heard sufficient evidence to conclude that Thomas is capable of rehabilitation because his mental illness is treatable and his treatment plan is directed at controlling his underlying mental disorder.

### A. Forfeiture

¶11 The County argues that Thomas forfeited his claim for relief by failing to either request a directed verdict or file a motion to change the jury's verdict. We are not convinced that Thomas forfeited his claim.

¶12 The appeal of an involuntary commitment proceeding is governed by WIS. STAT. RULE 809.30. WIS. STAT. § 51.20(15). WISCONSIN STAT. RULE 809.30(2)(h) states that an individual filing an appeal “shall file a motion for postconviction or postdisposition relief before a notice of appeal is filed unless the grounds for seeking relief are sufficiency of the evidence or issues previously raised.” Thomas challenges whether the jury had sufficient evidence to find that he is a proper subject for treatment; therefore, he has not forfeited his claim.

### B. Merits of Thomas's Sufficiency of the Evidence Claim

¶13 The only issue is whether the jury heard sufficient evidence to find that Thomas is a proper subject for treatment under WIS. STAT. § 51.20(1)(a)1. This requires the County to show that Thomas is capable of rehabilitation. *See* WIS. STAT. § 51.01(17).

¶14 Thomas argues that the County failed to present evidence that he can be rehabilitated. He analogizes his case to *Helen E.F.* in which the Wisconsin Supreme Court concluded that an individual involuntarily committed under WIS. STAT. § 51.20 was not a proper subject for treatment because her underlying disorder did not respond to treatment designed to bring about rehabilitation. Thomas asserts that treatment will only “blunt” his symptoms; therefore, he should not be involuntarily committed under ch. 51. Instead, he contends that he may be

a candidate for protective services under WIS. STAT. ch. 55. We are not convinced.

¶15 Wisconsin case law has considered the meaning of rehabilitation in the context of WIS. STAT. ch. 51 involuntary commitments. In *Helen E.F.*, the Wisconsin Supreme Court recently held that an Alzheimer’s patient was “not a proper subject for treatment because[,] while her Alzheimer’s Disease may be managed, she is not medically capable of rehabilitation, as required by the chapter [ch. 51].” *Helen E.F.*, 340 Wis. 2d 500, ¶42. In reaching this conclusion, the court reviewed *Milwaukee Cnty. Combined Cmty. Servs. Bd. v. Athans*, 107 Wis. 2d 331, 320 N.W.2d 30 (Ct. App. 1982), and *C.J. v. State*, 120 Wis. 2d 355, 354 N.W.2d 219 (Ct. App. 1984), which both considered whether individuals committed under ch. 51 were capable of rehabilitation as required by the chapter. In doing so, the Wisconsin Supreme Court cited the test from *C.J.* for determining whether an individual is capable of rehabilitation with approval. *Helen E.F.*, 340 Wis. 2d. 500, ¶36. It explained,

If treatment will “maximize[e] the[ ] individual functioning and maintenance” of the subject, but not “help[ ] in controlling or improving their disorder[ ],” then the subject individual does not have rehabilitative potential, and is not a proper subject for treatment. *C.J.*, 120 Wis. 2d at 362, 354 N.W.2d 219. However, if treatment will “go beyond controlling ... activity” and will “go to controlling [the] disorder and its symptoms,” then the subject individual has rehabilitative potential, and is a proper subject for treatment.

*Id.*, ¶36 (quoting *C.J.*, 120 Wis. 2d at 362). In other words, an individual is capable of rehabilitation and thus a “proper subject for treatment” under ch. 51 if treatment will control or improve the individual’s underlying disorder and its symptoms. *Helen E.F.*, 340 Wis. 2d. 500, ¶36

¶16 At trial, Thomas's treating psychiatrist, Dr. Knudson, testified that Thomas is diagnosed with schizoaffective disorder. He testified that Thomas's symptoms include illogical and unclear thoughts, delusions, auditory hallucinations, and difficulty with staying focused on reality. Specifically, Dr. Knudson stated that Thomas's illness impairs his judgment, which leads him to refuse medication for his physical health concerns.

¶17 Dr. Knudson also testified that Thomas's mental illness is treatable with antipsychotic medications. In regard to Thomas's medication, Dr. Knudson stated,

They increase the amount of time between the more severe symptoms when he loses control of his behavior and gets aggressive. With the treatment, that happens less often. The medicine also helps him to think more clearly and make decisions that are better in his interests and stay more in control of his behavior.

He further testified that even with medication, Thomas still experiences symptoms, but that medication reduces the intensity of his symptoms. He explained that during times when Thomas was not medicated he has shown extended periods of intense anger due to the delusions associated with his illness. Finally, Dr. Knudson testified that Thomas's current treatment plan is aimed at controlling his symptoms.

¶18 The jury also heard testimony from two general psychiatrists who each conducted an independent examination of Thomas in preparation for trial. Dr. Bales testified that Thomas is diagnosed with schizoaffective disorder and that he is a proper subject for treatment. Dr. Bales explained that Thomas' mental illness is treatable within a structured setting that allows him to receive medications and participate in group activities that both have therapeutic value.

Dr. Bales testified that Thomas's illness has responded to medications as evidenced by a reduction in his violent and psychotic episodes. Finally, Dr. Bales opined that Thomas's ability to spend time in the dayroom and in the courtyard without incident on a particular day is evidence that his illness is treatable with medication.

¶19 Similarly, Dr. Elkind testified that Thomas is a proper subject for treatment because he will benefit from continued socialization and medication. Dr. Elkind also testified that he had no basis for believing that Thomas symptoms were caused by his institutionalization.

¶20 Based on the expert testimony, we are satisfied that the County presented sufficient evidence for the jury to conclude that Thomas is capable of rehabilitation and is thus a proper subject for treatment. The experts agreed that Thomas is not only diagnosed with a treatable mental illness, but that his presentation of that illness responds positively to treatment. For example, they heard from Thomas's treating psychiatrist who testified that medication improves Thomas's thought process and decision-making and that it works to control the specific symptoms of his illness. This testimony was sufficient for the jury to conclude that Thomas is capable of rehabilitation because it indicated that his treatment does more than just control his actions. Instead, the testimony demonstrated that Thomas's treatment works to improve his condition through control of his specific disorder and its symptoms. Therefore, viewing the expert testimony in the light most favorable to the jury verdict, we conclude that the evidence was sufficient for the jury to find that Thomas is a proper subject for treatment under WIS. STAT. § 51.20(1)(a). Accordingly, we affirm.

*By the Court.*—Order affirmed.



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

