

**COURT OF APPEALS
DECISION
DATED AND FILED**

August 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. 2015AP388

Cir. Ct. No. 2006ME3132

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT I**

IN THE MATTER OF THE MENTAL COMMITMENT OF KENT F.:

MILWAUKEE COUNTY,

PETITIONER-RESPONDENT,

v.

KENT F.,

RESPONDENT-APPELLANT.

APPEAL from an order of the circuit court for Milwaukee County:
PEDRO COLON, Judge. *Affirmed.*

¶1 KESSLER, J.¹ Kent F. appeals an order extending his WIS. STAT. ch. 51 mental health commitment. Kent argues that Milwaukee County failed to

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

prove by clear and convincing evidence that he was a proper subject for treatment under ch. 51. We affirm.

BACKGROUND

¶2 On August 27, 2014, the Milwaukee County Department of Human Services, Adult Services Division, filed a motion requesting an extension of Kent’s commitment. A hearing on the motion was held on September 12, 2014. At the hearing, the County was required to prove that Kent was: (1) mentally ill, (2) dangerous, and (3) a proper subject for treatment. *See* WIS. STAT. § 51.20(1)(a), (13)(e).

¶3 The County called two expert witnesses: (1) Dr. Lawrence Koszewski and (2) Dr. Charles Rainey. Dr. Koszewski, a clinical psychologist, told the court that Kent suffers from schizoaffective disorder, bipolar type, a mental illness which “combines symptoms from both schizophrenia and mood disorder.” Dr. Koszewski testified that he was the clinical program director for Rehab Center Central, the facility where Kent resides. Dr. Koszewski described the facility as a locked psychiatric nursing home, which provides Kent with 24-hour nursing supervision and monitoring.

¶4 Dr. Koszewski described Kent’s symptoms as including “the presence of hallucinations, auditory hallucinations, delusions, and recurrent urgent mood,” which cause Kent to “feel[] a sense of urgency that he must flee wherever he is.” Dr. Koszewski stated that Kent’s mental illness is treatable with medications, noting that Kent “functions far better” when he takes his medications.

¶5 Dr. Koszewski testified that earlier in 2014, Kent was transferred to an acute care unit, where his medications were strictly monitored and enforced. Dr. Koszewski said that during this time, Kent’s behaviors improved dramatically. Kent was able to go for extended walks with Dr. Koszewski, “accepted a haircut with great manners and dignity,” and “conducted himself very, very well” when spending time with Dr. Koszewski off-premises. Dr. Koszewski stated that when Kent’s medications are not at that “therapeutic level,” Kent hears voices and suffers from intense, “agonizing” hallucinations in which he feels “that he’s being penetrated by bullets, glass, razor blades. He often hears babies or puppies trapped in his mattress or under the floor.” When his medications are at a therapeutic level, Dr. Koszewski said, Kent exhibits a sense of humor, behavioral restraint, and a “great capacity to be compassionate.” Dr. Koszewski stated that Kent could be transferred to a less restrictive facility within the next year if Kent continues to take his medications, does not attempt to flee the facility, does not strike anyone, and begins to understand that he has a mental illness. Dr. Koszewski testified that improvements in Kent’s behavior indicate potential that Kent could begin to understand his mental disorder.

¶6 Dr. Rainey, a forensic psychiatrist appointed by the court to evaluate Kent, also stated that Kent’s mental illness was treatable. Dr. Rainey stated that schizoaffective disorder, bipolar type, “is a significant impairment of both thought and mood,” making Kent a proper subject for treatment. Dr. Rainey told the court about each of Kent’s medications—Invenga (antipsychotic), Prolixin (antipsychotic), Depakote (mood stabilizer) and Clonazepam (anti-anxiety)—stating that the combination of these medications help Kent stay calm, control his impulses and “help with his thought disorders, his hearing hallucinations.”

¶7 Dr. Rainey also stated that Kent would be a proper subject for commitment if Kent’s treatment was withdrawn. Dr. Rainey testified that Kent does not believe he has a mental illness, does not want to take his medications and does not want to go to clinics. Dr. Rainey opined that without an extended commitment order, Kent would not voluntarily take his medications, leading either to a return to acute care or to “be[ing] a guest of the county as part of the criminal justice system.” Dr. Rainey also stated that continued treatment could abate Kent’s symptoms and prevent Kent’s condition from reoccurring. Dr. Rainey said that Kent’s schizophrenia is not curable, but is treatable, while the affective portion of Kent’s disorder may be curable.

¶8 The circuit court found that the County met its burden and found Kent a proper subject for treatment. This appeal follows.

DISCUSSION

Standard of Review.

¶9 “The burden of proof is upon the county department or other person seeking commitment to establish evidence that the subject individual is in need of continued commitment.” WIS. STAT. § 51.20(13)(g)3. The County must prove all required facts by clear and convincing evidence. WIS. STAT. § 51.20(13)(e). On review, the circuit court’s factual findings will be upheld if they are supported by any credible evidence or reasonable inferences drawn from that evidence. *See Cavanaugh v. Andrade*, 202 Wis. 2d 290, 306, 550 N.W.2d 103 (1996). We will overturn the circuit court’s factual findings only if they are clearly erroneous. *See K.N.K. v. Buhler*, 139 Wis. 2d 190, 198, 407 N.W.2d 281 (Ct. App. 1987). However, application of the facts to statutory recommitment requirements presents a question of law we review *de novo*. *See id.*

The County Met its Burden of Proving that Kent Remained a Proper Subject for Chapter 51 Commitment.

¶10 To extend a WIS. STAT. ch. 51 commitment, the County needed to prove by clear and convincing evidence that Kent suffered from a mental illness, was a proper subject for commitment, and was dangerous. *See* WIS. STAT. § 51.20(1)(a), (13)(e). Kent concedes that the County met its burden of proving that he suffers from a mental illness and meets the criteria for dangerousness. He argues, however, that he is not a proper subject for WIS. STAT. ch. 51 commitment because he is not capable of rehabilitative treatment. Kent relies on the Wisconsin Supreme Court’s decision in *Fond du Lac County v. Helen E.F.*, 2012 WI 50, 340 Wis. 2d 500, 814 N.W.2d 179, to assert that his inability to be rehabilitated renders him an inappropriate subject for commitment under ch. 51. We disagree.

¶11 A person is a proper subject for commitment if he or she is mentally ill, dangerous and a proper subject for treatment. WIS. STAT. § 51.20(1)(a)1. Treatment is defined as “those psychological, educational, social, chemical, medical or somatic techniques designed to bring about rehabilitation of a mentally ill ... person.” WIS. STAT. § 51.01(17). Kent asserts that his treatment plan—namely, medications—cannot rehabilitate him; rather, it can only control his symptoms. The Wisconsin Supreme Court considered this argument in *Helen E.F.* when it discussed the meaning of rehabilitation in the context of WIS. STAT. ch. 51 involuntary commitments. The court 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. 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., 340 Wis. 2d 500, ¶36 (citations omitted, brackets and ellipses in *Helen E.F.*). In essence, 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.

¶12 Here, both doctors testified in detail about Kent’s disorder and stated that the disorder is treatable with medications. Dr. Koszewski provided detailed testimony about Kent’s dramatic reduction in symptoms while receiving treatment. Dr. Rainey discussed each medication Kent is prescribed, the effects of each medication, and the positive results the medications have yielded in Kent’s mood and behavior. Both doctors stated that Kent is a proper subject for treatment and would likely cease taking his medications if his commitment was not extended. Both also testified that Kent is capable of continued improvement, and possibly rehabilitation, if he remains in the facility where his medications are structurally administered. Indeed Dr. Rainey stated that the affective portion of Kent’s disorder could be cured. Based on this testimony, we are satisfied that the County presented sufficient evidence that continued treatment will improve Kent’s disorder and symptoms. Accordingly, the circuit court properly exercised its discretion when it found Kent a proper subject for treatment.

By the Court.—Order affirmed.

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

