

**COURT OF APPEALS
DECISION
DATED AND FILED**

September 9, 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. 2015AP1080-FT

Cir. Ct. No. 2014ME96

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT II**

IN THE MATTER OF THE MENTAL COMMITMENT OF C.Y.K.:

OZAUKEE COUNTY,

PETITIONER-RESPONDENT,

v.

C.Y.K.,

RESPONDENT-APPELLANT.

APPEAL from an order of the circuit court for Ozaukee County:
SANDY A. WILLIAMS, Judge. *Affirmed.*

¶1 NEUBAUER, C.J.¹ C.Y.K. appeals from an order for involuntary medication and treatment. She argues that there was insufficient evidence to prove by clear and convincing evidence that she is substantially incapable of applying an understanding of the advantages and disadvantages of and alternatives to treatment to her mental illness in order to make an informed choice whether to accept or refuse medication or treatment. *See* WIS. STAT. § 51.61(1)(g)4.b. C.Y.K. argues that the court's finding was clearly erroneous because the court-appointed psychiatrist wrote in his report and testified at the hearing that she was not substantially incapable of applying her understanding to make an informed choice. When the psychiatrist's report and testimony are viewed in their entirety and along with testimony from C.Y.K.'s case worker, the psychiatrist's statement does not negate the rest of the picture supporting the circuit court's determination that C.Y.K. is substantially incapable of applying an understanding of the advantages and disadvantages of and alternatives to treatment to her mental illness in order to make an informed choice whether to accept or refuse medication or treatment. There was sufficient evidence for the court to enter its order for involuntary medication and treatment. We affirm.

BACKGROUND

¶2 C.Y.K. has a varied psychiatric history, including multiple hospitalizations. C.Y.K. has a history of homicidal statements against her parents, suicidal ideation, self-harm including cutting and burning, heroin addiction, complex delusions about her parents wanting to kill her, acute paranoia, and

¹ 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.

attempted suicide. C.Y.K. was admitted to the hospital on June 19, 2014, on a voluntary basis, for delusions and inappropriate affect consistent with psychosis. After C.Y.K. refused treatment and amid concerns about dangerousness on discharge, staff filed a statement of emergency detention. Ultimately, C.Y.K. was committed as an outpatient on July 3, 2014, for a period of six months, with an order for involuntary medication and treatment for the duration of the commitment.

¶3 In October 2014, the Ozaukee County Department of Human Services wrote to corporation counsel for the County requesting an order of detention be issued for C.Y.K. The letter indicated that C.Y.K. “has been uncooperative with treatment conditions and shows no insight regarding the seriousness of complying with the conditions of this arrangement.” The letter went on to tell that C.Y.K. was refusing all treatment and that “[a]s a result of her lack of compliance with treatment and prescribed medications, her judgment is impaired, her ability to make rational decisions is compromised and the symptoms of her illness (i.e., paranoia and delusions) are unmanageable at this time.” Then, on December 9, 2014, the department again wrote to corporation counsel, this time requesting that C.Y.K.’s commitment be extended. Laurie Rathke, supervisor of Crisis Management/Adult Protection, wrote to counsel that C.Y.K. “continues to have no insight regarding her mental illness. Should the conditions of this commitment be withdrawn, [C.Y.K.] will discontinue [her] psychotropic medications leading [to] an increase in psychotic symptoms resulting in a danger to herself and/or others.”

¶4 On December 15, 2014, the County sought to extend C.Y.K.’s commitment and order for medication. The court extended the commitment for

twelve months and included an order for involuntary medication and treatment. C.Y.K. challenges the involuntary medication and treatment order.

¶5 Dr. Robert Rawski, a court-appointed psychiatrist, evaluated C.Y.K. for both the initial commitment and the extension. For this review, Rawski reviewed his records from the previous commitment, including the report of his initial examination of C.Y.K., and records from the department compiled since the time of his initial evaluation. He also evaluated C.Y.K., spoke with her case manager, and spoke with a representative of the department.

¶6 Based on his evaluation, Rawski opined that C.Y.K. suffers from a treatable mental illness (schizophrenia). Rawski testified that C.Y.K. had shown improvement in her symptoms during her initial commitment, but that her symptoms reemerged after her outpatient psychiatrist changed her medications. Rawski continued that C.Y.K. “is beginning to demonstrate prolonged improvement” in her symptoms after a recent change in medication. Rawski testified that C.Y.K.’s insight into her illness was markedly different in his most recent evaluation as compared to that of six months before:

What was substantially different compared to my last examination was [C.Y.K.’s] verbal insight into her mental illness, need for treatment and the concerns about the potential dangerousness stemming from those symptoms. She was acutely psychotic and adamantly denied experiencing mental illness or needing treatment or that any of her experiences were inconsistent with reality when I evaluated her six months ago. On this occasion she gave what was probably the most insightful interview I’ve conducted in some time by an individual who would not be expected to offer such good insight so early in her illness.

The other problem with giving such great insight, a verbal insight, into her illness and need for treatment is that it did not entirely match up with her judgment exhibited with regard to the illness and need for treatment that’s recently as a few weeks prior to the interview. So I believe

there's more time necessary to determine to what degree that insight—that verbal insight translates into good judgment.

¶7 Rawski testified that the last six months of treatment had been “something of a roller coaster” and included periods of C.Y.K. feeling suicidal. He stated that the “last six months indicate that she possesses a chronic severe mental illness that requires maintenance treatment in order to prevent symptoms from re-emerging and escalating” to their previous severity. He testified that C.Y.K. required ongoing treatment with psychotropic drugs and that “[n]o form of counseling or hypnotherapy or herbal remedies or anything will effectively control the symptoms of schizophrenia that only certain antipsychotic medications appear to effectively control it.” Rawski told the court that if C.Y.K. discontinued her medication or was prescribed ineffective medication “the concerns are suicidal thoughts, delusions about her parents and a re-emergence of impaired judgment including homicidal thoughts.”

¶8 Rawski told the court that he had discussed the advantages and disadvantages of all the medications she had used for the past six months and that she “provided me with intelligent, educated, organized explanations of the benefits of the treatment and the side effects she experienced” that were consistent with her records. Given C.Y.K.’s insightful responses, Rawski concluded that at the current time he did “not believe that she is incompetent to accept or refuse medication.” However, Rawski indicated that he had concerns “that her level of insight has not been sufficiently tested for her to make those decisions on her own.”

¶9 C.Y.K. admitted to Rawski that she had periods of noncompliance, and Rawski noted that it had been only weeks prior that involuntary injections had

to be used to enhance compliance with treatment. Rawski testified that C.Y.K. had previously refused to take her medication. He explained that C.Y.K.'s insight was tenuous and that when she is more symptomatic she withdraws from and refuses to cooperate with interventions that are trying to catch her symptoms before they become more severe. "And so that's the limitations to her insight in judgment already demonstrated." Rawski opined that C.Y.K. needed inpatient care because her outpatient psychiatrist might not be aware that he prescribed medications that had already been shown to be ineffective and that commitment would provide better management of her care. While Rawski acknowledged that currently, while cooperating with her treatment, C.Y.K. has shown improvement, he added, "If she's not taking medications, she's likely to become psychotic and her insight will rapidly deteriorate as will her judgment, and she'll have to be hospitalized and stabilized once again."

¶10 Rawski further testified, "[C.Y.K.] has made statements about how ... the commitment expires in January and her need to receive this treatment will effectively end with that. And that causes concern about her voluntarily cooperating with ongoing treatment for the illness that she requires to prevent future dangerousness." Rawski testified that C.Y.K. had told other staff that she would no longer have to take the medication after the hearing, and Rawski said if the staff had told this to him, he "would have authored an opinion that indicated that she was substantially incapable of applying her intellectual understanding of the advantages and disadvantages, alternatives to her particular situation." To Rawski, C.Y.K. denied that she intended to stop taking her medication. Rawski elaborated that he did not trust that what she told him was accurate, that he questioned her credibility, and that "she's certainly intelligent enough to understand what needs to be said to a psychiatrist in order to convince them that

she understands her illness and the need for treatment and the advantages and disadvantages and the consequences of not receiving treatment.” Rawski testified that if C.Y.K. had expressed a refusal to take medication, he would have opined that she was substantially incapable of applying an understanding to her mental illness.

¶11 Margaret Speed also testified. Speed is a case manager hired by C.Y.K.’s mother to make sure C.Y.K. takes her medications. Speed said she had seen C.Y.K. take her medication only twice. Speed told the court that while C.Y.K. had not told her she would not be taking her medication in the future, she had told her that she would no longer need Speed’s services after the hearing, that “all of this will be over anyway.” Later, Speed clarified that C.Y.K.’s comment about not needing medication was in reference to her anxiety medication, which was prescribed on an as-needed basis.

¶12 C.Y.K. testified, indicating that she was taking her prescribed medications. Regarding Speed’s testimony about her statements that she would no longer need Speed’s care, C.Y.K. said that she knew the case manager was a requirement of the commitment and that when the commitment is over she would no longer need a case manager. C.Y.K. went on to say, “I believe that those services have helped me, but as for do I need it today, do I need it, no. I can take my medication and go to my therapy appointments without it.”

¶13 In closing argument, counsel for the County indicated that while Rawski testified he would like C.Y.K.’s insight to be tested over a longer period of time, Rawski’s conclusion, expressed in his report and in court, was that C.Y.K. was not incapable of refusing medication. Counsel advised the more prudent course of action would be to include an order for medication, but said that she was

“really not convinced ... that the evidence ris[es] to the level of allowing the Court to do that.”

¶14 The circuit court extended the commitment and order for involuntary medication by one year. The court indicated that Rawski’s testimony showed a refusal to accept medication and that Rawski believes a medication order is appropriate. The court noted that Rawski still struggled with C.Y.K’s judgment and relied on C.Y.K’s reported statements that once her commitment is over she will not be taking the medication.

DISCUSSION

Standard of Review

¶15 Whether the standard to show a person is not competent to refuse medication or treatment under WIS. STAT. § 51.61(1)(g)4. has been met is a mixed question of fact and law. *K.N.K. v. Buhler*, 139 Wis. 2d 190, 198, 407 N.W.2d 281 (Ct. App. 1987). We uphold the circuit court’s findings of fact unless they are clearly erroneous; whether those facts meet the statutory requirement is a question of law we review de novo. *Id.* Whether the County has put forth sufficient evidence to meet its burden to prove the statutory elements by clear and convincing evidence is also a question of law. See *Outagamie Cnty. v. Melanie L.*, 2013 WI 67, ¶39, 349 Wis. 2d 148, 833 N.W.2d 607.

Competence to Refuse Medication or Treatment

¶16 Under WIS. STAT. § 51.61, entitled “Patients rights,” a person receiving services for mental illness has the right to refuse medication and treatment. Sec. 51.61(1)(g). Under that same paragraph (g), the court may order medication or treatment to be administered to the individual, regardless of consent,

if it finds that the individual is not competent to refuse medication or treatment. Sec. 51.61(1)(g)3. The court starts with the presumption that the person is competent to make a decision regarding medication or treatment. *Melanie L.*, 349 Wis. 2d 148, ¶45. To prove an individual is not competent to refuse medication or treatment, the County must show:

[B]ecause of mental illness ... and after the advantages and disadvantages of and alternatives to accepting the particular medication or treatment have been explained to the individual, one of the following is true:

a. The individual is incapable of expressing an understanding of the advantages and disadvantages of accepting medication or treatment and the alternatives.

b. The individual is substantially incapable of applying an understanding of the advantages, disadvantages and alternatives to his or her mental illness ... in order to make an informed choice as to whether to accept or refuse medication or treatment.

Sec. 51.61(1)(g)4.

¶17 C.Y.K. argues that the court's finding that she was substantially incapable of applying her understanding of her medications to make an informed choice about taking them was clearly erroneous. A finding of fact is not clearly erroneous merely because a different fact finder could have reached a different conclusion. *State v. Wenk*, 2001 WI App 268, ¶¶8-9, 248 Wis. 2d 714, 637 N.W.2d 417. The circuit court, acting as the finder of fact, was not bound by the County's view that the evidence was insufficient to issue the involuntary medication order. "The opinion of counsel, including the State's attorney, is not evidence." *Id.* The County presented Rawski and his written report, as well as the testimony of Speed. Regarding Rawski, the circuit court was not obligated to accept any of his opinions, even if the opinion was uncontradicted. *See State v. Kienitz*, 227 Wis. 2d 423, 438-40, 597 N.W.2d 712 (1999). Furthermore, the court

could accept as much or as little from Rawski's report and testimony as it found probative. *See Wenk*, 248 Wis. 2d 714, ¶9. The bottom line is whether there was evidence to support the court's conclusion, and there was.

¶18 Rawski testified at the final hearing. Rawski had evaluated C.Y.K. and concluded in his written report that she was "not substantially incapable of applying her intellectual understanding of the advantages, disadvantages, and alternatives to psychotropic treatment to her particular condition so as to make an informed choice as to whether to accept or refuse psychotropic medications for the treatment of her mental illness." However, he went on to note that "her competency to refuse meds is subject to change depending on her level of symptomology." Throughout his report and in his testimony, Rawski described a history of a woman who often failed to comply with treatment, who "confirmed that she has not always been compliant," and who "admitted that she did not like having the oversight of the commitment." Rawski testified that if C.Y.K. had expressed a refusal to take medication, he would have opined that she was substantially incapable of applying her understanding to her mental illness.

¶19 According to testimony at the hearing and Rawski's report, C.Y.K. did make comments from which one could infer that she planned to stop taking her medications once the commitment was over. Speed, the private case manager, told the court that C.Y.K. indicated she would no longer need her services after the hearing. Rawski reported that C.Y.K. made similar comments to nurses every time she received her injection. At the same time, C.Y.K. told Rawski that she intended to continue with her medication, causing him to question her credibility.

¶20 It is reasonable to infer from the evidence that C.Y.K. would stop her medication once the commitment was over and that C.Y.K. "is substantially

incapable of applying an understanding of the advantages, disadvantages and alternatives to ... her mental illness.” WIS. STAT. § 51.61(1)(g)4.b. While C.Y.K. told Rawski that she intended to keep taking her medication, he questioned her credibility given her history of noncompliance and comments she had made to others that she would stop taking her medication when the commitment ended. C.Y.K., Rawski, and C.Y.K.’s case worker gave conflicting testimony regarding whether C.Y.K. intended to continue taking her medication if the commitment were not extended. Ultimately, the credibility of these witnesses was a fact for the circuit court to determine. *Dickman v. Vollmer*, 2007 WI App 141, ¶14, 303 Wis. 2d 241, 736 N.W.2d 202 (credibility of witnesses is for the circuit court). The circuit court was free to make that determination based on the evidence it had before it, which was sufficient to support the conclusion. And given the totality of the evidence before the circuit court, including Rawski’s testimony and written report and Speed’s testimony, the circuit court could conclude that C.Y.K. was substantially incapable of applying an understanding of the advantages and disadvantages of and alternatives to accepting the particular medications to treat her mental illness.

By the Court.—Order affirmed.

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

