COURT OF APPEALS
DECISION
DATED AND FILED

August 10, 1999

Marilyn L. Graves
Clerk, Court of Appeals
of Wisconsin

No. 99-0478-FT

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

IN THE MATTER OF THE MENTAL COMMITMENT OF ROBERT P.:

EAU CLAIRE COUNTY,

PETITIONER-RESPONDENT,

V.

ROBERT P.,

RESPONDENT-APPELLANT.

APPEAL from an order of the circuit court for Eau Claire County: BENJAMIN D. PROCTOR, Judge. *Affirmed.*

HOOVER, P.J., Robert P. appeals the circuit court's order committing him to the Eau Claire County Human Services Board, § 51.42, STATS.,

for outpatient care and treatment.[1] Robert argues that the circuit court lost competency to order his continued commitment because the re-examination reports were not filed within what he contends is a seven-day time limit. Robert also argues that the circuit court lost jurisdiction to order his continued commitment because the corporation counsel failed to serve him with copies of the examination reports at least forty-eight hours before the recommitment hearing.

This court holds that the reports in question must only be filed with the court so as to provide Robert's counsel access to them within forty-eight hours before the recommitment hearing. There is no requirement the reports be served upon Robert. The circuit court's order is therefore affirmed.

In November 1997, Robert was determined to be mentally ill and was committed for a period not to exceed six months. In May 1998, after the six-month term had expired, the board moved to extend Robert's commitment, alleging need for further commitment and the likelihood that Robert was still a proper subject for commitment under § 51.20(1)(a), STATS. The circuit court ordered medical and psychiatric evaluations by various experts and all parties stipulated that there was "clear" and "convincing" evidence of mental illness, that Robert be committed for care and treatment in the least restrictive manner consistent with his condition for no more than one year, and that Robert be

[1] This is an expedited appeal under RULE 809.17, STATS.

medicated regardless of his consent. As a result of these stipulations, the recommitment hearing was waived, and Robert was committed for outpatient care not to exceed one year.

In August 1998, Robert arrived at Eau Claire's Luther Hospital with a blood alcohol concentration of .16% and was admitted to the psychiatric unit for stabilization because of his mental illness and alcohol abuse. The board transferred Robert from outpatient to more restrictive inpatient care. In September 1998, Robert petitioned the circuit court for review of his commitment, asserting that his condition had substantially changed and that he no longer met the requirements for commitment.

The circuit court again ordered psychiatric evaluations. Robert filed a motion to dismiss based upon corporation counsel's failure to serve him with the examination reports at least forty-eight hours before the hearing and the failure of the doctors' reports to be timely filed. The circuit court denied the motion, and upon the evaluations ordered Robert to be committed for outpatient care and treatment in the least restrictive manner consistent with his condition. The commitment was not to exceed one year, beginning in October. This appeal followed.

This case presents issues of statutory construction, which are questions of law that this court reviews de novo. ***In re Michelle A.D.***, 181 Wis.2d 917, 922-23, 512 N.W.2d 248, 249 (Ct. App. 1994).

Robert first argues that the circuit court lost competency to order his continued commitment as a result of the re-examination report not being filed within what he asserts is a mandatory seven-day time frame. Essentially, Robert argues that under § 51.20(16)(c), STATS., once a petition for review of commitment is filed and the time period since the last review hearing is greater than thirty days but less than 120 days, the circuit court must order within twenty-four hours a re-examination of the petitioner to be completed in seven days.[2] If the judge then decides to hold a hearing, § 51.20(16)(e) requires that the court "proceed in accordance with sub. (9)(a)."[3] ***Id.*** Subsection (9)(a) requires a report of all such examinations be filed with the court. Furthermore, Robert argues that

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[2] Section 51.20(16)(c), STATS., provides:

> If [a recommitment hearing] has not been held within 30 days of the filing of a petition [for review of commitment], but has been held within 120 days of the filing, the court shall within 24 hours of the filing order an examination to be completed within 7 days by the appropriate county department …. A hearing may then be held in the court's discretion ….

The most recent review of Robert's commitment prior to this action occurred in May, a period greater than 30 days, but less than 120.

[3] Section 51.20(16)(e), STATS., provides that "[i]f the court determines or is required to hold a hearing, it shall thereupon proceed in accordance with sub. (9)(a)." Under § 51.20(16)(c), STATS., only if the last hearing with respect to an individual's commitment was held more than 120 days before the filing is the court required to hold a hearing.

under § 801.14(4), STATS., filing is not complete until all parties are served with a copy of the report. Therefore, Robert believes the statutes require that the examiners' reports be filed with the court and served on all parties within seven days of being ordered. Because Robert was not served with the reports within the seven-day limit, he claims the reports were not properly filed and the circuit court has lost competency to proceed. This court disagrees.

Contrary to Robert's assertions, a careful reading of the applicable statutes reveals that the examination required under § 51.20(16)(c), STATS., is different from the examinations under § 51.20(9)(a) that result in the reports Robert claims were improperly filed.[4] The first examination under § 51.20(16)(c) is to be completed within seven days by the "appropriate county department." The statute is silent as to whether the report of this examination ever has to be filed with the court.[5] If, based on the results of this examination, the court decides there should be a hearing, or is otherwise required to hold a hearing, § 51.20(9)(a) applies. Under § 51.20(9)(a), the court must order personal examinations of the subject individual to be conducted by "2 licensed physicians specializing in

[4] In the present case, the initial examination ordered by the court was a personal examination to be conducted by a licensed medical doctor and an expert in neuro-psychology. This examination, which was completed in seven days, satisfied the requirements of the examination under subsecs. (16)(c) and (9)(a). The merging of the two examinations may have caused counsel's confusion in concluding the report of this examination must be filed within seven days when it does not.

[5] While this report may never have to be filed with the court, it does have to be made available to counsel for the person to be committed 48 hours in advance of the final hearing. *See* § 51.20(10)(b), STATS.

psychiatry, or one licensed physician and one licensed psychologist, or 2 licensed physicians one of whom shall have specialized training in psychiatry, if available, or 2 physicians …." Furthermore, a written report of these examinations must be filed with the court. ***Id***.

Examinations under § 51.20(9)(a), STATS., are much more thorough; they involve a personal examination, conducted by two qualified experts with a written report of each examination filed with the court. The only time frame that applies to these examinations is found in § 51.20(10)(b), which provides counsel for the person to be committed access to all reports forty-eight hours in advance of the final hearing.[6] Thus, under the unambiguous statutory scheme, there is a seven-day time period for completing the initial examination under § 51.20(16)(c), and the reports of the second set of examinations must be filed with the court in time for counsel to have access to them forty-eight hours before the hearing. There is no statutory language suggesting a merger of the two, requiring both types of reports to be completed and filed within seven days, as Robert seems to argue.

Robert further contends that §§ 801.14(1) and (4) and 801.01(1) and (2), STATS., deprive the circuit court of jurisdiction because of corporation counsel's failure to serve the examination reports upon him. Many of Robert's

[6] Section 51.20(10)(b), STATS., requires "[c]ounsel for the person to be committed shall have access to all psychiatric and other reports 48 hours in advance of the final hearing."

arguments, however, are not fully developed or supported by valid authority. This court has no duty to accept such arguments or to even consider them. ***State v. Flynn***, 190 Wis.2d 31, 58, 527 N.W.2d 343, 354 (Ct. App. 1994). This court will, however, address the issues Robert has sufficiently argued.

Section 51.20(10)(c), STATS., reads in relevant part: "*Except as otherwise provided in this chapter*, the rules of evidence in civil actions and s. 801.01(2) apply to any judicial proceeding or hearing under this chapter." (Emphasis added.) Section 801.01(2), STATS., reads in relevant part: "Chapters 801 to 847 govern procedure and practice in circuit courts of this state in all civil actions and special proceedings … *except where different procedure is prescribed by statute or rule.*" (Emphasis added.) A plain reading of these statutes reveals that § 801.01(2) applies "[e]xcept as otherwise provided." *See* § 51.20(10)(c), STATS. Subsection (10)(b) requires that counsel for the person to be committed shall have access to all reports within forty-eight hours of the hearing. Section 801.01(2) is thus not applicable because § 51.20(10)(b) prescribes a specific procedure whereby the examination reports must be accessible to the subject's counsel within forty-eight hours of the hearing rather than served.

Robert contends that § 801.14(1) and (4), STATS., require that any time a document is to be filed with the court, it must be served upon all other parties. This court disagrees. Section 801.14(1) reads in relevant part: "Every order required by its terms to be served, … every paper relating to discovery

required to be served upon a party … and every written notice, appearance, demand, offer of judgment, undertaking, and similar paper shall be served upon each of the parties." (Emphasis added.) Furthermore, § 801.14(4) reads in relevant part: "The filing of any paper *required to be served* constitutes a certification by the party or attorney effecting the filing that a copy of such paper has been timely served upon all parties *required to be served* …." (Emphasis added.)

Robert has misconstrued the law. There is no general requirement in either of these subsections that all documents filed with the court be served on all parties. Only when the paper in question is "required to be served" is service upon all parties necessary. Section § 801.14(1), STATS., neither specifically nor implicitly requires the examination reports to be served. None of the §51.20, STATS., subsections list the examination reports as among those documents requiring service. Subsection (9)(a) only requires filing and subsec. (10)(b) only mandates that the opposing party shall have "access" to the reports within forty-eight hours. Indeed, Robert advances no argument as to why the court-appointed experts' reports are of a similar nature to the documents § 801.14(1) specifically requires to be served. He does not explain why an obligation to serve a party should, under the statute's language, be placed on non-party experts, nor why the county is obligated to serve the product of court-appointed examiners. Consequently, this court finds neither of Robert's arguments compelling.

By the Court.—Order affirmed.

This opinion will not be published. RULE 809.23(1)(b)4, STATS.