COURT OF APPEALS
DECISION
DATED AND FILED

April 12, 2016

Diane M. Fremgen
Clerk of Court of Appeals

Appeal No. 2015AP718 **Cir. Ct. No. 2012ME240A**

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

IN THE MATTER OF THE MENTAL COMMITMENT OF ADAM B.:

OUTAGAMIE COUNTY,

PETITIONER-RESPONDENT,

V.

ADAM B.,

RESPONDENT-APPELLANT.

APPEAL from an order of the circuit court for Outagamie County: GREGORY B. GILL, JR., Judge. *Affirmed*.

¶1 SEIDL, J.[1] Adam B. appeals an order involuntarily committing him to the custody of Outagamie County for the purposes of mental health treatment. Adam argues the circuit court improperly found him dangerous without concluding he met any of the dangerousness standards listed in WIS. STAT. § 51.20(1)(a)2. Adam also argues a person's acknowledgment of suicidal or homicidal thoughts, without more, is an insufficient basis for a factfinder to conclude the person is dangerous. Finally, Adam argues the circuit court could not find him dangerous because undisputed evidence showed that reasonable provision for his protection was available in the community. We reject these arguments and affirm.

BACKGROUND

¶2 A statement of emergency detention was filed regarding Adam on September 8, 2014. According to the statement of emergency detention, on September 6, Adam was pacing around the home where he lived with his parents and told his mother to call the police and an ambulance because he was thinking of hurting someone. When police arrived, Adam "appeared anxious and had difficulty answering simple questions." His eyes were "fluttering," and he was "very weepy." He appeared disheveled. He would intermittently calm down but then "begin to escalate" again. Adam was transported to the hospital, where he was evaluated by a county crisis worker and subsequently admitted.

¶3 At the final hearing on September 19, 2014, the County presented the testimony and written report of psychiatrist Marshall Bales. Bales testified he

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

interviewed Adam on September 15 for approximately forty-five minutes. During the interview, Adam was "very paranoid and suspicious" and "look[ed] over his shoulder frequently out of fear that he [was] being watched." Bales testified Adam's thoughts were disorganized, and, as a result, he had difficulty expressing himself and holding a conversation. Adam appeared "disheveled and unkept [sic], and his skin kind of had an off color to it," which led Bales to conclude he "was not taking care of himself." Adam reported during the interview that his medications "make him suicidal." However, he denied having a plan to commit suicide. Based on his observations during the interview, Bales concluded Adam's insight and judgment were impaired.

¶4 In addition to interviewing Adam, Bales also reviewed records from the County and from Adam's prior hospitalizations for mental health issues in 2009, 2012, and 2013.[2] Bales testified those records contained "several references to suicidal and homicidal statements." In particular, Bales' written report noted that Adam told a doctor in the fall of 2013 that he was having suicidal thoughts and that suicide "was not that bad of an idea." Bales conceded on cross-examination that there was no evidence Adam had ever taken any action to harm himself or others.

[2] As discussed in greater detail below, the circuit court ultimately found Adam was dangerous under WIS. STAT. § 51.20(1)(a)2.c., which requires proof of "such impaired judgment, manifested by evidence of a pattern of *recent* acts or omissions, that there is a substantial probability of physical impairment or injury to himself or herself or other individuals." (Emphasis added.) Adam does not argue on appeal that any acts or omissions that occurred in 2009 or thereafter are insufficiently recent to satisfy the statutory standard, nor did he raise that argument in the circuit court. Moreover, we do not rely on any evidence from 2009 in reaching our conclusion that the circuit court properly found Adam dangerous under § 51.20(1)(a)2.c.

¶5 Bales diagnosed Adam with schizoaffective disorder, with acute psychosis and paranoia, and anxiety disorder, not otherwise specified. He opined that Adam would be dangerous to himself or others if he were not committed. He explained:

> I believe that the main danger is through his inability to care for himself, and it's at the point where he's not eating or drinking properly. But with this ongoing and several years of intermittent dangerous statements, attention directed to suicide or homicide, I think he is a danger to harm himself or others. And, again, directly to me he said, "The meds make me suicidal," and that's a direct quote.

¶6 In an oral ruling, the circuit court found that Adam met the statutory criteria for involuntary commitment under WIS. STAT. § 51.20—that is, that he was mentally ill, was a proper subject for treatment, and was dangerous. *See* § 51.20(1)(a). With respect to dangerousness, the court stated:

> [T]he doctor's testimony addresses two separate types of issues. One is the suicidal ideation. Also, to a certain degree, although not exhibited to the doctor himself, was the homicidal ideation. These are serious behaviors. In conjunction with that, there is the concern that, as based upon Dr. Bales' testimony, is that there was an indication that the medications make [Adam] not [sic] feel like committing suicide, the concern being it would provide an incentive for him to discontinue his medication regimen, therefore, being an overt act.
>
> On that same token, however, and more specifically, we address the omission. In fact, this was the prong in which the doctor focused and, in fact, I believe his quote was the main danger is the inability to care for himself, and that is manifested by [Adam's] not eating or drinking. So while [Adam] does present himself well today, I certainly don't question that, the reality is there are things that I cannot ascertain simply by looking at [Adam] today that are or is, amongst other things, whether or not he is appropriately eating or appropriately maintaining his health through nourishment.
>
> So I do find that when one looks at those two factors, that there is sufficient evidence of the dangerousness

> component. Again, I state that to reach that conclusion I look at both the omission and the acts together. Whereas one standing alone may not be sufficient, we have elements associated with both types of dangerousness.

¶7 An order committing Adam to the care and custody of the County for six months was entered on September 19, 2014.[3] Adam moved for postdisposition relief, which the circuit court summarily denied on February 13, 2015. Adam now appeals.[4]

DISCUSSION

¶8 Our review of a WIS. STAT. ch. 51 involuntary commitment order has two steps. First, we uphold the circuit court's findings of fact unless they are clearly erroneous. *See* ***K.N.K. v. Buhler***, 139 Wis. 2d 190, 198, 407 N.W.2d 281 (Ct. App. 1987). Second, whether those facts fulfill the statutory requirements for involuntary commitment is a question of law that we review independently. *See* ***id.***; *see also* ***Outagamie Cty. v. Melanie L.***, 2013 WI 67, ¶39, 349 Wis. 2d 148, 833 N.W.2d 607.

¶9 To involuntarily commit an individual for treatment, the County must prove by clear and convincing evidence that the individual is mentally ill, is a proper subject for treatment, and is dangerous. *See* WIS. STAT. § 51.20(1)(a),

[3] The circuit court also entered an order for involuntary medication and treatment, which is not at issue in this appeal.

[4] Adam concedes the six-month period of commitment ordered by the court has now expired. However, he notes the commitment order also prohibited him from possessing a firearm and stated that prohibition would "remain in effect until lifted by the court." The prohibition on firearm possession apparently has not been lifted, and, accordingly, Adam's appeal from the commitment order is not moot. *See* ***State ex rel. Milwaukee Cty. Pers. Rev. Bd. v. Clarke***, 2006 WI App 186, ¶28, 296 Wis. 2d 210, 723 N.W.2d 141 (quoting ***State ex rel. Olson v. Litscher***, 2000 WI App 61, ¶3, 233 Wis. 2d 685, 608 N.W.2d 425) ("An issue is moot when its resolution will have no practical effect on the underlying controversy.").

(13)(e). To establish that an individual is dangerous, the County must prove that he or she meets one or more of the five dangerousness standards set forth in § 51.20(1)(a)2.a.-e.

¶10 Adam argues the circuit court failed to find he was dangerous under any one of the five statutory standards. Instead, he contends the court found he was dangerous based on aspects of multiple different statutory standards. However, Adam mischaracterizes the court's oral ruling. Although the court did not expressly indicate which dangerousness standard it believed the County had proven, taken together, the court's comments indicate it found Adam dangerous under WIS. STAT. § 51.20(1)(a)2.c., which states in relevant part that an individual is dangerous if he or she "[e]vidences such impaired judgment, manifested by evidence of a pattern of recent acts or omissions, that there is a substantial probability of physical impairment or injury to himself or herself or other individuals."

¶11 The circuit court began its discussion of dangerousness by highlighting Adam's history of suicidal and homicidal ideations. It noted Adam's belief that his medications were making him feel suicidal could lead him to discontinue his medications, which, the court stated, would be an "overt act." The court then credited Bales' testimony that, without treatment, Adam would be unable to care for himself because he would not eat or drink appropriately, which the court characterized as an "omission." The court then stated that, considering "those two factors," there was sufficient evidence to find Adam dangerous. The court clarified it reached that conclusion by "look[ing] at both the omission and the acts together." It is apparent from these comments that the court was analyzing dangerousness under WIS. STAT. § 51.20(1)(a)2.c.

¶12 Adam emphasizes the circuit court's subsequent statement that "[w]hereas one standing alone may not be sufficient, we have elements associated with both types of dangerousness." Although Adam argues this is an admission that "no statutory version of dangerousness, on its own, would be sufficient," we disagree. When read in context, it is clear that when the court stated "one standing alone may not be sufficient," it was referring to acts and omissions under the WIS. STAT. § 51.20(1)(a)2.c. standard, not separate statutory standards of dangerousness. In other words, the court stated that, while it was possible neither Adam's acts nor his omissions alone would be sufficient to establish that he met any of the statutory dangerousness standards, when considered together, they permitted a finding that Adam was dangerous.

¶13 Moreover, even if Adam is correct that the circuit court erred by failing to find that he met any single one of the statutory dangerousness standards, on appeal, we independently review whether the facts found by the court satisfy the statutory standard for involuntary commitment. Here, the evidence produced at the final hearing established by clear and convincing evidence that Adam was dangerous under WIS. STAT. § 51.20(1)(a)2.c. Bales testified regarding Adam's history of mental illness, which included prior hospitalizations and a history of making suicidal and homicidal statements. Bales further testified Adam exhibited paranoia, suspicion, and disorganized thought processes. He specifically opined that Adam's judgment and insight were impaired. He testified Adam had reported that his medications made him feel suicidal, and he observed Adam had previously told another physician that he was thinking of committing suicide and it was "not that bad of an idea." Bales also concluded Adam's mental illness prevented him from caring for his own basic needs, such as eating and drinking. Bales' testimony was uncontroverted. In addition, the statement of emergency detention

reflected that Adam told his mother to call the police because he was thinking of hurting someone. On this record, the County established by clear and convincing evidence that Adam was dangerous, in that he evidenced "such impaired judgment, manifested by evidence of a pattern of recent acts or omissions, that there [was] a substantial probability of physical impairment or injury to himself … or other individuals." *See* § 51.20(1)(a)2.c.[5]

¶14 Adam argues his "acknowledgment[s] that he had thoughts of harming 'someone,' and that his 'meds made him suicidal,' are not a proper basis for a finding of dangerousness under [WIS. STAT. § 51.20(1)(a)2.a.-b.]" However, the circuit court did not find Adam was dangerous under either § 51.20(1)(a)2.a. or b., and neither do we. Moreover, ***Outagamie County v. Michael H.***, 2014 WI 127, 359 Wis. 2d 272, 856 N.W.2d 603, on which Adam relies, actually undermines his argument that an acknowledgement of suicidal thoughts is an insufficient basis to find an individual dangerous. In ***Michael H.***, our supreme court concluded an individual's undisputed acknowledgment that he was suicidal was sufficient to constitute a "threat" of suicide under § 51.20(1)(a)2.a. ***Michael H.***, 359 Wis. 2d 272, ¶¶32, 36-37. The court reasoned, "The ordinary definitions of threat include 'an indication of impending danger or harm,' and under that definition, the jury could reasonably have considered Michael's statements to be threats." ***Id.***, ¶34. The court further stated, "We see no reason to

[5] In addition, we observe the County set forth a developed argument in its respondent's brief that it proved Adam was dangerous under WIS. STAT. § 51.20(1)(a)2.c. Adam failed to respond to this argument, by virtue of his failure to file a reply brief, and we therefore deem it conceded. *See* ***Charolais Breeding Ranches, Ltd. v. FPC Sec. Corp.***, 90 Wis. 2d 97, 109, 279 N.W.2d 493 (Ct. App. 1979) (Arguments not refuted are deemed conceded.).

hold that an articulation of a specific plan is necessary in order to constitute a threat for purposes of this statute." ***Id.***, ¶37.

¶15 Adam's final argument is that the circuit court could not find him dangerous because the evidence showed he "was cared for and resided with his family." WISCONSIN STAT. § 51.20(1)(a)2.c. provides that "[t]he probability of physical impairment or injury is not substantial … if reasonable provision for the subject individual's protection is available in the community and there is a reasonable probability that the individual will avail himself or herself of these services." Adam contends the care provided by his family constitutes reasonable provision for his protection. However, as the County observes, § 51.20(1)(a)2.c. clarifies that "[f]ood, shelter or other care provided to an individual who is substantially incapable of obtaining the care for himself or herself, by a person other than a treatment facility, does not constitute reasonable provision for the subject individual's protection available in the community." Adam's family is not a "treatment facility," as that statute defines that term.[6] Consequently, any care provided by Adam's family does not constitute reasonable provision for his protection that is available in the community.

By the Court.—Order affirmed.

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

[6] *See* WIS. STAT. § 51.01(19) ("Treatment facility" means "any publicly or privately operated facility or unit thereof providing treatment of alcoholic, drug dependent, mentally ill or developmentally disabled persons, including but not limited to inpatient and outpatient treatment programs, community support programs and rehabilitation programs.").