COURT OF APPEALS
DECISION
DATED AND FILED

May 4, 2016

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. 2016AP46-FT **Cir. Ct. No. 2009ME1158**

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

IN THE MATTER OF THE MENTAL COMMITMENT OF J.W.J:

WAUKESHA COUNTY,

PETITIONER-RESPONDENT,

V.

J.W.J.,

RESPONDENT-APPELLANT.

APPEAL from an order of the circuit court for Waukesha County: WILLIAM DOMINA, Judge. *Affirmed*.

¶1 REILLY, P.J.[1] J.W.J. appeals from an order extending his involuntary commitment and an order for involuntary medication and treatment. J.W.J. argues that Waukesha County failed to prove by clear and convincing evidence that J.W.J. is a proper subject for treatment under WIS. STAT. ch. 51. Because the evidence presented at J.W.J.'s commitment hearing supports extending the commitment, we affirm.

¶2 WISCONSIN STAT. § 51.20(1) governs involuntary commitment for treatment. To involuntarily commit a person, the county must show that the person is mentally ill and dangerous. *See* § 51.20(1)(a)1.-2., (13)(e). The same standards apply to extensions of the commitment, except the county may satisfy the showing of dangerousness by demonstrating that "there is a substantial likelihood, based on the subject individual's treatment record, that the individual would be a proper subject for commitment if treatment were withdrawn." Sec. 51.20(1)(am). Whether the county has met its burden is a mixed question of law and fact. 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). Whether the facts fulfill the statutory standard is a question of law we review de novo. ***Id.***

¶3 In ***Fond du Lac County v. Helen E.F.***, 2012 WI 50, ¶36, 340 Wis. 2d 500, 814 N.W.2d 179, our supreme court adopted the standard to determine whether an individual is a proper subject for treatment under WIS. STAT. ch. 51. According to the court,

[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.

> [i]f treatment will "maximize 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.

Helen E.F., 340 Wis. 2d 500, ¶36 (quoting ***C.J. v. State***, 120 Wis. 2d 355, 362, 354 N.W.2d 219 (Ct. App. 1984) (bracketed changes from original omitted)). Based on the standard, we conclude that the County demonstrated by clear and convincing evidence that J.W.J. is a proper subject for treatment.

¶4 Dr. Richard Koch testified at the commitment hearing that he has been appointed to examine J.W.J. at various times since 1990.[2] Koch explained that J.W.J. is mentally ill as he suffers from schizophrenic illness paranoid type. Based on Koch's review of J.W.J.'s past records, he testified that J.W.J.'s "history is one of inconsistent utilization of psychotropic mediations." According to Koch, "[w]hen [J.W.J. is] not appropriately medicated, he becomes increasingly more agitated, paranoid, grandiose at times, and he started having hallucinations, demand hallucinations to either harm himself or others. When he's taking medications, while some of those experiences and symptoms may still be present, he doesn't act on them." Koch's opinion was that J.W.J. is dangerous as defined under the recommitment standard and that J.W.J.'s illness is treatable "to the extent that when treated with medications that his behavior is improved and he can survive in the community." In other words, as the court concluded in ***C.J.***, "we have evidence that [J.W.J.] will benefit from treatment that will go beyond

[2] Koch has not recently personally examined J.W.J. as J.W.J. has refused Koch's attempts to schedule an examination.

controlling his activity—it will go to controlling his disorder and its symptoms." ***C.J.***, 120 Wis. 2d at 361-62. Under the circumstances, we conclude that the evidence was sufficient to support the circuit court's finding that the County satisfied the standards found in WIS. STAT. § 51.20(1)(a)1.-2. and (am) to extend J.W.J.'s involuntary commitment.

By the Court.—Order affirmed.

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