COURT OF APPEALS
DECISION
DATED AND FILED

June 15, 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. 2015AP2619 **Cir. Ct. No. 2015ME399**

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

IN THE MATTER OF THE MENTAL COMMITMENT AND ORDER FOR INVOLUNTARY MEDICATION AND TREATMENT OF M.O.S.:

WINNEBAGO COUNTY,

PETITIONER-RESPONDENT,

V.

M.O.S.,

RESPONDENT-APPELLANT.

APPEAL from an order of the circuit court for Winnebago County: THOMAS J. GRITTON, Judge. *Affirmed*.

¶1 NEUBAUER, C.J.[1] M.O.S. appeals from an order for involuntary medication following a hearing. He contends that there was insufficient evidence to support the order. We disagree and affirm.

¶2 The petitioner, Winnebago County, commenced this proceeding to involuntarily medicate M.O.S., an inmate.

¶3 At a hearing, Dr. Thomas Michlowski, a psychiatrist, testified that after reviewing M.O.S.'s records and evaluating him that morning for a half hour, he had concluded that M.O.S. was suffering from a gross delusional disorder, predominantly of thought.[2] The disorder predominately impaired M.O.S.'s capacity to recognize reality and did so to a gross degree. Prior to the commencement of this proceeding, other less restrictive alternatives had been attempted with M.O.S., such as placing him on a specialized unit with the Wisconsin Resource Center and offering him voluntary treatment with psychotropic medications, but to no avail.[3] Michlowski had explained to M.O.S. the advantages and disadvantages of taking psychotropic medication, specifically Abilify. The advantage of the medication was that it would alleviate his delusions. Those delusions included thoughts that he is an FBI and CIA agent; a "zillionaire," meaning "24 zeros;" that he owns record companies; and that he had a chip in his shoulder so that he could be watched. On the latter, M.O.S., because he was

[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.

[2] Michlowski testified that he was covering for M.O.S's treating psychiatrist Dr. Nikhath Irfana.

[3] Also prior to the commencement of this proceeding, Irfana had fully informed M.O.S. of his treatment needs, the availability of mental health services, and had an opportunity to discuss as much with him.

taking his medication, was starting to believe this was a delusion. The other delusions, however, are fixed. M.O.S. was "very pleasant and cooperative" in talking with Michlowski, but his ideas were "fixed," and he was "adamant" that he does not need medication, even though M.O.S. "considered that the medication has helped him." Michlowski thought medication was starting to help M.O.S. and that it would help his thinking process and organize his thought. In other words, the medication would have a therapeutic value. The disadvantages of the medication or possible side effects were nausea, dizziness, and tremors. Michlowski asked M.O.S. if he was experiencing any side effects, and he said no. However, M.O.S. was "preoccupied," he "just kept talking and talking … about his gazillion dollars and being an FBI agent." Michlowski explained that M.O.S. "just denied he has a mental illness," and Michlowski moved on to talking about the medication, but that "only lasted a few seconds before he just went off" talking about being a CIA agent and that Michlowski should talk to the sheriff about it. In sum, Michlowski explained the advantages and disadvantages of the medication to M.O.S., but he was substantially incapable of applying an understanding of those advantages and disadvantages to his own condition so as to make an informed choice. This was because M.O.S. did not believe he has a disorder and that his delusions are true.

¶4 From the bench, the circuit court concluded that M.O.S. was not competent to refuse medication due to mental illness, and that because of it "he doesn't understand or is incapable of understanding the advantages and disadvantages of the medication and that the medication would have a therapeutic effect for him." The court signed a written order finding that M.O.S. is "substantially incapable of applying an understanding of the advantages,

disadvantages and alternatives to his … condition in order to make an informed choice as to whether to accept or refuse psychotropic medications."

¶5 M.O.S. contends that the circuit court's findings do not track either of the statutory bases that justify the entry of an involuntary medication order. The court's findings approximate WIS. STAT. § 51.61(1)(g)4.a., but that subparagraph requires a finding that the individual be unable to express an understanding of the benefits of the medication to be ordered. M.O.S. was able to express such an understanding, recognizing that because of the medication he was no longer suffering from the delusion that a chip had been embedded in his shoulder. Therefore, the court's findings are insufficient to support the involuntary medication order.

¶6 Under WIS. STAT. § 51.61(1)(g)4., there are two ways that a person who is mentally ill and who has received the requisite explanation of the advantages and disadvantages of and alternatives to medication may be found incompetent to refuse such medication. ***Outagamie Cty. v. Melanie L.***, 2013 WI 67, ¶54, 349 Wis. 2d 148, 833 N.W.2d 607. One, if "[t]he individual is incapable of expressing an understanding of the advantages and disadvantages of accepting medication or treatment and the alternatives;" or, two, if "[t]he 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. The County bears the burden of proving an individual's incompetence to refuse medication by clear and convincing evidence. WIS. STAT. § 51.20(13)(e); ***Melanie L.***, 349 Wis. 2d 148, ¶37. Thus, an individual is presumed competent to refuse treatment. ***Melanie L.***, 349 Wis. 2d 148, ¶89. The circuit court's findings of fact will not be disturbed unless clearly erroneous, but

whether the County met its burden of proof, which involves the application of facts to the statutory standard, is reviewed de novo. ***Id.***, ¶¶38-39.

¶7 Here, as clearly expressed in the circuit court's written order, it found that M.O.S. was incompetent to refuse medication because he was "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." Thus, we reject M.O.S.'s contention that the circuit court's findings were based on WIS. STAT. § 51.61(1)(g)4.a.

¶8 Further, there was sufficient evidence to support the circuit court's findings based on WIS. STAT. § 51.61(1)(g)4.b. In ***Melanie L.***, discussing the language of § 51.61(1)(g)4.b. "phrase by phrase," our supreme court interpreted it to mean that a person, to a considerable degree, lacks the necessary ability, capacity, or power, to make a connection between an expressed understanding of the benefits and risks of medication and the person's own mental illness in order to make a choice based on an informed understanding of the viable options with respect to medication or treatment. ***Melanie L.***, 349 Wis. 2d 148, ¶¶68-72, 76-78. Where a "person cannot recognize that he or she has a mental illness, logically the person cannot establish a connection between his or her expressed understanding of the benefits and risks of medication and the person's own illness."[4] ***Id.***, ¶72; *see* ***Winnebago Cty. v. B.C.***, No. 2015AP1192-FT, unpublished slip op. ¶20 (WI

[4] M.O.S. points out in his reply brief that the County omitted the words preceding this quote, "it may be true that." Nevertheless, contrary to M.O.S.'s contention, the State cited ***Outagamie Cty. v. Melanie L.***, 2013 WI 67, ¶72, 349 Wis. 2d 148, 833 N.W.2d 607, for the correct proposition.

App Oct. 14, 2015) (testimony that respondent did not believe he was suffering from a mental illness supported involuntary medication order under § 51.61(1)(g)4.b.). Such is the case here. M.O.S. denies that he has any mental illness and, with the exception of his delusion about a chip having been put in his shoulder, believes his delusions are true. We are not persuaded that because M.O.S. was able to recognize one thought as a delusion that he no longer satisfies the statutory standard. As the supreme court recognized in ***Melanie L.***, "a person … may be able to acknowledge 'issues' and rattle off side effects without being truly able to apply his or her 'understanding' to the person's own problem." ***Melanie L.***, 349 Wis. 2d 148, ¶74. In the same vein, while M.O.S. was able to recognize that the medication has helped him and that one thought was a delusion, he still did not want to continue taking the medication and without articulating any basis for terminating it.

¶9 Therefore, we affirm the order.

By the Court.—Order affirmed.

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