COURT OF APPEALS
DECISION
DATED AND FILED

January 12, 2017

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. 2016AP1459 **Cir. Ct. No. 2016ME4**

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

IN THE MATTER OF THE MENTAL COMMITMENT OF J. L. R.:

IOWA COUNTY,

PETITIONER-RESPONDENT,

V.

J. L. R.,

RESPONDENT-APPELLANT.

APPEAL from an order of the circuit court for Iowa County: EDWARD E. LEINEWEBER, Judge. *Affirmed.*

¶1 LUNDSTEN, J.[1] J.L.R. appeals the circuit court's order for involuntary Chapter 51 commitment. J.L.R.'s sole challenge here relates to the commitment element requiring proof of dangerousness. Specifically, J.L.R. argues that the petitioner, Iowa County, failed to prove by clear and convincing evidence that J.L.R. was dangerous to herself or others within the meaning of WIS. STAT. § 51.20(1)(a)2. I disagree, and therefore affirm the commitment order.

Background

¶2 In the circuit court, the County sought to prove the dangerousness element under two alternative grounds, WIS. STAT. § 51.20(1)(a)2.b. and c. As pertinent here, the statute required the County to prove by clear and convincing evidence that J.L.R. met one of the following two alternatives:

> b. Evidences a substantial probability of physical harm to other individuals as manifested by … evidence that others are placed in reasonable fear of violent behavior and serious physical harm to them, as evidenced by a recent … threat to do serious physical harm….
>
> c. Evidences 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 ….

See WIS. STAT. § 51.20(1)(a)2.b. and c. and (13)(e).

¶3 In support of the danger-to-others alternative, the County relied primarily on evidence relating to a recent threat by J.L.R. to burn down her mother's house. J.L.R., in contrast, claimed that burning down her mother's house

[1] This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(d). All references to the Wisconsin Statutes are to the 2015-16 version. We cite the current version for ease of reference; there have been no recent changes to the statutory language we apply here.

was just a "figure of speech." In support of the danger-to-self alternative, the County relied primarily on expert testimony that J.L.R.'s ability to function in the community was "declining" and that she was "decompensat[ing]" and putting her health at risk by refusing to take thyroid medication.

¶4 Focusing on the second alternative, the circuit court concluded that J.L.R. was a danger to herself based on the "process and act of decompensation complicated by [J.L.R.'s] untreated hypothyroidism." As to the first alternative, the court stated that "there [was] a possible basis" to conclude that J.L.R. was also a danger to others.

Discussion

¶5 On appeal, J.L.R.'s briefing makes clear that she agrees her commitment may be upheld based on either of the two dangerousness alternatives. J.L.R. argues, however, that the County failed to meet its burden of proof on either alternative. For the reasons that follow, I conclude that, at a minimum, the County met its burden on the danger-to-others alternative. I need not address the danger-to-self alternative.

¶6 My standard of review is mixed. "In evaluating whether the County met its burden of proof, a court must apply facts to the statutory standard … and interpret the statute. Applying facts to the standard and interpreting the statute are questions of law that [the] court reviews independently." ***Outagamie Cty. v. Melanie L.***, 2013 WI 67, ¶39, 349 Wis. 2d 148, 833 N.W.2d 607. However, an appellate court "will not disturb a circuit court's factual findings unless they are clearly erroneous" and will "accept reasonable inferences from the facts available to the circuit court." ***Id.***, ¶38. Further, "[t]he credibility of witnesses and the

weight given to their testimony are matters left to the trier of fact." ***State v. Kienitz***, 227 Wis. 2d 423, 440, 597 N.W.2d 712 (1999).

¶7 To repeat, the danger-to-others alternative, as pertinent here, required clear and convincing proof that J.L.R.

> [e]vidences a substantial probability of physical harm to other individuals as manifested by … evidence that others are placed in reasonable fear of violent behavior and serious physical harm to them, as evidenced by a recent … threat to do serious physical harm.

See WIS. STAT. § 51.20(1)(a)2.b. and (13)(e).

¶8 Here, in addressing this standard, the parties focus on the evidence of J.L.R.'s recent threat to burn down her mother's house. J.L.R. does *not* dispute that she made a statement to this effect. Rather, as I understand it, J.L.R. makes two arguments—one relating to what she meant by the statement and the other relating to her statement's effect on her mother.

¶9 J.L.R.'s first argument relies on dictionary definitions of "threat" that the Wisconsin Supreme Court cited in ***Outagamie County v. Michael H.***, 2014 WI 127, ¶4, 359 Wis. 2d 272, 856 N.W.2d 603. Those definitions are "'an expression of an intention to inflict injury'" or "'an indication of impending danger or harm.'" *See* ***id.*** (quoted source omitted). Relying on these definitions, J.L.R. argues that her statement was not a "threat" under the statute because "she did not mean the statement as a threat but rather as a figure of speech" and because she "did not have intent to actually inflict injury and did not indicate any 'impending danger or harm.'"

¶10 I will assume, without deciding, that the supreme court in ***Michael H.*** meant the cited definitions to be binding. Even so, J.L.R.'s argument

is easily rejected because it goes directly against the circuit court's factual and credibility findings. The circuit court plainly disbelieved J.L.R.'s claim that she meant her statement as a figure of speech, and instead found that J.L.R. meant the statement as a threat. The court stated:

> [J.L.R.] threatened to burn her mother's house down. [J.L.R.] says it was a figure of speech. I'm just thinking, what would that be a figure of speech for. And I've never heard that as a figure of speech. So it's a little hard for me to gather anything from that statement other than a threat to burn the house down.

Further, the record contains ample evidence to support the court's finding that J.L.R.'s threat was real. The evidence included expert testimony by Dr. Leslie Taylor explaining why Dr. Taylor formed the opinion that J.L.R. was dangerous within the meaning of WIS. STAT. § 51.20(1)(a)2. Dr. Taylor testified, in part:

> It's clear to me that her behavior was escalating.
>
> And while nothing significantly dangerous happened—I mean, nobody was physically harmed by her behavior—I think a lot of that has to do with luck. The way that she was yelling out profanities and making threats towards others, I would worry that someone would harm her or that she would act on one of her many threats. For example, to burn down her mother's house ….

¶11 It is true that the record contains other evidence, including other expert testimony, that could have supported a finding that J.L.R.'s threat was not indicative of dangerousness. But it is apparent that the circuit court gave the most significant weight to Dr. Taylor's testimony.

¶12 J.L.R.'s second argument relies on the statutory language requiring evidence that others are placed in "reasonable fear of violent behavior and serious physical harm." *See* WIS. STAT. § 51.20(1)(a)2.b. J.L.R. points to prior testimony by her mother in which J.L.R.'s mother indicated that she did not think J.L.R.

would actually burn down the house. J.L.R. argues that this "reasonable fear" language was not satisfied because her mother's testimony showed that J.L.R.'s mother was "not placed in reasonable fear of violent behavior or serious physical harm" by J.L.R.'s threat. I reject this argument for two reasons.

¶13 First, J.L.R.'s argument seems to assume, without support, that the "reasonable fear" standard focuses on a threat's actual effect on its target and whether the target, in fact, subjectively feared violent behavior or serious physical harm. But the authority I find on the topic suggests that the focus is on the nature of the threat viewed objectively, and not from the subjective standpoint of any particular person. In ***R.J. v. Winnebago County***, 146 Wis. 2d 516, 431 N.W.2d 708 (Ct. App. 1988), the court concluded that it would be "absurd" to interpret the statute to "focus upon the subjective feelings of the threatened individual" instead of "the objective acts of the disturbed person." ***Id.*** at 522. Thus, in ***R.J.*** the court upheld a Chapter 51 commitment even when the threat target was *unaware* of the threat. *See* ***id.*** at 518, 523.

¶14 Second, even if I applied J.L.R.'s subjective standard, I would affirm because other parts of J.L.R.'s mother's testimony support a finding that J.L.R.'s mother *did* actually fear violent behavior or serious physical harm, even if she did not believe J.LR. would actually burn down the house. Specifically, J.L.R.'s mother testified that J.L.R.'s threat, along with other behaviors, led J.L.R.'s mother to call the police. J.L.R.'s mother further testified that she had "never seen [J.L.R.] this angry."

Conclusion

¶15 For the reasons stated, I affirm the commitment order.

By the Court.—Order affirmed.

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