COURT OF APPEALS
DECISION
DATED AND FILED

February 28, 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. 2016AP1898-FT **Cir. Ct. No. 2016ME107**

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

IN THE MATTER OF THE MENTAL COMMITMENT OF R. O.:

MARATHON COUNTY,

PETITIONER-RESPONDENT,

V.

R. O.,

RESPONDENT-APPELLANT.

APPEAL from an order of the circuit court for Marathon County: MICHAEL MORAN, Judge. *Affirmed.*

¶1 HRUZ, J.[1] R.O. appeals an order for involuntary WIS. STAT. ch. 51 commitment. She argues Marathon County failed to present sufficient evidence under WIS. STAT. § 51.20(1)(a)2. showing that she was a danger to herself. We disagree and affirm.

BACKGROUND

¶2 On April 1, 2016, law enforcement filed a statement of emergency detention for R.O., in which R.O. was described as needing psychiatric help after she was evicted from her home and was unable to complete paperwork to stay at a Salvation Army shelter. A few days later, the circuit court ruled there was probable cause to temporarily detain R.O., and it appointed two experts to examine her.

¶3 At the April 13, 2016 final hearing, Dr. John Coates testified that after conducting a thirty-minute examination of R.O. and reviewing her past medical records, he diagnosed R.O. with a treatable psychotic disorder. Coates described R.O. as possessing impaired judgment, which included "display[ing] some persecutory delusions[,]" "denying … auditory or visual hallucinations[,]" and being "defiant … angry and irritable." Coates explained that he reached this conclusion because R.O. possessed a "lack of insight into … her illness" brought upon by her belief that "the health care center was … out to get her or … against her and they were doing absolutely nothing for her."

[1] This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2) (2015-16). This is an expedited appeal under WIS. STAT. RULE 809.17 (2015-16). All references to the Wisconsin Statutes are to the 2015-16 version.

¶4 Doctor Coates determined there was a substantial probability R.O.'s impaired judgement would cause physical impairment or injury to herself because "she basically would not be able to provide herself with basic living needs in her present state" in which she lacked employment and housing. According to Coates, "That is where the danger arises." Coates also testified that R.O. denied even suffering from a mental illness and is otherwise, in his opinion, incompetent to make a decision applying "the advantages and disadvantages and the alternatives to treating her illness due to her lack of insight." When asked whether R.O.'s risk of harm was imminent, Coates explained:

> [W]hether or not it is going to … is she going to die of starvation or cold exposure in the next week or so … probably not.
>
> But I think without treatment she will enter the system again if things were dismissed and it would be a very short time where something would occur. Either some inability to properly socialize with others or again, I just don't think in her present state she's employable or able to take care of her own affairs.
>
> … I think if she was released … we would probably see her back within a month's time[.]

¶5 Doctor Nicholas Starr testified that after a fifteen-minute examination of R.O., he diagnosed her with a "bipolar condition," consistent with Coates's diagnosis. Starr explained R.O. was "visibly angry, intense, she refused portions of the examination, she had elevated mood, she was preoccupied with being wrong. She had paranoia, she was disorganized, she had a nonsensical thought process and her psychotic process interfered with her inability [sic] to concentrate or understand judgment." Starr determined R.O. demonstrated impaired judgment due to her disorganized thoughts, her coming "to conclusions that she's being wronged and there's falsified information about her[,]" and her

consistent failure to follow through with medical recommendations or seek treatment.

¶6 Based upon the examination and his review of R.O.'s medical records, Dr. Starr determined R.O demonstrated a substantial probability of impaired judgment leading to physical injury, and that her mental illness left her unable to satisfy basic needs. He testified that R.O. denied having been institutionalized or having been on psychotropic medications, despite her records indicating the opposite. Starr explained R.O.'s records showed she had visited a crisis center in 2011 because she was neither sleeping nor eating, with additional visits on January 4, 2012, and August 10, 2015, for the same reason, and that she did so again on January 14, 2016, due to a psychotic episode. Starr noted R.O. had been psychiatrically hospitalized in 2007 and 2012, and she was found outside in the cold on two different occasions, including one instance in December 2007 where R.O. was catatonic outdoors for over two hours. Starr opined that R.O. was dangerous to herself because, if her psychotic disorder went untreated, there was a substantial probability of harm—specifically a lack of sleep, starvation, and frostbite—due to her inability to care for herself.

¶7 R.O. also testified at the hearing. Essentially, she stated she had been evicted and intended to stay at the Salvation Army shelter on the night she was detained before deciding against it. She further testified she could find housing and employment, although she did not specify where and what.

¶8 The circuit court concluded the County met its burden to show R.O. was a proper subject for WIS. STAT. ch. 51 involuntary commitment, including that she demonstrated a lack of judgment and presented a danger to herself. The court determined R.O. suffered "from a Chapter 51 disorder" and was "incapable of

expressing the advantages and disadvantages of accepting medication or treatment and the alternatives." In reaching its conclusion, the court stated it relied upon Dr. Coates's and Dr. Starr's testimonies regarding R.O.'s diagnoses, their opinions that R.O. will suffer significant risk of harm if not committed, "the overall charge history[,] and the testimony that she does not believe she has any type of mental disorder." The court ordered confinement for 120 days.[2] R.O. appeals.

DISCUSSION

¶9 "In order to be subject to a [WIS. STAT.] ch. 51 involuntary commitment, a subject individual must meet three criteria: the subject individual must be 1) 'mentally ill'; 2) 'a proper subject for treatment'; and 3) 'dangerous' to themselves or to others." ***Fond du Lac Cty. v. Helen E.F.***, 2012 WI 50, ¶20, 340 Wis. 2d 500, 814 N.W.2d 179 (citing WIS. STAT. § 51.20(1)(a)1.-2. (2009-10)). The petitioner must prove by clear and convincing evidence that the subject individual is suitable for treatment and confinement. WIS. STAT. § 51.20(13)(e).

¶10 R.O. does not dispute on appeal that she meets the criteria of being "mentally ill" or "a proper subject for treatment." Rather, the only issue on appeal is whether the County presented clear and convincing evidence of dangerousness under either WIS. STAT. § 51.20(1)(a)2.c. or d. The parties agree that the only

[2] The order was entered on April 18, 2016. The record reflects that the term of R.O.'s commitment ended on August 11, 2016, a recommitment hearing was held, an order for extended detention was filed on August 10, 2016, and the circuit court denied a motion to vacate that order for extended detention on August 12, 2016. As such, under the record before this court, it appears R.O. is still detained under a Chapter 51 order. R.O. filed a notice of appeal on September 29, 2016, of the order entered on April 18. The County has made no argument that this appeal is moot.

evidence of "dangerousness" relates to R.O. being a danger to herself, not to others.

¶11 Review of a commitment order presents a mixed question of fact and law. The circuit court's findings of fact will not be set aside unless they are clearly erroneous. ***Outagamie Cty. v. Melanie L.***, 2013 WI 67, ¶¶38-39, 349 Wis. 2d 148, 833 N.W.2d 607. Appellate courts "accept reasonable inferences from facts available to the circuit court." ***Id.***, ¶37. Application of those facts to the relevant statutory standard and interpreting the statute are questions of law reviewed independent of the circuit court's conclusions. ***Id.***, ¶39.

¶12 Under WIS. STAT. § 51.20(1)(a)2.c., the County must present clear and convincing evidence that the subject "[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." R.O. and the County agree that, as the terms are used within this statute, "pattern" means "[a] mode of behavior or series of acts that are recognizably consistent[,]" *Pattern*, BLACK'S LAW DICTIONARY (10th ed. 2014), and "substantial probability" means "much more likely than not[,]" *see* ***State v. Curiel***, 227 Wis. 2d 389, 415, 597 N.W.2d 697 (1999).

¶13 We conclude the County met its burden of establishing through clear and convincing evidence that R.O. was dangerous to herself under WIS. STAT. § 51.20(1)(a)2.c.[3] Testimony by Dr. Coates and Dr. Starr established that during

[3] For this reason, we do not address whether the County provided sufficient evidence showing R.O. was dangerous under WIS. STAT. § 51.20(1)(a)2.d., which concerns an inability to meet basic needs. *See* ***Turner v. Taylor***, 2003 WI App 256, ¶1 n.1, 268 Wis. 2d 628, 673 N.W.2d 716 (appellate court need not reach multiple issues if one is dispositive).

both examinations, R.O. consistently possessed impaired judgment affecting her ability to care for herself. Both experts observed she was uncooperative, delusional, and lacked any insight into her current psychotic disorder. They also opined R.O. was at a high risk of causing herself significant harm because her inability to recognize that, without treatment, her current behavior would not allow her to obtain shelter and employment. They also examined R.O.'s medical records, which showed multiple hospitalizations (some of which were relatively recent) arising from similar concerns brought upon by her mental illness and inability to care for herself.

¶14 R.O. argues the evidence did not establish she was "dangerous" under WIS. STAT. § 51.20(1)(a)2.c for several reasons, none of which are persuasive. Initially, she contends Dr. Coates's and Dr. Starr's testimonies alone could not establish a pattern of behavior for several reasons. First, the County presented no witnesses who observed firsthand R.O.'s apparently "disruptive" behavior at the Salvation Army shelter. From this point, she claims the evidence in this case is akin to only "yelling at and pointing a finger at another person" one time, which does not establish dangerousness. *See* ***Milwaukee Cty. v. Cheri V.***, No. 2012AP1737, unpublished slip op., ¶7 (WI App Dec. 18, 2012).[4] Second, the doctors supposedly only offered "conclusory" testimony regarding their examinations of R.O. because they failed to describe in detail both R.O.'s symptoms and whether R.O. was malnourished, improperly clothed, or catatonic at the Salvation Army shelter. Third, the doctors' "cursory knowledge of past incidents" is not relevant to any "recent" pattern of behavior.

[4] Unpublished one-judge opinions issued on or after July 1, 2009, may be cited for persuasive value. WIS. STAT. RULE 809.23(3)(b).

¶15 The thrust of R.O's argument is this: Because the County never provided any specific testimony about the Salvation Army shelter incident or R.O.'s current *physical* health, a pattern of recent acts or omission, and by extension dangerousness, cannot be established. We disagree. In ***Cheri V.***, this court was confronted with evidence consisting of only one witness who observed the subject cause an incident in a mental health facility; there was no evidence about the subject's prior history of behavior. *See* ***Cheri V.***, No. 2012AP1737, unpublished slip op., ¶¶3, 7. If R.O. means to compare her unspecified, allegedly "disruptive" behavior at the Salvation Army shelter to that of merely "yelling and pointing a finger" in ***Cheri V.***, then she misses the point. There is much more evidence here, as the doctors' testimonies establishes R.O. displayed a consistent "mode of behavior" during the examinations, a mode consistent with prior incidents requiring R.O.'s hospitalization. *See Pattern*, BLACK'S LAW DICTIONARY (10th ed. 2014). R.O. does not adequately explain why the doctors were unable to reach their expert opinions after having examined her, observed her behavior, and, for Dr. Starr at least, considered other recent visits to medical providers due to her condition.

¶16 This mode of behavior showed R.O. was dangerous because of her inability to adequately care for herself, not because of any outbursts or threats to herself at the shelter. R.O.'s behavior during the examinations provides evidence of a pattern of impaired judgment due to her failure to acknowledge any need to care for herself or receive treatment. Even during the hearing, R.O. continued, on multiple occasions, to claim the medical records being referenced were not her own. Furthermore, the doctors' testimonies about the examinations help to establish risk of harm when coupled with inferences drawn from her medical

records relating to her current condition, most importantly the January 14, 2016, and August 10, 2015, incidents.

¶17 Next, R.O. claims her own testimony at the hearing—specifically, that she was appropriately dressed at the Salvation Army shelter and she could find housing and employment soon—went unrefuted and establishes she did not exhibit impaired judgment. While the circuit court did state that R.O.'s testimony "made it [a] close [case][,]" it ultimately and properly concluded the evidence as a whole established both risk and impaired judgment. The court simply drew the reasonable inference, based upon the evidence as a whole, that R.O. lacked the ability to find shelter or employment in her current state. ***Melanie L.***, 349 Wis. 2d 148, ¶38.

¶18 Finally, R.O. summarily claims her refusal to fully participate during either doctor's examination is irrelevant because WIS. STAT. § 51.20(9)(a)4. provides patients with a statutory right to remain silent during such examinations. R.O. was advised she could invoke this right in her interviews with Drs. Coates and Starr. However, she did not invoke this right, and instead responded to their questions and conversed with them. In fact, Coates in particular considered her "hyperverbal state" and "nonstop talking during the interview" to be possible symptoms of bipolar disorder. R.O. fails to offer any explanation—and we are aware of none—as to why her alleged less-than-full participation in the interviews should have prevented the circuit court from considering her behavior during them as part of its WIS. STAT. § 51.20(1)(a)2.c. analysis.

By the Court.—Order affirmed.

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