COURT OF APPEALS
DECISION
DATED AND FILED

November 7, 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. 2017AP1313-FT **Cir. Ct. No. 2016ME75**

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

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

LANGLADE COUNTY,

PETITIONER-RESPONDENT,

V.

D. J. W.,

RESPONDENT-APPELLANT.

APPEAL from orders of the circuit court for Langlade County: JOHN B. RHODE, Judge. *Affirmed.*

¶1 HRUZ, J.[1] David[2] appeals orders for involuntary commitment and for involuntary medication and treatment, both issued pursuant to chapter 51 of the Wisconsin Statutes. The sole issue in this appeal is whether Langlade County presented clear and convincing evidence of dangerousness under WIS. STAT. § 51.20(1)(a)2. so as to justify these orders. We conclude it did and affirm.

BACKGROUND

¶2 The County filed a statement of emergency detention against David on October 31, 2016, three days after he had been detained due to concerns over his "altered state" and ongoing schizophrenia. In particular, North Central Health Care's treatment director stated:

> Patient has somatic delusions and he believes that he has parasites in his intestines, he is vomiting up his food here because he believes NCHC [North Central Health Care] is putting medicine in his food. He is paranoid and he believes that he is the chosen one. He believes that the devil had taped [sic] him on the shoulder. Client has a family hx [history] of schizophrenia. Due to client[']s current altered state he is not able to care for himself at this time. It has been reported that mom is concerned for her safety as well because he was standing outside of her bedroom door with a knife in his hand while she was sleeping.

¶3 On November 2, 2016, David and the County entered into a court-approved settlement agreement imposing certain treatment and other conditions. The County later filed a statement of noncompliance with the agreement, and the

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

[2] For the reader's convenience, we refer to Appellant D.J.W. with a pseudonym.

circuit court set a final commitment hearing for January 30, 2017, while also appointing two doctors to examine David.

¶4 At the commitment hearing, Dr. John Coates, a medical doctor, testified that, based upon a review of David's medical records, David suffered from schizophrenia and a cannabis use disorder, both of which he opined were treatable.[3] According to Coates, the medical records indicated that David proclaimed he was "the Messiah" sent by God to save humanity and that he hears voices to that effect. Coates also testified regarding reports of David's "heavy marijuana use on a daily basis." Coates opined that David was dangerous to himself because his delusional and "acute psychotic state" left him unable to care for himself or provide for his basic needs. Coates specified that David's records showed an inability to "care for himself" or "properly socialize," that David had a clear history "of aggressive behavior and property damage," that David had several past psychiatric hospitalizations, and that David "had suicidal ideations" after he dropped out of school in 2014. Coates further noted the medical records showed David denied having schizophrenia or any need for medication. Coates also testified that, in his opinion, David was incapable of applying or understanding the advantages and disadvantages of receiving medication due to his current impaired judgment.

¶5 Doctor Coates admitted he neither paid "too much attention to [David's] hygiene" during the examination nor observed any "gross disturbance" in David's appearance. Coates also could not recall any specific examples from

[3] David invoked his right under WIS. STAT. § 51.20(9)(a)4. to remain silent during both of the doctors' examinations and did not respond to their questioning.

David's medical records of when David demonstrably was unable to care for himself. Coates instead referred to David's acute schizophrenia, noting David's current illness "is very unpredictable as to what might happen during a psychotic episode" and that the "bottom line is [David is] in an acute psychotic state. Very delusional. And you don't need to look beyond that to see he can't take care of himself." When the circuit court questioned Coates about David's specific dangerous behavior, Coates referred to David's delusions and non-compliance with the settlement agreement, but Coates did not describe a particular behavioral episode.

¶6 Doctor Nicholas Starr, a psychologist, testified he also diagnosed David with schizophrenia and cannabis use disorder. Starr stated David suffered from hallucinations, delusions, and "thought broadcasting." Starr opined that David's disorders were treatable and that David posed a risk of danger to himself and others due to his current condition. Starr noted two instances referenced in David's medical records of David recently "questioning the point of living" and of David making telephone threats to his outpatient psychiatrist. Starr was unaware, however, of any specific instances where David demonstrably was unable to provide care for himself.

¶7 David testified at the hearing that, originally, he voluntarily sought treatment for his "abnormalities" and to discuss his strange dreams, his certainty that the world could hear his thoughts, his certainty that he is the Messiah, and his dismay that governments were not contacting him given that he is the Messiah. David testified he later refused treatment, and that he would continue to do so, because he perceived his counseling and medications were not beneficial. He further explained that he refused to use his prescribed medications because he was informed there was a risk they could cause an allergic reaction. While David

admitted hearing voices, he testified those voices never told him to hurt himself or other people, and, if they ever did, he would check himself back into treatment. David also testified that he sees things that other people do not see.

¶8 On cross-examination, David explained he willfully vomited on one occasion during his time in treatment because he believed medical personnel were medicating him without his approval. David further explained the reason he questioned whether life was worth living was because of difficulties with a physical ailment he claimed to no longer experience. David acknowledged that on another occasion he stood outside his mother's bedroom door with a knife while she slept, but he denied he ever intended to harm her. He also stated that he "on most occasions" carries around a knife. He also denied ever threatening his outpatient psychiatrist. David presented no other witnesses, other evidence, or any expert opinions.

¶9 After testimony concluded, the County argued that, in terms of dangerousness, Drs. Coates and Starr "seem[ed] to be relying on the dangerousness standard that reflects one's ability to care for oneself." The County specifically emphasized David's "acute schizophrenia," in and of itself, required treatment so that his symptoms could subside.

¶10 In its findings and conclusions, the circuit court expressly noted David's case was "not just about whether there is mental illness here," but rather the County also had to establish David's dangerousness to himself or others. Narrowing the issue to dangerousness, the court observed that it was "disappointed" that Dr. Coates did not provide specific examples of prior acts or omissions demonstrating David's dangerousness to himself, and it recognized that David denied the examples of such dangerousness that Dr. Starr noted in the

records. Ultimately, the court questioned David's overall credibility and relied on the doctors' testimony in concluding David was a danger to himself. The court entered a six-month commitment order and an order for involuntary medication and treatment for the commitment's duration.[4] David now appeals both orders.

DISCUSSION

¶11 For an individual to qualify for involuntary commitment for treatment under WIS. STAT. ch. 51, the petitioner must prove by clear and convincing evidence that the individual is mentally ill, a proper subject for treatment, and dangerous to others or him or herself. *See* WIS. STAT. §§ 51.20(1)(a)1.-2.; 51.20(13)(e). In evaluating whether the petitioner has met its burden of proof, a court must apply facts to the statutory standard and interpret the statute. ***Outagamie Cty. v. Melanie L.***, 2013 WI 67, ¶39, 349 Wis. 2d 148, 833 N.W.2d 607. The circuit court's findings of fact will not be set aside unless they are clearly erroneous. ***Id.***, ¶38. We must accept reasonable inferences from facts available to the circuit court. ***Id.*** Application of those facts and reasonable inferences therefrom to the relevant statutory standard, as well as interpreting relevant statutory provisions, are questions of law reviewed independent of the circuit court's conclusions. ***Id.***, ¶39.

¶12 The parties do not dispute that David is mentally ill or that he is a proper subject for treatment. Rather, David argues the evidence at the commitment hearing did not sufficiently show he was dangerous under the terms

[4] The County later petitioned for David's original commitment and treatment orders to be extended twelve months. The circuit court entered an order extending the original orders for that length on July 18, 2017.

of WIS. STAT. § 51.20(1)(a)2.d.[5] This subparagraph provides, in relevant part, that a subject individual is dangerous if he or she

> [e]vidences behavior manifested by recent acts or omissions that, due to mental illness, he or she is unable to satisfy basic needs for nourishment, medical care, shelter or safety without prompt and adequate treatment so that a substantial probability exists that death, serious physical injury, serious physical debilitation, or serious physical disease will imminently ensue unless the individual receives prompt and adequate treatment for this mental illness.

Id. David contends the County never established any facts relating to a recent failure to care for himself or whether there was a probability of imminent harm if he was not treated. David instead asserts both Drs. Starr and Coates—and, by extension, the circuit court—determined he was dangerous only because he was schizophrenic.

¶13 Based on our review of the entire record, we disagree. David's argument is initially directed at the credibility of the witnesses and the weight the circuit court gave their testimony. These issues are left to the trier of fact, not to

[5] The County also asserts three other standards of dangerousness, *see* WIS. STAT. § 51.20(1)(a)2.a.-c., support affirming the orders. In his reply brief, David incorrectly invokes the "judicial estoppel" doctrine and argues the County's position on appeal to argue these three bases for "dangerousness" is "contradictory" to its position in the circuit court. Although David cites the three requirements for judicial estoppel to apply, he ignores the fact that the County never convinced the circuit court to affirmatively take a position contrary to the County's current arguments. Arguing for and succeeding on one of the four standards for dangerousness is far from contradictory to a conclusion that any of the other standards apply.

In any event, we understand David as arguing the County forfeited any appellate argument on the other factors by not first presenting them to the circuit court. If so, the rule of forfeiture or waiver is inapplicable to a respondent. *See* ***State v. Holt***, 128 Wis. 2d 110, 124-25, 382 N.W.2d 679 (Ct. App. 1985), *superseded on other grounds by statute*. Regardless, because we affirm the circuit court's orders based only on subparagraph d., we do not address any other statutory grounds for "dangerousness" in this appeal.

this court. *See* ***State v. Kienitz***, 227 Wis. 2d 423, 440, 597 N.W.2d 712 (1999). Although the court complimented David for his demeanor on the stand, it nevertheless questioned the credibility of his testimony. Regarding whether it should believe the doctors or David on any disputed facts, the court observed it would "almost have to find that these doctors' testimony was so lacking in probative value or so off base or that they have some ulterior motive here and wish you harm to believe you over them. And that's hard for the Court to believe or understand." The court noted David had presented no other evidence questioning the doctors' testimony, let alone any contrary expert opinion.[6]

¶14 In light of the circuit court's factual findings, we are satisfied, based upon our independent review, that clear and convincing evidence showed David was dangerous under the terms of WIS. STAT. § 51.20(1)(a)2.d. David focuses on the lack of testimony about his physical state. In doing so, he fails to recognize that both doctors testified about, and relied upon, additional records showing David's recent acts and omissions.

¶15 Doctor Coates testified, however broadly, that David's medical records indicated he had a prior history of both aggressive behavior and hospitalization over mental health concerns. In terms of recent acts, as Dr. Starr

[6] The circuit court commented "I don't know" while considering the actuality of the alleged threats to David's outpatient psychiatrist and if David refused to take his prescribed medication. To whatever extent David argues the court never found these instances occurred based on these equivocations, we again note that it found David's testimony incredible in general. What is more, we construe the record as the circuit court only noting the reality that it could not, and cannot, know for certain what happened during events to which the court was not privy. For example, the court also commented it "d[id]n't know for sure" if David was the Messiah. The court never found in David's favor as to any disputed issue of fact. In any event, we may assume the court implicitly found those facts in support of its decision in favor of commitment. *See* ***County of Dunn v. Goldie H.***, 2001 WI 102, ¶44, 245 Wis. 2d 538, 629 N.W.2d 189.

noted, David questioned the point of living while he was hospitalized, in addition to David's forcing himself to vomit and refusing medication and treatment, all of which were prompted by David's alleged concerns that the circuit court determined were incredible. David also readily admitted he usually carries around a deadly weapon—namely, a knife.

¶16 David also incorrectly asserts that the County did not present any evidence relating to an inability to care for himself as a consequence of his disorders or acts. In fact, according to the doctors, the records indicated David would be unable to care for himself or properly socialize due to his delusions and unpredictable behavior if his conditions were left untreated, consistent with the above examples. Most importantly, despite David's initial willingness for treatment, he had since expressly denied the need for additional medication or commitment. David even denied the existence of his mental illness, despite a diagnosis of "acute" schizophrenia from Dr. Coates.

¶17 Relating to the probability of harm, it is undisputed that Drs. Coates and Starr both opined, based on their respective expertise, that a substantial probability exists that harm will imminently ensue unless David receives the necessary treatment. Ultimately, David may disagree with the weight the circuit court gave to these opinions in terms of proving his "dangerousness," but the instances on which the experts based their opinions do evidence behavior, manifested by recent acts or omissions, that David's mental illness is rendering him unable to satisfy basic needs for medical care or safety without treatment.[7]

[7] Indeed, during oral argument at the commitment hearing, David's counsel acknowledged that Dr. Starr relied on medical records to provide a "couple of specific examples" of David's dangerousness; counsel merely contested the veracity and weight of those instances by (continued)

¶18 In all, and contrary to David's arguments, the County, its experts, and the circuit court did not conclude David was unable to adequately care for himself merely because he suffers from some mental illness, such as schizophrenia. Rather, it was the other evidence cited on David's behavior, combined with the emphasis on the particularly acute nature of David's schizophrenia, that led to this conclusion. While David asserts "the law requires more," he does not cite any authority for this declaration nor offer any interpretation of WIS. STAT. § 51.20(1)(a)2.d. to persuade us that he is correct.

¶19 Meanwhile, David's criticism of the circuit court merely "guessing" is unwarranted, given the evidence and opinions of record. The reality is that all determinations under WIS. STAT. chapter 51 on a person's future dangerousness are inherently predictive exercises. In this respect, the circuit court's conclusion of dangerousness was ultimately proper based upon the weight it assigned to all of the evidence. Put another way, the conclusions reached by the circuit court—as well as our independent conclusion in applying the record and factual findings to the legal standards stated in WIS. STAT. § 51.20(1)(a)2.d.—are not based on an unsupported "guess."

By the Court.—Orders affirmed.

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

noting David "explain[ed] those to the court." Again, the circuit court did not find those explanations credible.