COURT OF APPEALS
DECISION
DATED AND FILED

January 23, 2018

Diane M. Fremgen
Acting Clerk of Court of Appeals

Appeal No. 2017AP450 **Cir. Ct. No. 2016ME157**

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

IN THE MATTER OF THE MENTAL COMMITMENT OF C. A.:

OUTAGAMIE COUNTY,

PETITIONER-RESPONDENT,

V.

C. A.,

RESPONDENT-APPELLANT.

APPEAL from an order of the circuit court for Outagamie County: TIMOTHY A. HINKFUSS, Judge. *Affirmed*.

¶1 STARK, P.J.[1] C.A. appeals a WIS. STAT. ch. 51 order for her involuntary commitment. She contends Outagamie County failed to show she was dangerous to herself or others under WIS. STAT. § 51.20(1)(a)2. We affirm.

BACKGROUND

¶2 C.A. was taken into custody in September 2016 under an emergency detention based upon reports from her family members that she had made "serious" threats to kill a judge. At the commitment hearing, Dr. Marshall Bales, a psychiatrist, testified to a reasonable degree of medical certainty that, based upon his examination of C.A. and a review of her medical records, C.A. was mentally ill. Bales diagnosed C.A. as suffering from schizoaffective disorder with manic and psychotic features. He opined that C.A.'s disorder was treatable. However, Bales noted C.A. was incapable of rationally applying an understanding of her disorder—the existence of which she denied—to make an informed choice about accepting or refusing treatment. Accordingly, Bales further opined C.A. was dangerous to herself due to a "substantial risk for further deterioration" that was likely to result from her continued lack of treatment. His opinion was based, in part, on C.A.'s "paranoid," "pronounced" and "delusional" thoughts about the legal system that he observed both during his examination and from C.A.'s records. Bales also spoke with C.A.'s elderly mother, with whom C.A. lived alone prior to her detention, and surmised that C.A. "intimidated" her.

¶3 Police officer Randall Lefeber testified about his past and recent contact with C.A. through his official duties, which contact he described as a

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

"roller coaster." After C.A.'s previous court order for medication expired, Lefeber received "at an increasing rate" reports that C.A. had raved in public "about somebody being killed" and about her displeasure with the court system. Lefeber had multiple contacts with C.A. at her mother's residence during the two months prior to her detention. During these contacts, he described C.A. as "manic," voicing disorganized and delusional thoughts about the legal system, and unable to express "a consistent thought or pattern." When Lefeber spoke to C.A.'s mother about C.A., he noted she seemed "very reluctant to talk to us out of fear" and "very guarded with her words."

¶4 Clinical therapist Sheng Lee Yang testified that she requested an emergency detention after receiving reports from C.A.'s family members that C.A. had threatened to kill a judge. Yang also referenced reports that C.A. had been "making accusations or making threats to others in the community" since the spring. When speaking to C.A. via phone as part of a welfare check, Yang noted that C.A. expressed "rambling and very disorganized thinking about … the judicial system." Yang believed, based on C.A.'s recent delusional behavior, that C.A.'s "mental health was decompensating" and that C.A. "could be at risk if she should start making accusations to somebody in the community." Yang also testified that, after the emergency detention, she received a letter from C.A.'s mother stating C.A. would not be "welcome back home at th[at] time" if C.A. was released from hospitalization.

¶5 C.A.'s mother was the only witness to testify on C.A.'s behalf. She denied witnessing C.A. threaten a judge in her presence or her being fearful of C.A.

¶6 At the conclusion of the hearing, the circuit court found that C.A. suffered from a mental illness, that she was a proper subject for treatment, and that she was dangerous. In particular, the court determined C.A. was dangerous under WIS. STAT. § 51.20(1)(a)2.e., based primarily upon Bales's testimony and his report.[2] The court entered an order for involuntary commitment after the hearing. C.A. appeals.

DISCUSSION

¶7 In a WIS. STAT. ch. 51 proceeding, a petitioner has the burden to prove by clear and convincing evidence that a subject individual is mentally ill, a proper subject for treatment, and dangerous to him- or herself or others. *See* WIS. STAT. § 51.20(1)(a), (13)(e). Whether this burden has been met presents a mixed question of fact and law. ***Waukesha Cty. v. J.W.J.***, 2017 WI 57, ¶15, 375 Wis. 2d 542, 895 N.W.2d 783. We uphold the circuit court's findings of fact unless they are clearly erroneous. ***Id.*** Whether these findings satisfy the statutory standards is a question of law we review de novo. ***Id.***

¶8 The only issue C.A. raises on appeal is whether the County satisfied its burden to show she was dangerous to herself or others. WISCONSIN STAT. § 51.20(1)(a)2.e., also known as the "fifth standard," "permits commitment only when a mentally ill person needs care or treatment to prevent deterioration but is unable to make an informed choice to accept it."[3] ***State v. Dennis H.***, 2002 WI

[2] The circuit court determined the evidence also satisfied dangerousness under WIS. STAT. § 51.20(1)(a)2.b. Because we conclude the County met its burden under § 51.20(1)(a)2.e., we do not need to address the parties' arguments relating to § 51.20(1)(a)2.b. *See* ***Sweet v. Berge***, 113 Wis. 2d 61, 67, 334 N.W.2d 559 (Ct. App. 1983).

[3] The fifth standard, in relevant part, defines an individual as dangerous if:

(continued)

104, ¶39, 255 Wis. 2d 359, 647 N.W.2d 851. A petitioner must prove by clear and convincing evidence five elements for an individual to be considered dangerous under the fifth standard: (1) the individual is mentally ill; (2) the individual is unable to make an informed choice as to whether to accept or refuse treatment because of mental illness; (3) the individual shows a substantial probability that he or she needs care or treatment to prevent further disability or deterioration, based upon his or her treatment history and recent acts or omissions; (4) the individual evidences a substantial probability that he or she will lack services necessary for

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> [A]fter the advantages and disadvantages of and alternatives to accepting a particular medication or treatment have been explained to him or her and because of mental illness, evidences either incapability of expressing an understanding of the advantages and disadvantages of accepting medication or treatment and the alternatives, or substantial incapability 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; and evidences a substantial probability, as demonstrated by both the individual's treatment history and his or her recent acts or omissions, that the individual needs care or treatment to prevent further disability or deterioration and a substantial probability that he or she will, if left untreated, lack services necessary for his or her health or safety and suffer severe mental, emotional, or physical harm that will result in the loss of the individual's ability to function independently in the community or the loss of cognitive or volitional control over his or her thoughts or actions. The probability of suffering severe mental, emotional, or physical harm is not substantial under this subd. 2. e. if reasonable provision for the individual's care or treatment is available in the community and there is a reasonable probability that the individual will avail himself or herself of these services or if the individual may be provided protective placement or protective services under ch. 55. Food, shelter, or other care that is provided to an individual who is substantially incapable of obtaining food, shelter, or other care for himself or herself by any person other than a treatment facility does not constitute reasonable provision for the individual's care or treatment in the community under this subd. 2. e.

WIS. STAT. § 51.20(1)(a)2.e.

health and safety if he or she is left untreated; and (5) an individual evidences a substantial probability that he or she will suffer mental, emotional or physical harm if left untreated, resulting in the loss of either the individual's ability to function independently in the community or the individual's cognitive or volitional control over any thoughts or actions. ***Id.***, ¶¶18-26 (citing WIS. STAT. § 51.20(1)(a)2.e.).

¶9 C.A. does not dispute that the first two elements were satisfied, but she contends that the evidence failed to satisfy the remaining three elements. As to the third element, C.A. acknowledges that Bales properly relied on her treatment history in opining that there was a "substantial probability" that her condition would deteriorate without treatment. However, C.A. asserts there was no evidence of any "recent acts or omissions" showing any need for treatment to prevent further deterioration. WIS. STAT. § 51.20(1)(a)2.e. More specifically, she contends the evidence never showed she actually threatened anyone.

¶10 We need not address C.A.'s argument about the lack of any credible or admissible evidence that she threatened anyone. Regardless of any threat, the County presented evidence of several recent acts demonstrating that C.A. had a need for treatment to prevent further deterioration. The evidence showed that after C.A.'s court order for medication expired she exhibited, with increasing frequency, a delusional thought process regarding the justice system. In particular, Lefeber noted C.A. displayed delusional thought processes, angry tone, and ravings about legal persons and the court system during his multiple contacts at her mother's residence, all of which left him feeling "uncomfortable." Yang similarly observed C.A.'s "decompensating" mental health prompted other family members to contact Yang out of concerns for their safety. All three of the County's witnesses testified in some form that C.A.'s mother was fearful due to

C.A.'s behavior.[4] C.A.'s mother acknowledged she reached out to Yang in order to get "medicine" for the "terrible stress" C.A. was experiencing. Together, this testimony provides sufficient evidence of recent acts showing a need for treatment to prevent C.A.'s further deterioration.

¶11 On the fourth element, C.A. argues the evidence does not support a finding that there is a substantial probability she will lack services necessary for health and safety if left untreated. C.A. observes her mother provided her with shelter immediately prior to her detention, and she cites testimony from Bales that she appeared to be in good physical health. While there was conflicting testimony as to C.A.'s physical health and whether C.A.'s mother would continue to provide her housing and assistance, these issues are unimportant under the fifth standard: "[T]he simple provision of food and shelter by a non-treatment facility does not satisfy the requirement of the 'reasonable provision for the individual's care or treatment.'" ***Dennis H.***, 255 Wis. 2d 359, ¶25 (quoting WIS. STAT. § 51.20(1)(a)2.e.). Pertinent to the element, Bales opined that, without any commitment order, there was a substantial probability that C.A. would refuse to seek treatment or medication and that her mental health would thus deteriorate. Simply put, she would thus lack the services necessary for her health and safety.

¶12 Finally, on the fifth element, C.A. denies there is a substantial probability that she will suffer mental, emotional or physical harm if left untreated, resulting in the loss of her ability to function independently in the community or of

[4] Although the circuit court did not expressly find C.A.'s mother incredible when she testified she was not fearful of C.A., the court explicitly relied upon the testimony of Bales and Yang in its findings of fact. We therefore assume the court implicitly found the County's witnesses credible as to their observations of C.A.'s mother. *See* ***Jacobson v. American Tool Cos., Inc.***, 222 Wis. 2d 384, 390, 588 N.W.2d 67 (Ct. App. 1998).

her cognitive or volitional control over any thoughts or actions. C.A. asserts she was adequately functioning independently in the community and the evidence showed she was maintaining volitional control over her thoughts and actions.

¶13 C.A.'s argument overlooks that the fifth standard applies to persons who "are clearly dangerous to themselves because their incapacity to make informed medication or treatment decisions makes them more vulnerable to severely harmful deterioration than those who are competent to make such decisions." ***Id.***, ¶34. As noted above, the evidence showed C.A.'s mental health was declining without treatment. Bales opined there was a substantial probability that C.A. would continue to refuse treatment because she did not believe she was ill. He testified that, as in the past, without treatment C.A.'s mental health would continue to decompensate, thus causing her to lose volitional control over her thoughts and actions. Bales further opined that under those circumstances there was a substantial probability that C.A. would suffer mental and emotional harm due to her delusional and paranoid thought process and be unable to function independently in the community.

¶14 The evidence clearly proved C.A. was dangerous under all the elements of WIS. STAT. § 51.20(1)(a)2.e. As the County persuasively argues, "C.A. is precisely the type of person the fifth standard was designed to help." Indeed, the fifth standard exists to allow the state to help a patient who is "helpless, by virtue of an inability to choose medication or treatment, to avoid the harm associated with the deteriorating condition." ***Dennis H.***, 255 Wis. 2d 359, ¶33. In other words, the fifth standard here "allow[ed] the state to intervene with care and treatment before the deterioration reache[d] an acute stage, thereby preventing [C.A.'s] otherwise substantially probable and harmful loss of ability to function independently or loss of cognitive or volitional control." *See* ***id.***

By the Court.—Order affirmed.

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