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DISTRICT IV

January 23, 2018

To:

Hon. Barbara W. McCrory
Circuit Court Judge
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You are hereby notified that the Court has entered the following opinion and order:

2016AP2256-NM

In the matter of the mental commitment of J. E. B.: Rock County
v. J. E. B. (L.C. # 2014ME267)

Before Kloppenburg, J.¹

Summary disposition orders may not be cited in any court of this state as precedent or authority, except for the limited purposes specified in WIS. STAT. RULE 809.23(3).

Attorney Tristan Breedlove, appointed counsel for appellant J.E.B., has filed a no-merit report seeking to withdraw as appellate counsel. *See* WIS. STAT. RULE 809.32; *Anders v. California*, 386 U.S. 738, 744 (1967). The no-merit report addresses the sufficiency of the evidence to support the order extending J.E.B.'s involuntary commitment and the circuit court's

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

exercise of discretion as to disposition.² J.E.B. was sent a copy of the report, but has not filed a response. Upon my independent review of the entire record, as well as the no-merit report, I agree with counsel's assessment that there are no arguably meritorious appellate issues.

On March 23, 2016, Rock County filed a petition for a hearing on its request to extend J.E.B.'s involuntary commitment. On May 25, 2016, the circuit court held an extension hearing. Two psychiatrists testified as to the mental health condition examinations they recently conducted as to J.E.B. Following the hearing, the circuit court entered orders extending J.E.B.'s involuntary commitment and for involuntary treatment.

The first issue addressed in the no-merit report is whether there would be arguable merit to a challenge to the sufficiency of the evidence to support the circuit court's decision to extend J.E.B.'s involuntary commitment. Under WIS. STAT. § 51.20(13)(g)3., the county department that has custody of an individual under an order for commitment may petition to extend the order for commitment, and has the burden to prove that the criteria for commitment are met. The criteria for mental health commitment are that the individual is: (1) mentally ill, (2) a proper subject for treatment, and (3) dangerous. *See* WIS. STAT. § 51.20(1)(a) and (am). Here, the examining psychiatrists both testified that J.E.B. has been diagnosed with schizoaffective disorder, thus meeting the statutory criteria of mental illness. They also testified that J.E.B. responds positively to psychiatric medication, thus establishing that J.E.B. is a proper subject for treatment. Additionally, they testified that there is a substantial likelihood that J.E.B. would be a proper subject for commitment if treatment were withdrawn—because J.E.B. has a history of

² Although the orders for involuntary commitment and treatment have now expired, I address their validity because issues arising from these orders may affect subsequent orders.

withdrawing from her psychiatric medication, leading to unsafe behavior and police contacts—meeting the statutory requirement of dangerousness. *See* WIS. STAT. § 51.20(1)(am) (dangerousness element for person under court order for treatment of mental illness immediately prior to current proceeding met “by a showing that there is a substantial likelihood, based on the subject individual’s treatment record, that the individual would be a proper subject for commitment if treatment were withdrawn”). Accordingly, I agree with counsel’s assessment that a challenge to the sufficiency of the evidence to support the extension of the involuntary commitment would lack arguable merit.

Next, the no-merit report addresses whether there would be arguable merit to a challenge to the circuit court’s exercise of discretion at disposition in extending J.E.B.’s commitment for one year and ordering involuntary treatment. Under WIS. STAT. § 51.20(13)(g)1., an order for extending a commitment may be for a period of up to one year. Additionally, under WIS. STAT. §§ 51.61(1)(g)3. and 4.a., a court may order involuntary treatment for a person subject to commitment if the person is not competent to refuse medication or treatment, in that she is “incapable of expressing an understanding of the advantages and disadvantages” of treatment. Here, both testifying psychiatrists testified as to J.E.B.’s history of decompensating and engaging in inappropriate and unsafe behavior when treatment was withdrawn. They also both stated that J.E.B. was unable to understand the advantages and disadvantages of treatment as applied to her. Again, I agree with counsel that a challenge to the court’s exercise of discretion would lack arguable merit.

Upon my independent review of the record, I have found no other arguable basis for reversing the circuit court’s order. I conclude that any further appellate proceedings would be wholly frivolous within the meaning of *Anders* and WIS. STAT. RULE 809.32.

Therefore,

IT IS ORDERED that the orders are summarily affirmed. *See* WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that Attorney Tristan Breedlove is relieved of any further representation of J.E.B. in this matter. *See* WIS. STAT. RULE 809.32(3).

IT IS FURTHER ORDERED that this summary disposition order will not be published.

Diane M. Fremgen
Acting Clerk of Court of Appeals