COURT OF APPEALS
DECISION
DATED AND FILED

April 25, 2018

Sheila T. Reiff
Clerk of Court of Appeals

Appeal No. 2017AP952 **Cir. Ct. No. 2008CI5**

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

IN RE THE COMMITMENT OF MATTHEW TYLER:

STATE OF WISCONSIN,

PETITIONER-RESPONDENT,

V.

MATTHEW TYLER,

RESPONDENT-APPELLANT.

APPEAL from orders of the circuit court for Milwaukee County: WILLIAM W. BRASH and T. CHRISTOPHER DEE, Judges. *Affirmed*.

Before Neubauer, C.J., Reilly, P.J., and Gundrum, J.

¶1 PER CURIAM. Matthew Tyler appeals from orders denying his petition for release from his WIS. STAT. ch. 980 (2015-16) commitment and his WIS. STAT. § 809.30 postjudgment motion seeking supervised release or a new trial.[1] We reject his arguments and affirm.

¶2 Tyler has been involuntarily committed as a sexually violent person since 2008. His 2015 petition for discharge was tried to the court. One psychologist testified for the State; two testified on Tyler's behalf. The doctors' reports were accepted as exhibits. None of the three found Tyler eligible for supervised release, as he had declined to participate in sexual offender treatment and therefore was not making significant progress in treatment. *See* WIS. STAT. § 980.08(4)(cg)1. Tyler's doctors supported discharge, however. The circuit court denied his petition but did not specifically address supervised release.

¶3 Tyler's petition had not requested supervised release, but he also had not affirmatively waived his right to have the issue determined. Tyler filed a postjudgment motion alleging that on denying his petition for discharge, the court was statutorily bound to determine his eligibility for supervised release. *See* WIS. STAT. § 980.09(4). As the court did not, he continued, it should make that determination or grant him a new trial.

¶4 In the meantime, Judge Brash was appointed to the court of appeals. Tyler's motion was heard by the successor judge, Judge Dee. Judge Dee found that Judge Brash discussed evidence pertaining to supervised release, cited WIS.

[1] The Honorable William W. Brash presided over the bench trial. The Honorable T. Christopher Dee presided over the postjudgment hearing.

All references to the Wisconsin Statutes are to the 2015-16 version unless noted.

STAT. § 980.08(4)(cg), which sets forth the criteria for supervised release, and noted the need to consider the factors for both supervised release and discharge. The court denied Tyler's motion, finding that it was apparent from "the context and language of his oral decision" that Judge Brash implicitly denied supervised release and that his failure to expressly so state was "most assuredly an inadvertent omission." Tyler appeals.

¶5 A person committed as sexually violent under WIS. STAT. § 980.06 may petition a circuit court for supervised release or discharge from commitment. WIS. STAT. §§ 980.08(1), 980.09(1). At a trial on a discharge petition, "the state has the burden of proving by clear and convincing evidence that the person meets the criteria for commitment as a sexually violent person." Sec. 980.09(3). At the hearing on a petition for supervised release, the committed person has the burden of proving by clear and convincing evidence that he or she meets all of the necessary criteria. Sec. 980.08(4)(cg), (cj).

¶6 The issue on appeal is whether Judge Dee properly clarified that Judge Brash intended to deny Tyler supervised release although Judge Brash's ruling did not expressly say so. Tyler contends Judge Dee conducted a transcript review that required him to weigh and compare testimony he had not heard, thereby going beyond modifying the original judgment to improperly making a wholly new finding of unsuitability for supervised release.

¶7 Whether a judgment is ambiguous is a question of law, which we review de novo. ***Cashin v. Cashin***, 2004 WI App 92, ¶12, 273 Wis. 2d 754, 681 N.W.2d 255. A judgment is ambiguous if it "is subject to two or more reasonable interpretations," ***id.***, ¶11, or if, with respect to a certain issue, it is silent on that issue, *see* ***Washington v. Washington***, 2000 WI 47, ¶¶4, 16, 32, 234 Wis. 2d 689,

611 N.W.2d 261. A circuit court has the authority to construe an ambiguous judgment to effectuate the court's objective. ***Cashin***, 273 Wis. 2d 754, ¶10. Such a construction is a clarification, not an impermissible modification or revision of the judgment. *See* ***Washington***, 234 Wis. 2d 689, ¶19.

¶8 We give deference to a trial court's interpretation of its own prior ambiguous judgment. ***Schultz v. Schultz***, 194 Wis. 2d 799, 808, 535 N.W.2d 116 (Ct. App. 1995). Here, we are reviewing a successor judge's interpretation of another judge's decision. A successor judge has all the powers and authority of his or her predecessor. *See* ***Starke v. Village of Pewaukee***, 85 Wis. 2d 272, 282, 270 N.W.2d 219 (1978). The successor judge "may in the exercise of due care modify or reverse decisions, judgments or rulings of his [or her] predecessor if this does not require a weighing of the testimony given before the predecessor." ***Id.*** at 283. Judge Dee was not called upon to make a determination that depended upon weighing testimony. Neither are we.

¶9 A circuit court starts in the position of having to deny a petition for supervised release. ***State v. Rachel***, 2010 WI App 60, ¶9, 324 Wis. 2d 465, 782 N.W.2d 443; *see* WIS. STAT. § 980.08(4)(cg) ("The court may not authorize supervised release unless, based on all of the reports, trial records, and evidence presented, the court finds that all of the following criteria are met."). To be eligible for supervised release, one criterion the committed person must satisfy is that he or she "is making significant progress in treatment" which "can be sustained while on supervised release." Sec. 980.08(4)(cg)1.

¶10 Judge Dee did not have to weigh evidence or make credibility determinations to ascertain Judge Brash's intended meaning regarding supervised release. In his oral ruling, Judge Brash expressly noted that on a petition for

discharge, a court "has to take into consideration" "whether or not somebody is, in fact, ready or appropriate for supervised release versus ultimately for discharge," and that he had "weigh[ed] all that." Judge Brash also commented that Tyler had "declined to participate in sex offender treatment" and that one of Tyler's own experts indicated his belief at trial that Tyler failed to meet the statutory criteria for supervised release. As the undisputed evidence was that Tyler declined to partake in sex offender treatment, it follows that he could not have been "making significant progress in treatment."

¶11 Tyler did not meet his burden of proving by clear and convincing evidence that he meets all of the necessary criteria. WIS. STAT. § 980.08(4)(cg), (cj). Statutorily, therefore, Judge Brash could not have done anything but deny supervised release. In light of the record, Judge Dee's clarification of Judge Brash's judgment is the only reasonable construction.

By the Court.—Orders affirmed.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)5.