COURT OF APPEALS
DECISION
DATED AND FILED

April 26, 2018

Sheila T. Reiff
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. 2017AP2429 **Cir. Ct. No. 2013ME18B**

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

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

PORTAGE COUNTY,

PETITIONER-RESPONDENT,

V.

J. W. K.,

RESPONDENT-APPELLANT.

APPEAL from an order of the circuit court for Portage County: THOMAS T. FLUGAUR, Judge. *Affirmed.*

¶1 BLANCHARD, J.[1] J.W.K. appeals an order extending his involuntary commitment by 12 months. J.W.K. argues that Portage County failed to prove by clear and convincing evidence that J.W.K. would be a proper subject for commitment under WIS. STAT. ch. 51 if his treatment were to be withdrawn, and therefore the circuit court erred in extending J.W.K.'s commitment. I conclude that the evidence presented at J.W.K.'s recommitment hearing, and the circuit court's findings based on that evidence, support extending the commitment, and accordingly affirm.

¶2 The parties do not dispute pertinent legal standards or facts, which I now summarize.

¶3 WISCONSIN STAT. § 51.20(1) governs involuntary commitment for treatment. In order to involuntarily commit a person, the county must show that the person is mentally ill and dangerous. *See* § 51.20(1)(a)1.–2., (13)(e). The same standards apply to extensions of the commitment, except that the county may satisfy the showing of dangerousness by demonstrating 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subject individual's treatment record, that the individual would be a proper subject for commitment if treatment were withdrawn." § 51.20(1)(am). Whether the County has met its burden is a mixed question of law and fact. I uphold the circuit court's findings of fact unless they are clearly erroneous. *See* ***K.N.K. v. Buhler***, 139 Wis. 2d 190, 198, 407 N.W.2d 281 (Ct. App. 1987). Whether the facts fulfill the statutory standard is a question of law that I review de novo. ***Id.***

[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.

¶4 Two witnesses testified at the recommitment hearing: Dr. James Scott Persing and Steve Bierman, a social worker employed by the County. Persing testified that J.W.K. has been diagnosed with schizophrenia and exhibits symptoms that include "intermittent difficulties with paranoia" and "at times, suspected issues with auditory hallucinations." Persing further testified that, at the time of the hearing, J.W.K.'s illness was being treated with a prescribed medicine, Haldol Deconoate, and continued "treatment, services, and medication" would help to "improve or control" J.W.K.'s condition.

¶5 Asked if it was his opinion that there was a substantial likelihood that J.W.K. would be a proper subject for commitment if treatment were withdrawn, Persing answered in the affirmative, "to my best degree of psychiatric certainty." Persing proceeded to explain that "[s]chizophrenia is a chronic and progressive deteriorating mental illness," which is not curable, nor is it an illness "that is intermittent." If treatment is withdrawn, symptoms "should come back as they were prior to treatment." On cross examination, Persing testified that J.W.K. had failed to follow the recommendations of treatment providers as recently as one month prior to the hearing.

¶6 Bierman, J.W.K.'s social worker, testified that J.W.K. had engaged in "threatening behavior," on and off, from the time Bierman began working with him in 2000. Bierman also testified that, at one point in the spring of 2016, the county human services department allowed J.W.K. to live in a less-restrictive setting in the community, but that this did not work out because J.W.K. did not take prescribed medications and engaged in "threatening behavior" toward his landlord. As a result, J.W.K. was returned to a more restrictive setting. Bierman further testified that J.W.K. continued to leave him threatening messages up until just before the hearing, and that on one recent occasion J.W.K. "made a face-to-

face threat" to Bierman—specifically, that J.W.K. would "knock [Bierman's] fucking eyes out."

¶7 Based on the testimony of Persing and Bierman, the circuit court found that J.W.K. would be a proper subject for commitment if treatment were withdrawn. *See* WIS. STAT. § 51.20(1)(am). The court found that J.W.K. is suffering from a mental illness, namely, schizophrenia, is a proper subject for treatment, and is in need of medication. The court also expressed concern regarding J.W.K.'s "dangerous behavior," "based on some of [J.W.K.'s] recent emails, as well as face-to-face threats" that he had made, according to testimony credited by the court.

¶8 J.W.K. argues that the County failed to prove that J.W.K. would be a proper subject for commitment if treatment were withdrawn. More specifically, he contends that the facts presented at the recommitment hearing, as summarized above, do not meet the requisite standard for dangerousness set forth in ch. 51, and suggests that Persing's testimony was too conclusory to be probative. I disagree. Persing's testimony was sufficiently clear and on point. More generally, I see nothing in the record to suggest that the findings of the circuit court in support of its pertinent conclusions are clearly erroneous. The record contains substantial evidence that J.W.K. "will benefit from treatment that will go beyond controlling his activity—it will go to controlling his disorder and its symptoms." *See* ***C.J. v. State***, 120 Wis. 2d 355, 361-62, 354 N.W.2d 219 (Ct. App. 1984). The testimony and the circuit court's findings are sufficient to meet the requisite standard for dangerousness as set forth above, and sufficient to support the circuit court's determination that the County satisfied the § 51.20(1)(a)1.–2. and (am) standards to extend J.W.K.'s involuntary commitment.

By the Court.—Order affirmed.

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