COURT OF APPEALS
DECISION
DATED AND FILED

May 14, 2019

Sheila T. Reiff
Clerk of Court of Appeals

Appeal No. 2018AP987 **Cir. Ct. No. 2016ME800**

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

IN RE THE COMMITMENT OF D. C. B.:

MILWAUKEE COUNTY,

PETITIONER-RESPONDENT,

V.

D. C. B.,

RESPONDENT-APPELLANT.

APPEAL from an order of the circuit court for Milwaukee County: DAVID L. BOROWSKI, Judge. *Affirmed*.

¶1 KESSLER, P.J.[1] D.C.B. appeals the order extending his involuntary commitment. He argues that: (1) Wisconsin's continued commitment standard is unconstitutional; (2) the circuit court lost competency over D.C.B. and failed to make a proper finding of dangerousness; and (3) the County failed to prove that D.C.B. was dangerous. We affirm.[2]

BACKGROUND

¶2 On August 4, 2017, Milwaukee County requested an extension of D.C.B.'s commitment. The County alleged that D.C.B. was subject to commitment under WIS. STAT. ch. 51, that D.C.B. continued to be a proper subject for treatment, and that the commitment should be extended for "a period of one year or for such other period that the Court deems appropriate[.]" In support of its request, the County's petition stated that D.C.B. was diagnosed with paranoid schizophrenia, missed required contacts with the County, was late to appointments, and did not believe that he had a mental health condition or was in need of medication. The County stated that an order for continued commitment was necessary to prevent D.C.B. from decompensating and ultimately posing a threat to himself or others.

[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.

[2] The Office of the State Public Defender suggests that this case may be appropriate for a three-judge panel as well as publication. Both the County and the State, who filed an amicus brief, contend that neither a three-judge panel nor publication are necessary because established case law resolves the matter. We agree that this case is appropriate for review by one judge because D.C.B. was not committed under an unconstitutional statute and the record supports the circuit court's decision.

¶3 At the extension hearing on September 1, 2017, the County called two witnesses: Steven Drenning, a case manager at Wisconsin Community Services, and Peder Piering, a clinical psychologist. Drenning testified that D.C.B. is a client of Wisconsin Community Services, an organization that provides "supportive psychotherapy" and "[m]edication monitoring." Drenning testified that when D.C.B. takes his medication he is "[l]ess symptomatic," but that D.C.B. believes that "he does not have a mental illness, and he doesn't need medications." Drenning stated that without continued commitment, D.C.B. "would become very sick and act out and become a danger to himself or others." Drenning also stated that D.C.B. had a past episode where he decompensated and "r[an] down the street without any clothes on, had a firearm. He's threatened his mother with a firearm[.]" Drenning also stated that when D.C.B. does not take his medications, he does not meet with Wisconsin Community Services representatives and he does not meet with his psychiatrist.

¶4 Piering testified that he evaluated D.C.B. and determined that D.C.B. has a treatable mental health illness—schizoaffective disorder. He testified that D.C.B. "has a history of delusional thinking, grandiosity," and is a proper subject for treatment. Piering stated that D.C.B. does not accept that he has a mental illness, does not recognize the need for medications, and without a continued commitment would become a risk to himself and others. Piering testified that when D.C.B. previously stopped taking his medication, he "ended up back in the hospital."

¶5 D.C.B. did not present any witnesses and he waived his right to testify. Following the conclusion of the testimony, D.C.B. interrupted the County's argument with the following exchange taking place:

> [COUNTY]: … I'm asking for a one-year extension…. I don't think he's too happy being under commitment. He's doing pretty well under commitment, and he's doing much better since he's been on the injectable. He's forced to be compliant with his medications. He's independent. He comes and goes.
>
> [D.C.B.]: My life is worse than it's ever been, and I'm not doing fine on the commitment.
>
> [COUNTY]: And he works.
>
> [D.C.B.]: I'm not working…. I'm unemployed, if you want to be honest.
>
> ….
>
> [D.C.B.]: Talk to Social Security.
>
> ….
>
> [D.C.B.]: My life is worse than it's ever been; so don't give me that shit.
>
> [COUNTY]: On that, I rest. I'm asking for one[-]year extension.

¶6 Defense counsel asked the circuit court to decline the extension request. The following exchange occurred:

> The Court: All right. The Court's reviewed the documents in the file. I've heard the testimony. Clearly, the county's met the burden. There's a need for an extension in this case. [D.C.B.] -- unfortunately, but -- clearly is mentally ill. He needs an extension of this commitment. He needs to continue to cooperate with his treatment. I would say he's doing marginally well, or marginally, okay?
>
> [D.C.B.]: No. I'm doing great.
>
> [Defense Counsel]: Okay. Okay.
>
> The Court: [D.C.B.], you're testing the Court's patience.
>
> [D.C.B.]: Oh, no.
>
> The Court: Knock it off.
>
> [D.C.B.]: I'm scared.

> [COUNTY]: Okay.
>
> The Court: Get him out of here. Cuff him and take him out of here. He needs to go inpatient today. I want the county to work on that.
>
> [D.C.B.]: That'll help my life out. Thanks.
>
> The Court: Keep it up, [D.C.B.].
>
> [D.C.B.]: Or what? I'm going inpatient. Can't get any worse than that.
>
> The Court: You want to bet? Want to have a conversation about that?
>
> [D.C.B.]: Yeah. I said meet me outside. We can have a conversation then.
>
> The Court: I want the county to commit him today….
>
> [D.C.B.]: Are you scared?
>
> The Court: And he … is not released without my permission. [Wisconsin Community Services] needs to be more on top of this case. That was ridiculous. He's doing okay? He should be in the community? Bull….
>
> And [Wisconsin Community Services] needs to be more on top of this. He should have been brought in. The allegations are he's walking around with weapons. He clearly is hostile in court with a bailiff standing next to him after his attorney warned him not to behave like that.
>
> People like that need to be inpatient, not in the community.…

¶7 On that same day, the circuit court signed an order extending D.C.B.'s commitment by one year. D.C.B. filed a motion to dismiss on the basis that the circuit court did not make the appropriate findings of fact. On October 20, 2017, the circuit court held a hearing to "complete/clarify the record." At the hearing, the court recapped the events of the previous hearing, stating, "at the end of that hearing, [D.C.B.] was rather agitated. He was not happy with the way the hearing was progressing. He was not happy with the Court, and he expressed

himself verbally and by standing up … if not directly coming at the Court, certainly taking a step or two towards me. I did not take too kindly to that." The court continued, "I think I forgot to make the oral findings because of the disturbance, because of the chaos, because of the situation that was caused, frankly, by [D.C.B.]'s behavior." The court then stated:

> The court made the appropriate findings. This case is appropriate for an extension…. The county met their burden.
>
> I think it would turn the law upside down if, in an unfortunate circumstance like this where [D.C.B.] was agitated … creating a disturbance and, thus, causing chaos and having the Court and the lawyers have to deal with all kinds of things … I guess, maybe forgetting to go back on the record or being prevented, in some sense, from going back on the record with [D.C.B.], should not create a dismissal.
>
> [D.C.B.] needs to be on extension. He needs the supervision that's being provided. He continues to be mentally ill. The county again met the burden. I'm denying the motion to dismiss.

This appeal follows.

DISCUSSION

¶8 D.C.B. raises multiple arguments on appeal. He contends that Wisconsin's "continued commitment" standard is facially unconstitutional because it "fails to require a finding of dangerousness to justify the deprivation of liberty," and therefore violates due process. He also argues that the circuit court lost competency to proceed when it "exiled D.C.B. from the courtroom" and failed to make the proper factual findings. Finally, D.C.B. contends that the County failed to prove that D.C.B. was dangerous.

I. Wisconsin's "Continued Commitment" Standard Does Not Violate Due Process.

¶9 At an initial involuntary commitment hearing, the County must establish the following by clear and convincing evidence: (1) the individual is mentally ill, (2) the individual is a proper subject for treatment, and (3) the individual is dangerous, as defined by WIS. STAT. § 51.20(1)(a)2.a-e.

¶10 We begin by pointing out what is not on appeal—D.C.B. does not challenge the constitutionality of initial commitment standards. Rather, D.C.B. argues that the continued commitment standard, provided by WIS. STAT. § 51.20(13)(g)3., is facially unconstitutional because it does not require a finding of dangerousness, which is a prerequisite to a civil commitment. D.C.B. contends that the plain language of the statute allows the County to confine a non-dangerous individual, thus violating his or her liberty interests. We disagree.

¶11 WISCONSIN STAT. § 51.20(13)(g)3. states:

> The county department under s. 51.42 or 51.437 to whom the individual is committed under par. (a)3. may discharge the individual at any time, and shall place a committed individual in accordance with par. (f). Upon application for extension of a commitment by the department or the county department having custody of the subject, the court shall proceed under subs. (10) to (13). *If the court determines that the individual is a proper subject for commitment as prescribed in sub. (1)(a)1. and evidences the conditions under sub. (1)(a)2. or (am) or is a proper subject for commitment as prescribed in sub. (1)(ar), it shall order judgment to that effect and continue the commitment.* The burden of proof is upon the county department or other person seeking commitment to establish evidence that the subject individual is in need of continued commitment.

(Emphasis added.)

¶12 In addition to requiring the circuit court to find that an individual is mentally ill and is a proper subject for treatment, the statute requires the court to find that the individual evidences the conditions under WIS. STAT. §§ 51.20 (1)(a)2. or (am). Sections 51.20(1)(a)2. and (am) require a finding of dangerousness:

> (a) Except as provided in pars. (ab), (am), and (ar), every written petition for examination shall allege that all of the following apply to the subject individual to be examined:
>
> ….
>
> 2. The individual is dangerous because he or she does any of the following:
>
> ….
>
> (am) If the individual has been the subject of inpatient treatment for mental illness … the requirements of a recent overt act, attempt or threat to act under par. (a)2. a. or b., pattern of recent acts or omissions under par. (a)2. c. or e., or recent behavior under par. (a)2. … d. *may be satisfied 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*….

(Emphasis added.)

¶13 The statutory requirement of dangerousness arises directly from the statute. Case law supports our conclusion. It is well established that upon each petition to extend a term of commitment, a county must establish the same elements with the same quantum of proof. *See* ***Fond du Lac Cty. v. Helen E.F.***, 2012 WI 50, ¶20, 340 Wis. 2d 500, 814 N.W.2d 179. "However, [the County] may satisfy the 'dangerousness' prong by showing '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.'" ***Waukesha Cty. v. J.W.J.***,

2017 WI 57, ¶20, 375 Wis. 2d 542, 895 N.W.2d 783 (citation omitted). The statute recognizes that dangerousness may be established by different means when an individual is already undergoing treatment. We explained the reason for allowing the County to prove dangerousness by alternative means:

> The clear intent of the legislature in amending sec. 51.20(1)(am), Stats., was to avoid the "revolving door" phenomena whereby there must be proof of a recent overt act to extend the commitment but because the patient was still under treatment, no overt acts occurred and the patient was released from treatment only to commit a dangerous act and be recommitted. The result was a vicious circle of treatment, release, overt act, recommitment. The legislature recognized the danger to the patients and others of not only allowing for, but requiring, overt acts as a prerequisite for further treatment. To construe [the amendment] differently would facilitate the very problem the legislature sought to avoid in the first place.

State v. W.R.B., 140 Wis. 2d 347, 351-52, 411 N.W.2d 142 (Ct. App. 1987).

¶14 We agree with the County that D.C.B. is left with the argument that he does not believe that dangerousness can be demonstrated in a number of ways. However, this does not make continued commitment a constitutional violation. The continued commitment statute does not violate due process.[3]

II. The Circuit Court Did Not Lose Competency.

¶15 D.C.B. contends that the circuit court lost competency to proceed when it "exiled D.C.B. from the courtroom" and when it failed to properly make a finding of dangerousness on the record at that time. We disagree.

[3] Because we conclude that the statute at issue does not violate due process, we decline to address D.C.B.'s remaining constitutional arguments. *See* ***State v. Blalock***, 150 Wis. 2d 688, 703, 442 N.W.2d 514 (Ct. App. 1989) (We decide cases on the narrowest possible grounds.).

A. D.C.B.'s removal from the courtroom.

¶16 The due process standards for WIS. STAT. ch. 51 proceedings are provided by WIS. STAT. §§ 51.20(5) and 885.60. Section 51.20(5)(a) provides, in part:

> The hearings which are required to be held under this chapter shall conform to the essentials of due process and fair treatment including the right to an open hearing, the right to request a closed hearing, the right to counsel, the right to present and cross-examine witnesses, the right to remain silent and the right to a jury trial if requested[.]

Section 885.60 provides:

> (1) Subject to the standards and criteria set forth in ss. 885.54 and 885.56 and to the limitations of sub. (2), a circuit court may, on its own motion or at the request of any party, in any criminal case or matter under chs. 48, 51, 55, 938, or 980, permit the use of videoconferencing technology in any pre-trial, trial or fact-finding, or post-trial proceeding.
>
> (2)(a) Except as may otherwise be provided by law, a defendant in a criminal case and a respondent in a matter listed in sub. (1) is entitled to be physically present in the courtroom at all trials and sentencing or dispositional hearings.

¶17 Although D.C.B. had a right to be present at every stage of the proceedings, a party's right "can be waived by consent or forfeited by conduct 'so disorderly, disruptive, and disrespectful of the court that his [proceeding] cannot be carried on with him in the courtroom.'" ***State v. Pirtle***, 2011 WI App 89, ¶21, 334 Wis. 2d 211, 799 N.W.2d 492 (citation omitted). In other words, the circuit court can, in some instances, remove a party from the courtroom, notwithstanding a right to otherwise be present. The record reflects that D.C.B. was speaking out of turn and ultimately behaved in a manner the circuit court reasonably considered

threatening. We discern no error from D.C.B.'s removal from the courtroom under these circumstances.

¶18 D.C.B. was in the courtroom until the end of the proceeding, when his own belligerent and threatening behavior led the circuit court to have him removed from the courtroom. D.C.B. heard the evidence, had the opportunity to cross-examine witnesses, and was present when the court said:

> The Court's reviewed the documents in the file. I've heard the testimony. Clearly, the county's met the burden. There's a need for an extension in this case. [D.C.B.] -- unfortunately, but -- clearly is mentally ill. He needs an extension of this commitment. He needs to continue to cooperate with his treatment.

The court did not render its decision outside of the D.C.B.'s presence, nor did D.C.B. miss any pertinent portion of the hearing. Accordingly, the court did not lose competency over the matter when it ordered D.C.B. removed from the courtroom.

B. The circuit court made the requisite findings.

¶19 We also conclude that the circuit court made the requisite finding of dangerousness. The court stated that it reviewed the documents in D.C.B.'s file and heard the testimony of two witnesses who both testified that D.C.B. was in denial about his condition and his need for treatment. Both witnesses also indicated that without treatment, D.C.B. could pose a threat to himself and/or others. Accordingly, the circuit court properly found that D.C.B., without treatment, remained dangerous and in need of continued commitment.

III. The County Met Its Burden.

¶20 Finally, D.C.B. contends that the County failed to meet its burden of proving that D.C.B. was in need of a commitment extension.

¶21 For an individual to be involuntarily committed under WIS. STAT. ch. 51, a petitioner must prove by clear and convincing evidence that the individual is mentally ill, a proper subject for treatment, and dangerous. *See* WIS. STAT. §§ 51.20(1)(a)1.-2., 51.20(13)(e). When the petitioner moves to extend a commitment under § 51.20(13)(g)3., those same standards apply. *See* WIS. STAT. § 51.20(1)(am). However, when extending a previous commitment, § 51.20(1)(am) allows the petitioner to prove the dangerousness element by showing "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."

¶22 When reviewing a circuit court's decision to impose involuntary commitment, we do not set aside the court's findings of fact unless they are clearly erroneous. *See* ***Outagamie Cty. v. Melanie L.***, 2013 WI 67, ¶38, 349 Wis. 2d 148, 833 N.W.2d 607. We must accept reasonable inferences from the facts available to the court. *See* ***id.*** Application of those facts to the relevant statutory standard and interpretation of statutory provisions are questions of law that we review independently. *See* ***id.***,¶39.

¶23 Two witnesses testified that D.C.B. was diagnosed with a schizophrenic disorder, was a proper subject for treatment, and was dangerous. As stated, both witnesses testified that D.C.B. did not believe he had a mental health condition and that D.C.B. did not understand his need for medications. Both witnesses testified that without an extended commitment, D.C.B. was at risk for

refusing to take his medications. Both witnesses also testified that D.C.B. stopped taking medications in the past, resulting in dangerous behavior and hospitalization. The record supports the circuit court's determination that the County met its burden of proving the need for D.C.B.'s commitment extension.

¶24 For the foregoing reasons, we affirm the circuit court.

By the Court.—Order affirmed.

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