**COURT OF APPEALS**
**DECISION**
**DATED AND FILED**

February 13, 2001

**Cornelia G. Clark**
**Clerk, Court of Appeals**
**of Wisconsin**

**NOTICE**



**No. 00-2786-FT**

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

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**IN THE MATTER OF THE MENTAL COMMITMENT OF HILBERT RANDY S.:**

**MARATHON COUNTY,**

**PETITIONER-RESPONDENT,**

**V.**

**HILBERT RANDY S.,**

**RESPONDENT-APPELLANT.**

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APPEAL from an order of the circuit court for Marathon County: RAYMOND THUMS, Judge. *Affirmed.*

¶1 CANE, C.J.[1] Hilbert R.S. appeals from the trial court's order recommitting him for a period of one year pursuant to WIS. STAT. Ch. 51. Hilbert had been originally committed involuntarily. The single issue on appeal is whether the trial court erred by refusing Hilbert's attempt to show that he was not dangerous and, therefore, not a proper subject for commitment if treatment were discontinued. Specifically, Hilbert contends that as part of his evaluation, he should have been permitted to inquire whether the treatment records showed that he was dangerous. The order is affirmed.

¶2 The standard for recommitment is undisputed and set forth in WIS. STAT. § 51.20(1)(am).[2] The issue before the trial court was whether Hilbert, based on his treatment records, would again be a subject for commitment if treatment were withdrawn.

[1] This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(d), and is an expedited appeal under WIS. STAT. RULE 809.17. All references to the Wisconsin Statutes are to the 1999-2000 version unless otherwise noted.

[2] WISCONSIN STAT. § 51.20(1)(am) provides in part:

> (am) If the individual has been the subject of inpatient treatment for mental illness, developmental disability or drug dependency immediately prior to commencement of the proceedings as a result of a voluntary admission or a commitment or placement ordered by a court under this section or s. 55.06 or 971.17 or ch. 975, or if the individual has been the subject of outpatient treatment for mental illness, developmental disability or drug dependency immediately prior to commencement of the proceedings as a result of a commitment ordered by a court under this section or s. 971.17 or ch. 975, the requirements of a recent overt act, attempt or threat to act under par. (a) 2. a. or b., a 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.

¶3 The testimony of Dr. Michael Galli and the stipulated report of Dr. Sheldon Schooler are uncontroverted. Both opinions are based on personal interviews and examination of Hilbert's treatment records. Both Galli and Schooler opined there was a substantial likelihood Hilbert would be a proper subject for commitment if treatment were discontinued.

¶4 The application of a statute to a particular set of facts presents a question of law, which this court decides without deference to the trial court. ***Neis v. Board of Educ.***, 128 Wis. 2d 309, 313, 381 N.W.2d 614 (Ct. App. 1985). In construing a statute, the primary objective is to achieve a reasonable construction that will effectuate the statutory purpose. ***Barnett v. LIRC***, 131 Wis. 2d 416, 420, 388 N.W.2d 652 (Ct. App. 1986).

¶5 The County correctly observes that WIS. STAT. § 51.20(1)(am) was passed to shut the "revolving door" dilemma. It cites ***In re W.R.B.***, 140 Wis. 2d 347, 351, 411 N.W.2d 142 (Ct. App. 1987), where we stated:

> 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.

Obviously, the legislative intent was to require a reasonable standard of review to determine when a commitment should end. By enacting this section, the legislature recognized that medications and treatment control dangerousness. As we observed in ***In re M.J.***, 122 Wis. 2d 525, 530-31, 362 N.W.2d 190 (Ct. App. 1984):

> Section 51.20(1) (am) provides that in a proceeding to extend a patient's commitment, the requirements of sec. 51.20(1)(a)2 that the acts or omissions relied on must be recent behavior may be satisfied by showing that there is a substantial likelihood, based on the patient's treatment record, that he or she would be a proper subject for commitment if treatment were discontinued. The purpose of this provision is to allow extension of a commitment when the patient's condition has not improved enough to warrant discharge. Because of the therapy received, evidence of recent action exhibiting "dangerousness" is often nonexistent. Therefore, the emphasis is on the attendant consequence to the patient should treatment be discontinued.

¶6 The trial court correctly observed that if it were to accept Hilbert's contention, then it would be revisiting the issue of dangerousness as determined in the original commitment. Acceptance of Hilbert's contention would simply be putting the court back to the "revolving door" situation, which the legislature intended to avoid. Therefore, the trial court properly refused Hilbert's attempt to revisit the dangerousness finding and required him to focus on the correct issue, namely, whether there was a substantial likelihood that if his treatment were withdrawn he would become a proper subject for recommitment. The answer to that question was uncontroverted. He would.

*By the Court.*—Order affirmed.

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