COURT OF APPEALS
DECISION
DATED AND FILED

July 3, 2001

Cornelia G. Clark
Clerk, Court of Appeals
of Wisconsin

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.

No. 01-0610-FT

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

IN THE MATTER OF THE MENTAL COMMITMENT OF CHERYL L.M.:

SHEBOYGAN COUNTY,

PETITIONER-RESPONDENT,

V.

CHERYL L. M.,

RESPONDENT-APPELLANT.

APPEAL from an order of the circuit court for Sheboygan County: GARY LANGHOFF, Judge. *Affirmed.*

¶1 ANDERSON, J.[1] Cheryl L.M. appeals from an order entered pursuant to WIS. STAT. § 51.20(13)(g)3 extending her commitment to the Winnebago Mental Health Institute (WMHI) for twelve months. Cheryl maintains that Sheboygan County failed to present sufficient evidence to prove that she would be a proper subject for commitment extension if treatment were withdrawn. We affirm because we conclude that the County met its evidentiary burden.

¶2 Cheryl was originally committed to WMHI on April 27, 2000. A petition for an extension was filed on October 20, 2000. WIS. STAT. § 51.20(13)(g)2r. The petition made assertions based on a report concluding that Cheryl had been diagnosed as bipolar, had begun to "decompensate" and had become manic and delusional. At trial, a psychiatrist and psychotherapist both testified to Cheryl's condition and in favor of her extended commitment. The extension order concluded that Cheryl would be a proper subject for commitment extension if treatment were withdrawn.

¶3 A commitment under WIS. STAT. ch. 51 is subject to extension under WIS. STAT. § 51.20(13)(g)3. The County must prove the elements of a commitment extension by clear and convincing evidence.[2] Sheboygan County needed to prove by clear and convincing evidence that Cheryl is mentally ill. Secs. 51.20(1)(a)1, (13)(e). The County also needed to prove, by the same standard, that Cheryl was dangerous. Sec. 51.20(1)(a)2. The element of

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

[2] "Under ch. 51, Stats., county governments are given primary responsibility for the well-being, treatment and care of the mentally ill." ***M.J. v. Milwaukee County Combined Cmty. Servs. Bd.***, 122 Wis. 2d 525, 529, 362 N.W.2d 190 (Ct. App. 1984).

dangerousness is established by 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." Sec. 51.20(1)(am).

¶4 At the commitment extension hearing, the County presented the testimony of a psychiatrist along with a written report that the psychiatrist had prepared under orders from the circuit court. The report established that Cheryl had been diagnosed as suffering from a bipolar affective disorder with psychotic features and was currently in a manic/hypomanic state, that she had begun to "decompensate," and that she was suffering from numerous delusions. At trial, the psychiatrist, a staff member at WMHI, testified to a reasonable degree of professional certainty that there was a substantial likelihood, based upon Cheryl's treatment record, that she would become a proper subject for commitment extension, if treatment were withdrawn. On direct examination, the County elicited the following testimony from the doctor:

> **Q** Based on your own evaluation and a review of the records, can you make a diagnosis to a reasonable degree of medical certainty as to her condition?
>
> **A** Yes.
>
> [**Q**] What is that diagnosis?
>
> **A** In my opinion she presents with Bipolar Affective Disorder with psychotic features, and at the time I saw her she was in manic or hypomanic state.
>
> **Q** Is that diagnosis considered a mental illness?
>
> **A** Yes, it is a mental illness.
>
> **Q** Does it create a substantial disruption of thought, mood, or perception?
>
> **A** Yes. It does cause disruption to a substantial degree of thought, mood, and perception.
>
> **Q** Does her condition also create a substantial risk of harm to herself or others if she is not treated?
>
> **A** Yes. It does create harm towards herself and other people.

Q How is that risk manifested specifically in her case?

A Well, she is very intrusive, extremely bizarre, very delusional, and very paranoid and frequently requires intervention from the surrounding staff to settle her down.

Q Is she a proper subject for treatment?

A She is a proper subject for treatment.

….

Q You indicated that you have had a chance to review her medical records. In your opinion is there a substantial likelihood based on her treatment record that she would become a proper subject for treatment—for commitment if treatment were withdrawn at this point?

A Yes, of course.

Q Do you believe she would continue treatment voluntarily if she were not under commitment?

A No. She would not do that.

Q And what are you basing that opinion on?

A Based on what her history is, what she told me, she doesn't believe—she has her own bizarre ideas of the medication, about what she should receive and what she should not, that she is allergic to medication. She is not in favor of taking medications, so I do not believe she would take meds voluntarily and if left on her own would even seek help.

¶5 The County presented the abbreviated testimony of a psychotherapist who opined that if treatment were withdrawn Cheryl would become a proper subject for an involuntary commitment. Additionally, the psychotherapist had filed a report which was attached to the petition for an extension of Cheryl's commitment. In the report, the therapist summarized Cheryl's diagnosis and treatment history and recommended her continued involuntary commitment.

¶6 In this appeal, Cheryl takes issue with the County's effort to meet its burden. She points out that the questions asked by the County "simply tracked the statutory language" rather than elicited answers that provided evidence of

objective facts. She argues that the testimony of the psychiatrist and psychotherapist failed to demonstrate that she would be dangerous to anyone if treatment were withdrawn.

¶7 We cannot overturn the circuit court's findings of fact unless the findings are clearly erroneous. ***K.N.K. v. Buhler***, 139 Wis. 2d 190, 198, 407 N.W.2d 281 (Ct. App. 1987). Factual findings will be upheld as long as they are supported by any credible evidence or reasonable inferences that can be drawn therefrom. ***Estate of Cavanaugh v. Andrade***, 202 Wis. 2d 290, 306, 550 N.W.2d 103 (1996). However, the application of the facts to the statutory test for commitment extension is a question of law that we review de novo. ***K.N.K.***, 139 Wis. 2d at 198.

¶8 The commitment extension of an individual is regulated by WIS. STAT. § 51.20(13)(g)3:

> The county department … to whom the individual is committed … may discharge the individual at any time …. Upon application for extension of a commitment by 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) … (am) … it shall order judgment to that effect and continue the commitment. The burden of proof is upon the county department … seeking commitment to establish evidence that the subject individual is in need of continued commitment.

¶9 Because Cheryl is subject to a court order for involuntary commitment extension, the County is not required to present evidence of recent acts or behavior evidencing that there is a substantial probability of serious physical harm to the patient or others or serious physical impairment or injury to

the patient. The County must show evidence of conditions under WIS. STAT. § 51.20(1)(am):

> If the individual has been the subject of inpatient treatment for mental illness … immediately prior to commencement of the proceedings as a result of … a commitment … ordered by a court under this section … 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.

¶10 We explained the purpose of this section in ***State v. W.R.B.***, 140 Wis. 2d 347, 351, 411 N.W.2d 142 (Ct. App. 1987):

> The clear intent of … sec. 51.20(1)(am), Stats., [is] 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.

We went on to spell out that the waiving of the requirement to show a recent dangerous act was recognition of the imminent risk to the patient and others of requiring objective evidence of recent overt acts as a prerequisite to extending a commitment. ***W.R.B.***, 140 Wis. 2d at 351-52.

¶11 It is undeniable that Cheryl has a long history of mental illness with multiple hospitalizations. She is now being treated on an inpatient basis at WMHI where she is "intrusive, extremely bizarre, very delusional, and very paranoid and frequently requires intervention from the surrounding staff to settle her down." Her inpatient treatment is hindered because of "her own bizarre ideas of medication" and her ensuing refusal to take certain prescribed medications. The

psychiatrist testified at the recommitment hearing that because Cheryl is not compliant with her medications, she has "decompensated" while a patient at WMHI. It was the psychiatrist's testimony that Cheryl "does not understand the nature of her illness and how to control the nature of that illness."

¶12 There was testimony that if treatment were withdrawn Cheryl would not take medications or seek treatment for her mental illness. There was also evidence that Cheryl is not in touch with reality even while an inpatient and requires staff intervention to "keep herself and other people around her safe." The examining psychiatrist testified that if treatment were withdrawn Cheryl would become a proper subject for an involuntary recommitment. Based upon the evidence presented at the hearing, the circuit court extended Cheryl's commitment, finding that if treatment were withdrawn she would become a proper subject for commitment. We affirm because we conclude that the evidence and reasonable inferences flowing from the evidence establish that the County met its burden of proving, by clear and convincing evidence, all of the conditions necessary for Cheryl's commitment extension. *See* ***W.R.B.***, 140 Wis. 2d at 352.

By the Court.—Order affirmed.

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