COURT OF APPEALS
DECISION
DATED AND FILED

August 1, 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. 01-0828-FT

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

IN THE MATTER OF THE MENTAL COMMITMENT OF RONALD C.:

COUNTY OF RACINE,

PETITIONER-RESPONDENT,

V.

RONALD C.,

RESPONDENT-APPELLANT.

APPEAL from an order of the circuit court for Racine County: DENNIS J. FLYNN, Judge. *Affirmed.*

¶1 SNYDER, J.[1] Ronald C. appeals from a WIS. STAT. ch. 51 order of the circuit court finding that he was mentally ill and a danger to himself or others, and committing him to inpatient treatment for six months. Ronald argues that he was not a danger to himself or others because Racine County did not establish a link between his mental illness and his dangerousness. In addition, Ronald argues that the evidence does not support his commitment for inpatient treatment. We disagree with both contentions and affirm the order of the circuit court.

FACTS

¶2 Ronald was temporarily detained pending a hearing in a WIS. STAT. ch. 51 proceeding pursuant to a statement of emergency detention. A probable cause hearing was held on November 7, 2000, at which Ronald was found to be mentally ill and a danger to himself or others, as alleged in the statement of emergency detention.

¶3 A final hearing was held on November 16, 2000. At this final hearing, the court heard testimony regarding Ronald's dangerousness from three witnesses, J.R., L.S.C. and F.C. Upon objection from Ronald, the circuit court found that the testimony of these three witnesses established that Ronald was a danger to himself or others because of threats he had made to these witnesses. The court determined that Ronald was mentally ill and a danger to himself or others and that the least restrictive placement was an inpatient placement, and ordered Ronald to inpatient treatment for a six-month period of commitment to the WIS. STAT. § 51.42 board.

[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.

DISCUSSION

¶4 When reviewing a commitment order, a circuit court's findings of fact cannot be overturned unless clearly erroneous. ***K.N.K. v. Buhler***, 139 Wis. 2d 190, 198, 407 N.W.2d 281 (Ct. App. 1987); *see also* WIS. STAT. § 805.17(2). However, we review questions of law independently, without deference to the circuit court. ***Scheunemann v. City of West Bend***, 179 Wis. 2d 469, 475, 507 N.W.2d 163 (Ct. App. 1993).

¶5 Ronald makes two arguments in support of his appeal: (1) that he was not a danger to himself or others because the County had not demonstrated "a link between [his] mental illness and a showing of dangerousness" and (2) that inpatient treatment was unsupported by the evidence. We reject both of these arguments.

¶6 Citing to ***State v. Post***, 197 Wis. 2d 279, 541 N.W.2d 115 (1995), Ronald argues that "although there had been a stipulation as to mental illness … there was no link between respondent's mental illness and a showing of dangerousness." ***Post*** is immaterial here. Ronald was committed under WIS. STAT. ch. 51, and, as Ronald admits, ***Post*** was a WIS. STAT. ch. 980 commitment proceeding. A ch. 980 proceeding is a horse of a different color.

¶7 First, although both WIS. STAT. chs. 980 and 51 are civil commitment chapters, Ronald's arguments ignore the specific language of these chapters. Chapter 980 specifically mandates a causal link between the mental disorder and the propensity for violence. To involuntarily commit someone under ch. 980, the petitioner must prove beyond a reasonable doubt, *see* WIS. STAT. § 980.05(3)(a), that

> (a) The person satisfies any of the following criteria:
>
> 1. The person has been convicted of a sexually violent offense.
>
> 2. The person has been found delinquent for a sexually violent offense.
>
> 3. The person has been found not guilty of a sexually violent offense by reason of mental disease or defect.
>
> (ag) The person is within 90 days of discharge or release, on parole, extended supervision or otherwise, from a sentence that was imposed for a conviction for a sexually violent offense, from a secured correctional facility, as defined in s. 938.02(15m), from a secured child caring institution, as defined in s. 938.02(15g), or from a secured group home, as defined in s. 938.02(15p), if the person was placed in the facility for being adjudicated delinquent under s. 938.183 or 938.34 on the basis of a sexually violent offense or from a commitment order that was entered as a result of a sexually violent offense.
>
> (b) The person has a mental disorder.
>
> (c) The person is dangerous to others because the person's mental disorder creates a substantial probability that he or she will engage in acts of sexual violence.

WIS. STAT. § 980.02(2).

¶8 WISCONSIN STAT. § 51.20(1)(a) requires a petitioner to prove by clear and convincing evidence[2] that

> 1. The individual is mentally ill or, except as provided under subd. 2.e., drug dependent or developmentally disabled and is a proper subject for treatment.
>
> 2. The individual is dangerous because he or she does any of the following:
>
> ....
>
> b. Evidences a substantial probability of physical harm to other individuals as manifested by evidence of recent homicidal or other violent behavior, or by evidence that others are placed in reasonable fear of violent behavior and

[2] *See* WIS. STAT. § 51.20(13)(e).

> serious physical harm to them, as evidenced by a recent overt act, attempt or threat to do serious physical harm.…

¶9 While WIS. STAT. chs. 980 and 51 both govern involuntary commitments, ch. 980 has considerably different rules and procedures, and actually affords a patient greater protections than ch. 51. ***State v. Thiel***, 2001 WI App 32, ¶18, 241 Wis. 2d 465, 626 N.W.2d 26. "[Chapter] 980 ultimately is unique and distinct from other civil commitment chapters." ***Thiel***, 2001 WI App 32 at ¶18. In fact, a ch. 980 case is less like a ch. 51 proceeding and more analogous to a criminal proceeding. ***Thiel***, 2001 WI App 32 at ¶18. Chapter 980 specifically requires a causal link. WIS. STAT. § 980.02(2)(c). We conclude that the commitment provisions of ch. 980 are not applicable to ch. 51 proceedings, and therefore, Ronald's first argument fails.

¶10 Ronald also argues that the order for inpatient treatment was unsupported by the evidence. We disagree.

¶11 Under WIS. STAT. ch. 51, a petitioner must establish by clear and convincing evidence that an individual is mentally ill, amenable to treatment, and dangerous to himself or others. WIS. STAT. § 51.20(1)(a), (13)(e). The circuit court must order commitment to the care and custody of the appropriate county department unless inpatient care is not required. Subd. (13)(a)3. The court must designate the facility which is to receive the subject individual, subd. (13)(c)1, and must designate the maximum level of inpatient facility. Subd. (13)(c)2.

¶12 The standard of review for sufficiency of the evidence requires us to examine the record for any credible evidence that under any rational view fairly admits of an inference that will support the fact finder's conclusion. ***Peissig v. Wis. Gas Co.***, 155 Wis. 2d 686, 702-03, 456 N.W.2d 348 (1990). We must

therefore search the record for any credible evidence that under any rational view fairly admits of an inference that will support the circuit court's conclusion that inpatient care was required.

¶13 The court-appointed doctor, Paul W. Voelkel, filed an Examining Doctor's Report for Commitment on November 13, 2000, which stated that in his current condition Ronald was most likely unable to provide for his own nourishment, could not provide his own shelter, was most likely unable to take common precautions and safety measures, and could not make a competent decision to receive psychotropic medication. According to Voelkel, Ronald was not interested in any type of treatment and denied that he suffered from a mental illness. Voelkel wrote that with prolonged hospitalization and medications, it was hoped that Ronald could return to a more functional level.

¶14 At the November 16, 2000 final hearing, three witnesses testified: J.R., L.S.C. and F.C. J.R., a case manager with the Targeted Case Management Program at Transitional Living Services, testified that she terminated her association with Ronald because he became threatening towards her and she was afraid that he would behave violently. Ronald's ex-wife, L.S.C., testified that while Ronald was hospitalized at Mendota Mental Hospital, he called her and threatened to kill her. According to L.S.C., Ronald screamed at her on the phone, shouting, "I feel evil, I am angry, if I don't get out of here I'm going to kill somebody, get me out of here." Ronald's brother, F.C., testified that Ronald had threatened him in the presence of one of Ronald's treating physicians.

¶15 In deciding that inpatient care was required, the circuit court stated:

> Certainly the issue now is what should be done given the finding of mental illness, dangerousness to others and treatability. Based upon the record before us, the Court

> finds under a standard of least restrictive placement that there is credible evidence where there have been threats to kill made, it seems overly evident, threats to kill until that condition can be obviated -- and I go to the brother really in his statements and the ex-spouse's statements as well, that when Mr. [C.] is not under the control of the mental illness or is receiving medication he apparently is a genuinely decent, competent, loving, caring person.
>
> The Court does find under the credible -- that credible evidence exists that the least restrictive placement is in fact inpatient, and again, I deal with facts and inferences that reasonably flow from those facts. As a result the Court does order in this case that there be a six month commitment to the 51.42 Board with inpatient placement. However, at such time as the doctors -- and really the doctors are the experts -- determine that a less restrictive setting is possible, that can occur or the matter can come immediately back to court for such other placement as would be less restrictive than an inpatient facility.

The examining doctor's report, in combination with the testimony of the three witnesses, provides sufficient credible evidence to support the circuit court's holding that inpatient care was required.

CONCLUSION

¶16 Nothing in WIS. STAT. ch. 51 requires the County to establish a link between Ronald's mental illness and his dangerousness. Furthermore, Ronald's commitment for inpatient treatment is supported by credible evidence from the record. We therefore affirm the order of the circuit court.

By the Court.—Order affirmed.

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