

**COURT OF APPEALS
DECISION
DATED AND FILED**

February 23, 2011

A. John Voelker
Acting 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. 2010AP2571-FT

Cir. Ct. No. 2004ME461

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT II**

IN THE MATTER OF THE MENTAL COMMITMENT OF KATHLEEN R. H.:

WAUKESHA COUNTY,

PETITIONER-RESPONDENT,

v.

KATHLEEN R. H.,

RESPONDENT-APPELLANT.

APPEAL from orders of the circuit court for Waukesha County:
PATRICK C. HAUGHNEY, Judge. *Affirmed.*

¶1 NEUBAUER, P.J.¹ Kathleen R.H. appeals from circuit court orders extending her mental health commitment for twelve months under WIS. STAT. § 51.20(13)(g)1. and ordering involuntary medication and treatment on an outpatient basis under WIS. STAT. § 51.61(1)(g)4.b. Kathleen contends that there was insufficient evidence upon which to order the extension of her mental health commitment because Kathleen's case manager failed to provide testimony indicating that Kathleen would engage in dangerous behavior if treatment were withdrawn. We reject Kathleen's challenge. We conclude that the County met its burden of proving that Kathleen is a proper subject for recommitment under § 51.20. We affirm the circuit court's orders.

BACKGROUND

¶2 Kathleen has been the subject of commitment orders under WIS. STAT. ch. 51 since 2004. In January 2010, the County filed a petition to again extend Kathleen's mental health commitment for a twelve-month period. The grounds for recommitment, as cited by the County, included Kathleen's statement that "she believes she does not need to be on psychotropic medications and would not take them if she was not under commitment," and that her circumstances since her last commitment "remain[] unchanged." Kathleen's prior twelve-month commitment order had been entered in March 2009.

¶3 The circuit court held a hearing on the County's petition on February 23, 2010. Both Kathleen's case manager, Paul Brennan, and a court-appointed psychologist, Dr. Terrill Bruett, testified. Bruett testified that Kathleen

¹ This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(d) (2009-10). All references to the Wisconsin Statutes are to the 2009-10 version unless otherwise noted.

has schizoaffective disorder that “grossly impair[s] [Kathleen’s] ability to meet the ordinary affairs of life.” In his opinion, “if the order for treatment were withdrawn, [Kathleen] would not take her medication and therefore would deteriorate and be a proper subject for commitment.” Brennan testified that prior to her commitment in 2004, Kathleen had discontinued medications against medical advice, hospitalization had been required, and that Kathleen currently believes that she does not need psychotropic medications. Brennan testified to his opinion that Kathleen would discontinue her psychotropic medications if she were not under commitment.

¶4 Following a narrative statement by Kathleen, the circuit court issued an oral decision granting the County’s request for Kathleen’s recommitment for a period of twelve months. Kathleen appeals.

DISCUSSION

¶5 Kathleen challenges the circuit court’s determination that the County met its burden of proof for the extension of her commitment. She argues that while Brennan and Bruett testified that Kathleen would be a proper subject for commitment if treatment were withdrawn, they failed to provide testimony concerning how Kathleen would be dangerous and, thus, failed to provide grounds for recommitment. We reject Kathleen’s contention. Her argument is premised on an erroneous interpretation of the recommitment standard under WIS. STAT. § 51.20(1)(am).

¶6 Once an individual is subject to a commitment order, the County may petition for the extension of that commitment under WIS. STAT. § 51.20(13)(g)3. The circuit court must then determine (1) whether, pursuant to § 51.20(1)(a)1., the individual is mentally ill and is a proper subject for

commitment and (2) whether the individual is dangerous under § 51.20(1)(a)2. However, if an individual has been the subject of outpatient treatment for mental illness immediately prior to the commencement of the proceedings as a result of a commitment ordered by the court, the requirements of § 51.20(1)(a)2. may be satisfied 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).

¶7 The burden of proof is on the County to establish evidence that the subject individual is in need of continued commitment. WIS. STAT. § 51.20(13)(g)3. The County must prove all required facts by clear and convincing evidence. WIS. STAT. § 51.20(13)(e). On review, we will overturn the circuit court’s findings of fact if they are clearly erroneous. *K.N.K. v. Buhler*, 139 Wis. 2d 190, 198, 407 N.W.2d 281 (Ct. App. 1987). However, application of the facts to statutory recommitment requirements presents a question of law we review de novo. *Id.*

¶8 Here, Kathleen misconstrues WIS. STAT. § 51.20(1)(am) as requiring proof, apart from that contained in her treatment record, that she would be a danger to herself or others if treatment were withdrawn. See WIS. STAT. § 51.20(1)(a)2. However, § 51.20(1)(am) requires only that there be a substantial likelihood of recommitment if the current treatment were withdrawn. Indeed, in *State v. W.R.B.*, 140 Wis. 2d 347, 351, 411 N.W.2d 142 (Ct. App. 1987), this court explained that § 51.20(1)(am) was enacted 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.”

¶9 In reaching its determination that the County had met its burden of proof, the circuit court referenced the testimony of Kathleen's case manager and examining psychologist that (1) Kathleen has a schizoaffective disorder that is a substantial disorder of thought, mood and perception that grossly impairs her ability to deal with the ordinary affairs of life and (2) that she would "meet the dangerous standard under the recommitment standard. That is, that if treatment were withdrawn, [she] would be a proper subject for treatment." The court noted Bruett's testimony that Kathleen is incapable of expressing an understanding of the advantages and disadvantages of accepting treatment with the use of psychotropic medications and that she would not take the medications if she were not subject to a commitment order. This testimony meets the requirements of WIS. STAT. § 51.20(1)(am), namely that if treatment were withdrawn, Kathleen would likely stop taking her medication and as a result would once again be a proper subject for recommitment.

CONCLUSION

¶10 Based on the circuit court's findings, we conclude that the record supports its determination that the County met its burden of establishing that Kathleen meets the recommitment criteria set forth in WIS. STAT. § 51.20(1)(am). We affirm the circuit court's orders extending Kathleen's mental health commitment for a twelve-month period and ordering involuntary medication and treatment on an outpatient basis.

By the Court.—Orders affirmed.

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

