

**COURT OF APPEALS
DECISION
DATED AND FILED**

March 8, 2005

Cornelia G. Clark
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. 04-2037

Cir. Ct. No. 00ME001299

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT I**

IN THE COMMITMENT OF DENNIS H.:

STATE OF WISCONSIN,

PETITIONER-RESPONDENT,

v.

DENNIS H.,

RESPONDENT-APPELLANT.

APPEAL from an order of the circuit court for Milwaukee County:
KITTY K. BRENNAN, Judge. *Affirmed.*

¶1 KESSLER, J.¹ Dennis H. appeals from an order extending his WIS. STAT. ch. 51 commitment. He claims the County failed to meet its burden of

¹ This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2) (2003-04). All references to the Wisconsin Statutes are to the 2003-04 version unless otherwise noted.

demonstrating he would be a proper subject for commitment if treatment were withdrawn. Because the evidence is sufficient, this court affirms the order.

BACKGROUND

¶2 Dennis suffers from chronic schizophrenia. He has been subject to commitment orders at various times since the 1980s. His most serious health crisis occurred in 1990, when he stopped eating because he believed that this would enable him to become a marathon runner; he had noted that marathon runners are often very thin. Dennis had lost about fifty-five pounds at the time he was hospitalized and was suffering from kidney failure.

¶3 Although Dennis was not under a commitment order for a period of time in the 1990s, in 2000 Dennis' father, his psychiatrist, and his case manager filed a three-party petition to commit him "because he was exhibiting behavior that had previously led to his hospitalization in critical condition for kidney failure." *State v. Dennis H.*, 2002 WI 104, ¶2, 255 Wis. 2d 359, 647 N.W.2d 851. Dennis challenged the commitment in the circuit court and on appeal. The Wisconsin Supreme Court affirmed his commitment. *Id.*, ¶1.

¶4 Dennis has been under continuing commitment orders since 2000. He lives on his own, but because he refuses to take oral medication, he receives his medication by injection every three weeks.

¶5 In December 2003, Dennis' treating psychiatrist, Dr. Leandrea Lamberton, M.D., requested that his current commitment be extended for one year pursuant to WIS. STAT. § 51.20(13)(g). Dennis contested the extension and the matter was tried to a jury.

¶6 The County presented evidence from Dr. Kristine Mooney, Dr. Robert Rawski and Dr. Lamberton. Dennis' case manager, Tina Jelinski, also testified. Dennis testified in his own behalf.

¶7 The jury was asked to answer three questions: (1) whether Dennis is mentally ill; (2) whether there is a substantial likelihood, based on Dennis' treatment record, that he would be a proper subject for commitment if treatment were withdrawn; and (3) whether Dennis is a proper subject for treatment. The jury answered each question in the affirmative. The trial court entered an order consistent with the jury verdict that extended Dennis' commitment order for one year. This appeal followed.

DISCUSSION

¶8 The extension of a WIS. STAT. ch. 51 mental health commitment 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)(a) 2. or (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 The County's burden of proof is one of "clear and convincing evidence." WIS. STAT. § 51.20(13)(e). This court will not overturn factual findings unless they are clearly erroneous. *K.N.K. v. Buhler*, 139 Wis. 2d 190, 198, 407 N.W.2d 281 (Ct. App. 1987). The findings will be upheld if supported by any credible evidence or reasonable inferences drawn therefrom. *Cavanaugh*

v. Andrade, 202 Wis. 2d 290, 306, 550 N.W.2d 103 (1996). However, application of the facts to the statutory requirements for recommitment presents a question of law this court reviews *de novo*. *K.N.K.*, 139 Wis. 2d at 198.

¶10 To succeed on a petition for recommitment, the County must first show that the “individual is mentally ill.” *See* WIS. STAT. § 51.20(1)(a)1. and 51.20(13)(g)3. Dennis does not challenge the diagnosis of chronic schizophrenia or evidence that he is mentally ill.

¶11 Second, the County must show that the “individual is dangerous.” *See* WIS. STAT. § 51.20(1)(a)2. and 51.20(13)(g)3. When an individual is subject to recommitment, dangerousness may be shown in accordance with § 51.20(1)(am). Instead of requiring evidence of recent acts, § 51.20(1)(am) allows the County to prove dangerousness by showing “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.” Section 51.20(1)(am) avoids the “vicious circle of treatment, release, overt act, recommitment.” *State v. W.R.B.*, 140 Wis. 2d 347, 351, 411 N.W.2d 142 (Ct. App. 1987).

¶12 Dennis argues that the evidence is insufficient, as a matter of law, to support the jury’s verdict that he would be a proper subject for commitment if treatment were withdrawn. This court disagrees and concludes that there is substantial credible evidence to support the jury’s verdict.

¶13 The jury heard testimony that in the four months prior to trial, Dennis had been reporting a week or two late for his injections, and that Dennis does not believe that he needs medication. All three doctors opined that if Dennis is not under a commitment order, he will stop taking his medication, and that the

symptoms of his schizophrenia will return. Dennis acknowledges that given the standard of review, these opinions must be accepted. However, he argues that the doctors' opinions are insufficient to support a finding that if Dennis' symptoms return, "he will stop eating to the point that it endangers his health." He explains:

Dennis has a thirty[-]year history of schizophrenia but, apparently on only one occasion were the symptoms severe enough to endanger his health. This was in the early 90's when he stopped eating in order to become a marathon runner. Dennis testified ... that he no longer has a desire to be a marathon runner and, in any event, he feels that he is perfectly capable of maintaining adequate nutrition. Likewise, Dennis went nearly ten years during the 1990s without any problems concerning his nutrition and his weight.

¶14 Although Dennis has not suffered extreme weight loss since 1990, the jury heard testimony that Dennis continues to be concerned with what he perceives to be excess weight. Dr. Lamberton testified that since she began treating Dennis in September 2002, "[h]e has talked about being thin and needing to lose weight." She stated, "I'm concerned that he will stop eating and die either by dehydration [or] kidney failure."

¶15 When Dr. Mooney evaluated Dennis, Dennis again indicated that he continues to believe he should lose weight. Dr. Mooney testified: "He has had, for many years, a belief that he should lose weight, and we talked quite a bit about his current weight and his belief that he should lose 30 pounds or so, and we talked about his history and some problems there with weight maintenance."

¶16 Dr. Rawski also offered his opinion that there is a substantial likelihood that Dennis would become a subject for commitment if his present treatment regimen were withdrawn. Dr. Rawski testified:

[Dennis] has been the subject [of] commitment on various occasions for at least the last 20 years. When he is

unmedicated, and his illness becomes severe, he has a tendency toward abandoning regular food and nutritional intake.... At the current time he lacks insight into his illness despite the 30-year history, lacks insight into the potential consequences of stopping his medications, and does not believe that he truly suffers from schizophrenia. He dismisses the potential dangerousness as seen in his prior decompensations and readily admits that he would not take medications if they were not court ordered. All of those serve as the primary factors for a risk of decompensation secondary to noncompliance, and eventually he would become a subject for commitment once again.

¶17 The testimony of these three doctors constitutes sufficient evidence to sustain the jury's finding 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." *See* WIS. STAT. § 51.20(1)(am).

¶18 Dennis argues that if his hospitalization in 1990 is enough to continue to recommit him, "[h]e can never prove that he is no longer dangerous to himself." However, substantial evidence supported the jury's verdict that was not related to Dennis' 1990 hospitalization. All three doctors testified that Dennis' *current behavior*, including his continuing concern about losing weight, his lack of insight into his illness, his belief that he is not mentally ill, and his admission that he would not take his medication if not subject to a court order to do so, are the focus of the current recommitment. Each petition for recommitment is examined on its own merits. If Dennis' condition improves, as it did in the 1990s when he consistently took his medication, a commitment order may no longer be necessary. For the year in question, however, there is evidence to support the jury verdict and the trial court's order, which this court affirms.

By the Court.—Order affirmed.

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

