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DISTRICT II

November 20, 2024

To:

Hon. Michael S. Gibbs
Circuit Court Judge
Electronic Notice

Thomas Brady Aquino
Electronic Notice

Sara Henke
Register in Probate
Winnebago County Courthouse
Electronic Notice

Catherine B. Scherer
Electronic Notice

P.D.F., #255306

You are hereby notified that the Court has entered the following opinion and order:

2024AP1349-NM

In the matter of the mental commitment of P.D.F.:
Winnebago County v. P.D.F. (L.C. #2023ME22)

Before Grogan, J.¹

Summary disposition orders may not be cited in any court of this state as precedent or authority, except for the limited purposes specified in WIS. STAT. RULE 809.23(3).

Counsel for P.D.F. has filed a no-merit report concluding that there is no arguable basis for challenging orders committing P.D.F. for mental health treatment pursuant to WIS. STAT. ch. 51 and authorizing involuntary medication and treatment. The no-merit report addresses the sufficiency of the evidence to support the order for involuntary commitment, as well as the sufficiency of the evidence to support the circuit court's determination that P.D.F. is not competent to refuse psychotropic medication or treatment. P.D.F. was sent a copy of the report

¹ This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2) (2021-22). All references to the Wisconsin Statutes are to the 2021-22 version unless otherwise noted.

and was advised of his right to file a response. He has not done so. Upon an independent review of the Record as mandated by WIS. STAT. RULE 809.32 and *Anders v. California*, 386 U.S. 738 (1967), this court summarily affirms the orders because there are no issues that would have arguable merit for appeal. WIS. STAT. RULE 809.21.

This court agrees with counsel that there would be no arguable merit to challenge the sufficiency of the evidence to support the commitment order. P.D.F. has been committed under Chapter 51 since 2000. To obtain an extension order for P.D.F.'s commitment, the County had the burden of proving by clear and convincing evidence that (1) P.D.F. is mentally ill, (2) he is a proper subject for treatment, and (3) he is dangerous to himself or others. *See* WIS. STAT. §§ 51.20(13)(e), 51.20(1)(a).

At the final hearing, which was held on January 30, 2024, the County elicited testimony from a psychiatrist, Dr. Maria Baldomero, who testified that P.D.F. suffers from a mental illness, specifically schizophrenia, and that P.D.F. was a proper subject for treatment. Dr. Baldomero also opined that, if treatment were withdrawn, P.D.F. would be dangerous, in part, under the “second” standard—i.e. there was 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[.]” *See* WIS. STAT. § 51.20(1)(a)2.b. Baldomero explained that in December 2023, P.D.F. began threatening staff, and in early January 2024, P.D.F. threatened to kill a staff member. That staff member testified that in early January, P.D.F. “went from smiling, looking at me, ... to his face just dropped and he looked ... possessed.” P.D.F. told the staff member that once he was released, he was going to kill her and then started yelling. The staff member also testified that P.D.F. was upset about coming to court for the final hearing today and began “yelling and telling people he was going to kill them.” The

circuit court concluded that there was clear and convincing evidence to satisfy each of the factors under WIS. STAT. §§ 51.20(1)(a)1., 2.b. & (am), and found that there was a basis for commitment. As the no-merit report discusses, the Record supports the circuit court's conclusion. There would be no arguable merit to challenge the sufficiency of the evidence to support the commitment order.

The no-merit report also discusses whether there would be any arguable merit to challenging the sufficiency of the evidence to support the circuit court's determination that P.D.F. is not competent to refuse psychotropic medication or treatment. The County had the burden of proving, by clear and convincing evidence, that P.D.F. was incompetent to refuse medication. *Outagamie County v. Melanie L.*, 2013 WI 67, ¶37, 349 Wis. 2d 148, 833 N.W.2d 607; *see also* WIS. STAT. § 51.20(13)(e). To meet that burden, the County was required to show that the advantages and disadvantages of and alternatives to accepting the particular medication or treatment had been explained to P.D.F. and that he was either (1) incapable of expressing an understanding of the advantages and disadvantages of, and the alternatives to, the medication or (2) substantially incapable of applying an understanding of the advantages, disadvantages and alternatives to his mental illness in order to make an informed choice. *See* WIS. STAT. § 51.61(1)(g)4. The circuit court made findings that all of these requirements had been met, and the Record supports the circuit court's findings. There is no arguable merit to this issue.

In addition to the issues discussed above, this court has independently reviewed the Record and concluded that there are no arguably meritorious issues for appeal.

Therefore,

IT IS ORDERED that the orders of the circuit court are summarily affirmed. *See* WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that attorney Thomas Brady Aquino is relieved of further representing P.D.F. in this matter. *See* WIS. STAT. RULE 809.32(3).

IT IS FURTHER ORDERED that this summary disposition order will not be published.

Samuel A. Christensen
Clerk of Court of Appeals