

**COURT OF APPEALS
DECISION
DATED AND FILED**

October 18, 2012

Diane M. Fremgen
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. 2012AP23
STATE OF WISCONSIN**

Cir. Ct. No. 11ME210

**IN COURT OF APPEALS
DISTRICT IV**

IN THE MATTER OF THE MENTAL COMMITMENT OF RAPHAEL M.:

DANE COUNTY,

PETITIONER-RESPONDENT,

V.

RAPHAEL M.,

RESPONDENT-APPELLANT.

APPEAL from an order of the circuit court for Dane County:
AMY SMITH, Judge. *Affirmed.*

¶1 KLOPPENBURG, J.¹ Raphael M. appeals from an Order of Commitment, Order for Involuntary Medication and Treatment, and Amended Order of Commitment entered against him pursuant to WIS. STAT. § 51.20. Under § 51.20(1)(a), an individual is subject to involuntary commitment if he or she is mentally ill, a proper subject for treatment, and a danger to the individual's self or others. Raphael asserts that the circuit court erred in finding that the County met its burden of proving these elements by clear and convincing evidence, as required under § 51.20(13)(e). Concluding that the evidence was sufficient to support the circuit court's findings, this court affirms.

BACKGROUND

¶2 On July 22, 2011, three individuals with personal knowledge of Raphael's conduct filed a Petition for Examination. The three petitioners included: Dr. Mark Juckett, M.D., the doctor who performed a stem cell transplant on Raphael; Dr. Elizabeth Trowbridge, M.D., Raphael's primary care physician; and Peter Grimyser, a University of Wisconsin police detective. The petition alleged that Raphael had bipolar affective disorder, was "grandiose, delusional, lacking sleep and displaying impaired judgment[,]" and would respond to psychiatric treatment. The petition further alleged that Raphael had "a potentially life-threatening bone marrow disease for which he is failing/refusing/neglecting consist[e]nt appropriate treatment." In addition, the petition outlined examples of Raphael's potentially dangerous behavior to others.

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.

¶3 By way of background, Raphael was psychiatrically hospitalized and diagnosed with bipolar affective disorder in 1974. He was diagnosed with acute myelogenous leukemia (AML) in 2006 and had a bone marrow transplant in 2007. After the transplant, Raphael began suffering from chronic graft-versus-host disease, a complication caused by the transplant. At the time the Petition for Examination was filed, Raphael was taking Prednisone and Sirolimus for treatment of the bone marrow disease. As a side effect, Prednisone can trigger manic phases or episodes. Raphael refuses to take psychotropic medications to treat his bipolar affective disorder, due to his Buddhist religious beliefs. The University of Wisconsin (UW) clinic that was treating Raphael's graft-versus-host disease refused to continue seeing him on an outpatient basis after a series of incidents including his pushing a nurse down to the floor.

¶4 On August 2, 2011, the court conducted a hearing pursuant to WIS. STAT. § 51.20(7) and concluded there was probable cause to believe Raphael was mentally ill, a proper subject for treatment, and dangerous to himself or others. At the final hearing on August 11, 2011, Dane County presented three witnesses: Dr. Sangita Patel, Dr. Mark Juckett, and Dr. Mitchell Illichmann. Raphael presented three witnesses: Dr. Kent Berney, his sister, and himself.

¶5 The County's first witness, Dr. Sangita Patel, had been appointed by the court to conduct a mental health examination of Raphael, which she performed on August 5, 2011. Based upon her examination of Raphael and her review of treatment records and the Petition for Examination, Dr. Patel concluded that Raphael has bipolar affective disorder, a mental illness that "substantially affects thoughts, perception, mood, judgment, [and] capacity to recognize reality." She opined that Raphael was a proper subject for treatment for mental illness, because he carries a long history of bipolar disorder, was showing "full[-]fledged

breakdown into manic or hypomanic state[,]” and was “likely to respond to the treatment as long as he takes the medications.” With regard to dangerousness, Dr. Patel testified that Raphael is a danger to himself, because “in his bipolar or manic phase right now, he’s so grandiose that he believes that he can heal himself just through religious beliefs, doesn’t think he needs any treatment or medications” She also expressed concern about Raphael’s driving, as he sustained injuries in a moped accident, most likely due to his “very impulsiveness, over confidence and poor judgment.” Dr. Patel further noted incidents referenced in the records regarding Raphael’s paranoid ideations. Specifically, she referenced an incident in which Raphael tried to carry a knife into the UW emergency room and his belief that “a particular UW police officer is a torturer and he needs to be stopped” She opined that Prednisone’s side effect of mania may be worsened by Raphael’s refusal to take psychotropic medications. In her opinion, Raphael, in his manic condition, was not capable of understanding the advantages, disadvantages, and alternatives to his mental condition in order to make an informed choice to accept or reject the medication. In sum, Dr. Patel recommended inpatient treatment with psychotropic medication.

¶6 The County’s second witness, Dr. Mark Juckett, specialized in hematology and bone marrow transplantation. Dr. Juckett provided ongoing treatment to Raphael for his graft-versus-host disease since performing Raphael’s bone marrow transplant in 2007. However, Dr. Juckett did not provide outpatient care to Raphael during a period of time in which Raphael was not allowed at the clinic. According to Dr. Juckett, UW Hospital Administration decided to no longer provide Raphael with outpatient treatment after a series of behaviors that staff perceived as threatening and/or intimidating. For example, Dr. Juckett explained Raphael had pushed a nurse at the clinic and, in a separate incident,

brought a knife and piece of wood with him in the waiting room and whittled the wood. As for Raphael's medical condition, Dr. Juckett opined that chronic graft-versus-host disease is a life-threatening condition. Dr. Juckett testified that although Raphael has never actually refused treatment for that condition, the UW oncology clinic is not willing to provide the treatment to him on an outpatient basis because of his conduct. Dr. Juckett explained that the situation is serious, in that the UW clinic is the only bone marrow transplant clinic in Dane County, the next closest being in Milwaukee County, and graft-versus-host disease is life threatening without treatment. With regard to psychotropic treatment, Dr. Juckett opined that psychotropic medications would alleviate Raphael's manic condition, regardless of whether or not the Prednisone was the cause of the mania.

¶7 The County's final witness was Dr. Mitchell Illichmann, the attending psychiatrist at the UW's inpatient psychiatric unit. Dr. Illichmann treated Raphael for fifteen days at UW prior to the final hearing. After observing his demeanor, Dr. Illichmann testified that while Raphael could be very friendly at times, there were "multiple instances of yelling at staff or belittling to staff." Based upon his mental status examination of Raphael and review of the records, Dr. Illichmann opined that Raphael has "[b]ipolar disorder currently manic" and is the proper subject for treatment in the form of "[i]npatient psychiatry hospitalization with medication management." Dr. Illichmann further testified that Raphael's behaviors indicated dangerousness, particularly his behavior at the oncology clinic – shoving a nurse and yelling at staff – and resulted in the denial of treatment until the mania was treated. Dr. Illichmann opined that psychotropic medication may control his mania so that he could return to the oncology clinic for graft-versus-host disease treatment. Dr. Illichmann testified that Prednisone does have psychiatric side effects, though Raphael's records reflect a history of mania

dating back to the 1970s. Dr. Illichmann could not distinguish whether Raphael's manic symptoms were caused by his bipolar affective disorder or Prednisone. As for Raphael's understanding of psychotropic treatments, Dr. Illichmann explained that while Raphael understands the risks and benefits and different types of medication options, "he's not adequately able to apply that situation to himself or his situation and that he insists that he does not have mania and even if he does have some symptoms, that they're better treated by types of psychotherapy that do not have reasonable evidence for treating mania."

¶8 Raphael's sister, Maria, testified on Raphael's behalf. Maria testified that she has had consistent contact with Raphael for the past six months. In the last six months, Maria noticed that Raphael is "more energetic, he's louder, he's more reactive emotionally both aggressively and compassionately." Maria testified that his behavior makes her question his judgment. She expressed concern about Raphael's difficulty interacting with hospital staff and his contacts with the police. Maria did not consider Raphael dangerous, but she is concerned about his safety if he is not allowed to get care at the hospital. Maria testified that Raphael has had a lifelong cultural and historical interest in knives. She has never seen any indication from Raphael that he was not interested in taking care of his medical condition. Maria explained that as a practicing Buddhist, Raphael believes taking psychotropic drugs that interfere with his cognitive abilities would violate his religious tenets.

¶9 Raphael's second witness was Dr. Kent Berney, a court-appointed psychologist who interviewed Raphael on August 8, 2011. Because Raphael takes Prednisone, Dr. Berney disagrees with the petition's allegation that Raphael is refusing appropriate treatment for his bone marrow disease. Dr. Berney testified that the records reflect a lengthy history of psychiatric difficulties, but no ongoing

psychiatric care. While recommendations were offered to Raphael, he elected not to receive treatment. Thus, Dr. Berney opined that Raphael suffers from a mental illness, but does not meet the requirements for the purpose of commitment under WIS. STAT. § 51.01(13)(b), mainly that Raphael has a disorder that “grossly impairs judgment [or] behavior.” Moreover, based on his review, Dr. Berney testified that the records he reviewed did not supply enough evidence to demonstrate that Raphael presents a substantial risk of danger to himself or others.

¶10 Finally, Raphael testified on his own behalf at the final hearing. Raphael explained that in addition to other medications, he was currently taking Haldol, a psychotropic drug. He did not like the side effects of Haldol, because it “cloud[s]” his mind and therefore violates Buddhist tenets. However, Raphael did admit that he uses marijuana, but does not believe this clouds his mind. As for the altercation with the nurse, Raphael stated that he did not intend to hurt anyone and described the incident as follows:

Well, okay, a nurse stood in my way. I couldn't get – She ordered me to leave an area. I couldn't get out of the area. I said, Ellen, I'm doing what you asked, would you move please. She said, no, I'm not done talking to you. I said, Ellen, apparently you missed that day in human communications class. It takes two, would you please move. She just stood there. At that moment I lost it; I pushed her. I believe she went down on her butt. I said, I screamed at her because what the sense was of how do you want someone to move, to leave an area and then prevent them from leaving?

....

... [S]he just stood there after she put me in what in the DSM-IV it's called a double bind situation where you said do this and then you make it impossible for the person, at that moment I lost it and pushed her out of my way and said, don't you ever do that again. I'll cut off your head. Now, I obviously don't have anything to cut off her head. I meant that as a metaphor that I would humiliate her so bad that she would lose face.

¶11 Upon the close of evidence and arguments of counsel, the circuit court concluded that the County had met its burden in establishing the grounds for commitment under WIS. STAT. ch. 51. Specifically, the circuit court found that the testimony of Drs. Patel and Illichmann established that Raphael had a mental illness, bipolar affective disorder. The circuit court noted that Dr. Berney provided some contrary testimony, but that his testimony was more related to dangerousness. Next, the circuit court determined Raphael was a proper subject for treatment, citing testimony that Raphael had been treated before, and could be successfully treated again. Finally, the circuit court addressed the remaining element of whether Raphael was a danger to himself or others. The circuit court concluded that the “physical pushing of the nurse, knocking her down on the floor and then threatening to cut her head off[,]” “more aggressive behaviors and yelling at individuals[,]” and “poor judgment” all demonstrated the probability of Raphael’s dangerousness to others. In addition, the court found that Raphael’s inability to receive the necessary bone-marrow treatment due to his threatening behavior towards hospital staff demonstrated Raphael’s dangerousness to himself, caused by his own behavior.

¶12 After concluding that the elements for commitment were met, the circuit court ordered that Raphael be committed for a six-month period in a locked in-patient facility at UW Hospital and that he be subject to involuntary medication and treatment. Raphael now appeals.

DISCUSSION

¶13 The application of WIS. STAT. ch. 51 requirements to the facts presents a question of law that this court reviews independently. *K.N.K. v. Buhler*, 139 Wis. 2d 190, 198, 407 N.W.2d 281 (Ct. App. 1987). However, a trial

court's findings of fact may not be set aside on appeal unless they are "clearly erroneous." *Milwaukee Cnty. v. Delores M.*, 217 Wis. 2d 69, 73, 577 N.W.2d 371 (Ct. App. 1998) (citing WIS. STAT. § 805.17(2)).

¶14 To place an individual under a WIS. STAT. ch. 51 commitment order, the County must prove, by clear and convincing evidence, that the individual has a mental illness, is a proper subject for treatment, and is dangerous. *See* WIS. STAT. §§ 51.20(1)(a), 51.20(13)(e). The "dangerous" element can be proven in various ways. *See* WIS. STAT. § 51.20(1)(a)2.a.-e. The evidence need only support one of the standards for "dangerous." *Id.* § 51.20(1)(a)2. ("The individual is dangerous because he or she does *any* of the following") (emphasis added). In this case, the circuit court made its findings of fact pursuant to the following standards:

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

....

e. ... [E]vidences ... substantial incapability of applying an understanding of the advantages, disadvantages, and alternatives to his or her mental illness in order to make an informed choice as to whether to accept or refuse medication or treatment; and ... that the individual needs care or treatment to prevent further disability or deterioration

Id. § 51.20(1)(a)2.b., e.

¶15 This court concludes that the evidence presented at the August 11, 2011 hearing was sufficient to support the circuit court's findings and that the circuit court provided a well-reasoned analysis applying the standards set forth in

WIS. STAT. ch. 51 to those facts. Therefore, this court affirms the circuit court's Order of Involuntary Commitment, Order for Involuntary Medication and Treatment, and Amended Order of Commitment.

By the Court.—Order affirmed.

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

