

**COURT OF APPEALS  
DECISION  
DATED AND FILED**

**May 7, 2013**

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. 2012AP2612**

**Cir. Ct. No. 2011ME59**

**STATE OF WISCONSIN**

**IN COURT OF APPEALS  
DISTRICT III**

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**IN THE MATTER OF THE MENTAL COMMITMENT OF BOE H.:**

**POLK COUNTY DEPARTMENT OF HUMAN SERVICES,**

**PETITIONER-RESPONDENT,**

**v.**

**BOE H.,**

**RESPONDENT-APPELLANT.**

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APPEAL from an order of the circuit court for Polk County:  
MOLLY E. GALEWYRICK, Judge. *Affirmed in part; reversed in part.*

¶1 MANGERSON, J.<sup>1</sup> Boe H. appeals an order extending his WIS. STAT. ch. 51 mental health commitment. He argues the circuit court lacked

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<sup>1</sup> This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2). All references to the Wisconsin Statutes are to the 2011-12 version unless otherwise noted.

authority to order him to live in a residential group home because the maximum level of treatment he may receive is outpatient treatment.

¶2 Before reaching Boe’s appellate arguments regarding whether he is prevented from being placed in a group home by virtue of his outpatient treatment, we conclude the circuit court was without authority to order Boe to remain in the group home for the pendency of the commitment. Decisions beyond the maximum level of treatment are reserved for the department to which Boe has been committed, not the circuit court. Accordingly, we reverse the portion of the court’s order that requires Boe to live in the group home during the commitment.

¶3 As to whether the Polk County Department of Human Services could place Boe in a group home while he receives outpatient treatment, we conclude that, because Boe has been committed to the care of the Department while he receives outpatient treatment, and because Boe’s residence in the group home does not change the nature of his treatment from outpatient to inpatient, the Department may require Boe to live in the group home as part of its plan to further transition Boe back into the community. We therefore affirm the remainder of the court’s order.

## **BACKGROUND**

¶4 In September 2011, a jury found Boe mentally ill, a proper subject for treatment, and dangerous under the “fifth standard,” WIS. STAT. § 51.20(1)(a)2.e. The circuit court committed Boe to the Department for six months and determined the maximum level of treatment would be a locked inpatient facility.

¶5 WISCONSIN STAT. § 51.20(13)(g)2d.a. provides that an individual committed pursuant to the “fifth standard” may “be treated only on an outpatient basis after thirty days.” Accordingly, after thirty days in the hospital, the Department transferred Boe to a group home.

¶6 In February 2012, the Department petitioned to extend Boe’s mental health commitment, and Boe contested the extension. At the extension hearing, Dr. Kent Brockmann testified Boe suffers from and displays “significant and obvious symptoms” of paranoid schizophrenia. Brockmann was aware Boe wished to return home, but opined that Boe needed to remain in a residential facility because he believed it “unlikely” that Boe would continue taking his medications if they were not administered to him. In a letter admitted into evidence, Brockmann explained Boe “has only barely begun to be stabilized” on medication and, although Boe “had made some improvement with his current medications, [Brockmann did] not believe [Boe] has been on these medications long enough to determine whether or not he could maintain stability outside of a group home in a structured environment under Chapter commitment.” Brockmann also testified that “daily oral medications management” was not available in Polk County.

¶7 Boe’s case manager, Craig Anderson, testified that, although Boe wanted to return home, Anderson was concerned because Boe’s family questioned the need for Boe’s medication. Anderson then explained Boe’s group home is unlocked, nothing keeps Boe in the group home, and Boe is free to come and go as long as he follows certain house rules.

¶8 The court granted the Department’s extension request. It then authorized placement in an “unlocked inpatient facility.”

¶9 Boe filed a postdisposition motion, arguing the court lacked authority to authorize his placement in an inpatient facility because WIS. STAT. § 51.20(13)(g)2d.a. provides that persons committed under the “fifth standard” can “be treated only on an outpatient basis after thirty days.” He argued that his placement in the group home amounted to placement in an inpatient facility and therefore violated WIS. STAT. § 51.20(13)(g)2d.a.’s outpatient treatment requirement.

¶10 At the postdisposition hearing, Anderson testified that, although there are social activities within the group home and the group home staff does store and manage Boe’s oral medications, Boe receives no professional treatment in the group home. Boe’s psychiatric services are provided off-site by a county psychiatrist, and Boe’s injectable medication is administered by a nurse under the supervision of a psychiatrist at the Human Services Department office.

¶11 Anderson also testified that group home residents may receive visitors from 8:00 a.m. to 8:00 p.m. seven days a week, and they must be in their room and quiet by 10:30 p.m. Additionally, Boe must have permission to leave the group home, and Boe does in fact leave the group home for visits with his family.

¶12 The circuit court found that Boe did not receive “treatment” in the group home. The court also concluded that the group home did not meet the statutory definition of an “inpatient facility,” and therefore Boe’s group home was not an inpatient placement. The court then signed an amended order, authorizing the maximum level of treatment as “outpatient with conditions.” After a box marked “other,” the court ordered: “Subject shall remain at a group home on an

outpatient basis.” The court also entered an order denying Boe’s postdisposition motion.

## DISCUSSION

¶13 On appeal, Boe argues that, because he may be treated only on an outpatient basis, the circuit court lacked authority to order him to live in the group home. His appellate arguments focus on the meaning of outpatient treatment and the authority given to place an individual, who may be treated only on an outpatient basis, in a community-based residential facility.

¶14 However, before reaching Boe’s appellate arguments, we conclude the circuit court lacked authority to order that Boe “[s]hall remain at a group home ....” After committing an individual to the Department, a court’s obligation is to designate only “the maximum level of inpatient facility, if any, which may be used for treatment.” WIS. STAT. § 51.20(13)(c)2. The Department then arranges for treatment in the least restrictive manner consistent with the subject’s specific requirements and the court order. *Id.* Here, the court was without authority to order Boe to remain at a group home for the pendency of the commitment; that determination is reserved for the Department. *See J.R.R. v. State*, 145 Wis. 2d 431, 437, 427 N.W.2d 137 (Ct. App. 1988) (Decisions beyond the maximum level of inpatient facility in which treatment can occur are properly reserved for medical authorities, not the court.). We therefore reverse the part of the court’s order requiring Boe to live in the group home for the pendency of the commitment.

¶15 Nevertheless, the issue remains as to whether the Department can place an individual, who may be treated only on an outpatient basis, in a group home. Boe argues the Department lacked authority to place him in the group home because the social and oral medication management services he receives

constitute “treatment,” and the residential aspect of the group home changes the nature of his treatment from outpatient to inpatient. Boe’s argument presents a question of law, decided on appeal without deference to the circuit court. *See Milwaukee Cnty. Combined Cmty. Servs. Bd. v. Athans*, 107 Wis. 2d 331, 335, 320 N.W.2d 30 (Ct. App. 1982).

¶16 WISCONSIN STAT. § 51.01(17) defines “treatment” as “those psychological, educational, social, chemical, medical or somatic techniques designed to bring about rehabilitation of a mentally ill ... person.” “Outpatient” and “inpatient” are not defined in § 51.01. However, WEBSTER’S THIRD NEW INTERNATIONAL DICTIONARY 1603 (unabr. 1993), defines “outpatient” as “a patient who is not an inmate of a hospital but receives diagnosis or treatment in a clinic or dispensary connected with the hospital – distinguished from inpatient.” “Inpatient” is defined as “a patient in a hospital or infirmary who receives lodging and food as well as treatment – distinguished from outpatient.” *Id.* at 1167. Based on these definitions, the difference between outpatient and inpatient turns on whether the patient receives treatment in a hospital setting. *See id.* at 1167, 1603.

¶17 We conclude Boe is not receiving inpatient treatment in the group home and he continues to be treated on an outpatient basis. Boe’s group home is a community-based residential facility, not a hospital or inpatient facility. *See* WIS. STAT. §§ 51.01(9), (10).<sup>2</sup> Because the group home is not a hospital or inpatient

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<sup>2</sup> WISCONSIN STAT. § 51.01(9) defines “hospital” in reference to WIS. STAT. § 50.33. Section 50.33(2)(a) defines “hospital” as “any building, structure, institution or place devoted primarily to the maintenance and operation of facilities for the diagnosis, treatment of and medical or surgical care for 3 or more nonrelated individuals hereinafter designated patients ....”

(continued)

facility, any services offered at the group home do not constitute inpatient treatment. Further, the outpatient treatment Boe receives from off-site providers is not changed to inpatient treatment by virtue of his residence in the group home.

¶18 Boe, however, argues that if he is not receiving treatment at the group home, which he maintains would be inpatient by virtue of his residence, the Department lacks authority to place him in the group home. He asserts WIS. STAT. ch. 51 authorizes only rehabilitation, not habilitation. *See Athans*, 107 Wis. 2d at 336-37 (Involuntary mental health commitments are reserved for individuals who are rehabilitable; individuals who are only habilitable may not be placed under a chapter 51 commitment.).

¶19 The Department is not merely providing habilitation to Boe. The purpose of Boe's placement in the group home is to stabilize him on his medication so that he may be further transitioned back into the community. *See id.* at 336 ("Services which are rehabilitable are those 'which ameliorate impairments and facilitate an individual's capability to function,' and habilitative services are those 'which assist an impaired person's ability to live in the community.'" (citation omitted)). As Dr. Brockmann testified at the extension hearing, Boe still displays obvious symptoms of paranoid schizophrenia, has only just begun to become stabilized on his medication, and is unlikely to take his medication without the group home's medication management service. Boe's placement in the group home therefore ameliorates his delusions through further

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WISCONSIN STAT. § 51.01(10) defines "inpatient facility" as "a public or private hospital or unit of a hospital which has as its primary purpose the diagnosis, treatment and rehabilitation of mental illness, developmental disability, alcoholism or drug abuse and which provides 24-hour care."

medical stabilization, allows him to receive psychiatric treatment on an outpatient basis, and gives him the freedom to interact in the community.

¶20 Finally, Boe argues the Department cannot place him in the group home because it lacks “custody” over his person. Boe points out that the Department only gains “care and custody” over an individual if the court authorizes inpatient treatment, but if the court orders outpatient treatment as it did here, the individual is committed only to the “care” of the Department. *See* WIS. STAT. § 51.20(13)(a).

¶21 Although the Department lacks “custody” of Boe and therefore cannot place him in an inpatient facility, *see* WIS. STAT. § 51.20(13)(a), the Department’s community-based placement is a far cry from an involuntary hospital admission. At the group home, Boe retains the freedom to do what he wishes. Although he needs permission to leave and must follow the home’s rules, Boe’s case manager testified at the extension hearing that Boe is allowed to come and go from the group home and does in fact leave for visits with his family. Further, there is a good reason why the Department sought to have Boe reside at the group home instead of with his family. Not only has Boe just begun to become stabilized on medication, but his family’s support for Boe’s medication regimen is lacking and Dr. Brockmann testified it is unlikely that Boe would continue to take his medication outside the group home. Because Boe has been committed to the “care” of the Department while he receives outpatient treatment, we conclude the Department may require Boe to live in the group home as part of its plan to treat Boe and further transition him back into the community.



*By the Court.*—Order affirmed in part; reversed in part.

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

