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DISTRICT II

February 25, 2015

To:

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

2014AP2794-NM Sheboygan County v. John J. V. (L.C. #2005ME178)

Before Neubauer, P.J.[1]

John J. V. appeals from an order extending his WIS. STAT. ch. 51 commitment for a year, which also permitted the involuntary administration of medication, after the trial court determined that he was mentally ill, a proper subject for treatment, and dangerous within the meaning of WIS. STAT. § 51.20(1)(a)2.d. John's appointed appellate counsel has filed a no-merit report pursuant to WIS. STAT. RULE 809.32 and ***Anders v. California***, 386 U.S. 738 (1967). John was provided with a copy of the report and informed of his right to file a response, but he has not done so. Upon consideration of the report and an independent review of the record as mandated

[1] This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(d) (2013-14). All references to the Wisconsin Statutes are to the 2013-14 version unless otherwise noted.

by ***Anders***, we agree there are no issues with arguable merit for appeal. We summarily affirm the order. *See* WIS. STAT. RULE 809.21.

John has been committed to the care and custody of the Sheboygan County Health and Human Services (HHS) for a number of years. The commitment has been extended annually. His treatment through the county Community Support Program allows John to continue living in the community. John's treatment includes regularly scheduled intramuscular (IM) injections of a psychotropic medication, but he is responsible for taking his oral medication.

John's case manager, Justin Strahl, filed a report with the petition to extend John's commitment. The report stated that John no longer could cognitively track his IM medication schedule, potentially posing an increased danger to self, and that if treatment were withdrawn, it was substantially likely John would decompensate and require a more restrictive environment. The report recommended extending his commitment for a year and "strongly recommended" an order mandating psychotropic medications. After a hearing, the trial court extended the commitment and permitted medications and treatment to be involuntarily administered. This appeal followed.

The no-merit report first identifies as potential issues whether the WIS. STAT. § 51.20 petition requirements and time limits were met. The circuit court followed the statutory procedures, including the time limits, governing John's commitment. We agree with counsel's analysis and his conclusion that these issues have no arguable appellate merit.

The report also addresses whether the evidence was sufficient to find that John is mentally ill and dangerous under WIS. STAT. §§ 51.01(13) and 51.20(1)(a)2. As relevant here, a ch. 51 commitment may be extended if the petitioner proves by clear and convincing evidence

that the individual is mentally ill, is a proper subject for another year of commitment, and meets one of the statutory criteria for dangerousness. *See* § 51.20(1)(a), (13)(e), and (13)(g)1.

Psychiatrist Dr. Carolyn Baxter testified that John presented for his interview disheveled and "odorous," then exercised his right to remain silent, so she based her conclusions on John's medical file and a discussion with his case manager. Her testimony revealed her belief that John has schizophrenia; that his diagnosis dates back at least to 1980; that schizophrenia impairs thoughts, moods, or perceptions, can create a substantial risk of harm to self or others because it causes delusions and disorientation and may interfere with tending to hygiene, nutrition, and safety; that medication would have therapeutic value to him; and that his likelihood of remaining on his medication if not under commitment was "low."

Eric Brunnich, John's former HHS case worker and Strahl's supervisor, testified that he still sees John when Strahl is not available.[2] Brunnich testified that he has "known John for a long, long time"; that he has seen John walk into traffic without looking; that John's ability to keep track of dates and places is declining; that John continues to deny his mental illness; that he has seen John "under commitment and off"; that John fares better and is more medication compliant when under commitment; and that John is in need of continued commitment.

The circuit court summarily concluded that John is mentally ill, dangerous, and a proper subject for treatment without making specific findings of fact to support the extension order. We are satisfied that in ordering the extended commitment, the court relied on information of record sufficient to make the necessary findings, *see* WIS. STAT. § 51.20(1)(a)2.d., (10)(c), and

[2] Strahl was not available to testify at the hearing.

implicitly made those findings of fact, *see* ***County of Dunn v. Goldie H.***, 2001 WI 102, ¶44, 245 Wis. 2d 538, 629 N.W.2d 189. These findings will not be disturbed as they are not clearly erroneous. *See* ***K.S. v. Winnebago Cnty.***, 147 Wis. 2d 575, 578, 433 N.W.2d 291 (Ct. App. 1988). Any argument challenging the sufficiency of the evidence to support the extension of John's commitment would lack arguable merit.

We independently consider whether there was sufficient evidence to support the order for involuntary medication. An individual subject to commitment has a right to refuse medication unless a court determines he or she is not competent to do so. WIS. STAT. § 51.61(1)(g)3. A person may not be found incompetent to refuse medication unless, after the advantages, disadvantages and alternatives to accepting the medication are explained to the person, the person either is "incapable of expressing an understanding" or is "substantially incapable of applying [that] understanding … to his or her mental illness" to make an informed choice as to whether to accept or refuse the treatment or medication. WIS. STAT. § 51.61(1)(g)4.

The record indicates that John does not believe he is mentally ill; that he does not like the side effects associated with his medications; that he does not want to discuss either his diagnosis or the medications; that medication is necessary to prevent him from decompensating; that he has lived in his current Sheboygan apartment for over ten years; and that the last time he was not under commitment, the City of Madison Police Department found John in the public library "creating disturbances and bothering patrons." The court concluded that John is substantially incapable of applying an understanding of the advantages, disadvantages and alternatives. The record supports these implicit findings. Any challenge to sufficiency of the evidence to support the order for involuntary medication would lack arguable merit.

Our independent review of the record discloses no other potentially meritorious issue for appeal. Accordingly, we affirm the order and accept the no-merit report.

For the foregoing reasons,

IT IS ORDERED that the order of the circuit court is summarily affirmed, pursuant to WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that Attorney Ralph J. Sczygelski is relieved of further representation of John J. V. in this matter.

Diane M. Fremgen
Clerk of Court of Appeals