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DISTRICT I

October 19, 2015

To:

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M. M.

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

2014AP2851-NM

In re the commitment of M. M.: Milwaukee County v. M. M.
(L.C. #2012ME4530)

Before Curley, P.J.¹

M.M. appeals from an order of the circuit court, extending her WIS. STAT. ch. 51 mental health commitment for twelve months. Appellate counsel, Dustin C. Haskell, has filed a no-merit report pursuant to WIS. STAT. RULE 809.32, concluding that there is no arguable merit to any challenge to that order on appeal. M.M. was advised of her right to file a response, but has not responded. Upon an independent review of the record and counsel's report, we agree that

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.

there is no arguable merit to any issue that could be raised on appeal. Therefore, the order is summarily affirmed. *See* WIS. STAT. RULE 809.21.

M.M. was originally committed for six months in December 2012 on an emergency detention petition because she had taken a swing at a nurse who asked to check her vital signs. The commitment was extended for twelve months in June 2013. This appeal involves Milwaukee County's May 2014 application for another twelve-month extension.

The recommitment petition alleged that M.M. has schizophrenia, undifferentiated type, with symptoms of bipolar disorder. It noted that M.M. had been a patient at Milwaukee County Mental Health Complex since February 2014. While there, she had refused all oral medications and she told staff she could not take the medication once discharged from the Complex. The petition further explained that prior to admission to the Complex, M.M. had been kicked out of a group home because of unsafe and threatening behavior towards staff and other residents.

The matter was presented to a six-person jury, *see* WIS. STAT. § 51.20(11)(a), which concluded M.M. met the criteria for continued commitment. Based on the jury's verdict, the circuit court ordered the commitment extended.

Appellate counsel addresses whether there is any arguable merit to the sufficiency of the evidence supporting the jury's verdict and the order extending M.M.'s commitment. Once an individual is subject to a commitment order, the County may petition to extend that order under WIS. STAT. § 51.20(13)(g)3. Continued commitment is appropriate if the fact finder determines that the individual: (1) is mentally ill, (2) is a proper subject for treatment; and (3) is "dangerous." *See* WIS. STAT. § 51.20(1)(a)1.-2. If the matter is an extension hearing, rather than an initial hearing, the dangerousness element may be satisfied by "a showing 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). The County has the burden of proof to establish that the individual is in need of continued commitment. *See* WIS. STAT. § 51.20(13)(g)3. The County must prove all required facts by clear and convincing evidence. *See* WIS. STAT. § 51.20(13)(e).

M.M.'s case manager, Kate Sayers, testified that M.M. does not believe she has a mental illness and, when M.M. was in a group home in the community, she would frequently refuse her medication because she did not believe she needed it. Sayers explained that when M.M. does not take her medication, she becomes physically and verbally aggressive and assaultive towards staff and other residents. Sayers also noted that M.M. had previously been released from inpatient treatment to the community but had to be redetained twice because of her behavior off medication.

Heather Martens, M.M.'s treating psychologist, testified that M.M. has bipolar disorder, a treatable mental illness. Martens explained that M.M. previously took Depakote, an oral medication that was effective enough that M.M. could care for herself while living in the community. However, M.M. had been refusing her medications, and she testified that she would continue to refuse the oral medications if she were allowed back into the community. Pursuant to a medication order, treatment providers were giving M.M. intramuscular injections, but Martens explained there was no injectable form of Depakote and there are no injectable drugs as effective as the orally administered Depakote. Martens further explained that when M.M. does not take her medication, she gets agitated, becomes hostile, and engages in dangerous behavior.

Dr. Peder Piering also testified that M.M. has bipolar disorder. He noted that M.M. denies having a mental illness, but he noted that she had a history of psychotic symptoms. Piering further explained that M.M.'s bipolar disorder is treatable, but if M.M.'s current treatment were removed, he did not believe that M.M. would follow through with her medication requirements, which would result in violent behavior and require treatment.

M.M. also testified. She said she was not mentally ill. She admitted she did not take her medication and further admitted she would continue to refuse the oral medications that she believed were harmful to her. Trial counsel, in closing, conceded that M.M. meets the definitions for mental illness and dangerousness, but urged the jury to find she was not treatable. This argument reflected the inability to force M.M. to take oral medications and the lower efficacy of drugs given by intramuscular injections.

The evidence presented was sufficient for the jury to conclude that M.M. is mentally ill, a proper subject for treatment, and would be a proper subject for commitment if treatment were withdrawn. It was uncontroverted that M.M. has bipolar disorder. Both doctors testified that the mental illness is treatable; Martens' testimony suggests that if M.M. would comply with the oral medications, she could live in the community. Adequate testimony was presented regarding the consequences when M.M. is not medicated at all, so the jury could conclude she would be a proper subject for commitment if the current treatment were withdrawn.

Our independent review of the record reveals no other potential issues of arguable merit.

Upon the foregoing, therefore,

IT IS ORDERED that the order is summarily affirmed. *See* WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that Attorney Dustin C. Haskell is relieved of further representation of M.M. in this matter. *See* WIS. STAT. RULE 809.32(3).

Diane M. Fremgen
Clerk of Court of Appeals