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DISTRICT III

November 3, 2015

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

2015AP571-NM Eau Claire County Department of Human Services v. B. I.
(L. C. No. 2013ME5B)

Before Stark, P.J.[1]

Counsel for B. I. has filed a no-merit report concluding there is no arguable basis for challenging the order extending B. I.'s WIS. STAT. ch. 51 mental health commitment. Although the notice of appeal does not reference the order for involuntary medication and treatment that was entered at the same time, and the no-merit report does not address whether there is an arguable basis for challenging it, we will review the involuntary medication and treatment order within the context of this no-merit appeal. B. I. was advised of the right to respond to the report and has not responded. Upon an independent review of the record as mandated by WIS. STAT.

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

RULE 809.32, this court concludes there is no arguable merit to any issue that could be raised on appeal. Therefore, the orders are summarily affirmed. *See* WIS. STAT. RULE 809.21.

B. I. was initially committed after he drove his vehicle through a stop sign and off the road into a ditch, explaining to authorities that he was "distracted by three voices." This appeal involves Eau Claire County's second application for a twelve-month extension of B. I.'s original commitment. The County applied for the extension and the medication order based, in part, on a recommendation for recommitment submitted by B. I.'s case manager indicating there was a need for continued commitment and, based on B. I.'s treatment record, there was a substantial likelihood that he would be a proper subject for commitment if treatment were withdrawn.

B. I. was served with notice of the extension hearing. Two examiners submitted their reports more than forty-eight hours before the hearing, *see* WIS. STAT. § 51.20(10)(b), and the hearing was held before B. I.'s previous commitment expired. Therefore, any challenge to the extension of B. I.'s commitment based on a failure to comply with statutory deadlines or procedures would lack arguable merit.

There is likewise no arguable merit to a challenge to the sufficiency of the evidence to support either the order extending B. I.'s commitment or the order for involuntary medication and treatment. WISCONSIN STAT. § 51.20(13)(g)3. requires continued commitment if the court determines the individual: (1) is a proper subject for commitment; and (2) meets certain statutory conditions of dangerousness. A person is a proper subject for commitment if he or she is mentally ill and a proper subject for treatment. WIS. STAT. § 51.20(1)(a)1. At an extension 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." WIS. STAT. § 51.20(1)(am). "The burden of proof is upon the county department or other person seeking commitment to establish evidence that the subject individual is in need of continued commitment." WIS. STAT. § 51.20(13)(g)3. Further, the county must prove all required facts by clear and convincing evidence. WIS. STAT. § 51.20(13)(e).

With respect to the order for involuntary medication and treatment, WIS. STAT. § 51.61(1)(g)3. provides that, incident to a commitment order, a court may direct that the committed person not retain the right to refuse medication and treatment if the court determines, following a hearing, that the committed individual "is not competent to refuse medication or treatment." An individual is not competent to refuse medication or treatment if,

> because of mental illness … and after the advantages and disadvantages of and alternatives to accepting the particular medication or treatment have been explained to the individual, one of the following is true:
>
> a. The individual is incapable of expressing an understanding of the advantages and disadvantages of accepting medication or treatment and the alternatives.
>
> b. The individual is substantially incapable 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.

WIS. STAT. § 51.61(1)(g)4.; *see also* ***Outagamie Cty. v. Melanie L.***, 2013 WI 67, ¶¶8-9, 349 Wis. 2d 148, 833 N.W.2d 607.

Here, psychologist Brian A. Stress and psychiatrist David A. Schlagel submitted reports opining that B. I. suffers from a mental illness—paranoid schizophrenia—and would be a proper subject for commitment if treatment were withdrawn. Both examiners noted that B. I. does not

think he has a mental illness and had indicated he would not take medication if not ordered to do so. The examiners opined that left to his own devices, B. I. would become medication and treatment noncompliant, causing rapid deterioration leading to a substantial probability of harm to himself or others. Both examiners also opined that B. I. was not competent to refuse medication or treatment, as he was incapable of expressing an understanding of the advantages and disadvantages of accepting medication or treatment and the alternatives. The doctors ultimately recommended a one-year recommitment on an outpatient basis with court-ordered medications.

At the extension hearing, Dr. Schlagel testified consistent with his report, reiterating that B. I. was diagnosed with paranoid schizophrenia but does not believe he has a mental illness despite acknowledging "a chronic occurrence of hearing things that nobody else can seem to hear." Doctor Schlagel recounted B. I.'s belief that "there are various listening and transmitting devices that are planted all around him and that these devices are creating the so-called symptoms." Doctor Schlagel testified that the preferred method of treating paranoid schizophrenia is through the use of antipsychotic medication, but B. I. indicated he would stop taking medication if given the option. Doctor Schlagel therefore opined that if treatment were withdrawn, B. I. would be a proper subject for commitment. Doctor Schlagel noted that B. I. has already had negative outcomes from psychotic episodes, including the motor vehicle accident that prompted his initial commitment. Doctor Schlagel further opined that although he explained to B. I. the advantages, disadvantages and alternatives to accepting medication or treatment, B. I. was not competent to refuse medication, as his lack of insight into even the possibility of having a mental illness made him incapable of understanding the treatment.

B. I. testified that he hears voices but the frequency of such occurrences varies depending on "how badly the police want to bother me that day." B. I. further testified that he does not suffer from schizophrenia and that he would stop taking his medication if released from commitment. B. I. explained that he is "under surveillance," and there is no medication that will help that. B. I. also testified that the voices have never told him to hurt himself or others, and the car accident happened because he was "distracted" by the voices, not because the voices told him to run the stop sign.

To the extent there was conflicting testimony, it is the jury's function to decide the credibility of witnesses and reconcile any inconsistencies in the testimony. ***Morden v. Continental AG***, 2000 WI 51, ¶39, 235 Wis. 2d 325, 611 N.W.2d 659. The evidence at trial was sufficient to establish by clear and convincing evidence, that B. I. is mentally ill, a proper subject for treatment, and would be a danger to himself or others if treatment were withdrawn. The evidence was likewise sufficient to support the order for involuntary medication and treatment. *See* WIS. STAT. § 51.61(1)(g)3.

The court's independent review of the record discloses no other potential issues for appeal.

Therefore,

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

IT IS FURTHER ORDERED that attorney Daniel J. Chapman is relieved of further representing B. I. in this matter. *See* WIS. STAT. RULE 809.32(3).

Diane M. Fremgen
Clerk of Court of Appeals