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**DISTRICT II**

May 31, 2017

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

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2017AP279-NM

In the matter of the mental commitment of B.C.:  
Winnebago County v. B.C. (L.C. #2016ME71)

Before Hagedorn, J.<sup>1</sup>

A contested hearing was held on Winnebago County's petition for the extension of B.C.'s commitment and to medicate and treat him, regardless of his consent. The circuit court ordered that B.C.'s commitment be extended by twelve months and authorized the involuntary administration of medication and treatment during that time period. B.C.'s appointed appellate counsel, Gina Frances Bosben, filed a no-merit report pursuant to WIS. STAT. RULE 809.32 and

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<sup>1</sup> This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(d) (2015-16). All references to the Wisconsin Statutes are to the 2015-16 version unless otherwise noted.

*Anders v. California*, 386 U.S. 738 (1967). B.C. filed a response and counsel filed a supplemental report.

Bosben was permitted to withdraw upon accepting new employment. Gregory Bates, appointed as successor counsel, likewise filed a supplemental no-merit report. Upon consideration of the reports, B.C.'s response, and an independent review of the record as mandated by *Anders*, we conclude that there are no issues with arguable merit for appeal. We therefore summarily affirm the orders. *See* WIS. STAT. RULE 809.21.

The no-merit reports and B.C.'s response address whether: (1) the circuit court complied with statutory procedures governing involuntary commitment; (2) it is constitutional to commit an inmate of the state prison system to a treatment center; (3) there is any basis for challenging the circuit court's order allowing the involuntary administration of medication and treatment; (4) medication can be ordered to be delivered by injection without a person's consent; and (5) the evidence was sufficient to provide a basis for the extension of B.C.'s commitment and to allow a finding that he was not competent to refuse the prescribed medication.

We agree with appellate counsel that these issues do not have arguable merit for appeal. The circuit court followed the statutory procedures, including the time limits, governing the commitment of an inmate like B.C. *See* WIS. STAT. § 51.20(1)(ar). That statute is facially constitutional because it is reasonably related to the State's legitimate interest in providing care and assistance to inmates suffering from mental illness. *Winnebago Cty. v. Christopher S.*, 2016 WI 1, ¶8, 366 Wis. 2d 1, 878 N.W.2d 109. B.C. does not allege that it is unconstitutional as applied to him.

Under WIS. STAT. § 51.61, a person has the right to refuse medication unless a court determines that the person is not competent to make such a decision. An individual is not competent if he or she “is incapable of expressing an understanding of the advantages and disadvantages of accepting medication or treatment and the alternatives.” Sec. 51.61(1)(g)4.a. The County must overcome the presumption of competence by clear and convincing evidence. *Outagamie County v. Melanie L.*, 2013 WI 67, ¶¶49, ¶37, 349 Wis. 2d 148, 833 N.W.2d 607. Whether the County has done so is a question of law this court reviews independently. *Id.*, ¶39.

B.C. was able to testify that he is prescribed injectable aripiprazole and to state its possible side effects. His treating psychiatrist, Dr. Michelle Andrade, testified, however, that B.C. is incapable of expressing an understanding of the advantages and disadvantages of accepting the medication and lacks insight into his need for it. Indeed, he does not believe he requires medication, as he does not believe he has a mental illness. Dr. Andrade testified that B.C.’s schizophrenia “[s]ignificantly” impairs his thoughts, moods, and perception and “[g]rossly” affects his ability to recognize reality and meet the demands of daily life. For example, B.C. holds long-standing delusions that his food is being tampered with and that he is the focus of harassment by a nonexistent lawsuit. She testified that the medication benefits B.C. therapeutically and does not impair his ability to participate in legal proceedings. At this time, no meritorious challenge could be made to the conclusion that B.C. is incompetent to refuse the aripiprazole prescribed for him.

Likewise, no arguable issue could be advanced regarding the involuntary administration of the injectable form of aripiprazole. While “[t]he forcible injection of medication into a nonconsenting person’s body represents a substantial interference with that person’s liberty’ ... the state has an interest in administering treatment to a patient pursuant to a commitment order.”

*Id.*, ¶43 (citations omitted). Our mental health statutes “reflect a balance between treating mental illness and protecting the individual and society from danger on the one hand, and personal liberty of the individual on the other.” *Id.* Left on his own, B.C. sometimes did not take the drug or asked the Department of Corrections to cut his dose, resulting, according to Dr. Andrade, in B.C. becoming delusional, disorganized, and “very violent.” The injectable form requires less-frequent administration, as it is long-acting. Her testimony at the final hearing satisfied the County’s burden to prove the required facts by clear and convincing evidence, including that B.C. is not competent to refuse treatment. *See* WIS. STAT. §§ 51.20(13)(e) and 51.61(1)(g)4.b.

Our review of the record reveals that there is no meritorious basis to challenge either circuit court order. Accordingly, this court affirms the orders, and relieves Attorney Bates of any further representation of B.C. in this appeal. Therefore,

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

IT IS FURTHER ORDERED that Attorney Gregory Bates is relieved from further representing B.C in this matter. *See* WIS. STAT. RULE 809.32(3).

IT IS FURTHER ORDERED that this summary disposition order will not be published and may not be cited except as provided under WIS. STAT. RULE 809.23(3).

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*Diane M. Fremgen*  
*Clerk of Court of Appeals*