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DISTRICT II

November 10, 2021

To:

Hon. William Domina
Circuit Court Judge
Electronic Notice

Kelly K. Haag
Juvenile Clerk
Electronic Notice

Robert J. Mueller
Electronic Notice

Deborah B. Price
Electronic Notice

Pamela Moorshead
Electronic Notice

J.K.
Northview Heights
199 County Rd. DF
Juneau, WI 53039

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

2018AP616-NM

In the matter of the mental commitment of J.K.:
Waukesha County v. J.K. (L.C. #2016ME555)

Before Reilly, P.J.¹

Summary disposition orders may not be cited in any court of this state as precedent or authority, except for the limited purposes specified in WIS. STAT. RULE 809.23(3).

J.K. appeals from orders extending his mental commitment for twelve months on an outpatient basis and authorizing his involuntary medication and treatment.² His appellate

¹ This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(d) (2019-20). All references to the Wisconsin Statutes are to the 2019-20 version unless otherwise noted.

² The circuit court orders were entered on March 14, 2017. Thereafter, appointed counsel commenced a no-merit appeal which was dismissed as moot in a May 11, 2018 order of this court. On September 3, 2019, the Wisconsin Supreme Court summarily vacated this court's order and directed that the no-merit appeal should proceed. Appellate counsel filed a new no-merit report from the March 14, 2017 orders.

(continued)

counsel has filed a no-merit report pursuant to WIS. STAT. RULE 809.32, and *Anders v. California*, 386 U.S. 738 (1967). J.K. received a copy of the report, was advised of his right to file a response, and has elected not to do so. Upon consideration of the report and an independent review of the record, we conclude that the orders may be summarily affirmed because there is no arguable merit to any issue that could be raised on appeal. See WIS. STAT. RULE 809.21.

J.K. suffers from schizophrenia and was originally placed on mental commitment and involuntary medication orders in 2016. Waukesha County filed a recommitment petition alleging that J.K. continues to suffer from a mental illness, as well as significant memory problems and serious physical health conditions; that he still denies having a mental illness and delusions; and that given his history and lack of insight, his commitment should be extended.

Dr. Cary Kohlberg, a licensed psychiatrist, was appointed to examine J.K. and filed a report concluding that J.K. satisfied the criteria for recommitment and the involuntary administration of medication. Kohlberg testified at the recommitment hearing and his report was admitted into evidence. Kohlberg testified that during his examination, J.K. was mildly confused, but he was able to express his belief he had been misdiagnosed, had never experienced any underlying mental illness, and does not currently need any mental health treatment. Kohlberg opined that J.K. met the standard for recommitment because absent a court order, “it is

We observe that the transcript underlying the March 14, 2017 orders appears in the record at No. 98, and is mistakenly labeled in the record index as “Transcript of 08-21-2017 recommitment hearing...”

likely that he would stop psychiatric treatment, including that of antipsychotic medication[.]” and “quickly decompensate back to” his prior psychotic status. Kohlberg continued:

The reason he is doing well is because of primarily taking his antipsychotic medication regularly. [J.K.] advised me if he were off commitment he would not take antipsychotic medication because he does not believe that he needs it. If that were to happen, he would likely quickly have a psychotic decompensation and likely develop symptoms he had in the fall of last year before he was in treatment which resulted in a very poor ability to care for himself, including his medical needs which resulted in severe physical health problems, particularly heart problems requiring emergent medical hospitalization. So all of these cascade of events and severe health problems would likely quickly redevelop if he were off treatment.

Regarding the need for an involuntary medication order, Kohlberg stated that he had discussed the advantages, disadvantages, and alternatives of antipsychotic medications with J.K. Kohlberg opined that J.K. was incapable of expressing any understanding of those advantages, disadvantages, and alternatives, and incapable of applying any understanding of these matters to his own situation due to his mental illness, such that he could not make an informed choice as to whether to accept or refuse those medications.

J.K. also testified at the hearing. He stated that before his original commitment, he was regularly taking his medication for high blood pressure. He denied having schizophrenia and said he did not need medication for any mental illness.

The no-merit report addresses whether the evidence offered was sufficient to extend J.K.’s mental health commitment and to require his involuntary medication and treatment. The no-merit report states the appropriate standard for each intervention. *See* WIS. STAT. § 51.20(1)(a)2. and (am) (recommitment); WIS. STAT. § 51.61(1)(g)4. (involuntary medication and treatment). By Kohlberg’s report and testimony, the County met its burden to prove all

required facts by clear and convincing evidence. *See* § 51.20(13)(e). Additionally, the evidence satisfies the applicable standards for recommitment and involuntary medication. *See K.N.K. v. Buhler*, 139 Wis. 2d 190, 198, 407 N.W.2d 281 (Ct. App. 1987) (the application of the facts to statutory recommitment requirements presents a question of law we review de novo); *see also Outagamie Cnty. v. Melanie L.*, 2013 WI 67, ¶39, 349 Wis. 2d 148, 833 N.W.2d 607 (whether the County has put forth sufficient evidence to meet its burden to prove the statutory elements for an involuntary medication order is a question of law). There is no arguable merit to challenging the sufficiency of the evidence on appeal.³

Our review of the record discloses no other potential issues for appeal. Accordingly, this court accepts the no-merit report, affirms the orders of the circuit court, and discharges appellate counsel from having to further represent J.K. in this appeal. Therefore,

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

³ In *Langlade County v. D.J.W.*, 2020 WI 41, ¶40, 391 Wis. 2d 231, 942 N.W.2d 277, our supreme court held that “going forward circuit courts in recommitment proceedings are to make specific factual findings with reference to the subdivision paragraph of [WIS. STAT.] § 51.20(1)(a)2. on which the recommitment is based.” Because the March 2017 orders in this case predate the April 2020 decision in *D.J.W.*, its holding does not apply. *See Winnebago Cnty. v. S.H.*, 2020 WI App 46, ¶14, 393 Wis. 2d 511, 947 N.W.2d 761. The record, however, must contain evidence that links past dangerousness to the substantial likelihood of recurring dangerousness absent an extension order. *See id.*, ¶17. Here, although the circuit court did not reference the statutory subdivision on which the recommitment is based, the court explicitly accepted Kohlberg’s conclusions that J.K. did not recognize that he was ill, that he would discontinue his medication absent a commitment order, and that he would return to the dangerous behavior he exhibited in 2016 absent treatment and medication.

IT IS FURTHER ORDERED that Attorney Pamela Moorshead⁴ is relieved from further representing J.K. in this matter. *See* WIS. STAT. RULE 809.32(3).

IT IS FURTHER ORDERED that this summary disposition order will not be published.

Sheila T. Reiff
Clerk of Court of Appeals

⁴ Attorney Leon Todd was originally appointed to represent J.K., and filed the no-merit report. Todd left his position at the State Public Defender's Office and Attorney Pamela Moorshead was appointed as successor counsel.