COURT OF APPEALS
DECISION
DATED AND FILED

December 17, 2020

Sheila T. Reiff
Clerk of Court of Appeals

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. *See* WIS. STAT. § 808.10 and RULE 809.62.

Appeal No. 2020AP1171-FT **Cir. Ct. No. 2019ME211**

STATE OF WISCONSIN **IN COURT OF APPEALS**
DISTRICT III

IN THE MATTER OF THE MENTAL COMMITMENT OF R. W.:

OUTAGAMIE COUNTY,

PETITIONER-RESPONDENT,

V.

R. W.,

RESPONDENT-APPELLANT.

APPEAL from orders of the circuit court for Outagamie County: GREGORY B. GILL, JR., Judge. *Affirmed.*

¶1 HRUZ, J.[1] Rachel[2] appeals orders extending her involuntary commitment and her involuntary medication and treatment. She argues

[1] This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2) (2017-18). This is an expedited appeal under WIS. STAT. RULE 809.17 (2017-18). All references to the Wisconsin Statutes are to the 2017-18 version unless otherwise noted.

Outagamie County (the County) failed to prove by clear and convincing evidence that she is dangerous as that term is used in WIS. STAT. § 51.20(1). We affirm.

BACKGROUND

¶2 Rachel was committed to the custody and care of the County pursuant to an order that was set to expire, and on December 18, 2019, the County petitioned the circuit court to extend Rachel's commitment and involuntary medication orders for one year. On January 9, 2020, the court held a hearing on the petition.

¶3 The County's first witness was Russell Marmor, an employee at the County's health and human services department. Marmor oversaw the County's community support program and additionally oversaw Rachel's day-to-day functioning. Marmor testified that he had been working with Rachel on and off since 2008 and that her current commitment began in July 2019.[3] Marmor also testified that although he was not working directly with Rachel—and was not directly responsible for her care—prior to her July 2019 commitment, he had contact with Rachel because, due to his rapport with her, he would receive calls from the police requesting his assistance with issues involving her.

¶4 Marmor stated that Rachel's diagnosis was schizoaffective disorder, and he testified that she was committed in July 2019 because she had stopped

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[2] Following the parties' lead, and pursuant to the policy underlying WIS. STAT. RULE 809.86, we refer to R.W. using the pseudonym "Rachel."

[3] Marmor testified mistakenly that Rachel's commitment began in June 2019. Our review of the record revealed that her commitment began in July 2019. We therefore refer to that date throughout our opinion.

taking her medications and had made threats to her family, making her "potentially dangerous at that time." Marmor admitted, however, that he did not have firsthand knowledge of Rachel's failure to take her medications; instead, he relied on reports from her family members in that regard.

¶5 Marmor further testified that Rachel is prescribed Haldol and Artane to alleviate the symptoms of her schizoaffective disorder, with both medications capable of being taken orally or by injection. He explained that the medications were additionally prescribed as injectables because Rachel's "oral medication compliance ha[d] been questioned." As an example, Marmor testified that in October 2019, he "personally observed 20 oral Haldol in a side dish on her counter leading [him] to believe she ha[d] not been compliant with her oral medication." Marmor additionally opined that Rachel would not take her medications on a voluntary basis, stating:

> Well, I think the past is the best indicator of future behavior. We have four commitments, four attempts to allow for more independence and more autonomy, and all four times have led to decompensations and the need for another commitment. And I would just also add that this is concerning for two major reasons. One is that her life gets completely torn apart at this time and she has to put it back together.
>
> ....
>
> When I say "at this time," I mean when she decompensates[,] it has a very detrimental effect on her family and her livelihood. And the second note is that when she decompensated—when she decompensates, it's—she—people do not always return to baseline so it's concerning and problematic.

¶6 Marmor further testified that when Rachel is "not on a therapeutic dose of her medication, it has the effect of her becoming impulsive, irritable,

dangerous, and in the state that [he has] seen her at several points in time throughout the past." He stated that after each of Rachel's four prior commitments she had decompensated to the point where she became the subject of another commitment.

¶7 The County next called Dr. Marshall Bales to testify. Bales had known Rachel for approximately five years, and he had been her treating physician for the past six months, during Rachel's current commitment. Bales testified that Rachel was diagnosed with schizophrenia, that she was a proper subject for treatment, that she responds well to the medications when she takes them, and that Rachel would be a proper subject for commitment were treatment to be withdrawn. Bales further testified:

> She takes her medication compliantly as far as I know, but what she does, frankly, is over time she stops her medication and then some kind of dangerous psychotic incident will occur. ... I'm just worried that she will stop her medication. She will not stop it like in a day or a week, but she will stop it in my opinion within a period of time, and then what happens, and the history with her verifies this, is she goes off her medication and then she has to be rehospitalized and recommitted again.

When asked whether he was aware of any incidents where Rachel had stopped taking her medications during her current commitment, Bales responded, "She is taking her medication and is really doing well, and I do not know of any episodes of noncompliance offhand."

¶8 Doctor Bales testified that Rachel seemed to have a "surface" understanding of her mental illness, "but then down the road she goes off her medication" nevertheless. He also testified that he had explained to Rachel the advantages, disadvantages and alternatives to medication "[r]epeatedly over time,"

and that she was incapable of making an informed choice about taking her medications. Bales explained further:

> She can ... express everything I tell her, she can express it back, but the bottom line is that she does not walk the walk. She will say the words, I will stay on my medication, but her history is she goes off of the medication and she doesn't walk the walk of her words and staying on the medication.

¶9 Rachel testified in opposition to her recommitment. She stated that she would voluntarily continue her treatment and taking her medications if she were not recommitted to the County. Rachel explained the reason she intended to do so was

> [b]ecause [the medications] have psychotropic benefits for me that the psychotic part of your brain that gives you psychotic thoughts, the Haldol suppresses them thoughts and then you don't have them, your mind don't race and stuff like that. I haven't had any symptoms. The Haldol keeps my—my schizophrenia in remission. I haven't been hospitalized other than an arrest because of—they thought I wasn't taking my meds. I haven't been hospitalized for a year-and-a-half that I wasn't on commitment with Dr. Bales. I had an outside psychiatrist.

¶10 The circuit court extended Rachel's commitment order for one year. The court determined that Rachel had a mental illness, schizoaffective disorder or schizophrenia, and that her mental illness was treatable. The court also concluded that "without continued treatment [Rachel] would again become a suitable subject for treatment," explaining that it was "not satisfied that there is enough proof of compliance" with Rachel personally taking her medications. The court further explained its decision in that regard as follows: "Dr. Bales had espoused, and Mr. Marmor had also espoused, and to use, I believe it was Dr. Bales, sort of description, [Rachel] does a good job of talking the talk but walking the walk is a

little bit different. And I have some concerns with that." Consequently, the court also extended the involuntary medication order. Rachel now appeals.

DISCUSSION

¶11 In order to extend Rachel's commitment under WIS. STAT. ch. 51, the County had the burden to show by clear and convincing evidence that she: (1) is mentally ill; (2) is a proper subject for treatment; and (3) meets one of the five statutory standards of dangerousness set forth in WIS. STAT. § 51.20(1)(a)2. *See* ***Langlade Cnty. v. D.J.W.***, 2020 WI 41, ¶¶23, 29, 391 Wis. 2d 231, 942 N.W.2d 277. Rachel challenges only the third element on appeal—i.e., that the County failed to prove by clear and convincing evidence that she was dangerous.[4]

¶12 Because the County is petitioning for Rachel's recommitment, there is an additional manner in which it can prove Rachel's dangerousness. *See* ***id.***, ¶32.

> [T]he requirements of a recent overt act, attempt or threat to act under [WIS. STAT. § 51.20(1)](a)2.a. or b., pattern of recent acts or omissions under par. (a)2.c. or e., or recent behavior under par. (a)2.d. 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.

[4] Although Rachel appeals from orders for both involuntary commitment and for involuntary medication and treatment, she does not present any argument relating to the latter order. Therefore, we affirm without addressing the medication and treatment order and turn to the order for involuntary commitment. *See* ***State v. Pettit***, 171 Wis. 2d 627, 646, 492 N.W.2d 633 (Ct. App. 1992) (stating that we "may decline to review issues inadequately briefed").

WIS. STAT. § 51.20(1)(am). Section 51.20(1)(am) "recognizes that an individual receiving treatment may not have exhibited any recent overt acts or omissions demonstrating dangerousness because the treatment ameliorated such behavior, but if treatment were withdrawn, there may be a substantial likelihood such behavior would recur." ***D.J.W.***, 391 Wis. 2d 231, ¶33 (citation omitted). The statute also serves

> to avoid the "revolving door" phenomena whereby there must be proof of a recent overt act to extend the commitment but because the patient was still under treatment, no overt acts occurred and the patient was released from treatment only to commit a dangerous act and be recommitted. The result was a vicious circle of treatment, release, overt act, [and] recommitment.

State v. W.R.B., 140 Wis. 2d 347, 351, 411 N.W.2d 142 (Ct. App. 1987).

¶13 Despite the foregoing allowances, dangerousness remains an element that must be proven to support recommitment. ***D.J.W.***, 391 Wis. 2d 231, ¶33. "The alternate avenue of *showing* dangerousness under [WIS. STAT. § 51.20(1)](am) does not change the elements or quantum of proof required. It merely acknowledges that an individual may still be dangerous despite the absence of recent acts, omissions, or behaviors exhibiting dangerousness outlined in [WIS. STAT.] § 51.20(1)(a)2.a.-e." ***Portage Cnty. v. J.W.K.***, 2019 WI 54, ¶24, 386 Wis. 2d 672, 927 N.W.2d 509. In other words, the County must still prove that Rachel *is* dangerous, but it need not show Rachel evidenced the recent acts, omissions, or behaviors exhibiting dangerousness outlined in § 51.20(1)(a)2.a.-e. as long as the County proves there is a substantial likelihood, based on Rachel's treatment record, that she would be a proper subject for commitment if treatment were withdrawn. *See* ***D.J.W.***, 391 Wis. 2d 231, ¶¶33-34.

¶14 Whether the County presented sufficient evidence that Rachel is dangerous is a mixed question of law and fact. *See* ***id.***, ¶¶23-24. We will uphold a circuit court's findings of fact unless they are clearly erroneous. ***Id.***, ¶24. Whether the facts satisfy the statutory standard of dangerousness is a question of law that we review independently. ***Id.***, ¶25.

¶15 The thrust of the County's argument is that Rachel has a "cycle of dangerous behavior," such that if treatment were withdrawn, there is a substantial likelihood that Rachel would behave dangerously and new commitment proceedings would need to be initiated. *See* WIS. STAT. § 51.20(1)(am). The County asserts both Marmor and Dr. Bales provided credible testimony based upon their lengthy histories of treating Rachel, which included their experiences treating her in relation to her prior commitments. In the County's view, Marmor's and Bales' testimony established that Rachel is dangerous under § 51.20(1)(am) because she has historically failed to take her medications after she had been decommitted, resulting in her acting dangerously and requiring another commitment.

¶16 We agree that Marmor's and Dr. Bales' testimony describing Rachel's "cycle of dangerous behavior" is sufficient to demonstrate that she is dangerous and, thus, a proper subject for commitment if treatment were withdrawn pursuant to WIS. STAT. § 51.20(1)(am). *See* ***Winnebago Cnty. v. S.H.***, 2020 WI App 46, ¶16, 393 Wis. 2d 511, 947 N.W.2d 761. Although the County relies on ***Waukesha County v. J.W.J.***, 2017 WI 57, 375 Wis. 2d 542, 895 N.W.2d 783, to

support its argument, our published decision in ***S.H.*** is nearly identical to Rachel's case and, therefore, is more instructive.[5]

¶17 In ***S.H.***, "Sarah" appealed from an order extending her involuntary commitment and from an order for involuntary medication and treatment. ***S.H.***, 393 Wis. 2d 511, ¶1. The circuit court ordered her commitment extended because, in relevant part, the testimony at the recommitment hearing established that, pursuant to WIS. STAT. § 51.20(1)(am), if Sarah's treatment were withdrawn, she would become a proper subject for commitment. ***S.H.***, 393 Wis. 2d 511, ¶¶1-2.

¶18 Only one witness, Dr. Michael Vicente, testified at Sarah's recommitment hearing. ***Id.***, ¶2. He had been treating Sarah since 2015 (approximately four years) and met with her regularly. ***Id.***, ¶3. Vicente diagnosed Sarah with paranoid schizophrenia, which substantially impaired her thoughts and perception when she was not under treatment and grossly affected her judgment and capacity to recognize reality. ***Id.*** Vicente further testified that Sarah would become a proper subject for commitment if treatment were withdrawn because she neither believed she was mentally ill nor believed she needed treatment. ***Id.***, ¶4. Vicente thus opined there was a "very high likelihood" that Sarah would discontinue treatment without an extension of her orders, and he based his opinion on her history of discontinuing her medication when off of commitment, which had resulted in hospitalizations and further commitments. ***Id.***

[5] This court issued ***Winnebago County v. S.H.***, 2020 WI App 46, 393 Wis. 2d 511, 947 N.W.2d 761, on June 17, 2020, before briefs were submitted in the instant matter. Neither party cited to ***S.H.*** in their respective briefs. Normally, we request supplemental briefing from parties to address pertinent authorities issued near or after briefing has concluded that were not addressed in their briefs. However, given the expedited timeline in which we address this appeal and the clear similarities of fact and law between this case and ***S.H.***, we declined to request supplemental briefing here.

¶19 Doctor Vicente further testified that he had generally observed no paranoia in Sarah for the past few years prior to the recommitment hearing, save for one instance in July 2018. ***Id.***, ¶5. On that occasion, Sarah had paranoid ideation caused by a previous change in medication. ***Id.*** Vicente explained that "some of the old things that had been bothering [Sarah] were resurfacing," which included her discussing a time in her past when she brought a baseball bat to work. ***Id.*** Vicente testified that although Sarah had not evidenced dangerous behavior under his care, his one attempt to change her medication, as just discussed, led to her "becoming more paranoid which has led to dangerous behaviors in the past." ***Id.***, ¶6.

¶20 On appeal, Sarah argued Winnebago County, through Dr. Vicente's testimony, had failed to establish that she was dangerous because it did not link a finding of dangerousness under WIS. STAT. § 51.20(1)(am) to at least one of § 51.20(1)(a)2.'s statutory standards of dangerousness. ***S.H.***, 393 Wis. 2d 511, ¶12. We disagreed. ***Id.***, ¶13. We noted that "[a]t least up to a point, Sarah's position has merit," ***id.***, as there was "no question that both the County and the [circuit] court could have done more to address dangerousness with reference to the statutory standards for initial commitment," ***id.***, ¶14. In fact, we determined the County had failed "during its case in chief to present sufficient evidence of dangerousness." ***Id.***, ¶17.

¶21 Despite the County's failures and its cursory arguments regarding the element of dangerousness on appeal, ***id.***, we ultimately determined that "neither [WIS. STAT. § 51.20(1)(am)] nor the applicable case law requires an expert or circuit court to speculate on the precise course of an individual's impending decompensation by identifying specific *future* dangerous acts or omissions the individual might theoretically undertake without treatment." ***S.H.***,

393 Wis. 2d 511, ¶13. We observed further that "[d]angerousness in an extension proceeding can and often must be based on the individual's precommitment behavior, coupled with an expert's informed opinions and predictions (provided, of course, that there is a proper foundation for the latter)," all of which "involve[] a fact-intensive weighing of the evidence so as to arrive at an educated conclusion as to the likelihood of reoccurring dangerousness." ***Id.***, ¶13 & n.6.

¶22 With the foregoing guiding our analysis, we then concluded that the County met its burden of proving Sarah was dangerous under WIS. STAT. § 51.20(1)(am). *See* ***S.H.***, 393 Wis. 2d 511, ¶16. We determined the circuit court's "indirect[]" findings regarding Sarah not believing she needed medication, her hospitalization and further commitment when not taking her medications, and Dr. Vicente's "unrebutted discussion of his history treating [her] ... support a finding that Sarah engages in dangerous behavior when not on medication." ***Id.***, ¶15. We explained:

> Vicente brought up a specific prior instance of dangerous behavior that was directly tied to postcommitment paranoid ideations relating to the same incident, and that resurfaced following a change in medication. This provided the necessary link between past dangerousness and the substantial likelihood of reoccurrence of such behavior absent an extension order—particularly in light of Vicente's oft-repeated testimony that Sarah is highly likely to stop taking her medication without that order and in the absence of any rebuttal testimony.

Id., ¶17. We therefore concluded, "Vicente's testimony 'connected the dots,' supporting the court's final determination that Sarah would repeat this cycle (end of commitment/going off medication/dangerous behavior/recommitment) if her commitment order were not extended." ***Id.***, ¶15.

¶23 ***S.H.*** and Rachel's case are identical in all material respects, such that we are compelled to similarly conclude that the County met its burden of proving Rachel was dangerous under WIS. STAT. § 51.20(1)(am). *See* ***Cook v. Cook***, 208 Wis. 2d 166, 189-90, 560 N.W.2d 246 (1997) (court of appeals is bound by its own published precedent). To begin, and just like in ***S.H.***, both the County (at the recommitment hearing and in its appellate arguments) and the circuit court could have done more to address dangerousness with reference to the statutory standard for commitment. *See* ***S.H.***, 393 Wis. 2d 511, ¶14. Yet, similarly, those failures do not require reversal here.

¶24 In ***D.J.W.***, our supreme court recently directed 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." ***D.J.W.***, 391 Wis. 2d 231, ¶59 (emphasis added). As Rachel's January 9, 2020 extension order predates our supreme court's April 24, 2020 decision in ***D.J.W.***, its directive is inapplicable. *See* ***S.H.***, 393 Wis. 2d 511, ¶14. Thus, the failure to abide by ***D.J.W.***'s forward-looking directive cannot, in and of itself, mandate reversal here. This is so even though we agree with Rachel that the lack of specific reference to a statutory standard of dangerousness she was alleged to have evidenced could indicate the County failed to meet its burden of proof.

¶25 There are clear and convincing facts in the record, however, to satisfy the dangerousness requirement of WIS. STAT. § 51.20(1)(am). Marmor's and Dr. Bales' testimony provided a link between Rachel's past dangerousness and the substantial likelihood of reoccurrence of such behavior absent an extension order. And they did so in a manner similar to Dr. Vicente's testimony

regarding Sarah's past dangerousness in ***S.H.*** In fact, we believe the testimony here created a stronger link than that established in ***S.H.***

¶26 Marmor had a longtime professional relationship working with Rachel. Based on the rapport he had built with her, Marmor testified that, historically, if treatment were withdrawn, Rachel would become "impulsive, irritable, dangerous, and in the state that [he has] seen her at several points in time throughout the past." Specifically, Marmor testified that the decompensated state of Rachel's with which he was familiar included her "making threats to her family members."

¶27 Doctor Bales provided even more testimony "connecting the dots" that Rachel would be dangerous if treatment were withdrawn. Like Dr. Vicente in ***S.H.***, Bales was Rachel's treating physician and had been treating her for a number of years. Although Bales' testimony was vague as to when Rachel would historically stop taking her medications after decommitment, his testimony aligned with Marmor's that Rachel has a history of noncompliance with taking her medications when not under a commitment. Bales stated Rachel "will gradually get off her medication" and that "[n]obody knows when, but she'll go off of it and then she will become psychotic within—usually it's a couple of months."

¶28 The circuit court implicitly found Marmor and Dr. Bales to be credible witnesses, as it could not have otherwise determined Rachel would be a proper subject for commitment if treatment were withdrawn. *See* ***State v. Martwick***, 2000 WI 5, ¶31, 231 Wis. 2d 801, 604 N.W.2d 552 ("[I]f a circuit court fails to make a finding that exists in the record, an appellate court can assume that the circuit court determined the fact in a manner that supports the circuit court's ultimate decision."). In so doing, the court, like the circuit court in ***S.H.***, indirectly

found that Rachel did not believe she needed medication, and, as a result, she would not take her medications when not involuntarily committed, leading her to further hospitalization and commitment. That fact, along with Marmor's and Bales' discussions of their history working with and treating Rachel (including Marmor's testimony regarding how Rachel had made threats to her family when in a decompensated state), supports a finding that Rachel engages in dangerous behavior when not on a therapeutic dose of her medications.

¶29 If Rachel were to challenge our reliance on ***S.H.***, she might point to our statement regarding Dr. Vicente's "*unrebutted opinion* … that Sarah has gone through and will likely repeat the 'revolving door' cycle without a commitment order" as a distinction that is materially different from Rachel's case. *See* ***S.H.***, 393 Wis. 2d 511, ¶18 (emphasis added). Here, Rachel testified at her recommitment hearing that she would continue her medications absent an extension order, and she provided her reasons for continuing to do so. This factual difference is inconsequential, however, because the circuit court implicitly found Marmor's and Dr. Bales' testimony more credible than Rachel's with regard to whether she would again discontinue medication without a commitment order. The circuit court is the ultimate arbiter of credibility, to which we owe deference on appeal. *See* ***State v. Peppertree Resorts Villas, Inc.***, 2002 WI App 207, ¶19, 257 Wis. 2d 421, 651 N.W.2d 345.

¶30 As was repeated often throughout the recommitment hearing, Marmor's and Dr. Bales' testimony was based on their experiences treating and working with Rachel, such that their opinions and predictions had proper foundation and were not pure conjecture. *See* ***Marathon Cnty. v. D.K.***, 2020 WI 8, ¶52, 390 Wis. 2d 50, 937 N.W.2d 901; *see also* ***S.H.***, 393 Wis. 2d 511, ¶13 & n.6. Like Dr. Vicente's testimony in ***S.H.***, Marmor's and Bales' testimony

"connected the dots" supporting the court's final determination that Rachel would repeat this cycle of ending her commitment, going off her medications, behaving dangerously, and later being recommitted if her commitment order were not extended. We conclude the court's factual finding that Rachel will not continue to take her medications absent a commitment order is not clearly erroneous.

¶31 In all, we acknowledge that Rachel's arguments are not without some merit, particularly given that the recommitment hearing transcript and the County's appellate arguments leave much to be desired, and especially in light of our supreme court's recent decision in ***D.J.W.*** Even so, this case is indistinguishable in all material ways from ***S.H.***, and we are bound by that decision. Consistent with our decision in ***S.H.***, sufficient credible testimony was elicited at the recommitment hearing here such that the circuit court correctly concluded Rachel would be a proper subject for commitment if treatment were withdrawn and correctly concluded an extension should be granted pursuant to the "dangerousness" standard of WIS. STAT. § 51.20(1)(am). We therefore affirm.

By the Court.—Orders affirmed.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)4.

STATE OF WISCONSIN CIRCUIT COURT OUTAGAMIE COUNTY

IN THE MATTER OF THE CONDITION OF:

R.S.W., **Case No. 19-ME-211**

EXTENSION HEARING

BEFORE: **HONORABLE GREGORY B. GILL, JR.**
Circuit Court Judge, Branch IV
Outagamie County Justice Center
Appleton, WI 54911

DATE: **January 9, 2020**

APPEARANCES: **JOSEPH GUIDOTE**
Assistant Corporation Counsel
Appearing on behalf of the County

JEREMY CAMPSHURE
Attorney at Law
Appearing on behalf of R.S.W.

R.S.W.
Ward
Appearing in person

ALSO APPEARING:

Russ Marmor, Social Worker

Joan Biese
Official Reporter, Branch IV
Outagamie County

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TRANSCRIPT OF PROCEEDINGS

THE COURT: All right. We are on the record in 19ME211, *In Re: The Interest of* RACHEL [redacted].

And Miss Rachel appears in person along with her counsel, Attorney Jeremy Campshure. We have with us representing the County, Outagamie County Corporation Counsel, Joseph Guidote. We also have with us from the Department of Human Services Mr. Russ Marmor.

This matter is scheduled today for a hearing -- or an extension hearing, rather. Mr. Campshure, are we taking testimony, is there a stipulation, what is the status, sir?

ATTORNEY CAMPSHURE: We would be asking for testimony.

THE COURT: Okay. All right. Could we please get a doctor on the phone.

(Clerk placing call to doctor.)

THE COURT: All right. We are at this time getting an answering machine.

Let me ask, Attorney Guidote, is Mr. Marmor going to be testifying as well?

ATTORNEY GUIDOTE: He is, Your Honor.

THE COURT: All right. If acceptable, maybe we could start with Mr. Marmor, and hopefully

we'll have the doctor.

ATTORNEY GUIDOTE: That would be fine.

THE COURT: Sure. If you would please come on up, sir. Please remain standing, raise your right hand.

(Oath administered to witness.)

THE WITNESS: I do.

THE CLERK: All right. You may be seated, sir.

THE WITNESS: Thank you.

THE CLERK: Could you please state your name, spell the last for the record.

THE WITNESS: Russell -- Russell Marmor, M-A-R-M-O-R.

THE COURT: And, Mr. Guidote, your witness, please.

ATTORNEY GUIDOTE: Thank you, Your Honor.

EXAMINATION

BY ATTORNEY GUIDOTE:

Q Mr. Marmor, you are an employee of Outagamie County?

A Yes.

Q And you work with Outagamie County Health and Human Services, correct?

A Yes.

Q And in what capacity?
A I oversee the community support program. I'm the clinical coordinator.
Q And do you also do individual casework?
A At times. In Rachel 's case I do, yes.
Q And specifically what are your duties with regard to Rachel ?
A I oversee her day-to-day functioning, I see her as needed in the community, assess for stability, medication compliance. I'm also a member of the interdisciplinary team that works with Rachel , so -- including nurses, doctors, we all coordinate her care together.
Q And how long have you known Rachel ?
A I believe since '08.
Q And when you refer to Rachel , you're referring to Rachel .
A That's correct. Rachel , yes.
Q And so you've known her since 2008, and that would have been through your professional capacity with Outagamie County?
A Yes.
Q Okay. And has Rachel been committed in the past?
A Yes.
Q Okay. How many times?

A This is the fourth commitment that I'm aware of --
Q Okay.
A -- from a brief records review.
Q So would it be fair to say that she's been committed and discharged from commitment at various times?
A Yes.
Q Okay. And what was -- what was the date of the latest commitment?
A That was in I believe June of '19.
Q Okay. And could you tell the Court why she was committed at that time?
A [redacted] was -- [redacted] had stopped her medication. She was making threats to her family members. The police and family were concerned. They notified our office. And because of my familiarity, I attempted to assist. So [redacted] basically was -- was threatening, impulsive, and potentially dangerous at that time. She had decompensated.
Q Okay. And what is her diagnosis?
A Her diagnosis is schizoaffective disorder.
Q And in lay terms, what's the symptomology of schizoaffective disorder?
A Schizoaffective is a mood and also disorder of thought or cognition, so it is a -- a mood disorder that also includes psychotic symptoms.

Q Okay. And to your knowledge is [redacted] prescribed medications to alleviate the symptoms of schizoaffective disorder?
A Yes. I do have her measure her medications in front of me.
Q Okay. And what is she prescribed?
A She's currently prescribed Haldol, which is an anti-psychotic, both in the injectable form and also orally, in addition to Artane.
Q Okay. And has she responded well to medications?
A Yes.
Q And in the past has she responded well to medications?
A She has, yes.
Q Okay. And has she been taking her medications?
A She has been compliant with the injectable medication. However, I would note that her oral medication compliance has been questioned. Specifically, on 10/2 of 2019 I personally observed 20 oral Haldol in a side dish on her counter leading me to believe she has not been compliant with her oral medication.
Q Okay. Did that lead to the injectable medication?
A No. She's prescribed both oral and injectable.
Q Okay. And why is she prescribed the injectable

medication?
A Due to concerns of compliance.
Q Now, since your October discovery of the Haldol, has she been monitored for medications -- for the oral medications?
A She -- she's not. And I would -- I would just add that the logistics create a problem with her living in Seymour. If it was absolutely necessary, we would figure out a way to do that, but we are really leaning on the injectable medication to keep her stable and her -- yeah.
Q Okay. So the injectable medication, has it been keeping her stable?
A It has been. There -- I just add there is no way of me confirming that she's currently taking her oral medication, so that's a question mark right now.
Q Yeah. And what impact does that have on Ms. [redacted] when she doesn't take the oral medication but takes the injectable?
A Well, it's -- it's hard to tease out for -- when that was happening. I would imagine when she's not on -- to answer it this way, when she's not on a therapeutic dose of her medication, it has the effect of her becoming impulsive, irritable, dangerous, and in the state that I've seen her at several points in

time throughout the past.
Q Okay. Now, given your knowledge of -- of her history, is it likely that if she were taken off injectable medications that she would continue to take medications on a voluntary basis?
A No.
Q And why is that?
A Well, I think the past is the best indicator of future behavior. We have four commitments, four attempts to allow for more independence and more autonomy, and all four times have led to decompensations and the need for another commitment. And I would just also add that this is concerning for two major reasons. One is that her life gets completely torn apart at this time and she has to put it back together. Secondly --
Q Hang on. When you say "at this time", what do you mean?
A When I say "at this time", I mean when she decompensates it has a very detrimental effect on her family and her livelihood. And the second note is that when she decompensated -- when she decompensates, it's -- she -- people do not always return to baseline so it's concerning and problematic.

Q Okay. And have you had an opportunity to talk to her about her mental illness?
A Yes. On multiple occasions.
Q Okay. To your knowledge does she agree that she has a mental illness?
A I don't think she fully agrees. She struggles with insight.
Q Okay. In what way?
A I believe she has a symptom of the illness which is called anosognosia which is a delusion that one doesn't have the mental illness. And it's -- it's clearly something that Rachel has, that she struggles with.
Q And has she voiced that?
A Yes. On multiple occasions.
Q And have you asked her -- with regard to medications, have you had conversations with regard to the importance of maintaining her -- her medication regimen?
A Yes, multiple times.
Q And does she agree with that?
A I don't think so. She's voiced on multiple occasions that she wants to be off of the injectable medication. And I question her motives for that.
Q Okay. And what are her motives?

A I believe that she would stop taking her medication, again based on past behavior, and also what I assess as a lack of insight into her mental illness.

Q So since October have you been made aware of any further instances of -- of Rachel not taking her medications?

A No.

ATTORNEY GUIDOTE: Thank you. Nothing further.

THE COURT: Mr. Campshure.

ATTORNEY CAMPSHURE: Thank you, Your Honor.

EXAMINATION

BY ATTORNEY CAMPSHURE:

Q You mentioned that Miss Rachel doesn't want to be on the injectable. Is it possible that -- would it -- would there be a regimen of oral medications that would be sufficient to treat her mental illnesses?

A Yes. The science behind it would be -- there would be an equal oral dose that would match the injectable dose. It's just a question of system -- system of delivery, really, so --

Q Did she mention any reasons that she would specifically be opposed to the injections?

A She -- she's mentioned that. Of course there's the -- the pain, the physical pain of getting the

injection which she is averse to.
Q Did she mention any side effect she's had from those injections?
A Not that I recall, no.
Q And then you had mentioned that there was an incident I think you said in October of last year where you found Haldol in a dish?
A That's correct.
Q Did you check to see whether that might have been excess prescription that she had been given or whether she had been skipping her prescriptions?
A I'm trying to recall what I did with that. I was -- I was aware that she was not taking it as ordered, and I don't believe it was excess. I did have a conversation with her, but I -- I found myself skeptical of her response given my belief that she doesn't want to take her medication, so what I can say in all confidence is that I visibly saw 20 oral Haldol in a dish that were not being taken.
Q But do you recall if you checked that against her prescription schedule to see when she would have been given those medications?
A I don't recall specifically. I don't feel I could answer that confidently.
Q Okay. And you mentioned that before being placed on

this commitment that Miss Rachel had stopped taking her medications previously?

A Yes. That's correct.

Q Okay. Were you working with her at that time?

A During some of the -- during some of the -- some of these times I was. She's -- to clarify, she's been enrolled in the program I oversee three different times. So while she was enrolled in the community support program, I was working with her or was -- if not directly, I was aware of her functioning.

Q Do you recall if you were -- if you were working with her just before she was put on this commitment, so back in June or July of last year?

A No, I wasn't working with her in the capacity of her being enrolled in the program. I was, however, making myself available because I was getting calls from the police asking for my assistance because of my rapport with Rachel, so I did have contact with her at that time but wasn't directly responsible for her care.

Q And do you know if she had intentionally stopped taking her medications at that time or if there had been some change in her prescriptions?

A Based on the reports from her family members who were calling me, they believed she had stopped taking her

medication.

Q Okay. But that's not something you have firsthand knowledge of?

A Could you repeat that?

Q That's not something you have firsthand knowledge of it?

A No. I don't think I could say I had firsthand knowledge of her not taking medication. I did, however, have firsthand knowledge of her in a decompensated state based on my assessment of her.

ATTORNEY CAMPSHURE: Thank you. I have no further questions.

THE WITNESS: Thank you.

THE COURT: Any follow-up, Mr. Guidote?

ATTORNEY GUIDOTE: Just a couple.

EXAMINATION

BY ATTORNEY GUIDOTE:

Q Mr. Marmor, has Miss [redacted] voiced an objection to taking Haldol?

A Yes. Multiple times. She's talked negatively about her medication and the fact that she didn't want to take the medication.

Q And at the time that you witnessed the 20 or so Haldol in that dish, was she prescribed Haldol at that time?

A Yes. Both oral and injectable.

ATTORNEY GUIDOTE: Nothing further, Your Honor.

THE COURT: Anything else, Mr. Campshure?

ATTORNEY CAMPSHURE: No, Your Honor. Thank you.

THE COURT: All right. I don't have any questions, sir. You may be seated.

ATTORNEY GUIDOTE: We could try Dr. Bales again. I've also e-mailed my staff to see if they have any other numbers for him.

THE COURT: Okay. Great.

(Clerk placing call to doctor.)

THE COURT: All right. We're getting voicemail again, Mr. Guidote. You want to just wait a few minutes?

ATTORNEY GUIDOTE: Mr. Marmor is going to step out and try to get a hold of him.

(Brief recess.)

THE COURT: Hi, Doctor. This is Judge Gill. How are you today?

DR. BALES: Good. How are you?

THE COURT: Excellent. Thank you, sir. Wondering if we could take some brief testimony.

DR. BALES: Yes.

THE COURT: All right. Would you please raise your right hand.

(Judge administers oath to witness.)

THE WITNESS: I do.

THE COURT: Would you please state your name and spell the last for the record.

THE WITNESS: Marshall Bales, B-A-L-E-S.

THE COURT: All right. Dr. Bales, I'm now going to turn the questioning over to the attorneys. I may have a few brief follow-up questions thereafter.

Attorney Guidote.

ATTORNEY GUIDOTE: Thank you, Your Honor. Before we start with testimony, I'd note for the record that Attorney Campshure and I have stipulated to Dr. Bales' qualifications to testify as an expert witness in the field of psychiatry.

ATTORNEY CAMPSHURE: That is correct, Your Honor.

THE COURT: All right. Thank you.

EXAMINATION

BY ATTORNEY GUIDOTE:

Q Good morning, Dr. Bales. Can you hear me?

A Yes.

Q Okay. Doctor, it's my understanding that you are the

treating physician or psychiatrist for [redacted]?

A Yes.

Q And how long have you known Ms. [redacted]?

A Many years. I do not have her file in front of me, but it's been for many years.

Q Okay. Can you give us an approximation of how many years?

A I'm going to estimate five years.

Q Okay. And over the past six months, have you been her treating physician?

A I believe so.

Q And she's been committed to the County for the -- for the past six months. And approximately how many times have you met with her?

A Several times. I -- I do not have her file in front of me, but I still believe I can help the Court with some background here.

Q Okay. And, Doctor, are you aware of what Ms. [redacted]'s diagnosis is?

A Schizophrenia.

Q Okay. And what are the hallmarks of her symptomology?

A Well, she will become psychotic. And what she will do, though, is when she takes her medication, she

will become extremely functional, stable. She will be able to be outpatient. Extremely pleasant, friendly, and really a wonderful patient to have. I have good rapport with her, and she really responds to the medication well.

Q Okay. So based upon your treatment of Miss Rachel, do you have an opinion to a reasonable degree of medical certainty as to whether she presently suffers from mental illness?

A She does.

Q And your diagnosis is schizophrenia, correct?

A Yes.

Q And, Doctor, when -- you also indicated that she responds well to medication?

A Yes.

Q And so in your opinion, is Miss Rachel a proper subject for -- well, strike that.

Do you have an opinion to a reasonable degree of medical certainty as to whether Miss Rachel is a proper subject for treatment?

A Yes. She's very treatable, and we've proven that for years. And in fact, she maintains on this outpatient basis for long periods of time when she takes her medication.

Q Okay. Has there been a -- an issue with medication

compliance in the -- over the past six months?
A She takes her medication compliantly as far as I know, but what she does, frankly, is over time she stops her medication and then some kind of dangerous psychotic incident will occur. We let her off commitment -- I'm sorry, I can't give exact times, but a couple years ago, and I told her it's so important for you to stay on the -- this medication to protect you from relapse. Well, she eventually went off her medication and got rehospitalized and put on commitment again. I'm just worried that she will stop her medication. She will not stop it like in a day or a week, but she will stop it in my opinion within a period of time, and then what happens, and the history with her verifies this, is she goes off her medication and then she has to be rehospitalized and recommitted again. And I told her directly, I -- I just don't want to see her ever suffer that way again anytime soon. Hopefully permanently.
Q Have you talked to her about her rationale for stopping medications?
A Well, she -- she will give lip service, so to speak, to the need to take medication. She's pleasant, she's cordial, she'll tell you what you want to hear,

that the medicine helps her and so forth, but then her -- her actions are different over time. She will miss appointments, she will go off her medicine gradually, and then she -- she gets psychotic.

Q And, Doctor, in your opinion does Miss Rachel have insight into her mental illness or does she have insight into the fact that she suffers from mental illness?

A She seems to on the surface. I think as far as understanding the need for long-term treatment, she's been impaired, but she will say -- acknowledge the past incidents. She will say, so to speak, what I want to hear, and yes, I have a mental problem, so forth, but -- but then down the road she goes off her medication. And I've been through this several times with. Her, and I told her, I want you to stay on commitment for protection, to keep you as an outpatient and to prevent hospitalization. And I think Ross (sic) and the whole team feels the same way.

Q Doctor, Mr. Marmor testified earlier this morning that Miss White is on injectable medication. Are you aware of that?

A Yes. I forget if it's Prolixin or Haldol, but I have her on one.

Q Okay. And why -- why have you prescribed injectable medication as opposed to oral medications?
A She has a tendency to become noncompliant, and by giving the medicine by injection, we can guarantee that she will get the medication, and we can track if she keeps her appointments to get the shot.
Q Doctor, based upon your treatment of Ms. Rachel over the past several years, do you have an opinion to a reasonable degree of medical certainty as to whether she would be a proper subject for commitment if treatment were withdrawn at this time?
A Yes. Well, she will -- I'm telling you, I -- I've worked with her for a long time, and she will -- she will gradually get off her medication. Nobody knows when, but she'll go off of it and then she will become psychotic within -- usually it's a couple of months, and I just don't want to see that happen to her. And I've told her this. I've told her that I -- I just want the best for her, and I told her I would testify today because I want the best for her.
Q So, Doctor, is it your opinion that Miss Rachel would be a proper subject for commitment if treatment were withdrawn?
A Yes.

Q To a reasonable degree of medical certainty?
A Yes.
Q Doctor, are you recommending an involuntary medication order?
A Yes.
Q Okay. So have you explained the advantages, disadvantages and alternatives to medication or treatment to Miss Rachel?
A Yes. Repeatedly over time.

ATTORNEY GUIDOTE: I'll be right with you, Your Honor.

THE COURT: No problem.

Q (BY ATTORNEY GUIDOTE) And in your opinion to a reasonable degree of medical certainty is Ms. Rachel substantially incapable of applying an understanding of the advantages, disadvantages and alternatives to her condition in order to make informed choice as to whether to accept or refuse psychotropic medications?
A Incapable. She can -- she can express everything I tell her, she can express it back, but the bottom line is that she does not walk the walk. She will say the words, I will stay on my medication, but her history is she goes off of the medication and she doesn't walk the walk of her words and staying on the

medication.

ATTORNEY GUIDOTE: Thank you, Your Honor. Or thank you, Doctor. I have no further questions.

If you could hang on, defense counsel will have some for you.

THE COURT: Mr. Campshure.

ATTORNEY CAMPSHURE: Thank you, Your Honor.

EXAMINATION

BY ATTORNEY CAMPSHURE:

Q Doctor, can you hear me okay?

A Yes.

Q All right. Are you aware of any incidents where Miss [redacted] has stopped taking her medications while she's been on this commitment?

A She is taking her medication and is really doing well, and I do not know of any episodes of noncompliance offhand.

Q Okay. And so you didn't mention any issues while she's been on commitment; is that correct?

A She's been very stable with treatment.

Q Okay. So I guess what I'm wondering is there is this past history that you mention. Is there anything she could do that would -- that would show you that she is no longer a proper subject for treatment?

A Well, eventually everyone hopes for her to be

voluntarily treated on an outpatient basis with a doctor of her choosing, but I just do not think she's ready for transition to voluntary basis, and that's why I'm requesting a twelve-month extension with a medication order with the emphasis that we really want her care to be outpatient.

Q What sorts of signs would there be when she's at that point?

A Well, we need -- frankly, we need another year of stability, and then we -- we reassess as a team, and then that involves Russ Marmor, her caseworkers and record review, and we make sure there's been no hospitalizations or psychotic factors or any problems, and then we reassess with an open mind, but at this point I really believe she needs a twelve-month extension with the medication order.

Q Okay. But there haven't been any hospitalizations or psychotic breaks during the term of this commitment.

A Not that I know of.

Q And then have you ever had any conversations with Miss [redacted] about concerns she has about the -- about side effects from her Risperdol or, excuse me, the Haldol injection?

A Yes.

Q Do you know what her concerns are?

A Well, I recall a while back a dialogue, and we decreased the frequency. I think she had some injection site soreness and -- or didn't want to come in every two weeks or something, and then -- so we worked with her and -- collaboratively and decreased the frequency, but I just don't know the exact details. But I try to work with her collaboratively, but there is a point at which we -- we just, frankly, do want her to take her medications. And that's it.

Q Okay. Do you recall her mentioning anything about muscle spasms or tremors that might have been caused by those injectables?

A We talked about those, and we offer side effect pills to cover for that with usually either Artane or Cogentin, and then that's also why we reduced the level of the antipsychotic as much as we can, doing it, obviously, safely without wanting breakthrough psychotic symptoms, but that's what we do when I meet with her is I make sure that the benefits are maximized and the side effects are as low as we can possibly get.

Q So she was correct that those are known side effects of the Haldol injection?

A Yes. Yes. Those can occur. And I've talked to her about this. But she -- and she doesn't, I think,

adequately respect that the medicine protects her from these severe psychotic episodes, and so she has some difficulty probably weighing the pros and cons, and ultimately she goes off her medications, by her history.

Q In theory would she be able to be on oral -- on oral treatment entirely and not have an injectable?

A The one problem is she lives I think a ways out of Appleton making it hard for workers to do med drops. It's open for discussion at some point, but I -- I request a med order, and then I'll work with her on the timing of that and with the team over time, but it is very possible but just not yet.

ATTORNEY CAMPSHURE: Thank you. I have no further questions.

THE COURT: Any follow-up, Mr. Guidote?

ATTORNEY GUIDOTE: No, Your Honor.

THE COURT: All right. I don't have any questions for you, Doctor. I thank you for your time.

THE WITNESS: Okay. Thank you.

THE COURT: All right. Any witnesses, Mr. Campshure?

ATTORNEY CAMPSHURE: One moment, Your Honor. Yes, Your Honor. We would call Rachel [redacted].

THE COURT: Miss Rachel, if you would please come to the stand. Please remain standing and raise your right hand.

(Oath administered to witness.)

THE WITNESS: I do, Your Honor.

THE COURT: All right. You may be seated. Could you please state your name and spell the last for the record.

THE WITNESS: My name is Rachel. My last name is spelled Rachel.

THE COURT: All right, Miss Rachel. I will turn you over to Mr. Campshure for questioning.

ATTORNEY CAMPSHURE: Thank you, Your Honor.

EXAMINATION

BY ATTORNEY CAMPSHURE:

Q You heard the testimony from earlier?

A Yes, I did.

Q Okay. There was mention that you might want to stop taking your medications if you're no longer on this commitment?

A On the contrary. I already told Russ Marmor whether there was a commitment or not, I would stay in his program which is a voluntary program. It wasn't mandated by the Court that I even be in it, but I volunteered for it. There is another program you can

go to where you just see Dr. Bales once a month. I only see Russ Marmor once a month.

Q Okay. So you'd -- even if this commitment wasn't in place, you would still plan to take your medications as prescribed?

A Absolutely.

Q And why is that?

A Because they have psychotropic benefits for me that the psychotic part of your brain that gives you psychotic thoughts, the Haldol suppresses them thoughts and then you don't have them, your mind don't race and stuff like that. I haven't had any symptoms. The Haldol keeps my -- my schizophrenia in remission. I haven't been hospitalized other than an arrest because of -- they thought I wasn't taking my meds. I haven't been hospitalized for a year-and-a-half that I wasn't on commitment with Dr. Bales. I had an outside psychiatrist.

Q Okay. So you do agree that you have schizophrenia but that when you take your medications, you don't have symptoms?

A It's in remission at that time, yes. I do have it. My mom had depression.

Q Okay. And you also don't have any objection to taking your oral medications?

A Absolutely not. There is no reason I should have to take an injection when I'm capable of taking oral meds. I take oral meds for my heart condition, for my cholesterol, for my -- a baby aspirin, why wouldn't I take my Haloperidol.

Q And do you interact with anyone on a regular basis who might be able to tell you if you were getting out of control?

A Yes, I do. There is 30 people that I could like to bring in for witnesses, actually, at my parish where I reside. I go there three times a week, and I'm an active participant in the mass and in the social gatherings. We have funeral masses, and I serve food at the funeral masses. I wash pews and I vacuum floors.

Q Okay. And so do you have people you trust who if they talked to you --

A Oh, yes.

Q -- if you had issues?

A Yes. They would come to me and say to me, hey, your faculties aren't in order, you better get your meds checked.

Q And you would -- you believe that you would trust them?

A Yes, I would.

ATTORNEY CAMPSHURE: Thank you. I have no other questions.

THE COURT: Mr. Guidote, any follow-up?

EXAMINATION

BY ATTORNEY GUIDOTE:

Q Rachel, you've been committed a couple times before, correct?

A Yes, I have.

Q And in both of those instances you have been on commitment, complied, and then once off commitment apparently you gradually started to not take your medications?

A What law did I break? What did I do wrong? I don't know what I did wrong, sir.

Q Well, that --

A I didn't break one law.

Q That's not the question, ma'am. The question is did you then stop making medications?

A No, I did not. I was under other psychiatric care that lowered me on my doses.

Q Okay. And whose psychiatric care were you under?

A St. Elizabeth Hospital. They don't believe in injections. They let you take it orally. And you can't just quit Haloperidol, you have to be weaned off of that. If you quit it, you'd go into such a

tremor state, you could have a stroke or anything.

ATTORNEY GUIDOTE: Thank you, Your Honor. Nothing further.

THE COURT: Mr. Campshure, any follow-up questions?

ATTORNEY CAMPSHURE: No, Your Honor. Thank you.

THE COURT: I don't have any questions for you. You may be seated.

And at this point in time, having heard the testimony of Mr. Marmor, Dr. Bales, as well as Miss [redacted] herself, it does appear that many are in agreement on many things. Number one, Miss [redacted] being a pleasant individual. Certainly she exhibits that way today and certainly was a pleasure to hear from her.

The -- the concern comes in, quite frankly, as it relates to the medication compliance. In fact, Miss [redacted] testified today, and very articulately, sort of a -- at least a facially accurate understanding of what medication does. However, Dr. Bales had espoused, and Mr. Marmor had also espoused, and to use, I believe it was Dr. Bales, sort of description, Miss [redacted] does a good job of talking the talk but walking the walk is a little bit

different. And I have some concerns with that. And I -- at this point in time we have injectable, and I don't know if an option is to, while under commitment, have it go to an oral medication to allow her to prove herself, but my concern is that unless we really have a proven track record of compliance with oral medications in absence of there being the injectable alternative, I'm not satisfied that there is enough proof of compliance. Mr. Marmor had talked about the seen medications. Dr. Bales talked about the same, as well as I had noticed in terms of walking the walk. So I do find that the medication order is appropriate at this juncture, although it seems that all are in agreement there is a hope that Miss Rachel will be off commitment at some point in time.

Turning to sort of the underlying issue, I do find that there is a major psychiatric issue. It has been identified as a schizoaffective disorder or schizophrenia. Dr. Bales had testified that it is a treatable condition and that, likewise, without continued treatment Miss Rachel would again become a suitable subject for treatment, and so I do find that the extension is appropriate.

Any questions, Attorney Guidote?

ATTORNEY GUIDOTE: Your Honor, if you could address the firearms.

THE COURT: That's what I was eluding to at first. That's what I was eluding to at first. I -- probably not as succinct as I usually am. But for the reasons raised previously in my commentary, I do find that the continuation of the medication order is appropriate.

ATTORNEY GUIDOTE: Nothing further.

THE COURT: Mr. Campshure.

ATTORNEY CAMPSHURE: Your Honor, Miss Rachel did have a question for me.

THE COURT: Uh-huh.

ATTORNEY CAMPSHURE: She was concerned that while this commitment is in place that she's -- because there is a firearm restriction, she had previously accompanied people while they would go hunting, and she was wondering if she was still able to be present if she doesn't possess the gun herself.

THE COURT: My understanding, although, Attorney Guidote, I'm going to ask for your input, my general understanding would be that so long as Miss Rachel does not possess the firearm, i.e. she is holding it, have direct access to it, meaning that

the person she was hunting with would leave it unattended, I think the fact that she's simply accompanying that individual is not problematic. At least that's my understanding under the terms I set forth. But, Attorney Guidote, I'll ask you to weigh in as well.

ATTORNEY GUIDOTE: I would agree with that.

THE COURT: Okay. So the firearms restriction will remain in place, and again that -- my understanding is that that would not prohibit Miss Rachel from accompanying someone who does hunt so long as she doesn't actually possess or utilize the firearm herself.

MS. Rachel: Only target practice.

ATTORNEY CAMPSHURE: And then I just wanted to check to see if it is part of the Court's order that she should be transitioned to an oral medication or if that was just a suggestion that might be one way --

THE COURT: It's just a suggestion. I don't think that I'm in a good enough position, meaning I don't have the credentials to mandate one way or the other. I think it's a good idea to look at, and maybe that's something Miss Rachel could talk to Dr. Bales about, but I don't think I'm qualified

to order that, other than to say it should be explored as a possibility, but I'm not mandating the transition.

ATTORNEY CAMPSHURE: Okay. Thank you, Your Honor.

THE COURT: Anything else, Mr. Guidote?

ATTORNEY GUIDOTE: No, Your Honor.

THE COURT: All right. Thank you. We are adjourned.

(Proceedings concluded.)

C E R T I F I C A T E

STATE OF WISCONSIN)
) ss.:
COUNTY OF OUTAGAMIE)

I, JOAN BIESE, RMR/CRR, do hereby certify that I am the official court reporter for Branch IV of the Circuit Court of Outagamie County;

That as such court reporter, I made full and correct stenographic notes of the foregoing proceedings;

That the same was later reduced to typewritten form;

And that the foregoing proceedings is a full and correct transcript of my stenographic notes so taken.

Dated this 19th day of June, 2020.

Electronically signed by
Joan Biese, RPR/RMR/CRR

FILED

JAN 09 2020

OUTAGAMIE COUNTY
PROBATE COURT

BY THE COURT

Date Signed: 1-9-20

Circuit Court Judge/Circuit Court Commissioner/Probate Registrar

STATE OF WISCONSIN, CIRCUIT COURT, OUTAGAMIE COUNTY

IN THE MATTER OF THE CONDITION OF

Rachel [redacted]

Name of Subject

4/25/1963

Date of Birth

☐ Amended

Order of
☐ **Commitment**
☒ **Extension of Commitment**
☐ **Dismissal**

Case No. 19ME211

A hearing was held on [Date] January 9, 2020.

THE COURT FINDS:

☐ 1. Grounds for ☐ commitment ☐ extension of commitment have not been established.

☒ 2. Grounds for ☐ commitment ☒ extension of commitment have been established.
The subject is
A. ☒ mentally ill.
☐ drug dependent.
☐ developmentally disabled.
B. dangerous because the subject evidences behavior within one or more of the standards under §§51.20(1) or (1m), Wis. Stats. *(except for proceedings under §51.20(1)(a)2.e., Wis. Stats.).*
C. a proper subject for treatment.
D. ☒ a resident of Outagamie County, Wisconsin.
☐ a nonresident of the state of Wisconsin.
☐ an inmate of a Wisconsin state prison.

☒ 3. The dangerousness of the subject is likely to be controlled with appropriate medication administered on an outpatient basis.

☒ 4. The subject has been adjudicated pursuant to 18 USC 922(g)(4) as a "mental defective" or committed to a mental institution.

☐ 5. Other: _____

THE COURT ORDERS:

☐ 1. This matter is dismissed.

☒ 2. The subject is committed for 12 months from the date of this hearing to the care and custody of the
☒ A. Outagamie County Department established under §§51.42 or 51.437, Wisconsin Statutes.

☐ B. Department of Health Services.

3. The maximum level of treatment shall be
   A. ☐ a locked ☐ an unlocked inpatient facility.
      The reception facility shall be _____.
      Transportation to the facility shall be provided by
      ☐ the sheriff.
      ☐ Other: _____
   B. ☒ outpatient with conditions. The conditions of outpatient commitment on the attached document are incorporated into this order. A violation of any condition may result in the subject being taken into custody by law enforcement for inpatient treatment.

☒ 4. The subject is prohibited from possessing any firearm. Federal law provides penalties for, and you may be prohibited from possessing, transporting, shipping, receiving, or purchasing a firearm, including, but not limited to, a rifle, shotgun, pistol, revolver, or ammunition, pursuant to 18 U.S.C. 921(a)(3) and (4) and 922(g)(4). This prohibition shall remain in effect until lifted by the court. Expiration of the mental commitment proceeding does not terminate this restriction.
   ☐ A. Any firearm owned by subject shall be seized by _____.
   The subject's firearms may be found at the following location(s): _____.
   Any person residing at the/these locations is required to cooperate with law enforcement attempts to seize firearms. Failure to cooperate may result in contempt sanctions.
   ☐ B. As an alternative to seizure, the following person is designated to store any firearm(s) until the firearm restriction order has been canceled: _____.
   C. The subject is informed of the requirements and penalties under §941.29, Wis. Stat. including imprisonment for up to 10 years, a fine not to exceed $25,000 or both.
   D. The court clerk shall notify the department of justice of the restriction unless the department has been previously informed of a prohibition for this subject.

☒ 5. Other: The Court has been notified and the Court record will reflect that the subject does not possess or have access to any firearms.

THIS IS A FINAL ORDER FOR THE PURPOSE OF APPEAL.

DISTRIBUTION:
1. Court
2. Subject
3. Attorney
4. Treatment Provider
5. Detention facility (if different)

FILED

JAN 09 2020

OUTAGAMIE COUNTY
PROBATE COURT

BY THE COURT

Date Signed: 1-9-20

Circuit Court Judge/Circuit Court Commissioner/Probate Registrar

STATE OF WISCONSIN, CIRCUIT COURT, OUTAGAMIE COUNTY

IN THE MATTER OF THE CONDITION OF

Rachel [redacted]
Name of Subject

4/25/1963
Date of Birth

Order for Involuntary Medication and Treatment

Case No. 19ME211

A hearing was held on [Date] January 9, 2020.

THE COURT FINDS AND CONCLUDES:

1. The issue of involuntary administration of medication or treatment was considered at a hearing at or after a
   - ☐ A. probable cause hearing. There is probable cause to believe that medication or treatment will have therapeutic value and will not unreasonably impair the subject's ability to prepare for and participate in future court proceedings.
   - ☒ B. final hearing. Medication or treatment will have therapeutic value.
2. The subject appeared ☒ in person ☐ by video ☒ by counsel.
3. The subject needs medication or treatment.
4. The advantages, disadvantages, and alternatives to medication have been explained to the subject.
5. Due to
   - ☒ mental illness,
   - ☐ developmental disability,
   - ☐ alcoholism,
   - ☐ drug dependence,

   the subject is not competent to refuse psychotropic medication or treatment because the subject is
   - ☐ incapable of expressing an understanding of the advantages and disadvantages of accepting medication or treatment and the alternatives; or
   - ☒ substantially incapable of applying an understanding of the advantages, disadvantages and alternatives to his or her condition in order to make an informed choice as to whether to accept or refuse psychotropic medications.

THE COURT ORDERS:

Medication and treatment may be administered to the subject, regardless of his or her consent
- ☐ until the final hearing in this matter.
- ☒ during the period of commitment, or until further order of the court.

DISTRIBUTION:
1. Court
2. Parties
3. Treatment Provider

COURT OF APPEALS
DECISION
DATED AND FILED

July 3, 2001

Cornelia G. Clark
Clerk, Court of Appeals
of Wisconsin

NOTICE

No. 01-0610-FT

STATE OF WISCONSIN **IN COURT OF APPEALS**
DISTRICT II

IN THE MATTER OF THE MENTAL COMMITMENT OF CHERYL L.M.:

SHEBOYGAN COUNTY,

PETITIONER-RESPONDENT,

V.

CHERYL L. M.,

RESPONDENT-APPELLANT.

APPEAL from an order of the circuit court for Sheboygan County: GARY LANGHOFF, Judge. *Affirmed.*

¶1 ANDERSON, J.[1] Cheryl L.M. appeals from an order entered pursuant to WIS. STAT. § 51.20(13)(g)3 extending her commitment to the Winnebago Mental Health Institute (WMHI) for twelve months. Cheryl maintains that Sheboygan County failed to present sufficient evidence to prove that she would be a proper subject for commitment extension if treatment were withdrawn. We affirm because we conclude that the County met its evidentiary burden.

¶2 Cheryl was originally committed to WMHI on April 27, 2000. A petition for an extension was filed on October 20, 2000. WIS. STAT. § 51.20(13)(g)2r. The petition made assertions based on a report concluding that Cheryl had been diagnosed as bipolar, had begun to "decompensate" and had become manic and delusional. At trial, a psychiatrist and psychotherapist both testified to Cheryl's condition and in favor of her extended commitment. The extension order concluded that Cheryl would be a proper subject for commitment extension if treatment were withdrawn.

¶3 A commitment under WIS. STAT. ch. 51 is subject to extension under WIS. STAT. § 51.20(13)(g)3. The County must prove the elements of a commitment extension by clear and convincing evidence.[2] Sheboygan County needed to prove by clear and convincing evidence that Cheryl is mentally ill. Secs. 51.20(1)(a)1, (13)(e). The County also needed to prove, by the same standard, that Cheryl was dangerous. Sec. 51.20(1)(a)2. The element of

[1] This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(d) (1999-2000). All references to the Wisconsin Statutes are to the 1999-2000 version unless otherwise noted.

[2] "Under ch. 51, Stats., county governments are given primary responsibility for the well-being, treatment and care of the mentally ill." ***M.J. v. Milwaukee County Combined Cmty. Servs. Bd.***, 122 Wis. 2d 525, 529, 362 N.W.2d 190 (Ct. App. 1984).

dangerousness is established by 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." Sec. 51.20(1)(am).

¶4 At the commitment extension hearing, the County presented the testimony of a psychiatrist along with a written report that the psychiatrist had prepared under orders from the circuit court. The report established that Cheryl had been diagnosed as suffering from a bipolar affective disorder with psychotic features and was currently in a manic/hypomanic state, that she had begun to "decompensate," and that she was suffering from numerous delusions. At trial, the psychiatrist, a staff member at WMHI, testified to a reasonable degree of professional certainty that there was a substantial likelihood, based upon Cheryl's treatment record, that she would become a proper subject for commitment extension, if treatment were withdrawn. On direct examination, the County elicited the following testimony from the doctor:

> **Q** Based on your own evaluation and a review of the records, can you make a diagnosis to a reasonable degree of medical certainty as to her condition?
>
> **A** Yes.
>
> [**Q**] What is that diagnosis?
>
> **A** In my opinion she presents with Bipolar Affective Disorder with psychotic features, and at the time I saw her she was in manic or hypomanic state.
>
> **Q** Is that diagnosis considered a mental illness?
>
> **A** Yes, it is a mental illness.
>
> **Q** Does it create a substantial disruption of thought, mood, or perception?
>
> **A** Yes. It does cause disruption to a substantial degree of thought, mood, and perception.
>
> **Q** Does her condition also create a substantial risk of harm to herself or others if she is not treated?
>
> **A** Yes. It does create harm towards herself and other people.

> **Q** How is that risk manifested specifically in her case?
>
> **A** Well, she is very intrusive, extremely bizarre, very delusional, and very paranoid and frequently requires intervention from the surrounding staff to settle her down.
>
> **Q** Is she a proper subject for treatment?
>
> **A** She is a proper subject for treatment.
>
> ....
>
> **Q** You indicated that you have had a chance to review her medical records. In your opinion is there a substantial likelihood based on her treatment record that she would become a proper subject for treatment—for commitment if treatment were withdrawn at this point?
>
> **A** Yes, of course.
>
> **Q** Do you believe she would continue treatment voluntarily if she were not under commitment?
>
> **A** No. She would not do that.
>
> **Q** And what are you basing that opinion on?
>
> **A** Based on what her history is, what she told me, she doesn't believe—she has her own bizarre ideas of the medication, about what she should receive and what she should not, that she is allergic to medication. She is not in favor of taking medications, so I do not believe she would take meds voluntarily and if left on her own would even seek help.

¶5 The County presented the abbreviated testimony of a psychotherapist who opined that if treatment were withdrawn Cheryl would become a proper subject for an involuntary commitment. Additionally, the psychotherapist had filed a report which was attached to the petition for an extension of Cheryl's commitment. In the report, the therapist summarized Cheryl's diagnosis and treatment history and recommended her continued involuntary commitment.

¶6 In this appeal, Cheryl takes issue with the County's effort to meet its burden. She points out that the questions asked by the County "simply tracked the statutory language" rather than elicited answers that provided evidence of

objective facts. She argues that the testimony of the psychiatrist and psychotherapist failed to demonstrate that she would be dangerous to anyone if treatment were withdrawn.

¶7 We cannot overturn the circuit court's findings of fact unless the findings are clearly erroneous. ***K.N.K. v. Buhler***, 139 Wis. 2d 190, 198, 407 N.W.2d 281 (Ct. App. 1987). Factual findings will be upheld as long as they are supported by any credible evidence or reasonable inferences that can be drawn therefrom. ***Estate of Cavanaugh v. Andrade***, 202 Wis. 2d 290, 306, 550 N.W.2d 103 (1996). However, the application of the facts to the statutory test for commitment extension is a question of law that we review de novo. ***K.N.K.***, 139 Wis. 2d at 198.

¶8 The commitment extension of an individual is regulated by WIS. STAT. § 51.20(13)(g)3:

> The county department ... to whom the individual is committed ... may discharge the individual at any time .... Upon application for extension of a commitment by the ... county department having custody of the subject, the court shall proceed under subs. (10) to (13). If the court determines that the individual is a proper subject for commitment as prescribed in sub. (1)(a)1. and evidences the conditions under sub. (1) ... (am) ... it shall order judgment to that effect and continue the commitment. The burden of proof is upon the county department ... seeking commitment to establish evidence that the subject individual is in need of continued commitment.

¶9 Because Cheryl is subject to a court order for involuntary commitment extension, the County is not required to present evidence of recent acts or behavior evidencing that there is a substantial probability of serious physical harm to the patient or others or serious physical impairment or injury to

the patient. The County must show evidence of conditions under WIS. STAT. § 51.20(1)(am):

> If the individual has been the subject of inpatient treatment for mental illness ... immediately prior to commencement of the proceedings as a result of ... a commitment ... ordered by a court under this section ... the requirements of a recent overt act, attempt or threat to act under par. (a)2.a. or b., a pattern of recent acts or omissions under par. (a)2.c. or e. or recent behavior under par. (a)2.d. 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.

¶10 We explained the purpose of this section in ***State v. W.R.B.***, 140 Wis. 2d 347, 351, 411 N.W.2d 142 (Ct. App. 1987):

> The clear intent of ... sec. 51.20(1)(am), Stats., [is] to avoid the "revolving door" phenomena whereby there must be proof of a recent overt act to extend the commitment but because the patient was still under treatment, no overt acts occurred and the patient was released from treatment only to commit a dangerous act and be recommitted. The result was a vicious circle of treatment, release, overt act, recommitment.

We went on to spell out that the waiving of the requirement to show a recent dangerous act was recognition of the imminent risk to the patient and others of requiring objective evidence of recent overt acts as a prerequisite to extending a commitment. ***W.R.B.***, 140 Wis. 2d at 351-52.

¶11 It is undeniable that Cheryl has a long history of mental illness with multiple hospitalizations. She is now being treated on an inpatient basis at WMHI where she is "intrusive, extremely bizarre, very delusional, and very paranoid and frequently requires intervention from the surrounding staff to settle her down." Her inpatient treatment is hindered because of "her own bizarre ideas of medication" and her ensuing refusal to take certain prescribed medications. The

psychiatrist testified at the recommitment hearing that because Cheryl is not compliant with her medications, she has "decompensated" while a patient at WMHI. It was the psychiatrist's testimony that Cheryl "does not understand the nature of her illness and how to control the nature of that illness."

¶12 There was testimony that if treatment were withdrawn Cheryl would not take medications or seek treatment for her mental illness. There was also evidence that Cheryl is not in touch with reality even while an inpatient and requires staff intervention to "keep herself and other people around her safe." The examining psychiatrist testified that if treatment were withdrawn Cheryl would become a proper subject for an involuntary recommitment. Based upon the evidence presented at the hearing, the circuit court extended Cheryl's commitment, finding that if treatment were withdrawn she would become a proper subject for commitment. We affirm because we conclude that the evidence and reasonable inferences flowing from the evidence establish that the County met its burden of proving, by clear and convincing evidence, all of the conditions necessary for Cheryl's commitment extension. *See* ***W.R.B.***, 140 Wis. 2d at 352.

By the Court.—Order affirmed.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)4.