WISCONSIN SUPREME COURT
CALENDAR AND CASE SYNOPSES
MARCH 2024

The cases listed below will be heard in the Supreme Court Hearing Room, 231 East, State Capitol. The cases listed below originated in the following counties:

Milwaukee
Trempealeau
Waukesha
Winnebago

TUESDAY, MARCH 19, 2024

9:45 a.m.	22AP1329	State v. B. W.
11 a.m.	20AP1775	Kindschy v. Aish

WEDNESDAY, MARCH 20, 2024

9:45 a.m.	23AP215	Winnebago County v. D.E.W.
	23AP533	Waukesha County v. M.A.C.

Note: The Supreme Court calendar may change between the time you receive it and when a case is heard. It is suggested that you confirm the time and date of any case you are interested in by calling the Clerk of the Supreme Court at (608) 266-1880. If your news organization is interested in providing any type of camera coverage of Supreme Court oral argument, you must contact the Public Information Office of the Wisconsin Court System at communications@wicourts.gov. The synopses provided are not complete analyses of the issues presented.

WISCONSIN SUPREME COURT
March 19, 2024
9:45 a.m.

2022AP1329 State v. B.W.

This is a review of a decision of the Wisconsin Court of Appeals, District I (headquartered in Milwaukee) that affirmed the Milwaukee County Circuit Court order, Judge Ellen R. Brostrom, presiding, terminating B.W.'s parental rights to his son.

On May 14, 2021, the State filed a petition to terminate B.W.'s parental rights to his son. The State alleged that B.W.'s son was a child in continuing need of protection or services (continuing CHIPS) and that B.W. had failed to assume parental responsibility. In Wisconsin, the statutory procedure for the involuntary termination of parental rights has two phases: 1) the first phase—the grounds phase—where the petitioner, in this case the State, must prove by clear and convincing evidence that one of the statutorily enumerated grounds for termination of parental rights exists; and 2) the second phase—or the dispositional phase—where the circuit court must decide whether it is in the best interest of the child that the parent's rights be terminated.

At the initial appearance hearing in this case, the circuit court advised B.W. of his rights. The court stated that in regard to the dispositional phase, the State would have to prove by clear, convincing, and satisfactory evidence that it's in the child's best interest that B.W.'s parental rights be terminated. On March 2, 2022, B.W. entered a no-contest plea to the continuing CHIPS ground. During the plea colloquy with B.W., the court again stated that it was the State's burden to prove by clear, convincing, and satisfactory evidence to a reasonable degree of certainty that the grounds exist, and B.W. said he understood. The court went on to explain that by entering the no-contest plea to the continuing CHIPS ground, B.W. was not giving up his right to a trial on the second phase (or the dispositional phase).

At the dispositional hearing, several witnesses testified, including the two case managers, a program manager for supervised visitation, one of B.W.'s family members, and B.W. himself. After hearing all the testimony, the court found that it was in the child's best interests to terminate B.W.'s parental rights.

B.W. filed a post-disposition motion asking to withdraw his no-contest plea, because he argued his plea was not knowing, intelligent or voluntary, since the court improperly explained the statutory standard that would be applied at the dispositional hearing. The circuit court denied the motion without a hearing.

B.W. filed an appeal with the court of appeals, and the court of appeals affirmed the circuit court. B.W. argued in his appeal that he should be allowed to withdraw his plea because the circuit court did not ensure he understood the correct standard the court would be relying upon at the dispositional hearing. The court of appeals found the circuit court did not miscommunicate the statutory standard it was required to rely on at disposition because it did not use the word "rights" when discussing the State's clear and convincing burden of proof during the grounds phase, and that when the circuit court told B.W. he had "all

those same trial rights" from the grounds phase at disposition, the court was not referring to the clear and convincing burden of proof.

B.W. filed a petition for review with the Wisconsin Supreme Court and this court granted that petition. The issues for the supreme court to decide are:

1) When a parent in a termination of parental rights case enters a no contest plea to grounds, is the circuit court's plea colloquy defective if it informs the parent of the best interest standard but miscommunicates the burden of proof it is required to apply at disposition?
2) Did the circuit court improperly rely on the adoptive parent's assurance that she would allow B.W. to continue to visit with his son in deciding to terminate his parental rights?

WISCONSIN SUPREME COURT
March 19, 2024
11:00 a.m.

2020AP1775 Nancy Kindschy v. Brian Aish

This is a review of a decision of the Wisconsin Court of Appeals, District III (headquartered in Wausau) that affirmed the Trempealeau County Circuit Court's order, Judge Rian Radtke presiding, issuing an injunction against Brian Aish, forbidding him from coming near Nancy Kindschy, her place of employment, and her home, for a period of four years.

Kindschy is a nurse practitioner who has worked at several family planning clinics. Since 2014, Aish has protested at several family planning clinics at which Kindschy worked. In 2019, Kindschy worked at the Blair Clinic, and Planned Parenthood began providing family planning services there. Between 2019 and 2020, Aish regularly protested at the Blair Clinic.[1] It is undisputed that early interactions between Aish and Kindschy were not confrontational.

On March 10, 2020, Kindschy petitioned the Trempealeau County Circuit Court for a harassment injunction against Aish, claiming that Aish had engaged in threatening behavior toward her over a period of time that caused her to fear for her safety. The circuit court conducted a two-day injunction hearing at which it heard testimony from Kindschy, two of Kindschy's co-workers, Aish, and Aish's wife. Aish, a retired law enforcement officer, testified he protests at Planned Parenthood and other family planning clinics to "stand for children." Aish denied any desire to harm or intimidate Kindschy.

Kindschy testified that in the fall of 2019, Aish became more aggressive and confrontational toward her, and seemed to single her out while he was protesting. There were several instances of Aish approaching Kindschy, and her co-workers' testimony confirmed she was afraid when leaving work. The Clinic arranged for additional security based on her concerns.

After hearing all the testimony, the circuit court issued an injunction, enjoining Aish from harassing Kindschy, and requiring him to avoid Kindschy's home or any premises temporarily occupied by her, including the Blair Clinic, for four years. The court found that Aish's actions did not serve any legitimate purpose. The court agreed that First Amendment rights are "guarded" and protected, but also said that Kindschy having to endure intimidation from Aish's statements "crosse[d] the line" in this particular case.

Aish filed an appeal with the court of appeals arguing, among other things, that the injunction violated his First Amendment rights by effectively banning him from ever protesting against Planned Parenthood at the Blair Clinic. The court of appeals affirmed the circuit court's decision, emphasizing that the circuit court specifically found that Aish engaged in harassment "with intent to harass or intimidate"

[1] Abortions were not performed at the Blair Clinic.

Kindschy. The court of appeals stated that harassing behavior cannot be transformed into non-harassing, legitimate conduct simply by labeling it as a political protest.

Aish filed a petition with the Wisconsin Supreme Court to review the court of appeals' decision.[2] This court granted the petition.

On December 1, 2022, this court held oral argument, after which it ordered the case held in abeyance pending the United States Supreme Court's decision in Counterman v. Colorado. The U.S. Supreme Court issued its decision in Counterman[3] on June 27, 2023. On July 28, 2023, this court ordered the parties to file supplemental briefs regarding the effect of the U.S. Supreme Court's decision in Counterman on the issues in this case and the relief sought by each party.

After reviewing the supplemental briefs filed in response to the July 28, 2023, order, the court ordered further supplemental briefing and scheduled a supplemental oral argument on the following additional issues:

(1) Where a circuit court relies, in whole or in part, upon the content of a respondent's speech to determine that a harassment injunction may be issued under Wis. Stat. § 813.125, must the speech relied upon by the circuit court also fall within one of the limited categories in which the U.S. Supreme Court has permitted restrictions upon the content of speech? Why or why not?
(2) If speech relied upon for an injunction must fall within one of the limited categories of speech where government restrictions are permitted, does the scienter requirement adopted in Counterman v. Colorado, 600 U.S. 66, 143 S. Ct. 2106 (2023), in the context

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[2] Aish's petition for review raised the following issues:

1) Whether Wis. Stat. § 813.125, as construed by the Court of Appeals to prohibit speech from a public sidewalk intended to persuade listeners to cease their sinful conduct (participation in abortion) and repent immediately before something bad happens and they no longer have time to repent, violates the First Amendment of the U.S. Constitution and Art. I, §3 of the Wisconsin Constitution?
2) Whether speech from a public sidewalk intended to persuade listeners, even if directed to a specific listener, to cease sinful conduct (participation in abortion) and repent immediately before something bad happens and there is no longer time to repent serves "no legitimate purpose" within the meaning of Wis. Stat. §813.125?
3) Whether enjoining, for a period of four years, a longtime prolife, anti- Planned Parenthood protestor from protesting on a public sidewalk in front of a Planned Parenthood during its business hours because he made comments urging a Planned Parenthood worker to repent before something bad happens and there was no more time to repent, constitutes an unconstitutional restraint on First Amendment protected expression?

[3] 600 U.S. ___, 143 S. Ct. 2106 (2023).

of a criminal prosecution, apply to all civil injunction cases under § 813.125 where the speech relied upon by the circuit court is alleged to fall within the category of "true threats?" Why or why not?

(3) If strict scrutiny applies to the issuance of a harassment injunction under § 813.125 in this case, does the injunction issued under § 813.125 satisfy strict scrutiny, including in light of the reasoning of Counterman v. Colorado?

WISCONSIN SUPREME COURT
March 20, 2024
9:45 a.m.

2023AP215 Winnebago County v. D.E.W.

This is a review of a decision of the Wisconsin Court of Appeals, District II (headquartered in Waukesha) that affirmed the Winnebago County Circuit Court order, Judge Scott C. Woldt presiding, for involuntary mediation and treatment to D.E.W.

D.E.W. is an inmate in the Wisconsin prison system. Winnebago County filed a petition to extend D.E.W.'s mental commitment and for the involuntary administration of medication. At a hearing on the petition, the medical director at the Wisconsin Resource Center (WRC) testified that he had reviewed D.E.W.'s treatment records and had personally examined him on a number of occasions between August 24, 2022, the date of D.E.W.'s admission to the WRC, and the date of the hearing, October 20, 2022, including the morning of the hearing. The medical director opined that D.E.W. suffers from schizoaffective disorder which "grossly impair[s] . . . [p]redominantly [his] behavior and capacity to recognize reality." The doctor also opined that D.E.W. is dangerous and that his medical records "reflect on multiple incidences of dangerousness," and further that D.E.W. is not competent to refuse medication.

The circuit court entered a written order for involuntary medication and treatment. The court found that "[m]edication or treatment will have therapeutic value"; D.E.W. "needs medication or treatment"; "[t]he advantages, disadvantages, and alternatives to medication have been explained" to D.E.W.; and "[d]ue to mental illness" D.E.W. "is not competent to refuse psychotropic medication or treatment because [he] is . . . substantially incapable of applying an understanding of the advantages, disadvantages and alternatives to his . . . condition in order to make an informed choice as to whether to accept or refuse psychotropic medications."

D.E.W. appealed, arguing that Winnebago County failed to show by clear and convincing evidence that he was incompetent to refuse medication. The court of appeals disagreed and affirmed the medication order, holding that there was sufficient evidence in the record to support the circuit court's findings that the County met its burden of proof.

D.E.W. petitioned the Supreme Court to review the court of appeals' decision. The issues for the supreme court to decide are:

1) What kind of testimony must the County present to satisfy the "reasonable explanation" requirement in Wis. Stat. § 51.61(1)(g)4?
2) Does this Court's decision in Winnebago County v. Christopher S., 2016 WI 1, 366 Wis. 2d 1, 878 N.W.2d 109, permit the court of appeals to uphold a finding that the patient is incompetent to refuse medication based on "conclusory" testimony from the testifying doctor so long as the lower court finds that testimony "credible"?

WISCONSIN SUPREME COURT
March 20, 2024
11:00 a.m.

2023AP533 Waukesha County v. M.A.C.

This is a review of a decision of the Wisconsin Court of Appeals, District II (headquartered in Waukesha) affirming the Waukesha County Circuit Court order, Judge Laura F. Lau presiding, for the recommitment and involuntary medication of M.A.C. under Chapter 51 of the Wisconsin Statutes.

M.A.C. was first committed in June 2020, and since then has been recommitted several times. She is diagnosed with schizoaffective disorder, which is treated with a monthly injectable dose of Abilify Maintena along with two oral medications. During the initial commitment, M.A.C. was released to outpatient commitment under a conditional order that provided if she missed scheduled medication appointments, a statutory "DM" order[4] would be issued authorizing the sheriff to bring her in for her monthly injection. M.A.C. repeatedly expressed the opinion that she did not have a mental illness and did not need medication. At some point, M.A.C. was evicted from her apartment.

On July 19, 2022, Waukesha County filed a petition with the Waukesha County Circuit Court seeking an extension of M.A.C.'s commitment. At the time the petition as filed, M.A.C. was homeless. The petition requested a recommitment hearing, asserting that M.A.C.'s recommitment was necessary to protect society, M.A.C., or both, and that M.A.C. is "dangerous because there is a substantial likelihood . . . that [M.A.C.] would be a proper subject for commitment if [her current] treatment is withdrawn." The court scheduled a recommitment hearing and the notice of that hearing directed M.A.C. to contact two court-appointed doctors for examination prior to the recommitment hearing. The notice provided the doctors' phone numbers. The notice listed M.A.C. as homeless but indicated it was mailed to M.A.C., even though no mailing address was listed; the notice was mailed to the State Public Defender and to M.A.C.'s case manager. It is undisputed that M.A.C. was not personally served with notice of the recommitment hearing. M.A.C. did not contact either court-appointed doctor. Both doctors filed reports opining that M.A.C. met the statutory criteria for recommitment.

The recommitment hearing was held on August 16, 2022. M.A.C. did not attend, but M.A.C.'s lawyer did attend. M.A.C.'s lawyer informed the court that she had no explanation for M.A.C.'s nonappearance, that she had been trying to reach M.A.C., and that M.A.C.'s case worker had also been trying to find M.A.C.

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[4] A "DM" order is issued by the Department of Health & Human Services when an individual under a court order to receive medication injections misses an appointment. The sheriff is authorized by the DM order to locate, pick up, and transport the individual to the Department to receive the injection.

The County advised the court that the best option would be to find M.A.C. in default, rather than order that she be taken into custody. M.A.C.'s attorney said she had no direction from her client as to how to she wished to proceed, but agreed with the County that her client would not want to be taken into custody. The circuit court found M.A.C. in default. The County requested that the court rely on the doctors' reports that had been filed in order to find that the requirement for recommitment had been met (M.A.C.'s attorney said she was "not in a position to object"). The circuit court found, based on the doctors' reports and M.A.C.'s failure to appear for the hearing, that there were grounds to extend the commitment and that M.A.C. met the statutory criteria for an outpatient recommitment. The court ordered M.A.C. recommitted for 12 months. It also found that M.A.C. needed medication because it would have therapeutic value and that the advantages, disadvantages, and alternatives to medication had been explained to M.A.C., but that her mental illness rendered her incompetent to refuse the medication because she is incapable of applying an understanding of the information and cannot make an informed choice. Based on these findings, the court entered the involuntary medication order.

M.A.C. appealed both the recommitment order and the involuntary medication order, arguing that she was not personally served with the notice of the recommitment hearing, that the court erroneously exercised its discretion when it entered a default judgment against her even though her attorney was at the recommitment hearing, and there was insufficient evidence presented at the hearing to support the entry of either order. The court of appeals rejected these arguments and affirmed the circuit court's orders.

M.A.C. petitioned the Wisconsin Supreme Court for review; the issues for this court to decide are:

1) Under what circumstances may a default judgment be entered against an individual who appears by counsel at a commitment hearing?
2) Whether Wis. Stat. § 51.20(10)(a) entitles an individual to personal notice of a recommitment hearing. This statute provides: "[w]ithin a reasonable time prior to the final hearing, the petitioner's counsel shall notify the subject individual and his or her counsel of the time and place of the final hearing."
3) Whether a person can forfeit their right to an examination of their competency to refuse medication.