COURT OF APPEALS
DECISION
DATED AND FILED

January 13, 2015

Diane M. Fremgen
Clerk of Court of Appeals

Appeal No. 2014AP1885 **Cir. Ct. No. 2012ME004595**

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

IN THE MATTER OF THE MENTAL COMMITMENT OF ANDY S.:

MILWAUKEE COUNTY,

PETITIONER-RESPONDENT,

V.

ANDY S.,

RESPONDENT-APPELLANT.

APPEAL from orders of the circuit court for Milwaukee County: JANE V. CARROLL, Judge. *Affirmed.*

¶1 BRENNAN, J.[1] Andy S. appeals from the circuit court's involuntary mental commitment order and the order denying his motion for

[1] This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(d) (2011-12). All references to the Wisconsin Statutes are to the 2011-12 version unless otherwise noted.

postdisposition relief. He contends that the County failed to show by clear and convincing evidence that he was a danger to himself or others under WIS. STAT. § 51.20(1)(a)2. We disagree and affirm.

BACKGROUND

¶2 On December 24, 2012, the Milwaukee Police Department detained Andy S. in his home and transported him to the Milwaukee County Mental Health Facility. Thereafter, the County initiated involuntary mental commitment proceedings because the facility's treatment director determined that Andy S. suffered from "Psychosis NOS," posed a threat of danger to himself or others, was the appropriate subject for treatment, and needed to be involuntarily committed "to secure treatment."

¶3 On January 18, 2013, the parties entered into a settlement agreement, in which they agreed to suspend the proceedings for ninety days while Andy S. sought voluntary treatment. The agreement stated that the County could resume the proceedings if Andy S. was non-compliant with treatment. On January 29, 2013, the County filed a "Statement of Noncompliance," in which it alleged that Andy S. was not cooperating with his doctors.

¶4 On February 8, 2013, the circuit court held a dispositional hearing. In support of commitment, the County called two witnesses: Milwaukee Police Officer Truman Dodd and Dr. Robert Rawski.

¶5 Officer Dodd testified as follows:

> Q [On December 24, 2012] … were you dispatched to […] West […] Avenue, Apartment 3, in the City and County of Milwaukee?
>
> A Yes, I was.

Q …. And what, if anything, did you observe when you went to that location?

A We went to the location. As we were approaching apartment number 3, me and my partner, we heard noises coming from within, like a lot of rumbling, a lot of things being thrown around.

Q And did you go into that apartment?

A We did.

Q And did you have contact with anyone in the apartment?

A Yes, we did. The -- Andy [S.]

Q And Andy [S.] who's present in the courtroom today?

A Yes, ma'am.

Q And was there anyone else in the apartment with him?

A No, there wasn't.

Q …. How did he appear to you when you saw him?

A He -- He seemed to be -- He was sweating profusely. He was making statements.

Q Do you recall what these statements are?

A He was saying -- stating that someone was out to get him.

Q And did he make any other statements that you are aware of or that you recall?

A That he wanted to die.

Q …. And do you recall as he was making these statements, how his demeanor was?

A Yeah. He would go from calm, calm demeanor, talking to me, basically normal, having a decent conversation, and then it would switch to him crying.

He was having a conversation with someone that wasn't there in the apartment.

Q And do you recall how the apartment looked when you went in there?

> A It was in total disarray. There was broken furniture, a TV turned over. It was -- There were a lot of things messed up in that apartment.
>
> Q Did you leave [Andy S.] in the apartment?
>
> A No we did not.
>
> Q Where did you --
>
> A We --
>
> Q Where did he go?
>
> A We conveyed him out to the Mental Health Complex.

¶6 The County's second witness, Dr. Rawski, testified that, in his medical opinion, Andy S. suffered from "schizoaffective disorder," was the proper subject for treatment, and required hospitalization for treatment. He also testified that he believed that Andy S. was "dangerous." Dr. Rawski's opinion was based upon his review of Andy S.'s medical records because Andy S. refused to cooperate with Dr. Rawski's evaluation.

¶7 Following the County's witnesses' testimony, counsel for Andy S. moved for dismissal on the grounds that the County failed to prove dangerousness:

> I move to dismiss based on a lack of showing of dangerousness….
>
> The police officer did not testify to any threats made by [Andy S.] that he was going to harm himself. He did not testify to any act in furtherance of harm to himself or others.
>
> A stated desire is not enough. There was no indication as to -- in the officer's testimony as to how the apartment came to be in disarray.
>
> Even if there was, the disarray is not, in and of itself, sufficient for the dangerousness that the County has to show. Nor is the sweating sufficient for the dangerousness.

> The only thing here is -- I mean, his demeanor was from calm to crying and a simple statement, he wanted to die.
>
> No threat that he was going to do anything. No act in furtherance of trying to harm himself.
>
> For those reasons, I move the Court to dismiss this.

¶8 The circuit court denied Andy S.'s motion to dismiss and committed Andy S. for a period of six months:

> THE COURT: All right. Well, first of all, there is no dispute that Mr. Dodd does have a -- I'm sorry. Not Mr. Dodd, that was the officer. Mr. [S.] -- Is that how you say it, [S.]?
>
> [Andy S.]: Yes.
>
> THE COURT: Okay -- does have a mental illness, the schizoaffective disorder. He is a proper subject for treatment.
>
> In terms of the dangerousness, the statement, I want to die, is a clear indication --
>
> [Andy S.]: I didn't even say that.[2]
>
> THE COURT: -- in the ideation, but when combined with other things that were going on at the time -- the disorganization of his thoughts; talking to someone who's not there; being calm one minute, crying the next; the apartment having turned over a TV and broken furniture -- that the totality of those circumstances, along with that statement, I do think establish that if not treated, [Andy S.] would be dangerous to himself.
>
> So I will enter a six-month commitment order.

[2] On appeal, Andy S. does not argue that the circuit court's finding that he told Officer Dodd that "he wanted to die" was in error. As such, we accept the fact as true for purposes of appeal.

¶9 On February 26, 2014, Andy S. filed a timely notice of intent to pursue postdisposition relief. His commitment expired on August 5, 2013, and the County did not seek an extension.[3] On January 2, 2014, counsel filed a no-merit report on Andy S.'s behalf. On February 26, 2014, we issued an order, stating that there may be an issue "concerning the trial court's conclusion that Andy S. met the legal standard of dangerousness" and instructed counsel to defend the circuit court's finding or to dismiss the no-merit appeal. On March 28, 2014, counsel for Andy S. dismissed the no-merit appeal.

¶10 Thereafter, on June 30, 2014, Andy S. filed a motion for postdisposition relief, alleging that the circuit court erred when it found that Andy S.'s actions met the legal standard for dangerousness. On July 28, 2014, the circuit court denied Andy S.'s motion for relief. Andy S. appeals.

DISCUSSION

¶11 Our standard of review of the circuit court's decision on commitment is twofold. The circuit court's findings of fact will be upheld unless clearly erroneous, but whether those facts meet the statutory requirements is a question of law we review *de novo*. *See* ***K.N.K. v. Buhler***, 139 Wis. 2d 190, 198, 407 N.W.2d 281 (Ct. App. 1987).

[3] Because Andy S.'s six-month commitment order has expired, the County argues in its brief that the issues Andy S. raises in his brief are moot. We noted in our order rejecting counsel's no-merit report that we "concluded that the appeal is not moot, because 'the expired commitment has actual consequences for Andy S.' such as the effect on his ability to possess a firearm or obtain professional licenses." We need not readdress the mootness argument here because we otherwise conclude that the commitment order was properly issued. *See* ***State v. Castillo***, 213 Wis. 2d 488, 492, 570 N.W.2d 44 (1997) (appellate courts should decide cases on the narrowest possible grounds).

¶12 To involuntarily commit an individual for treatment, the County must prove by clear and convincing evidence that the individual is mentally ill, is a proper subject for treatment, and is dangerous. WIS. STAT. § 51.20(1)(a), (13)(e). Andy S. does not contest the first two prongs; he argues that the County did not prove dangerousness. Here, the standard for dangerousness was § 51.20(1)(a)2.a., under which the County was required to prove that Andy S. "[e]vidence[d] a substantial probability of physical harm to himself … as manifested by evidence of recent threats of or attempts at suicide or serious bodily harm." *See* ***id.*** A substantial probability in WIS. STAT. ch. 51 means "'much more likely than not.'" ***State v. Curiel***, 227 Wis. 2d 389, 414, 597 N.W.2d 697 (1999).

¶13 Andy S. argues that the evidence was insufficient to prove that he was dangerous. He makes two arguments. First, he argues that neither Officer Dodd's nor Dr. Rawski's testimony was sufficient to demonstrate that he was a danger to himself because neither witness had first-hand evidence that Andy S. had threatened to kill himself, was capable of killing himself, or had previously attempted suicide. Second, Andy S. contends that his statement to Officer Dodd that "he wanted to die" does not establish dangerousness, but rather, merely conveyed a thought or feeling with no overt act demonstrating an intention to follow through.

¶14 Andy S. does not challenge Officer Dodd's testimony that when he entered Andy S.'s apartment he observed that Andy S. was alone and that the apartment was in disarray with the television turned over and the furniture broken. Nor does Andy S. challenge the circuit court's findings that Officer Dodd observed Andy S. exhibiting disorganized thoughts, talking to someone who was not there, behaving calmly one minute and crying the next, and stating that "he wanted to die."

¶15 Based upon the totality of those facts, the circuit court properly concluded that Andy S. "[e]vidence[d] a substantial probability of physical harm to himself." *See* WIS. STAT. § 51.20(1)(a)2.a. Andy S.'s statement that "he wanted to die" was not made in a vacuum. When that statement is coupled with his other erratic behaviors—including talking to someone who was not present, vacillating between calm and crying, and turning over and breaking the television and furniture—the statement is sufficient to indicate that Andy S. was a danger to himself and was not merely conveying a thought without intent. As such, we affirm.

By the Court.—Orders affirmed.

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