

**COURT OF APPEALS
DECISION
DATED AND FILED**

May 22, 2012

Diane M. Fremgen
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. 2012AP99

Cir. Ct. No. 2011ME17

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT III**

**IN THE MATTER OF THE MENTAL COMMITMENT OF MELANIE L.:
OUTAGAMIE COUNTY,**

PETITIONER-RESPONDENT,

v.

MELANIE L.,

RESPONDENT-APPELLANT.

APPEAL from an order of the circuit court for Outagamie County:
MICHAEL W. GAGE, Judge. *Affirmed.*

¶1 MANGERSON, J.¹ Melanie L. appeals an order for involuntary medication. She argues Outagamie County failed to meet its burden of proving

¹ This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2). All references to the Wisconsin Statutes are to the 2009-10 version unless otherwise noted.

she was not competent to refuse medication, pursuant to WIS. STAT. § 51.61(1)(g)4.b. We affirm.

BACKGROUND

¶2 In February 2011, Melanie was placed under a WIS. STAT. ch. 51 mental health commitment and an involuntary medication order. In August 2011, the County petitioned to extend both the commitment and the medication order. Melanie contested the petition.

¶3 At the extension hearing, Kate Siebers, Melanie's case manager, testified that, after consulting with Melanie's treating psychiatrist,² she recommended an extension of the commitment because of Melanie's "lack of insight, inconsistency in keeping us up to date, noncompliance with medications and lack of follow-through." Siebers explained that Melanie lacked insight into her mental illness because there has been a "lack of follow-through with appointments, and ... that demonstrates to us that there's a belief that medication or treatment isn't needed." Siebers also explained that Melanie stopped taking her medication because she was pregnant and, after she miscarried in early June, did not resume medication. When Melanie was prescribed medication again in mid-July, she chose to take only one of the three medications.

¶4 Doctor Jagdish Dave testified that he performed an independent evaluation on Melanie. Melanie suffers from a psychotic disorder that causes a disturbance in her thoughts and perception. Specifically, Melanie experiences

² Siebers consulted with Dr. Milagros Cuaresma Ambas. However, Siebers explained that Melanie has since switched to a different psychiatrist and Melanie provided Siebers with the name of the new psychiatrist immediately before the hearing.

delusions and paranoia. Her condition is treatable, and Dr. Milagros Cuaresma Ambas prescribed Seroquel, Celexa, and Lorazepam to Melanie, the latter medication to be taken as needed. In Dave's report, which was admitted into evidence, Melanie told Dave she took Lorazepam as needed in June; however, she was currently only taking Seroquel and had discontinued Celexa and Lorazepam. Melanie explained that she discontinued the medication because she believed Seroquel by itself was sufficient. Melanie did not discuss discontinuing Celexa or Lorazepam with Ambas and reported Ambas "does not know what she is doing." Dave testified that not taking all of the prescribed medication could cause Melanie to decompensate and show "some bizarre behaviors as well as some potentially dangerous behaviors."

¶5 Dave also discussed the advantages, disadvantages and alternatives to medication and treatment with Melanie. The following exchange then occurred:

[The County]: And based upon that conversation, do you have an opinion to a reasonable degree of medical certainty as to whether Ms. [L.] is substantially incapable of applying an understanding of the advantages, disadvantages, and alternatives to her condition such that she would be able to accept or refuse psychotropic medications on an informed basis?

[Dave]: I do not think that she's capable of applying the benefits of the medication to her advantage.

On cross-examination, Dave conceded that Melanie can express an understanding of the risks and benefits of psychotropic medication because of her educational background.³ However, Dave reiterated that, even though she is able to

³ Melanie completed a certified nursing assistant program.

understand the advantages and disadvantages, she is not able to apply an understanding “to her advantage.”

¶6 The court ordered an extension of the mental health commitment and an involuntary medication order. In regard to the involuntary medication order, the court noted that Melanie was an intelligent person and was able to understand and articulate the advantages and disadvantages of treatment. It observed that psychotropic medications were used to treat her illness and that Melanie had at least recognized she should be taking Seroquel. The court reasoned that Melanie’s disorder made it difficult to separate her valid perceptions from her delusional ones. The court found Melanie’s “diagnostic malady” affected her ability to engage in reliable self-assessment and therefore the evidence showed she cannot apply the “advantages of taking or the disadvantages of not taking psychotropic medication to her present circumstance.”

DISCUSSION

¶7 On appeal, Melanie objects to the involuntary medication order.⁴ She argues the County failed to meet its burden of proving she was not competent to refuse medication, pursuant to WIS. STAT. § 51.61(1)(g)4.b.

¶8 We will overturn the circuit court’s factual findings only if they are clearly erroneous. *K.N.K. v. Buhler*, 139 Wis. 2d 190, 198, 407 N.W.2d 281 (Ct. App. 1987). We must accept reasonable inferences drawn from the evidence by the circuit court. *K.S. v. Winnebago Cnty.*, 147 Wis. 2d 575, 578, 433 N.W.2d 291 (Ct. App. 1988). However, application of the facts to the WIS. STAT. ch. 51

⁴ Melanie does not contest the extension of the mental health commitment.

requirements presents a question of law we review independently. **K.N.K.**, 139 Wis. 2d at 198.

¶9 The County bears the burden of proving by clear and convincing evidence that an individual is not competent to refuse medication. **Virgil D. v. Rock Cnty.**, 189 Wis. 2d 1, 14, 524 N.W.2d 894 (1994). In this case, the County relied on WIS. STAT. § 51.61(1)(g)4.b. to prove Melanie was not competent to refuse medication. WISCONSIN STAT. § 51.61(1)(g)4. provides, in relevant part, an individual is not competent to refuse medication if:

[B]ecause of mental illness ... and after the advantages and disadvantages of and alternatives to accepting the particular medication or treatment have been explained to the individual, one of the following is true:

....

b. The individual is substantially incapable of applying an understanding of the advantages, disadvantages and alternatives to his or her mental illness ... in order to make an informed choice as to whether to accept or refuse medication or treatment.

¶10 Melanie argues the evidence was insufficient to support an involuntary medication order for two reasons. First, she contends Dave's opinion that she was not competent to refuse medication did not fit the statutory standard of incompetency. She points out that Dave testified that she was incapable of applying an understanding "to her advantage" instead of "to ... her mental illness ... in order to make an informed choice." See WIS. STAT. § 51.61(1)(g)4.b. Second, Melanie asserts the evidence actually supports a determination that she can apply an understanding of the advantages, disadvantages, and alternatives to her mental illness. Melanie contends the record shows she recognized she has a mental illness and asked her doctor to prescribe her Seroquel because she had taken it in the hospital and had done well on that drug. She also took Lorazepam

as needed in June, and Melanie asserts this indicates she “understood her illness and its symptoms well enough to follow Dr. Ambas’ directions to take the Lorazepam as needed.”

¶11 We reject Melanie’s argument that the expert needs to iterate the specific words of the statute in order for the evidence to be sufficient. Moreover, her assertion that the record actually supports a determination that she can apply an understanding to her mental illness overlooks the deference we give to the circuit court’s factual findings and reasonable inferences. *See K.S.*, 147 Wis. 2d at 578.

¶12 We conclude Dave’s broader testimony, together with other evidence in the record, sufficiently supports the court’s findings. *See id.* Here, in addition to testifying that Melanie cannot apply an understanding “to her advantage,” Dave opined Melanie “still has poor insight and impaired judgment” regarding her illness. He observed that Melanie did not resume taking medication after her miscarriage and did not voluntarily attend follow-up care. Although Melanie requested Seroquel in July, she returned to Ambas to make that request because the County prompted her to return. Further, following that July appointment, Melanie did not comply with all of her prescribed medication. She reported that, although she had taken Lorazepam as needed in June, she discontinued Lorazepam and Celexa without consulting Ambas because she believed Seroquel was sufficient. Finally, Dave explained medication is necessary to treat Melanie’s illness and opined she “would not comply with psychotropic medication” on her own.

¶13 Melanie also suggests within her argument that the circuit court erred by “basing its determination that Melanie is incompetent to refuse

medication upon Melanie's diagnosis of psychotic disorder." *See Virgil D.*, 189 Wis. 2d at 12 (individual can be mentally ill but competent to refuse medication). To the extent this is a separate argument, we disagree that the circuit court ordered involuntary medication merely because Melanie suffers from a psychotic disorder. Instead, the court found Melanie's delusions affected her ability to engage in reliable self-assessment and therefore the evidence showed she cannot apply the "advantages of taking or the disadvantages of not taking psychotropic medication to her present circumstance."

By the Court.—Order affirmed.

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

