COURT OF APPEALS
DECISION
DATED AND RELEASED

July 31, 1996

No. 96-1120-FT

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

In the Matter of the Mental Condition of Sandra K.T.,

STATE OF WISCONSIN,

Petitioner-Respondent,

v.

SANDRA K.T.,

Respondent-Appellant.

APPEAL from an order of the circuit court for Kenosha County: ROBERT V. BAKER, Judge. *Affirmed*.

BROWN, J. Sandra K.T. has chronic schizophrenia. She has delusions that her former husband shrunk her children and that her children now live with her neighbors. The trial court found that Sandra's efforts to contact area children and bring them into her home has placed these children and their parents in fear. The court also found that Sandra may cause harm to

the children in the future. It thus ordered that Sandra be hospitalized. Sandra argues, however, that the State did not provide sufficient evidence to support the trial court's determination. She also contends that the trial court misused its discretion when it denied her motion for a change in counsel. We disagree with both of her claims and affirm.

We begin with a summary of the State's evidence. Sandra did not testify and rested when the State closed its case.

The State first called Rick Brandes. He knows Sandra because his wife is related to her. He explained that Sandra made about fifteen phone calls to his home beginning in December 1995. On the few occasions that Brandes actually spoke with her, he tried to remind Sandra that her children were much older. Still, Sandra told him that the Brandes children were hers and asked Brandes to return the children to her. Brandes further testified that Sandra also called his children's school and made the same requests to speak with his children. Finally, Brandes described that his two sons and daughter were scared because they believed that Sandra might take them away. He specifically reported that his nine-year-old daughter, Rachel, was having difficulty sleeping and had digestive problems stemming from her fears about Sandra.

The State also called the school secretary. She confirmed that Sandra had called in December asking to speak with Rachel. Sandra told her that Rachel was actually her daughter, but that Rachel had been placed in a pink solution at birth and shrunk, and was then given to the Brandes family.

An officer from the Kenosha police also testified. In January 1996, the school principal asked him to investigate the matter. The officer spoke with Sandra. She admitted that she had been speaking with children in the neighborhood. She explained that she was looking for her children who were adults but who had been shrunk when their father put semen in their hair and dyed their hair blond to disguise them from her. Sandra believed that her children had been sneaking by her house and she was therefore stopping them and trying to bring them back into their proper home. The officer also reported that the principal had informed him of other complaints against Sandra, including claims that she had actually tried to grab a few children and pull them into her house.

Nicole T., who is nine years old, also testified. She said that Sandra called once on the phone in early January and told her that she was going to come and take her when everybody was asleep. Nicole also testified that Sandra's warning scared her.

The State concluded its case by calling Dr. Thomas M. Duffy, who specializes in adult psychiatry. He had previously submitted a written report to the court. Duffy testified that he had been treating Sandra since 1988 and is familiar with her medical history dating back to 1980. He explained that Sandra has chronic schizophrenia and is currently "actively psychotic," which means "out of touch with reality." He provided further details about her delusions, describing how Sandra believed that her children are being held prisoner and that her children are being forced into having sex against their will. Duffy also

described how Sandra steadfastly maintained that her children had been shrunk with a pink liquid.

Duffy also noted that Sandra could be successfully treated with medication and "basically carry on in a normal fashion," but that she refuses because she does not think that she has a mental illness. Duffy recommended that Sandra be placed back on antipsychotic medication, under court order if necessary. In Duffy's opinion, while Sandra was not suicidal, and he was not aware that she had made specific threats of violence against anyone, he nonetheless believed that Sandra enjoyed "no advantage" from staying off of medication.

At the close of evidence, and after hearing arguments, the trial court proceeded to make findings. The court noted that Duffy had testified many times before it and reached an opinion that Duffy is a very able psychiatrist. Accordingly, the trial court agreed with his medical opinion and found that Sandra has a mental illness and is delusional. The court further concluded that her illness impairs her judgment. The court also found that her behavior created a risk for her and the community. It was concerned that the community would react negatively to Sandra's continued behavior should she return home. The court believed that the community may retaliate with violence should Sandra continue making threats to the area children. The court therefore issued the order hospitalizing her in a secured facility.

We will begin with Sandra's substantive complaint regarding the trial court's decision to confine her. She generally asserts that the State failed to

present sufficient evidence to warrant confining her pursuant to § 51.20, STATS. Specifically, Sandra claims that the State did not prove that she placed community members in reasonable fear of serious physical harm. *See* § 51.20(1)(a)2.b.

Sandra completes her argument by pointing towards alleged weaknesses in the State's case. She contends that the evidence showing that she scared the Brandes children is flawed because the children only became frightened after Brandes tried to explain to them why Sandra was trying to make contact with them.

Sandra also raises concerns with Nicole's testimony. Sandra characterizes Nicole's testimony as "vague and contradictory" and contends that it is too weak to form the basis for any conclusion that she is dangerous and should be confined.

In regard to the police officer's testimony, Sandra complains that the evidence he supplied about her alleged threats and physical contacts with other children in the neighborhood was hearsay and under ***S.Y. v. Eau Claire County***, 156 Wis.2d 317, 457 N.W.2d 326 (Ct. App. 1990), *aff'd*, 162 Wis.2d 320, 469 N.W.2d 836 (1991), it cannot legitimately be used as the basis for the court's finding that she should be confined.

Lastly, she points to Duffy's testimony and argues that it cannot support the trial court's decision to confine her. Sandra notes that Duffy never

personally observed her making a threat to any person and likewise concluded that she was not suicidal or otherwise presented a danger to herself.

Our ability to address the merits of Sandra's appeal is limited, however, because we may not set aside the trial court's findings unless they are clearly erroneous. *See generally* § 805.17(2), STATS. We reject Sandra's argument that we should independently review the trial court's ultimate conclusion that she should be confined because this decision was grounded on settled background facts about her behavior and statements. But contrary to her characterization, this case does not involve the application of undisputed facts to a legal standard. *See* ***Green Scapular Crusade, Inc. v. Town of Palmyra***, 118 Wis.2d 135, 138, 345 N.W.2d 523, 525 (Ct. App. 1984). Rather, as the trial court explained, the decision to confine her was deeply rooted in the court's credibility assessments of the witnesses. Such matters traditionally are left to the judgment of the fact finder, and thus we will not interfere with the trial court's ultimate decision to confine Sandra unless we determine that the decision stood against the great weight of the evidence. *See* ***Estate of Wolff v. Town Board***, 156 Wis.2d 588, 597-98, 457 N.W.2d 510, 513-14 (Ct. App. 1990).

Applying this deferential standard, we will now address each of Sandra's specific evidentiary concerns. First, we do not agree with her concerns about the testimony from Brandes. The trial court relied on the testimony about Sandra's relationship with the Brandes family to reach a conclusion that Sandra's actions were causing children to become scared and sick. We believe that this finding is supported by the record and reject Sandra's suggestion that

Brandes was to blame for creating the fear in his children when he cautioned them that Sandra had threatened to take them away. Sandra successfully brought out on cross-examination that Brandes actually issued the warning to his children and thus the trial court was aware of how the children learned of Sandra's threats. Nonetheless, the trial court obviously discounted this fact when it reached a conclusion that Sandra's phone calls were the major factor causing the children to become scared. We will not disturb its judgment.

Moreover, we note that Nicole testified that Sandra had personally contacted her and that she became scared as a result. Although Sandra now disputes the quality of Nicole's testimony, it nonetheless provides some further support for the trial court's ultimate decision that Sandra's actions had caused fear among other members of the community.

We also reject Sandra's challenge to the police officer's testimony. Under ***S.Y.***, she contends that the hearsay testimony of the police officer "presented no evidence of acts, attempts or threats to do violence or physical harm" which could be used to support a finding that Sandra was a danger to her community. Sandra's reading of ***S.Y.*** is correct to the extent that the case provides a general rule that hearsay evidence, like other forms of inadmissible evidence, may not be used to support a finding of dangerousness in a ch. 51, STATS., proceeding. *See* ***S.Y.***, 156 Wis.2d at 327, 457 N.W.2d at 330.

Nonetheless, we note that the defendant in ***S.Y.*** specifically raised a hearsay objection. But Sandra never raised such an objection.[1] *Compare* ***id***. at

[1] During her cross-examination of the police officer, Sandra made inquiries about "Who

327, 457 N.W.2d at 330. Accordingly, we find no error in the trial court's apparent decision to admit and consider this evidence. *See* ***Wilder v. Classified Risk Ins. Co.***, 47 Wis.2d 286, 290, 177 N.W.2d 109, 113 (1970).[2] Thus, the officer's testimony about those other complaints provided the trial court with evidence to reasonably conclude that Sandra made overt acts indicating that she might be a danger to the community. *See* § 51.20(1)(a)2.b, STATS.

Lastly, we come to Sandra's concerns regarding the expert testimony furnished by Duffy. She writes that Duffy's testimony "does not result in any admissible evidence on which the court can make a finding of dangerousness." We again dismiss Sandra's argument.

As we emphasized above, the trial court, as it was free to do, placed great weight on the credibility of Duffy's testimony. Our review of Duffy's testimony shows that he had treated Sandra for eight years and thus had great familiarity with Sandra and how her illness affected her. We particularly emphasize that Duffy explained how Sandra could not make proper judgments and that she believed that her children were in ongoing danger because they were being held prisoner and were being sexually assaulted. We believe that such testimony provides a reasonable basis for a

(..continued)
reported the grabbing or the attempted grabbing?" thereby indicating to the court that she had concerns about the reliability of these reports. Still, she never moved to have this evidence excluded.

[2] We observe that in ***S.Y. v. Eau Claire County***, 156 Wis.2d 317, 328, 457 N.W.2d 326, 330-31 (Ct. App. 1990), *aff'd*, 162 Wis.2d 320, 469 N.W.2d 836 (1991), the court noted that "the county fails to identify any statutory or case law supporting its position on appeal." Based on this statement, we conclude that ***S.Y.*** is limited to instances where a particular hearsay objection is raised and no other grounds exist to support the use of the evidence.

conclusion that Sandra could present a danger to herself and to her community. Since she believed that her children were in great danger, she was likely to take any step necessary to see to their safety. But since her judgment was so impaired, it was not unreasonable for the trial court to conclude that Sandra might take action to save her children, which could endanger either the children or other members of the community.

We now address Sandra's procedural complaint regarding the trial court's refusal to permit her to change counsel. The decision of whether to allow a change in counsel is within the trial court's discretion. *See* ***State v. Kazee***, 146 Wis.2d 366, 371, 432 N.W.2d 93, 96 (1988). We will uphold its decision if a reasonable view of the facts supports its conclusion. *See* ***id***. at 372, 432 N.W.2d at 96.

Sandra complains that the trial court did not allow her to develop the factual record to support her motion for a change of counsel. Indeed, she asserts that the court "interrupted" her as she tried to "state her reasons." She contends that the inadequacy of the trial court's factfinding is a signal that the trial court misused its discretion. *See* ***State v. Lomax***, 146 Wis.2d 356, 361, 432 N.W.2d 89, 91 (1988).

We will therefore focus on the care and attention that the trial court gave to Sandra's motion. The transcript captured the conversation between Sandra, her appointed counsel (that she wanted to replace), and the court in the following manner:

The Court: Well, [Sandra], what do you have to say about all this?

Sandra: I wanted a different attorney but I don't have the resources to get a different attorney.

The Court: Were you appointed by the Public Defender's Office?

Ms. Bureta: No, by the Court. County appointment.

The Court: May I ask why you want a different attorney?

Sandra: -- I had my divorce with -- I has taken so much time to write everything down and just seems like it wasn't handled that way--

The Court: Did you handle her divorce?

Sandra: No.

Ms. Bureta: No.

Sandra: No, but it wasn't taken care of the same way--like--it was being handled--(inaudible)--well, some of it was-- I didn't think it was--

Ms. Bureta: She said-- your Honor, it's my understanding that when she just talked about Stern, it sounded as though she may have had Judy Stern. It's a possibility that she's not-- she does not want a woman attorney representing her.

The Court: Well, okay. Today is--we are on time limits, strict time limits here, [Sandra], to protect the Respondent. That's you. I mean, nobody-- this is a mental hearing and nobody wants to find somebody mentally ill over a period of time. So the Legislature has told us to hear the cases quick. Within 14 days. Yes, ma'am?

Sandra's appointed counsel then asked the court to consider a seven-day postponement so that Sandra could apparently clarify her motion. But the State responded with concerns that it had assembled many witnesses and was ready

to go forward. Thus, the court denied the motion and permitted the case to proceed.

After reviewing the transcript of these proceedings, we conclude that the trial court acted reasonably. It tried to discern exactly why Sandra wanted to change counsel and its investigation only revealed that she had a general concern with being represented by a woman. Although Sandra seemed for a brief second to have a clear understanding of why she did not want her current counsel to continue representing her, noting that she had "limited resources," when the trial court tried to prompt more information, she could only provide a garbled response which seems to suggest that she was dissatisfied with her divorce attorney and this somehow affected her association with her present attorney. We believe that the trial court made a good effort to learn if Sandra had a legitimate reason for changing representation, and once it found that there was no such basis for her motion, it concluded that the case should go forward in light of the State's efforts to call witnesses and Sandra's interest in having a final determination made as soon as possible.

By the Court. – Order affirmed.

This opinion will not be published. *See* RULE 809.23(1)(b), STATS.