

**COURT OF APPEALS
DECISION
DATED AND RELEASED**

FEBRUARY 11, 1997

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See § 808.10 and RULE 809.62(1), STATS.

NOTICE

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

No. 96-2469

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT III**

**IN THE MATTER OF THE
MENTAL COMMITMENT OF
TERRY R. H.:**

MARATHON COUNTY,

Petitioner-Respondent,

v.

TERRY R. H.,

Respondent-Appellant.

APPEAL from an order of the circuit court for Marathon County:
VINCENT K. HOWARD, Judge. *Affirmed.*

CANE, P.J. The sole issue on appeal is whether the County met its burden of proof at Terry H.'s recommitment hearing. Terry H. was originally committed involuntarily and required medication as part of his treatment for schizophrenia. He does not dispute the court's finding that he remains mentally ill and is a proper subject for treatment. However, he contends the County failed to show a substantial likelihood that he would become dangerous if treatment were withdrawn and, therefore, the evidence is

insufficient to support the recommitment. Because this court is satisfied there is sufficient evidence to support Terry H.'s recommitment, the order is affirmed.

Recommitment hearings are governed by § 51.20(1)(am), STATS., which states the dangerousness criteria in a recommitment proceeding 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subject individual's treatment record, that the individual would be a proper subject for commitment if treatment were withdrawn.¹ Terry H. contends, however, that a finding that a person is a "proper subject for commitment if treatment were withdrawn" necessarily requires a finding of dangerousness. He reasons that because the evidence does not constitute a showing of a substantial likelihood that he would be dangerous if treatment were withdrawn, the order must be reversed. This court is not persuaded.

In *In re M.J.*, 122 Wis.2d 525, 530, 362 N.W.2d 190, 193 (Ct. App. 1984), this court observed:

A patient's commitment may be extended, under sec. 51.20(13)(g)3., STATS., if the patient continues to be mentally ill and a proper subject for treatment and meets one of the criteria of sec. 51.20(1)(a)2 or 51.20(1)(am). Section 51.20(1)(am) provides that in a proceeding to extend a patient's commitment, the

¹ Section 51.20, STATS., provides in part:

Involuntary commitment for treatment.

....

(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 voluntary admission or a commitment or placement ordered by a court under this section or s. 55.06 or 971.17 or ch. 975 ... 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 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.

requirements of sec. 51.20(1)(a)2 that the acts or omissions relied on must be recent behavior *may be satisfied by showing that there is a substantial likelihood, based on the patient's treatment record, that he or she would be a proper subject for commitment if treatment were discontinued.* The purpose of this provision is to allow extension of a commitment when the patient's condition has not improved enough to warrant discharge. Because of the therapy received, evidence of recent action exhibiting "dangerousness" is often nonexistent. Therefore, the emphasis is on the attendant consequence to the patient should treatment be discontinued. (Emphasis added; footnote omitted.)

Thus, this court agrees with the County that the issue of dangerousness in a recommitment proceeding is addressed under a different criteria from an original commitment action. In a recommitment proceeding, the criteria referencing dangerousness in § 51.20(1)(a)2, STATS., may be satisfied by a showing that there is a substantial likelihood, based on the individual's treatment record, that the individual would be a proper subject for commitment if treatment were withdrawn.

Here, the trial court found that if treatment were withdrawn, there was a risk that there would be an incident of dangerousness sufficient to lead to commitment in another proceeding. This court agrees with the trial court.

A review of the record reveals that the County's two experts testified, based on their examination of Terry H. and his treatment record, that he would again be a proper subject of commitment if treatment were withdrawn. Additionally, Dr. Michael Galli, one of the two County experts, testified:

Q You also have an opinion, Doctor, as to whether or not he would currently constitute a significant risk of dangerousness to himself and others?

A Terry is under reasonable control as far as danger is concerned by the medication. The dangerousness issue comes into play if the medication is stopped.

Q And how would his condition deteriorate to the extent hospitalization would again become necessary?

A He would become disillusional and angry and accusatory, and in the past when [Terry H.] is off his medication there are a lot of family conflicts and people have been dealt with roughly by him and are frightened of his increasing anger.

Because there is sufficient evidence to support Terry H.'s recommitment, the order is affirmed.

By the Court. – Order affirmed.

This opinion will not be published. RULE 809.23(1)(b)4, STATS.