COURT OF APPEALS
DECISION
DATED AND FILED

August 13, 2014

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. 2014AP1011-FT **Cir. Ct. No. 2013ME33**

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

IN THE MATTER OF THE MENTAL COMMITMENT AND ORDER FOR INVOLUNTARY MEDICATION AND TREATMENT OF LAURA B.:

OZAUKEE COUNTY,

PETITIONER-RESPONDENT,

V.

LAURA B.,

RESPONDENT-APPELLANT.

APPEAL from orders of the circuit court for Ozaukee County: JOSEPH W. VOILAND, Judge. *Affirmed*.

¶1 NEUBAUER, P.J.[1] Laura B. appeals from orders of the circuit court extending her commitment and for involuntary medication and treatment. Laura argues that, with regard to the extension of commitment, "there was no evidence that she would become dangerous if treatment were withdrawn." We conclude that the County established that Laura would be a proper subject for commitment if treatment were withdrawn. We affirm.

FACTS

¶2 Laura was committed on March 28, 2013, after she had to be forcibly removed from a bridge rail. The responding officer overheard Laura telling people at the scene that she would jump if they got any closer. When the officer asked if her intention in jumping was to die, she said, "If that's what God wants, that's fine." At the hearing on that commitment, Dr. Braam, a physician who evaluated Laura, concluded that Laura suffered from depression or thought or mood disorder and that further diagnostic work was needed. Braam testified that if she were left without treatment she would be a risk to herself. Braam testified that Laura felt singled out and persecuted by the Ozaukee County Human Services Department because her child had been taken away from her. Braam opined that Laura's irrational thinking increased her risk of more incidents like the one on the bridge.

¶3 During her six-month commitment, Laura was not compliant with her treatment plan, which included following the recommendations of her psychiatrist. Laura refused recommended psychotropic medication and stopped

[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.

seeing her assigned therapist. According to the therapist's testimony, Laura did not establish "any further insight into her illness or management of her symptoms," and Laura "feels that she does not have a mental illness." Toward the end of her six-month commitment, the department determined that, if her commitment expired, "she would discontinue all treatment, becoming a danger to herself or others." The department petitioned the circuit court for an extension of commitment, alleging that Laura was mentally ill, remains a proper subject for continued treatment and commitment, and "would be a danger if treatment were withdrawn."

¶4 Dr. Rawski, the physician who was requested to evaluate Laura with regard to recommitment and testified at the hearing on recommitment, diagnosed her with schizoaffective disorder, "a treatable mental illness of substantial [dis]order of thought and mood that grossly impairs [Laura's] judgment, behavior, capacity to recognize reality, and the ability to meet the ordinary demands of life." He further testified that Laura exhibited "paranoid delusions as well as symptoms of bipolar disorder including irritable emotional lability, impulsivity … persecutory delusions, suspicions of others' motives. She has been despondent, depressed, and hopeless about her situation." Rawski went on:

> She is delusional about the potential for her son to be placed with her sister in the future and essentially has dumped all explanations for her own mental illness on to persecutory delusions regarding her sister….
>
> [She] explained that she sees nothing wrong with her behavior and that everything that has occurred that is negative in her life is the result of persecution by others and that she's not going to take a medication for that.

When asked if Laura or others around her would suffer any harm if she does not take psychotropic medication as part of a treatment program, Rawski concluded

that "the main issues regarding harm are her potential for following through on suicidal ideations under the desperate irrational perspective that her son will never be returned to her and others are responsible for that." He concluded that Laura "continues to require ongoing outpatient treatment under the oversight of [the department]. She just needs to receive treatment." Rawski stated that Laura's condition "will not spontaneously improve … [a]nd could get worse."

¶5 The circuit court indicated that it had heard testimony from Rawski, Laura's therapist, and Laura's father. Furthermore, the circuit court noted that it had reviewed the record, specifically Rawski's report.[2] The circuit court granted the extension of Laura's commitment and ordered involuntary medication and treatment. Laura appeals.

DISCUSSION

Standard of Review

¶6 Our standard of review of the circuit court's decision on commitment and involuntary medication and treatment is twofold. The circuit court's findings of fact will be upheld unless clearly erroneous, but whether those

[2] Laura argues in her reply brief that the circuit court impermissibly considered Rawski's report, which Laura indicates was not admitted into evidence. First, Laura makes this argument for the first time in her reply brief. ***State v. Marquardt***, 2001 WI App 219, ¶14 n.3, 247 Wis. 2d 765, 635 N.W.2d 188 (if appellant fails to raise alleged error in main brief, may not do so in reply brief). Second, Laura does not provide any record citations to objections to the circuit court's consideration of the report, so it would appear that the objection was forfeited or waived. ***Zintek v. Perchik***, 163 Wis. 2d 439, 482-83, 471 N.W.2d 522 (Ct. App. 1991), *overruled on other grounds by* ***Steinberg v. Jensen***, 194 Wis. 2d 439, 534 N.W.2d 361 (1995) (we need not search the record to find places where objections have been made). Third, Laura never develops a legal argument nor does she address that examinations and reports are governed by WIS. STAT. § 51.20(9), which provides that a written report of the examination be filed with the court, § 51.20(9)(a)5.

facts meet the statutory requirements is a question of law we review de novo. ***K.N.K. v. Buhler***, 139 Wis. 2d 190, 198, 407 N.W.2d 281 (Ct. App. 1987).

Involuntary Medication and Treatment Order

¶7 WISCONSIN STAT. § 51.61 gives a person receiving services for mental illness the right to refuse medication and treatment. Sec. 51.61(1)(g). However, the court may order medication or treatment, regardless of consent, if it finds that the individual is not competent to refuse medication or treatment. Sec. 51.61(1)(g)3. To prove an individual is not competent to refuse medication or treatment, the County must show that, because of mental illness, and after the advantages and disadvantages of and alternatives to medication have been explained, the individual is incapable of expressing an understanding of the advantages and disadvantages of medication and the alternatives, or 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. Sec. 51.61(1)(g)4.

¶8 Under Laura's original commitment, there was no order for involuntary medication and treatment. However, part of her treatment plan was to follow the recommendations of her psychiatrist, which included taking psychotropic medications. Laura did not comply with this aspect of her treatment plan. Now, on appeal, Laura argues that she had the right to refuse medication and that her decision to do so cannot be held against her to support the current commitment and involuntary medication orders.

¶9 Rawski's testimony highlighted Laura's continuing need for treatment. In addition to the testimony related above, Rawski testified that he believed Laura "requires the use of a psychotropic medication capable of

addressing both the mood and psychotic symptoms." He said that Laura had not complied with requests to take psychotropic medication and that the staff could not compel her to do so because there was no order for involuntary medication and treatment. Rawski supported the order for involuntary medication and treatment, opining that Laura could not express or apply an understanding of the advantages, disadvantages, and alternatives to treatment. Rawski testified that it was Laura's "abject denial that any of that applies to her that's at issue." Rawski further testified that if there was no involuntary medication order, Laura's lack of cooperation with treatment would remain the same and her condition "would not spontaneously improve … [a]nd could get worse." Laura herself testified that she would not take psychotropic medication unless she were ordered to do so.

¶10 Laura does not dispute that she did in fact refuse the medication recommended by her psychiatrist pursuant to her first commitment. While she is correct that she was not required to take the medication, it was part of her treatment plan that she follow the recommendations of her psychiatrist, which included medication to address her mood and psychotic symptoms. The current involuntary medication and treatment order is supported by Laura's refusal to take medications recommended by her psychiatrist in light of her inability to express or apply an understanding of the advantages and disadvantages of treatment, as applied to her.

¶11 Laura does not contest Rawski's unrebutted opinion that Laura could not express or apply an understanding of the advantages, disadvantages, and alternatives to treatment, thus meeting the statutory criteria for an involuntary medication and treatment order. Indeed, Laura does not even discuss the standard for this order. *See* ***State v. Pettit***, 171 Wis. 2d 627, 647, 492 N.W.2d 633 (Ct. App. 1992) (we need not address an issue that is inadequately briefed); ***Gardner v.***

Gardner, 190 Wis. 2d 216, 239 n.3, 527 N.W.2d 701 (Ct. App. 1994) (we will not independently develop a litigant's argument). We affirm the circuit court's order for involuntary medication and treatment.

Extension of Commitment

¶12 To extend an involuntary mental health commitment under WIS. STAT. § 51.20, the circuit court must find clear and convincing evidence that the individual is mentally ill, is a proper subject for treatment, and 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." Sec. 51.20(1)(a)1., (1)(am). An individual is a proper subject for commitment if he or she poses a danger to himself or herself or to others. *See* § 51.20(1)(a)2. Section 51.20(1)(am) recognizes that a person who is currently committed and receiving treatment is unlikely to commit the type of overt act that would render him or her subject to an initial commitment under § 51.20(1)(a). The alternate standard for recommitment is meant to "avoid the 'revolving door' phenomena whereby there must be proof of a recent overt act to extend the commitment but because the patient was still under treatment, no overt acts occurred and the patient was released from treatment only to commit a dangerous act and be recommitted." ***State v. W.R.B***, 140 Wis. 2d 347, 351, 411 N.W.2d 142 (Ct. App. 1987).

¶13 Here, to establish grounds for an extension of commitment, the County had to show that Laura is mentally ill, is a proper subject for treatment, and "would be a proper subject for commitment if treatment were withdrawn." WIS. STAT. § 51.20(1)(am). Laura does not contest the first two prongs. Rather, she argues that the County did not establish "that she would become dangerous if

treatment were withdrawn." Laura focuses on Rawski's wording, indicating that he testified that she "could" get worse and that the prior suicide attempt "could" occur again. Laura argues that there was no evidence of any dangerous behavior during her commitment, and thus the County failed to prove that if her current treatment plan were withdrawn, she would become dangerous.

¶14 Laura's argument misses the mark under WIS. STAT. § 51.20(am). As noted in ***W.R.B.***, the whole point of paragraph (am) is to remove the need to show recent, overt acts in order to extend a commitment. The County did not have to show that Laura had exhibited any dangerous behavior during her commitment. Rather, the County had to show that, given her treatment record, if treatment were withdrawn there is a substantial likelihood that she would become dangerous. The circuit court found that Rawski's testimony was credible and noted Rawski's description of Laura's delusional thoughts and behaviors and that she had not complied with treatment recommendations. Laura herself testified that she would only take psychotropic medications if ordered to do so. Laura's noncompliance with her psychiatrist's recommendation evidences the uncontested finding that she was incapable of expressing or applying an understanding of the advantages and disadvantages of medication and the alternatives. Rawski opined in his report that, based on her treatment record and presentation, Laura "would become the proper subject for commitment if treatment were withdrawn." Rawski opined that Laura's condition would not improve without treatment; indeed, he stated that it might get "as bad as it was when she was above a bridge considering suicide." As indicated by the circuit court,

> Doctor Rawski does say that he's diagnosed her … as psychoaffective disorder, and he believes that impairs her judgment, behavior, and capacity to recognize her situation. He described delusional thoughts, and he gave a list of examples of those thoughts and behaviors. Doctor Rawski

> noted that she had not complied with treatment recommendations.
>
> Doctor Rawski noted that [Laura] could in some way at least in conversation state that she understood the advantages and disadvantages of treatment. But he said that nevertheless it remained his medical opinion that because of what he called [Laura's] abject denial that any of what the doctor was talking about could apply to her. That meant to him … she really did not understand the advantages and disadvantages of the treatment. And I found that testimony from him credible and reliable.…
>
> The doctor did testify that if certain medications were administered they would benefit her. The doctor did testify that he believed … there's a potential that [Laura] would harm herself, and he actually even said possibly others.… [G]iven [Laura's] withdrawal … and refusal to continue with the treatment recommendations and program that he believed that she would not get any better and might even regress.

Regarding whether Rawski's testimony had met the dangerousness standard, the circuit court said:

> The testimony of Dr. Rawski established that potential. It wasn't mere speculation. But it was expert testimony to a reasonable degree of certainty that Dr. Rawski's opinion is that [Laura] remains a danger to herself and possibly to others.

These findings are supported by the record, and these findings support the conclusion that Laura was a proper subject for recommitment under § 51.20. We affirm.

By the Court.—Orders affirmed.

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