

**COURT OF APPEALS
DECISION
DATED AND FILED**

July 27, 2005

Cornelia G. Clark
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. 2005AP1023-FT

Cir. Ct. No. 2002ME91

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT II**

**IN THE MATTER OF THE MENTAL COMMITMENT
OF JAMES P. G.:**

RACINE COUNTY,

PETITIONER-RESPONDENT,

V.

JAMES P. G.,

RESPONDENT-APPELLANT.

APPEAL from an order of the circuit court for Racine County:
RICHARD J. KREUL, Judge. *Affirmed.*

¶1 BROWN, J.¹ In WIS. STAT. ch. 51 recommitment proceedings, the burden is on the government to show by clear and convincing evidence “that there is a substantial likelihood, based on the subject’s individual treatment record, that the individual would be a proper subject for commitment if treatment were withdrawn.” *See* WIS. STAT. § 51.20(1)(am) and (13). In this appeal from an order extending the commitment of James P.G. for one year, James argues that the testimony presented in his case fails to satisfy this burden. This court disagrees. There is sufficient evidence to show that James is incompetent as it relates to his ability to keep taking his psychotropic medications if his commitment expired. We affirm.

¶2 This court has read the transcript of the hearing, and the issue boils down to whether James is competent to understand that he must keep taking his medications. The only witness to testify at the hearing was Dr. Stephen Callaghan, and his opinion was that James would be a proper subject for commitment if treatment were withdrawn. James takes issue with this assessment. He points out that Dr. Callahan admitted that James was “very cooperative” in his examination, that he really thought James’ condition had improved, that James is “currently living independently quite successfully,” and that James said he would take his medication on his own. Based on this testimony, James asserts that he fails to understand why the doctor feels it substantially likely that James would stop taking his medications if commitment were to end. In James’ view, the doctor’s opinion is without factual basis and appears to be more a product of the

¹ This case is decided by one judge pursuant to WIS. STAT. § 752.31(2)(d) (2003-04). All references to the Wisconsin Statutes are to the 2003-04 version unless otherwise noted.

doctor's preoccupation with James' past history of refusing to take medications than his condition at the present time.

¶3 While this court certainly understands James' position, the answer is not quite so simple as James makes it out to be. Wisconsin law has a specific statute dealing with the finding of incompetence as it relates to self-administration of psychotropic medications. WISCONSIN STAT. § 51.61(1)(g)4.a. and b. are the relevant provisions. In pertinent part, they say:

4... [A]n individual is not competent to refuse medication or treatment if, because 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:

a. The individual is incapable of expressing an understanding of the advantages and disadvantages of accepting medication or treatment and the alternatives.

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.

¶4 We focus on WIS. STAT. § 51.61(1)(g)4.b. as it relates to Dr. Callaghan's testimony on cross-examination. James' trial attorney apparently could not understand how Dr. Callaghan could be so glowing in his praise for James' understanding of his condition and James' improvement since his original commitment, so much so that Dr. Callaghan advocated even more freedom for James than in the past, and yet believe James was incompetent to decide whether to take his medications or not. During cross-examination, James' attorney pointedly questioned the doctor about this seeming contradiction. Dr. Callaghan responded:

He had difficulty retaining what I considered some important side effects on medication like tardive dyskinesia and part of—some reason we do blood work for Lithium. He did tend to persist on previous side effects that he thought about that the medication caused and not really taking in new information very well and so that made me feel he was incompetent.

¶5 Tardive dyskinesia is a central nervous system disorder characterized by involuntary movements of the tongue, face and sometimes other parts of the body that may accompany long-term use of antipsychotic medications. MERRIAM-WEBSTER'S NEW COLLEGIATE DICTIONARY 1206 (10th ed. 1997). Lithium is a medicine used to treat certain mental disorders.² Dr. Callaghan was not confident that James understood how a side effect of his medication might be the onset of Tardive dyskinesia. Should such side effects occur, Dr. Callaghan was of the opinion that James was not in a position to make an informed choice on whether to continue to take the prescribed medications. Likewise, blood work was necessary as an adjunct to taking lithium. Failure to understand that blood work was necessary and that significant side effects might occur if his blood was not properly monitored, means that James had difficulty applying this information to the taking of his medications.

¶6 Therefore Dr. Callaghan was satisfied that, at this point in time, James was incompetent to understand enough to make an informed choice about taking or how to take the prescribed medications. It is not enough that James shows a willingness to continue taking his medications. The question is whether he understands the need for blood tests and whether he will still be willing to take

² A certain level of the drug has to be produced in the blood to be effective, but if the level rises too much, unpleasant and potentially serious side effects can occur. Dr. Adrian Lloyd, *Lithium* (Feb. 2001) at http://www.netdoctor.co.uk/diseases/depression/lithium_000290.htm (last visited July 1, 2005).

medication if side effects occur. The trial court accepted the doctor's opinion that James was not competent at this juncture, and the record supports it.

¶7 James wonders whether such a holding means that he will never be free of commitment simply because he may never be able to identify all the side effects of his medications. But we do not read Dr. Callaghan's testimony as favoring recommitment simply because James cannot "identify" the side effects. Rather, we view Dr. Callaghan as being concerned with James' responsive attitude to the potential side effects and the need to take precautionary blood tests to avoid important repercussions. The record shows continued improvement by James over the years in understanding his condition and the steps he must take to prevent relapse. There is no reason to believe such improvement will not continue. We affirm.

By the Court.—Order affirmed.

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