

**COURT OF APPEALS
DECISION
DATED AND FILED**

August 9, 2006

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. 2006AP32
STATE OF WISCONSIN**

Cir. Ct. No. 1997ME260

**IN COURT OF APPEALS
DISTRICT II**

**IN THE MATTER OF THE
MENTAL COMMITMENT OF ERNEST J.P., JR.:**

STATE OF WISCONSIN,

PETITIONER-RESPONDENT,

v.

ERNEST J.P., JR.,

RESPONDENT-APPELLANT.

APPEAL from an order of the circuit court for Waukesha County:
LINDA M. VAN DE WATER, Judge. *Affirmed.*

¶1 SNYDER, P.J.¹ Ernest J.P., Jr., (Ernest) appeals from an annual extension of his WIS. STAT. § 51.20(1)(am) outpatient commitment, which includes an order for involuntary medication. Ernest contends that there is insufficient evidence to support the extension and that he was wrongly allowed to represent himself during the commitment hearing. We disagree and affirm the extension order.

¶2 Ernest was initially committed under WIS. STAT. ch. 51 in 1997 and since then has been extended annually in an outpatient status through the date of this order, November 9, 2005. Ernest's extensions are subject to a condition that he take psychotropic medication in order to remain in an outpatient status and avoid institutionalization.

¶3 We first address whether the record supports the standard of proof under WIS. STAT. § 51.20(1)(am) necessary to extend Ernest's WIS. STAT. ch. 51 outpatient status. A trial court's findings of fact will not be upset on appeal unless the findings are clearly erroneous and against the great weight or clear preponderance of the evidence and reversal is not dictated even if there is evidence to support a contrary finding. *Klein-Dickert Oshkosh, Inc. v. Frontier Mortgage Corp.*, 93 Wis. 2d 660, 663, 287 N.W.2d 742 (1980).

¶4 The statutory requirement for the extension of Ernest's outpatient commitment is a "showing that there is a substantial likelihood, based upon [Ernest's] treatment record, that [Ernest] would be a proper subject for commitment if treatment were withdrawn." See WIS. STAT. § 51.20(1)(am). The

¹ This appeal 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 stated otherwise.

trial court made findings that Ernest was mentally ill, that grounds for extension of commitment have been established, and that he was a proper subject for extended outpatient commitment and that dangerousness was “likely to be controlled with appropriate medication administered on an outpatient basis.”

¶5 Ernest testified that he is not mentally ill and that he does not want to take the psychotropic medication because of disagreeable side effects.² Psychiatrist Jean Oelschlager testified to a reasonable degree of psychiatric certainty that Ernest suffers from chronic schizophrenia, paranoid type, is dangerous under the WIS. STAT. ch. 51 recommitment standard, and would be a proper subject for institutionalized care if the psychiatric medication were withdrawn. Dr. Oelschlager has been Ernest’s primary treating psychiatrist since 1997 and testified at the request of Ernest.³ Ernest now contends that Dr. Oelschlager did not elaborate on, corroborate, or sufficiently demonstrate that her opinion as to his ch. 51 status is correct.

¶6 Ernest also called Drs. Robert VerWert and Charles Cahill as his witnesses. Dr. VerWert, a practicing psychologist since 1985, testified that Ernest requires a side-effect medication called Artane and is incompetent “to make a decision concerning the advantages and disadvantages of the medication.” Dr. Cahill, a practicing psychiatrist for forty-five years, also testified that Ernest is not

² Ernest stated that the medication makes him lethargic, it is hard for him to get up in the morning, that he has trouble concentrating, and that the medication “makes me shake.”

³ After Dr. Oelschlager appeared and testified on behalf of Ernest, Ernest moved that Dr. Oelschlager be held in contempt because, “I subpoenaed her. She was my witness and she didn’t show up at 1:30 yesterday. She showed up three hours late.” The trial court denied the motion on the basis that Dr. Oelschlager had appeared and was ready to testify in compliance with the subpoena.

competent to decide psychotropic medication for his condition, and that Ernest is mentally ill and needs the medication. There is no professional medical testimony that contradicts the evidence presented by Drs. Oelschlager, VerWert and Cahill concerning the merits of Ernest's recommitment or the psychotropic medication condition. We are satisfied that the extension of Ernest's outpatient commitment with included conditions is supported in law and in fact.

¶7 As we understand Ernest's second appellate issue, he complains that the trial court wrongly allowed him to represent himself at the recommitment hearing. The trial court had appointed Attorney Thomas Voss to represent Ernest, and Attorney Voss advised the trial court that Ernest wanted to represent himself. Ernest stated to the trial court:

It's my United State[s] Constitutional right to defend myself. I want to proceed with that Constitutional right. Now, Ma'am, if you don't [allow me to represent myself] then I'll put it in my appeal.

¶8 In response to Ernest requesting to proceed pro se, the trial court ruled as follows:

If [Ernest] wants to represent himself in this matter I'll allow him to do so, but I'm not going to discharge Attorney Voss. He will remain as a friend of the Court to assist [Ernest] on any legal procedures, or any legal concepts, or any terms that he does not understand, or anything else about the procedures, or give legal advice.

¶9 Contrary to his threat in the trial court, Ernest now raises the issue of the success of his pro se motion in this appeal. Ernest sees the issue as being directly related to his competence to determine his own psychotropic medication needs:

I don't want Attorney Voss at my table. I don't want him as a friend of the Court. I may—if you decided that I'm

competent enough to defend myself, I think I should be competent enough to choose whether I can take medication by myself or not.

¶10 Whether Ernest has a right to represent himself in a WIS. STAT. ch. 51 recommitment procedure has been addressed in *S.Y. v. Eau Claire County*, 162 Wis. 2d 320, 469 N.W.2d 836 (1991). The right to self-representation in a mental commitment hearing is guaranteed by article I, section 21(2) of the Wisconsin Constitution. *S.Y.*, 162 Wis. 2d at 328. As a matter of Wisconsin and federal law there may be a waiver of counsel in a mental commitment hearing. *Id.* at 333. There is no presumption or any inference of incompetence by reason of being subject to a proceeding under ch. 51. *See* WIS. STAT. § 51.59(1). We need not address the issue further.

By the Court.—Order affirmed.

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

