

**COURT OF APPEALS
DECISION
DATED AND FILED**

December 21, 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. 2006AP2257-FT

Cir. Ct. No. 2006ME37

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

IN RE THE COMMITMENT OF EMMANUEL L. B.:

UNIFIED BOARD OF GRANT & IOWA COUNTIES,

PETITIONER-RESPONDENT,

v.

EMMANUEL L. B.,

RESPONDENT-APPELLANT.

APPEAL from an order of the circuit court for Iowa County:
MICHAEL KIRCHMAN, Judge. *Affirmed.*

¶1 DYKMAN, J.¹ Emmanuel L.B. appeals from an order committing him to the custody of the Iowa County Department on findings that he is mentally ill, dangerous, and a proper subject for treatment. Emmanuel argues that the evaluating doctors' opinions did not support a finding of dangerousness as required under WIS. STAT. § 51.20(1)(a)2. We conclude that the record supports a finding that Emmanuel was unable to satisfy his basic needs for medical care and thus he was dangerous under § 51.20(1)(a)2.d. We therefore affirm.

Background

¶2 The following facts are taken from the final commitment hearing. On July 14, 2006, Dodgeville police officers responded to reports that eighty-two-year-old Emmanuel L.B. had spent approximately twenty-four hours in a parking lot that was being demolished, exhibiting odd behaviors. The officers found Emmanuel sleeping in his vehicle with his windows rolled up, and without any air conditioning or other ventilation, on a day with temperature highs in the nineties. The officers woke Emmanuel and noted the inside of the vehicle was extremely hot, one of Emmanuel's eyes was swollen with infection, and there was a strong odor of chicken feces on Emmanuel and in the vehicle. Emmanuel appeared confused and gave responses inappropriate to the questions the officers asked him. Based on their observations, the officers took Emmanuel to a hospital for evaluation.

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 otherwise noted. This is an expedited appeal under WIS. STAT. RULE 809.17.

¶3 On July 23, 2006, Dr. Taylor evaluated Emmanuel at the Mendota Mental Health Institute and filed a report with the county. Dr. Taylor testified that, to a reasonable degree of psychiatric certainty, she diagnosed Emmanuel with schizophrenia. She testified that when she evaluated Emmanuel, Emmanuel made several illogical statements, including that some markings on his arms were from high voltage electrical magnets that someone had used to try to shoot him. She described his thought processes as illogical and tangential, and stated that Emmanuel did not have any insight into his mental illness, nor did he believe that he suffers from mental illness.

¶4 Dr. Taylor determined that Emmanuel needed medication for his mental illness and without it presented a risk of danger to himself and possibly others. Dr. Taylor's report states that Emmanuel refused medication for his heart condition at the hospital before his admission to Mendota. At the final hearing, Dr. Taylor testified that Emmanuel continued to refuse medications at Mendota, and acted aggressively toward peers and staff. She believed that all of those conditions would continue and likely worsen without treatment for Emmanuel's mental illness. Dr. Taylor also testified that Emmanuel's mental illness was treatable with medication and that without the treatment Emmanuel was not competent to make decisions regarding his medication.

¶5 Dr. Barahal evaluated Emmanuel at Mendota on July 24, 2006, and filed a report with the county.² Dr. Barahal also diagnosed Emmanuel as mentally

² At the final commitment hearing, only Dr. Taylor testified as to Emmanuel's mental state. The county offered both doctors' reports as evidence, but, on Emmanuel's objection, the court denied admission of Dr. Barahal's report on grounds that it was hearsay. At the hearing on Emmanuel's motion for reconsideration, the court granted Emmanuel's request to reopen the evidence and admit Dr. Barahal's report because it was more favorable to Emmanuel. After

(continued)

ill, suffering from a substantial disorder of thought and grossly impaired judgment, with prominent paranoid and delusional ideation. His report states that Emmanuel poses a mild to moderate risk of danger to himself or others if not treated for his mental illness. Dr. Barahal's report does not mention Emmanuel's heart condition or his refusal of life-saving medication.

¶6 The court held a final commitment hearing on July 28, 2006. At the conclusion of the hearing, the court found that involuntary commitment was necessary. It stated that the most significant factor in its decision was Emmanuel's heart condition and his refusal of life-saving medication. Emmanuel appeals from the order of commitment.

Discussion

¶7 WISCONSIN STAT. § 51.20(1)(a) allows involuntary commitment to treat mental illness if an individual is mentally ill, a proper subject for treatment, and "dangerous" based on one of five definitions. Emmanuel does not contest that he is mentally ill and a proper subject for treatment, but argues that the two doctors' reports on which the trial court relied did not support a finding that he was "dangerous" under WIS. STAT. § 51.20(1)(a)2. We disagree, and conclude that the record provides support for the trial court's finding that Emmanuel was dangerous under § 51.20(1)(a)2.

¶8 We independently review the interpretation of WIS. STAT. § 51.20(1)(a)2. and its application to a given set of facts. See *Braatz v. Labor &*

considering Dr. Barahal's report, the court again found that involuntary commitment was necessary.

Indus. Review Comm'n, 174 Wis. 2d 286, 293, 496 N.W.2d 597 (1993). However, we will uphold the trial court's findings as to any disputed facts unless they are clearly erroneous. *Noll v. Dimiceli's, Inc.*, 115 Wis. 2d 641, 643, 340 N.W.2d 575 (Ct. App. 1983). Furthermore, we will accept the trial court's credibility determinations and inferences it draws when considering conflicting credible evidence. *Cogswell v. Robertshaw Controls Co.*, 87 Wis. 2d 243, 250, 274 N.W.2d 647 (1979).

¶9 The parties disagree over which alternative definition of “dangerous” under WIS. STAT. § 51.20 the trial court relied upon.³ On our own review, we conclude that the evidence establishes Emmanuel was dangerous under § 51.20(1)(a)2.d. and therefore need not consider the alternative definitions. *See* § 51.20(1)(a)2.

¶10 WISCONSIN STAT. § 51.20(1)(a)2.d. defines an individual as dangerous when he or she:

Evidences behavior manifested by recent acts or omissions that, due to mental illness, he or she is unable to satisfy basic needs for nourishment, medical care, shelter or safety without prompt and adequate treatment so that a substantial probability exists that death, serious physical injury, serious physical debilitation, or serious physical disease will imminently ensue unless the individual receives prompt and adequate treatment for this mental illness.

¶11 Both doctors' reports state Emmanuel posed a threat of harm to himself or others. While Dr. Barahal categorized the risk as “mild to moderate,” Dr. Taylor categorized the risk as “substantial.” Dr. Taylor's report explains that

³ The trial court did not state which definition of “dangerous” it used.

one basis for her opinion of Emmanuel's risk of danger to himself was that he refused medication for his heart condition at the hospital. Dr. Taylor explained at the final commitment hearing that Emmanuel was unable to make competent decisions about his medication and had continued to refuse medications while at Mendota. She testified that he would likely worsen if not involuntarily committed.

¶12 Emmanuel argues, however, that he could not be found dangerous because Dr. Taylor was unable to give an opinion as to the need for treatment as of the July 28 hearing and Dr. Barahal's report does not mention the need for heart medication. We disagree. First, Emmanuel cites no authority, nor have we uncovered any, supporting his proposition that a doctor's evaluation in support of confinement must be performed on the day of the final commitment hearing. Thus, we are not persuaded by Emmanuel's argument that Dr. Taylor's evaluation did not support commitment because she was unable to give an opinion as to the need for commitment on the date of the hearing. To the contrary, Dr. Taylor testified that Emmanuel was a danger to himself in part because he refused medication for his heart condition and that his condition was likely to worsen if he did not receive treatment for his mental illness. Her evaluation was done just five days before the hearing, and identified Emmanuel's risk of danger to himself or others as substantial. Finally, to the extent Dr. Barahal's report omitted any information about Emmanuel's need for heart medication or categorized his risk of danger as less severe, we defer to the trial court's determinations as to credibility and conclude it did not err in adopting the findings in Dr. Taylor's report and testimony. Because Dr. Taylor's report and testimony established that Emmanuel posed a substantial risk of harm to himself because he was unable to make medical decisions necessary to treat a life-threatening condition, continued to refuse

medications, and that the condition would continue and likely worsen without treatment, we affirm.

By the Court.—Order affirmed.

Not recommended for publication in the official reports. *See* WIS. STAT. RULE 809.23(1)(b)4.

