

**COURT OF APPEALS  
DECISION  
DATED AND FILED**

March 21, 2001

Cornelia G. Clark  
Clerk, Court of Appeals  
of Wisconsin

**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.

**No. 00-2869-FT**

**STATE OF WISCONSIN**

**IN COURT OF APPEALS  
DISTRICT II**

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**IN THE MATTER OF THE MENTAL  
COMMITMENT OF MICHELE L.W.:**

**SHEBOYGAN COUNTY,**

**PETITIONER-RESPONDENT,**

**v.**

**MICHELE L.W.,**

**RESPONDENT-APPELLANT.**

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APPEAL from an order of the circuit court for Sheboygan County:  
JAMES J. BOLGERT, Judge. *Affirmed.*

¶1 SNYDER, J.<sup>1</sup> Michele L.W. appeals from a final commitment and medications order initiated by Sheboygan County (the County) under ch. 51 of the Wisconsin Statutes. Michele argues that the trial court erred when it refused to dismiss this matter because the emergency detention hold authorizing her confinement was not signed by Sheboygan Memorial Medical Center's (SMMC) treatment director as required by WIS. STAT. § 51.15. We affirm the order of the trial court.

### FACTS

¶2 On June 21, 2000, Dr. Clint Norris detained Michele by filing a Statement of Emergency Detention by Treatment Director. Michele was already a voluntary patient at SMMC at the time. Norris detained Michele after she attempted to hang herself and then requested discharge from the facility.

¶3 A probable cause hearing was held on June 23, 2000. At that hearing, Michele's attorney objected to the detention because Norris was not the treatment director of SMMC, in violation of WIS. STAT. § 51.15(5). Michele's counsel implicitly argued that pursuant to § 51.15(5), a treatment director's hold was not allowed in counties other than Milwaukee. At the hearing, Norris testified that he was not currently the "department chairman," a rotating position he has held "six out of ten years," but that he was the "treatment director of Michele's care." At the time of Michele's detention, Dr. Suzanne Grimm was the department chair. Norris also testified that he had primary responsibility for all treatment provided at SMMC and was acting as Grimm's designee.

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<sup>1</sup> This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(d) (1999-2000). However, all further references to the Wisconsin Statutes are to the 1997-98 version, the applicable version at the time of the events in question, unless otherwise noted.

¶4 The trial court found probable cause that Michele was suffering from a mental illness, and that as a result, she posed a substantial risk of harm to herself and that she was an appropriate subject for treatment. The trial court further held that the County “can initiate a treatment director’s hold and a designee can do it.”

¶5 At the final hearing, Michele’s counsel raised the same issue, again arguing that WIS. STAT. § 51.15(5) does not provide for a treatment director’s hold in small counties such as Sheboygan. The County argued that § 51.15(5) was inapplicable and that the treatment director’s hold in this case was initiated pursuant to § 51.15(10).

¶6 The County presented evidence that SMMC did not have a treatment director; a memo written by the Director of the Behavioral Health Services Unit, William Bronson, stated that SMMC is “a private acute care hospital who [sic] does not employ physicians, [but has] a medical staff structure that is separate from [the] administrative structure.” As a result, the physician responsible for directing the care of any patient in the facility is the “attending physician.” According to Bronson, SMMC does not have a medical director with authority to oversee or supervise the work of other physicians.

¶7 After reviewing the evidence, the trial court denied Michele’s motion, stating that according to Bronson’s memo, SMMC “designates the attending physician to do this job as a treatment director.” The trial court then found Michele mentally ill and a danger to herself and committed her for a period of six months.

## **DISCUSSION**

¶8 Michele argues that WIS. STAT. § 51.15(5) makes no provision for a treatment director hold, and that § 51.15(10) only allows detention with the

signature of the treatment director. Because Norris was not the treatment director as defined in WIS. STAT. § 51.01(18), Michele argues, the emergency detention hold was invalid.

¶9 To determine whether the emergency detention hold was signed by the appropriate authorized person, we must interpret and apply WIS. STAT. § 51.15. The interpretation and application of statutes present questions of law that we review de novo. *Truttschel v. Martin*, 208 Wis. 2d 361, 364-65, 560 N.W.2d 315 (Ct. App. 1997).

¶10 WISCONSIN STAT. § 51.15(5) states:

DETENTION PROCEDURE; OTHER COUNTIES. In counties having a population of less than 500,000, the law enforcement officer or other person authorized to take a child into custody under ch. 48 or to take a juvenile into custody under ch. 938 shall sign a statement of emergency detention which shall provide detailed specific information concerning the recent overt act, attempt or threat to act or omission on which the belief under sub. (1) is based and the names of persons observing or reporting the recent overt act, attempt or threat to act or omission. The law enforcement officer or other person is not required to designate in the statement whether the subject individual is mentally ill, developmentally disabled or drug dependent, but shall allege that he or she has cause to believe that the individual evidences one or more of these conditions if sub. (1)(a)1., 2., 3. or 4. is believed or mental illness, if sub. (1)(a)5. is believed. The statement of emergency detention shall be filed by the officer or other person with the detention facility at the time of admission, and with the court immediately thereafter. The filing of the statement has the same effect as a petition for commitment under s. 51.20. When, upon the advice of the treatment staff, the director of a facility specified in sub. (2) determines that the grounds for detention no longer exist, he or she shall discharge the individual detained under this section. Unless a hearing is held under s. 51.20(7) or 55.06(11)(b), the subject individual may not be detained by the law enforcement officer or other person and the facility for more than a total of 72 hours, exclusive of Saturdays, Sundays and legal holidays.

Michele argues that § 51.15(5) makes no provision for a treatment director hold. Michele is correct. Section 51.15(5) addresses detention by a law enforcement officer or other person authorized to take a child or juvenile into custody and is inapplicable to the situation at hand, as Michele was a voluntary patient at SMMC and already in custody.

¶11 However, there is nothing in the record which indicates that WIS. STAT. § 51.15(5) was utilized in implementing this emergency detention. The Statement of Emergency Detention by Treatment Director merely indicates that the emergency detention was sought pursuant to § 51.15, the emergency detention statute.

¶12 WISCONSIN STAT. § 51.15(10) addresses the emergency detention of voluntary patients and states:

If an individual has been admitted to an approved treatment facility under s. 51.10 or 51.13, or has been otherwise admitted to such facility, the treatment director or his or her designee, if conditions exist for taking the individual into custody under sub. (1), may sign a statement of emergency detention and may detain, or detain, evaluate, diagnose and treat the individual as provided in this section. In such case, the treatment director shall undertake all responsibilities that are required of a law enforcement officer under this section. The treatment director shall promptly file the statement with the court having probate jurisdiction in the county of detention as provided in this section.

Michele was a voluntary patient at SMMC; therefore, § 51.15(10) applies to her emergency detention.

¶13 “Treatment director” is defined as “the person who has primary responsibility for the treatment provided by a treatment facility. The term includes the medical director of a facility.” WIS. STAT. § 51.01(18). Michele argues that

Dr. Norris, who signed the emergency detention order, was not the treatment director at SMMC, and because WIS. STAT. § 51.15(10) mandates that the treatment director sign the emergency detention order, the order was invalid.

¶14 It does not appear that SMMC has an official “treatment director.” Bronson, Director of the Behavioral Health Services Unit of SMMC, informed the court in a letter dated June 28, 2000, that SMMC is “a private acute care hospital who [sic] does not employ physicians, we have a medical staff structure that is separate from our administrative structure.” Bronson further wrote that

[t]he physician responsible for directing the care of any patient in our facility is the “Attending Physician.” In the case of the Behavioral Health Inpatient Unit, in most cases, this could be the “Attending Psychiatrist.” It is possible, but very rare, that the Attending Physician could be another physician with the psychiatrist being a consulting physician.

We do not have a “Medical Director” who has authority to oversee or supervise the work of other physicians.

Norris testified that he was Michele’s treating physician and that he was the treatment director of her care. However, Norris also testified that while he has primary responsibility for all treatment provided by SMMC, he was not the department chair of psychiatrists at SMMC. He testified that the department chair position was a rotating position and that he had held the department chair position for six out of ten years. Norris testified that Dr. Grimm was the department chair at the time Michele was detained. However, Norris testified that he was acting as Grimm’s designee.

¶15 The County argues that because Norris was “the treatment director of Michele’s care,” he meets the definition of “treatment director” in WIS. STAT. § 51.01(18). This argument belies the plain language of the statutes. “Treatment

director” is defined as “*the* person who has primary responsibility for the treatment provided by a treatment facility. The term includes the medical director of a facility.” *Id.* (emphasis added). WISCONSIN STAT. § 51.15(10) allows *the* treatment director or his or designee, not *a* treatment director, to sign a statement of emergency detention. The clear message is that there is one treatment director, not several. The trial court astutely stated that the treatment director is not the treating physician but “the person with the primary responsibility for treatment provided by a facility.”

¶16 No job description was provided for the department chair position.<sup>2</sup> Thus, we cannot tell if the department chair is, in fact, the person who has primary responsibility for the treatment provided by a treatment facility. Michele, however, implicitly concedes that the department chair, Dr. Grimm, is the equivalent of a “treatment director.” When an appellate record is incomplete in connection with an issue raised by the appellant, we must assume that the missing information supports the trial court’s ruling. *Fiumefreddo v. McLean*, 174 Wis. 2d 10, 27, 496 N.W.2d 226 (Ct. App. 1993). For the purposes of this decision, we therefore conclude that department chair is synonymous with treatment director.

¶17 WISCONSIN STAT. § 51.15(10) specifically states that “the treatment director or his or her designee ... may sign a statement of emergency detention.”

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<sup>2</sup> WISCONSIN ADMIN. CODE § HFS 61.71(1) addresses required personnel for inpatient programs and mandates that all mental health inpatient services have a director of mental health services. Michele argues that by failing to have an individual specified as a treatment director, SMMC runs afoul of this administrative code provision. Michele did not raise this issue before the trial court. Issues not raised or considered in the trial court will not be considered for the first time on appeal. *Wirth v. Ehly*, 93 Wis. 2d 433, 443, 287 N.W.2d 140 (1980). However, SMMC would be well advised to examine its administrative structure in light of all the administrative and statutory mandates.

Dr. Norris testified that he was acting as Dr. Grimm's designee. Michele has not presented any evidence to the contrary. As Grimm's designee, Norris had the authority under § 51.15(10) to sign the emergency detention order.

### CONCLUSION

¶18 As the treatment director's designee, Dr. Norris had the authority under WIS. STAT. § 51.15(10) to sign the emergency detention hold. The order of the trial court is affirmed.

*By the Court.*—Order affirmed.

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



