

**COURT OF APPEALS
DECISION
DATED AND FILED**

April 8, 2008

David R. Schanker
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. 2007AP2727

Cir. Ct. No. 2006ME3535

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT I**

IN THE MATTER OF THE MENTAL COMMITMENT OF MICHAEL L.:

MILWAUKEE COUNTY,

PETITIONER-RESPONDENT,

v.

MICHAEL L.,

RESPONDENT-APPELLANT.

APPEAL from an order of the circuit court for Milwaukee County:
KITTY K. BRENNAN, Judge. *Affirmed.*

¶1 WEDEMEYER, J.¹ Michael L. appeals from an order for involuntary medication and treatment. Michael claims that the evidence presented was insufficient to support the issuance of the order. Because the facts and circumstances of this case support the trial court's decision to enter the order, this court affirms.

BACKGROUND

¶2 In September 2006, Michael was committed pursuant to Chapter 51 of the Wisconsin statutes. At that time, the court also issued an order allowing the administration of psychotropic medication. The commitment was for six months. In February 2007, the Milwaukee County Department of Human Services filed a motion requesting that Michael's commitment be extended.

¶3 On March 21, 2007, Michael was re-detained for engaging in violent or dangerous behavior, including physically assaulting his brother-in-law, who was called to assist the police, who were trying to calm Michael. An evidentiary hearing was held on the issue of re-detention. The trial court held that re-detention was appropriate. The trial court also ruled that the order for commitment would be extended for one year.

¶4 Immediately thereafter, the trial court conducted a hearing on whether Michael should be ordered to take medication involuntarily. The trial court ruled that Michael was not competent to refuse medication and issued an order allowing the involuntary administration of medication. Michael now appeals on this issue.

¹ This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2) (2005-06).

DISCUSSION

¶5 Michael's sole contention is that the evidence was insufficient to support the trial court's order allowing the involuntary administration of medication. He contends that WIS. STAT. § 51.61(1)(g)4 was not followed because it requires that "the advantages and disadvantages of and alternatives to accepting the particular medication or treatment have been explained to the individual" before an individual may be found "not competent to refuse medication."

¶6 The trial court found that Michael was not competent to refuse medication. Thus, the issue for this court is whether that finding is clearly erroneous. WIS. STAT. § 805.17(2). After reviewing the record in this case, this court concludes that the evidence was sufficient to support the trial court's finding that Michael was not competent to refuse medication or treatment. The trial court finding was not clearly erroneous.

WISCONSIN STAT. § 51.61(1)(g)4 provides:

[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 disadvantage 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.

This statute is to be strictly followed and “clearly establishes only one standard to evaluate a patient’s competency to refuse medication, that is, whether the patient is able to express an understanding of the advantages and disadvantages of, and the alternatives to, accepting medication or treatment.” *Virgil D. v. Rock County*, 189 Wis. 2d 1, 11, 524 N.W.2d 894 (1994).

¶7 The record in this case demonstrates, however, that Michael refused to cooperate with the doctor’s attempt to provide the advice required by statute. Dr. Luca Alverno testified that Michael:

was not accessible to come and talk and discuss the need for the medications with him and the reasons for being in the hospital, and he became kind of loud although he was not threatening, but he became loud, and he did not want to undergo any examination with me or any discussion of the need for the medications.

When Dr. Alverno approached Michael to comply with the statute, Michael refused to listen and refused to discuss the matter. Dr. Alverno opined that Michael was not capable of expressing an understanding of the advantages and disadvantages regarding the medication. The doctor concluded that Michael was not competent to refuse the medication based on his observations and review of the chart.

¶8 The record also confirms that Michael’s refusal to interact with doctors was not limited to Dr. Alverno. Both court-appointed doctors testified the difficulty each encountered in attempting to communicate with Michael. The first court-appointed doctor, Dr. Joan Nuttall, testified that Michael agreed to meet with her at his home, but then refused to answer the door or telephone when she arrived for the meeting. The second doctor, Dr. Judy Kissicki, testified that Michael refused to meet with her in person, and after talking to her on the telephone

abruptly ended the conversation. Dr. Kissicki testified that Michael made comments about fighting demonic forces. Both court-appointed physicians diagnosed Michael with schizo-affective disorder.

¶9 Michael testified at the hearing. He denied speaking with any of the three doctors and he stated he did not need to take the medication because his mother told him he did not have to take it if he did not want to. He testified that he choked his brother-in-law just before his re-detention because he had been jumped “through witchcraft and sorcery.” He also testified that he did not want to take the medication because the pills come from petroleum byproducts and he did not want to put crude oil into his body. He stated that “I believe my body is a temple of God in a way ... putting these pills in there is like trying to – trying to kill God. That’s blasphemy and that’s a death sentence, capital punishment, according to the laws of the bible.”

¶10 Thus, this court is faced with a record demonstrating that Michael’s own actions prevented the doctor from complying with the strict requirements of the statute. Under such circumstances, this court rules that the trial court’s decision must be affirmed. There is sufficient evidence in the record to support the trial court’s finding that Michael is not competent to understand the advantages and disadvantages relating to taking the recommended medication. The doctor tried to comply with the requirements of the statute, but was prevented from doing so by Michael’s actions and conduct. Under such circumstances, Michael cannot now complain on appeal that the statute was violated because it was his own actions that prevented compliance with the statute. *See County of Milwaukee v. Edward S.*, 2001 WI App 169, ¶¶7-9, 247 Wis. 2d 87, 633 N.W.2d 241.

Accordingly, this court affirms the trial court’s finding.

By the Court.—Order affirmed.

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

