**COURT OF APPEALS**
**DECISION**
**DATED AND FILED**

**October 15, 2008**

**David R. Schanker**
**Clerk of Court of Appeals**



**Appeal Nos. 2007AP2602**
**2008AP819**

**Cir. Ct. No. 1997ME260**

**STATE OF WISCONSIN** **IN COURT OF APPEALS**
**DISTRICT II**

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

**STATE OF WISCONSIN,**

**PETITIONER-RESPONDENT,**

**V.**

**ERNEST J.P., JR.,**

**RESPONDENT-APPELLANT.**

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APPEAL from orders of the circuit court for Waukesha County: ROBERT G. MAWDSLEY, Judge. *Affirmed.*

¶1 SNYDER, J.[1] Ernest J.P., Jr., (Ernest) appeals pro se from an October 31, 2007 order extending his WIS. STAT. § 51.20(1)(am) outpatient commitment and adding a firearm restriction provision. Ernest also appeals pro se from a February 19, 2008 order denying without a hearing his motion to correct 181 alleged errors in the trial court record. We consolidated the appeals and now affirm both orders.

¶2 As we understand Ernest's problems with the October 31, 2007 commitment extension order, he contends the trial court: (1) interfered with his ability to present a defense, including not allowing Ernest to question witnesses as he desired and testify as he wished; (2) erred in concluding that Ernest was competent to represent himself at the hearing while also holding that he was not competent to administer his own medications; (3) erred in admitting erroneous expert medical evaluations into evidence; (4) wrongly assigned Ernest "standby" counsel over his objection; (5) erred in failing to rule on the issue of opposing counsel having contact with Ernest's witnesses prior to the commitment extension

[1] This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(d) (2005-06). All references to the Wisconsin Statutes are to the 2005-06 version unless otherwise noted.

hearing; and (6) erred in denying his motion to close the hearing.[2] Ernest wants us to reverse the order.

¶3 In light of this court having to use the trial court record to decide the extension order appeal, we first address Ernest's appeal from the February 19, 2008 order denying his request for a hearing to correct the record. Ernest presented the trial court with 181 written objections to court records involving WIS. STAT. ch. 51 proceedings going back to his original commitment record in 1997. He requested that the trial court "look at these objections and then schedule a hearing." As Ernest requested, the court looked at the objections. It then refused to schedule a hearing. Ernest claims error.

¶4 A party who believes that the record is defective, or that the record does not accurately reflect what occurred in the trial court, may move the court in which the record is located to supplement or correct the record. WIS. STAT. § 809.15(3). We have reviewed Ernest's seventeen pages of objections. The only relief prayed for in Ernest's motion was for a hearing. The trial court denied Ernest's request for a hearing because his objections were to prior records and to

[2] This court responded to Waukesha County Assistant Corporation Counsel Robert J. Mueller's request for assistance on how to respond to "an incomprehensible pro se appellant's brief" by pointing out that the respondent owes a duty to this court to respond even though the appellant's brief was deemed minimally acceptable, did not include a required statement of facts, and included disorganized and unsupported arguments. We are cognizant of ongoing efforts by the Wisconsin State Bar and certain judicial authorities to enhance the opportunity for legal self-representation in our court system. However, in his appellate brief, Ernest lists thirteen objections that he considers to be appropriate for appellate review. Then, in his later "Statement on Facts" (which we deemed nonexistent in our prior response to Attorney Mueller), Ernest lists eight circuit court errors as appellate issues. We agree with Attorney Mueller that Ernest's appellate briefing is incomprehensible, and we commend Attorney Mueller for his efforts in trying to sort out Ernest's issues and for responding to Ernest's legal concerns. We cannot help but wonder, however, if that should be visited upon a party opposing a pro se appellant as it was here.

records that were not relevant to the current commitment extension petition. Even if one of Ernest's objections was applicable, the trial court may disregard any error or defect in the proceedings if it would not affect Ernest's substantial rights. *See* WIS. STAT. § 51.20(10)(c). We conclude that none of Ernest's objections would affect his substantial rights regarding the October 2007 commitment extension procedure. Because the trial court's order is not erroneous in its denial of the only relief that Ernest requested, a hearing on the objections to prior court records, we affirm.

¶5 We now return to the merits of the October 2007 extension order appeal. Ernest makes a rather naked demand that the order be vacated and dismissed. Whether the record supports the standard of proof necessary to extend Ernest's outpatient status requires us to turn to the provisions of WIS. STAT. § 51.20 and apply them to the factual determinations made by the trial court. 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).

¶6 Ernest's WIS. STAT. ch. 51 commitment history has been memorialized in his prior appeals to this court. Ernest was initially committed under ch. 51 in 1997 and has been extended annually in an outpatient status through the date of this order, October 30, 2007. His extensions are subject to a condition that he take prescribed psychotropic medication in order to avoid institutionalization and to remain in an outpatient status.

¶7 Ernest objects to the extension of the current extension order and the involuntary medication order contained therein and has raised the issue of involuntary medication previously. Now, as then, Ernest maintains that he is not mentally ill and that the psychotropic medication causes disagreeable side effects. Here again, the trial court heard expert testimony as to Ernest's continuing need for outpatient treatment and medication.

¶8 Expert testimony is admissible if the witness is qualified as an expert and has specialized knowledge that is relevant. ***Hoekstra v. Guardian Pipeline, LLC***, 2006 WI App 245, ¶14, 298 Wis. 2d 165, 726 N.W.2d 648. The admissibility of expert evidence is left to the sound discretion of the trial court. ***Id.*** Under WIS. STAT. § 907.02 expert testimony will be excluded only if it is superfluous or a waste of the court's time. *See* ***Hoekstra***, 298 Wis. 2d 165, ¶14.

¶9 At the commitment extension hearing, Dr. Richard Koch, a psychologist, testified that Ernest has symptoms compatible with paranoid schizophrenia, that he is dangerous under the ch. 51 recommitment standard, and that he would be the subject of institutionalization if his medication were withdrawn. Dr. Koch opined to a reasonable degree of psychological certainty that Ernest is not competent to refuse his medication because he is incapable of applying and understanding the advantages, disadvantages and alternatives to the medication. Ernest's designated expert witness, psychiatrist Dr. Edmundo Centena, agreed with Dr. Koch's professional conclusions and agreed that Ernest lacked the capacity to understand the advantages, disadvantages and alternatives to the need for treatment and medication.

¶10 The trial court relied upon the report and expert representations of Dr. Koch in issuing the commitment extension order. Ernest challenges the report

as being inaccurate because Dr. Koch failed to conduct an evaluation of Ernest during 2007, and the report was hearsay and outdated. It is undisputed that Ernest refused to be examined by Dr. Koch before the commitment extension hearing. The State argues that under WIS. STAT. § 51.20(9)(a)4., Dr. Koch was required to file a report with the court even if Ernest exercised his right to remain silent. We agree. Having reviewed Ernest's challenges to the expert evidence supplied by Dr. Koch, we hold that the evidence was properly admitted and considered by the trial court.

¶11 Next, Ernest contends that the trial court wrongly ignored his request that counsel representing the State, Robert J. Mueller, not have contact with Ernest's witnesses. Attorney Mueller replies that he did not have any contact with Ernest's witnesses. Ernest also objects to Dr. Koch being excused and allowed to leave the courtroom after concluding his testimony, including Ernest's cross-examination. Ernest fails to indicate how either of these matters affected his ability to present his case against the commitment extension petition. We discern no negative impact upon Ernest's ability to challenge the extension order and summarily dismiss the alleged appellate issues.

¶12 In a cluster of what appears to be objections to the admission of evidence at the hearing, Ernest contends that the trial court improperly limited his questioning of a witness, refused to let him testify as he desired, and wrongly denied his request to call Assistant Corporation Counsel Mueller as a witness. Whether to admit or exclude evidence is within the trial court's discretion. ***State v. Clark***, 179 Wis. 2d 484, 490, 507 N.W.2d 172 (Ct. App. 1993). We will affirm the court's decision to admit or exclude evidence if the decision has a reasonable basis and was made in compliance with the facts of record and accepted legal

standards. ***Id.*** A judge exercises reasonable control over the mode and order of interrogation of witnesses and presentation of evidence to avoid needless consumption of time. *See* WIS. STAT. § 906.11(1)(b).

¶13 Ernest wanted to cross-examine witness Eugene Gallagher about his medicinal shot record to show that he was in compliance. Attorney Mueller had previously stipulated to the correctness of the shot record. As to restricting Ernest's testimony, Ernest complains that the trial court would not let him read into the record a medical court report that was already admitted into evidence or to cumulatively present other evidence. As to the denial of his request to call Mueller as a witness, Ernest wanted to present evidence of an attempt to reach an agreement with Mueller prior to the commitment extension hearing. Such settlement evidence need not be considered by the trial court. We conclude that the trial court's evidentiary rulings were reasonable and complied with accepted legal standards and that Ernest failed to show that the rulings involved an erroneous exercise of discretion.

¶14 Ernest complains about the trial court assigning him standby counsel during the hearing. We agree with the State that the court was within its authority to provide standby counsel to assist a pro se party in the event that legal assistance was needed. ***S.Y. v. Eau Claire County***, 162 Wis. 2d 320, 332, 469 N.W.2d 836 (1991). Ordering standby counsel is appropriate to insure that the hearing proceedings continue smoothly. ***State v. Lehman***, 137 Wis. 2d 65, 71, 403 N.W.2d 438 (1987). In addition, the State points out that the court never formally designated anyone to be "standby" counsel for Ernest and that Ernest's self-representation during the hearing was unfettered by anyone or anything. The record supports the State's representations. We conclude that Ernest's quest for

relief because of the appointment of "standby counsel" during the hearing is meritless.

¶15 Ernest complains about the trial court's refusal to grant his motion to close the hearing. WISCONSIN STAT. § 51.20(12) relates that "[e]very hearing which is held under this section shall be open, unless the subject individual … moves that it be closed." We have previously interpreted the term "moves" as meaning "to make an application to a court." ***State ex rel. Wis. State Journal v. Circuit Court for Dane County, Branch Two***, 131 Wis. 2d 515, 519, 389 N.W.2d 73 (Ct. App. 1986). Ernest moved to close the hearing in order to maintain confidentiality of the proceedings. The trial court should close the hearing if the circumstances are unusually compelling. ***Id.*** at 522. Essentially, the hearing should be closed only when not doing so would defeat the very purpose of the hearing, or would subvert the "overwhelming public values connected with the administration of justice." ***Id.*** While Ernest did make the motion to close, we conclude that he failed to provide the court with a justifiable reason to close the hearing other than a generic desire to obtain confidentially. Accordingly, we conclude that the court acted within its discretion in denying Ernest's motion.

¶16 Lastly, Ernest wants the firearms restriction removed from the extension order. Ernest is the subject of an outpatient disposition under WIS. STAT. § 51.20(13)(a)3. As such, the court has authority to prohibit Ernest from possessing a firearm under § 51.20(13)(cv)1. if the evidence indicates a substantial probability that the individual may use a firearm to cause physical harm to himself or to others, or to endanger the public safety.

¶17 During the hearing, Ernest testified that he would get a gun and take justice into his own hands and stated that he would shoot out the tires of motor

vehicles that he observed were not being operated according to his standards. Ernest's testimony provided sufficient evidence for the trial court to conclude that a WIS. STAT. § 51.20(13)(cv)1. restriction was appropriate. We agree with the trial court that the firearm restriction was warranted as a condition of the outpatient disposition.

¶18 In sum, we reject all of Ernest's challenges to the commitment extension order and affirm the order with the firearm restriction. To the extent that we may have been unable to define, understand or discern any additional problems, complaints or issues that Ernest thinks or believes he may have raised or included in his pro se appeal, we deny those also.

*By the Court.*—Orders affirmed.

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