COURT OF APPEALS
DECISION
DATED AND FILED

May 15, 2002

Cornelia G. Clark
Clerk of Court of Appeals

Appeal No. 02-0461-FT **Cir. Ct. No. 91-ME-97**

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

IN THE MATTER OF THE MENTAL COMMITMENT OF RODNEY G.R.:

COUNTY OF SHEBOYGAN,

PETITIONER-RESPONDENT,

V.

RODNEY G.R.,

RESPONDENT-APPELLANT.

APPEAL from an order of the circuit court for Sheboygan County: GARY LANGHOFF, Judge. *Affirmed.*

¶1 ANDERSON, J.[1] Rodney G.R. urges us to reverse his involuntary commitment because the trial court did not apply the proper standard of

[1] This is a one-judge appeal pursuant to WIS. STAT. § 752.31(2)(d) (1999-2000). All references to the Wisconsin Statutes are to the 1999-2000 version unless otherwise noted.

dangerousness and there is insufficient evidence in the record to support the involuntary commitment. From our independent review of the record, we are satisfied that the trial court applied the correct standard of dangerousness and the record contains sufficient evidence. Therefore, we affirm.

¶2 We will recite only those facts favorable to the order of commitment. Four people testified on behalf of the County of Sheboygan. A woman testified that she came up behind Rodney's truck on the interstate and all of a sudden it left the traveled portion of the interstate for the shoulder, slowed and turned in behind the woman, forcing another car into the left lane. The woman testified that Rodney "tailgate[d] [her] very closely" and "aggressively" followed her when she exited the interstate. After she was unable to elude Rodney, she called 911 and followed instructions to proceed to the City of Sheboygan Police Department.

¶3 Officer Brian Retzer of the Sheboygan police department testified that he was alerted to watch for a woman being followed by a truck. He saw both vehicles approaching him and Rodney was waving at the officer, trying to get his attention. After they passed, Retzer pulled out and initiated a traffic stop of Rodney. According to Retzer, Rodney exited his truck and ran back to the squad car so fast that the officer did not even have time to get out. Rodney appeared agitated. Rodney was very upset and said that the woman driving the car had "some sort of electromagnetic pulse device" that "was causing … pain to his head."

¶4 Officer Joel Clark arrived to assist Retzer. He testified that when he came on the scene, Rodney was very animated and was shouting at times. He testified that Rodney complained that the woman was shooting laser beams or

something called CBR through his brain. Rodney told Clark that he had copied down the woman's license plate number and wanted to catch up to her to find out for whom she was working. Clark was the person who initiated the emergency detention of Rodney because he believed that Rodney was dangerous to others. The officer also testified that Rodney told him that people on his farm were trying to hypnotize him, and because of people on the farm trying to get him, he had lost his farm and moved to the city. Rodney also told the officer that people had been shooting beams through his window on a nonstop basis and he was determined to find out who was responsible.

¶5 The final witness for the County was Rodney's treating psychiatrist, Dr. Asghar Shah. Dr. Shah testified that Rodney suffered from schizophrenia, chronic paranoid type. The psychiatrist testified that Rodney perceives danger from others and is a danger to them. He said that Rodney feels that "criminals are scrambling his mind with CBR's, chemical, biological and radiation weapons, and he feels he must protect himself from those people, and he feels that he might have to buy a gun and other things to protect himself from these criminals who are trying to scramble his brain."

¶6 Rodney testified on his own behalf. He confirmed that he believed the woman was shooting radio waves at him and he followed her in an attempt to find out who she was. Rodney also corroborated his psychiatric history that had been related by Dr. Shah but denied any mental illness. He told the court that he had been "chastised" by radio waves and his person was being violated by "chemicals or chemical biological, more of a biological, I think, because they also expel gas in like a teargas form."

¶7 After reciting the pertinent evidence, the trial court concluded that Rodney does suffer from a mental illness and is a substantial risk of serious harm to others. The trial court reasoned that Rodney poses "a significant danger to others because he's laboring under the delusion that others are out to get him through these radiological or biological weapons and that he must protect himself." The court ordered Rodney involuntarily committed for an initial six-month period.

¶8 In this appeal, Rodney contends that the trial court erred in applying the wrong standard of dangerousness under WIS. STAT. § 51.20(1)(a)2.b.[2] Rodney maintains that the trial court did not go far enough when it found that he was mentally ill, and because of his mental illness, he posed a significant danger to others. Rodney claims that the correct standard the trial court should have applied was whether there was "evidence of substantial probability of physical harm to other individuals as manifested by recent homicidal or other violent behavior or by

[2] The applicable portions of WIS. STAT. § 51.20 provide:

> **(1)** PETITION FOR EXAMINATION. (a) Except as provided in pars. (ab), (am), (ar) and (av), every written petition for examination shall allege that all of the following apply to the subject individual to be examined:
>
> 1. The individual is mentally ill ….
>
> 2. The individual is dangerous because he or she does any of the following:
>
> ….
>
> b. Evidences a substantial probability of physical harm to other individuals as manifested by evidence of recent homicidal or other violent behavior, or by evidence that others are placed in reasonable fear of violent behavior and serious physical harm to them, as evidenced by a recent overt act, attempt or threat to do serious physical harm.

evidence that others were placed in reasonable fear of violent behavior and physical harm because of recent overt acts, attempts or threats to do serious physical harm." Rodney also contends that there was insufficient evidence at the hearing to support the order for involuntary commitment.

¶9 The issues Rodney raises require us to apply two standards of review. The first issue, whether the trial court applied the proper standard, requires that we consider whether Rodney's conduct meets a statutory standard. A person's behavior is a fact. Whether that behavior meets a legal standard is a question of law that we review de novo. ***Bracegirdle v. Dep't of Regulation & Licensing***, 159 Wis. 2d 402, 421, 464 N.W.2d 111 (Ct. App. 1990). The second issue is a challenge to the trial court's findings of fact and we will not overturn the trial court's findings of fact unless clearly erroneous. WIS. STAT. § 805.17(2).

¶10 Rodney's first complaint is that in holding that he posed a "significant danger to others," the trial court ignored the statutory standard that he must pose a "substantial probability of physical harm to other individuals." We first observe that a commitment hearing does not follow a movie script and we do not expect the trial court to consistently utter "magic words." We do not believe that the trial court's failure to utter the precise "magic words" found in WIS. STAT. § 51.20(1)(a)2.b results in any reversible infirmity. The trial court's failure to utter the exact words of the statute does not result in reversible error if the court implicitly finds that the evidence was in accord with the statutory standard. *See* ***Hintz v. Olinger***, 142 Wis. 2d 144, 149, 418 N.W.2d 1 (Ct. App. 1987). This court may assume that a missing finding or conclusion was determined in favor of the order for commitment. ***Id.*** As we explain below, the evidence was sufficient to support the conclusion that Rodney's behavior matched the legal standard for an involuntary commitment: "Evidences a substantial probability of physical harm to

other individuals as manifested … by evidence that others are placed in reasonable fear of violent behavior and serious physical harm to them, as evidenced by a recent overt act, attempt or threat to do serious physical harm." Sec. 51.20(1)(a)2.b.

¶11 Our review of the sufficiency of the evidence is influenced by WIS. STAT. § 51.20(1)(a)2.b, which defines dangerousness in the disjunctive. It can be proved by showing either a recent violent act or, alternatively, by showing that others are placed in reasonable fear of a violent act due to, inter alia, a threat to do serious physical harm.

¶12 The latter part of this disjunctive definition is satisfied if it is shown that a reasonable person is placed in a fearful position. ***R.J. v. Winnebago County***, 146 Wis. 2d 516, 523, 431 N.W.2d 708 (Ct. App. 1988) ("We conclude that a showing can be made that others are placed in a fearsome position by a disturbed person's actions even if the person placed in that position has no subjective awareness of it."). Here, the treating psychiatrist testified that because Rodney perceives danger from others, he is a danger to them. The psychiatrist supported this statement with testimony that Rodney has told him that he would have to buy a gun and other things to protect himself. There is also evidence that Rodney followed the woman driver because he believed she was shooting radio waves at him and he was determined to find out who employed her. In this case, whether the woman being followed or another person knew of the threats or not, Rodney's direct statement to the psychiatrist that he would buy a gun to protect himself would create reasonable fear that there was a substantial probability that Rodney would cause serious bodily harm.

¶13 Because there is sufficient evidence to meet the second of the disjunctive tests of the statute, it is not necessary for us to consider the first test—whether there was evidence of other violent behavior. Nevertheless, we point out that Rodney did exhibit violent behavior: on the interstate, he slowed down and pulled to the shoulder to permit the woman to get in front of him and then pulled back onto the highway, causing a car to swerve to the left lane.

¶14 For the above reasons, we are satisfied that the trial court applied the correct legal standard and that there is clear and convincing evidence of dangerousness. We affirm the order for involuntary commitment.

By the Court.—Order affirmed.

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