

**COURT OF APPEALS
DECISION
DATED AND FILED**

August 6, 2002

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. 02-1149-FT

Cir. Ct. No. 01-ME-37

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT III**

**IN THE MATTER OF THE MENTAL COMMITMENT OF
SARAH H.:**

SHAWANO COUNTY,

PETITIONER-RESPONDENT,

v.

SARAH H.,

RESPONDENT-APPELLANT.

APPEAL from an order of the circuit court for Shawano County:
EARL W. SCHMIDT, Judge. *Affirmed.*

¶1 PETERSON, J.¹ Sarah H. appeals from an order extending her involuntary civil commitment in which the court ordered involuntary medication

¹ This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2). Furthermore, this is an expedited appeal under WIS. STAT. RULE 809.17. All references to the Wisconsin Statutes are to the 1999-2000 version unless otherwise noted.

and treatment. Sarah argues that the County failed to establish that she was incompetent to refuse involuntary medication. We disagree and affirm the order.

BACKGROUND

¶2 Sarah was initially involuntarily committed and ordered to submit to involuntary medications on July 10, 2001. The County filed a petition on December 13, 2001, seeking extension of that commitment. The circuit court appointed Chandra Bommakanti, M.D., to conduct an examination and file a report with the court on Sarah's mental condition.

¶3 Bommakanti's report recommended a twelve-month extension of Sarah's commitment with outpatient treatment as the least restrictive placement. The report stated that Sarah was a candidate for psychotropic medications. However, the report indicated that Sarah was not currently on any medication because her spleen had been surgically removed. According to Bommakanti, some people who do not have spleens may have a problem with medications. The report also indicated that Sarah did not want to take psychotropic medications for her depression because of her lack of a spleen. The report concluded that, even though Bommakanti explained the side effects, advantages and disadvantages of antidepressant medications that would be safe for someone without a spleen, Sarah "seems to be somewhat ambivalent and reluctant about using psychotropic medications for depression, so an involuntary medication order would be indicated."

¶4 The circuit court held a hearing on the petition to extend Sarah's commitment and the involuntary medication order on January 9, 2002. At the hearing, Bommakanti testified that in her opinion, Sarah suffered from a mental illness in the form of depression, that she presented a danger to herself because

“from time to time she goes through suicidal ideation,” and that her depression was treatable with psychotropic medications. Bommakanti concluded that she did not believe Sarah was competent to refuse medications because “she does not appreciate the clear cut advantages of psychotropic medications ... and is not competent to refuse.” Bommakanti also testified that there are psychotropic medications designed for a person without a spleen that Sarah could take.

¶5 Sarah testified, and she acknowledged being depressed but said that she was not a danger to herself because when “I get really depressed, I use the services that are out there like I’m supposed to.” Sarah told the court that she understood the advantages and disadvantages of psychotropic medications and that she did not want to take them because of her previous adverse reactions to medications and her lack of a spleen.

¶6 The circuit court found that Sarah was a danger to herself and ordered that her commitment be extended for twelve months. The court also concluded that Sarah was not competent to refuse involuntary medication. The court reasoned:

[T]he doctor says clearly involuntary medication would be indicated, because she is still somewhat ambivalent and reluctant about using these medications. Well, she says she has had severe side effects. I don’t know to what extent this creates any kind of emergency situation in her commitment, but I think it’s wise for the court to have it there, and that would be continued also.

STANDARD OF REVIEW

¶7 Whether Sarah’s behavior meets a legal standard of incompetence to refuse medications is a question of law that we review independently. *See Bracegirdle v. Department of Regulation & Licensing*, 159 Wis. 2d 402, 421,

464 N.W.2d 111 (Ct. App. 1990). However, we will not reverse a factual determination made by the circuit court unless it is clearly erroneous. *See* WIS. STAT. § 805.17(2). Further, the court is the ultimate arbiter of the witnesses' credibility, and when more than one reasonable inference can be drawn from the evidence, we are obliged to affirm the circuit court's findings. *Onalaska Elec. Htg. v. Schaller*, 94 Wis. 2d 493, 501, 288 N.W.2d 829 (1980).

DISCUSSION

¶8 Sarah argues that the State failed to prove she was incompetent to refuse medication. We disagree.

¶9 When a circuit court determines a patient's competency to refuse medication or treatment pursuant to WIS. STAT. § 51.61(1)(g)4, it must presume that the patient is competent to make that decision. *See* WIS. STAT. § 51.20(13)(e). The petitioner has the burden of overcoming that presumption by showing incompetence with evidence that is clear and convincing. *Id.* The petitioner must establish that the patient is unable to express an understanding of the advantages and disadvantages of the medication or treatment, and the alternatives to accepting the particular medication or treatment offered, after the advantages, disadvantages and alternatives have been explained.² *See* WIS. STAT. § 51.61(1)(g)4. If the petitioner is unable to meet that burden, the patient retains the right to exercise informed consent with regard to all medication and treatment. WIS. STAT. § 51.61(1)(g)3.

² The concepts of mental illness and competency are not synonymous. An individual may be psychotic, yet nevertheless capable of evaluating the advantages and disadvantages of taking psychotropic drugs and making an informed decision. *Jones v. Gerhardstein*, 141 Wis. 2d 710, 728, 416 N.W.2d 883 (1987).

¶10 In making its decision, the circuit court must first be satisfied that the advantages and disadvantages of, and the alternatives to, medication have been adequately explained to the patient. *Virgil D. v. Rock County*, 189 Wis. 2d 1, 14, 524 N.W.2d 894 (1994). Second, the court must consider the evidence of the patient's understanding regarding the advantages, disadvantages, and alternatives. *Id.* The evidence may include the actual testimony of the patient and the examining psychiatrist. *Id.* at 14-15. Factors that the court should take into account in reaching its decision include:

- (a) Whether the patient is able to identify the type of recommended medication or treatment;
- (b) whether the patient has previously received the type of medication or treatment at issue;
- (c) if the patient has received similar treatment in the past, whether he or she can describe what happened as a result and how the effects were beneficial or harmful;
- (d) if the patient has not been similarly treated in the past, whether he or she can identify the risks and benefits associated with the recommended medication or treatment; and
- (e) whether the patient holds any patently false beliefs about the recommended medication or treatment which would prevent an understanding of legitimate risks and benefits.

Id.

¶11 First, we must determine whether there was sufficient evidence to show that the advantages and disadvantages of, and the alternatives to, medication were adequately explained to Sarah. *See id.* at 14. In her report, Bommakanti indicated that she had explained to Sarah the side effects, advantages, and disadvantages of antidepressant medications that would be safe for someone without a spleen. Bommakanti also testified that while Sarah understood the

disadvantages of the medication, she was “not really clear in her mind” about psychotropic medications and how they would help her.

¶12 Sarah contends that Bommakanti never discussed alternatives to medication with her. However, the record shows that in addition to discussing the advantages and disadvantages, Sarah and Bommakanti discussed counseling as an alternative to medications. During Bommakanti’s testimony, Bommakanti indicated that Sarah wanted to proceed only with counseling instead of using medication and the two discussed this alternative. Therefore, there is sufficient evidence to conclude that Bommakanti explained to Sarah the advantages, disadvantages, and alternatives.

¶13 Next, we must determine whether Sarah understood the advantages, disadvantages, and alternatives. *See id.* As to the first two factors, the County concedes that Sarah is able to identify the type of recommended medication, having been on similar psychotropic medications in the past. However, the County contends that Sarah has not received medication designed for a person without a spleen. We agree. While there is evidence that Sarah has had adverse reactions to other psychotropic medications in the past, she has never taken medications designed not to cause a problem for a person without a spleen.

¶14 The next factor to consider is whether Sarah can identify the risks and benefits associated with the recommended medication. Based on the record, it is clear that Sarah can identify some of the risks of the medication, but there is nothing indicating her ability to identify the benefits. Bommakanti’s statement that Sarah was “not really clear in her mind” about “how [the medication] would help her” was a clear indication that Sarah did not understand the benefits of the medication.

¶15 The final factor to consider is whether Sarah holds any patently false beliefs about the recommended medication that would prevent an understanding to the legitimate risks and benefits. Sarah testified that she understands there may be medications for a person without a spleen that she can take. However, she also testified that taking it is not worth the risk. Bommakanti's interpretation is that Sarah's belief is not justified and prevents her from understanding the legitimate risks and benefits of the recommended medications. Bommakanti also testified that every drug has potential adverse side effects and that people have to weigh the risks with the benefits.

¶16 Sarah's argument depends solely on the credibility of her testimony and ignores Bommakanti's testimony. However, the circuit court is the ultimate arbiter of credibility. *Onalaska Elec. Htg.*, 94 Wis. 2d at 501. The circuit court evaluated the credibility of the witnesses' testimony and found Bommakanti to be more credible. The court stated "the expert diagnosis here is that [Sarah] does not really clearly perceive her situation and what the effects of those medications would be from a positive point of view, and we are going to go with the expert."

¶17 The circuit court looked at all the factors, considered Sarah's objections concerning possible side effects of the recommended medications and considered Bommakanti's statements regarding the need for medications. We conclude that there is clear and convincing evidence to establish that Sarah is incompetent to refuse medication.

By the Court.—Order affirmed.

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

