

**COURT OF APPEALS  
DECISION  
DATED AND FILED**

**October 19, 2010**

A. John Voelker  
Acting 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. 2010AP1026**

**Cir. Ct. No. 2009ME216**

**STATE OF WISCONSIN**

**IN COURT OF APPEALS  
DISTRICT III**

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

**BARRON COUNTY,**

**PETITIONER-RESPONDENT,**

**V.**

**DENNIS H.,**

**RESPONDENT-APPELLANT.**

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APPEAL from orders of the circuit court for Barron County:  
TIMOTHY M. DOYLE, Judge. *Affirmed.*

¶1 BRUNNER, J.<sup>1</sup> Dennis H. appeals an order of commitment and an order for involuntary medication and treatment. He claims the evidence presented at the commitment hearing was insufficient to support the orders.<sup>2</sup> We affirm.

¶2 In a commitment proceeding under WIS. STAT. ch. 51, the petitioner (here, Barron County) bears the burden of proving, by clear and convincing evidence, that the respondent is both mentally ill and dangerous. *See* WIS. STAT. §§ 51.20(1)(a)1., (1)(a)2., (13)(e). Dennis concedes the evidence was sufficient to support a finding that he is mentally ill,<sup>3</sup> but asserts the evidence was insufficient to support the circuit court's determination that he is dangerous. Whether undisputed facts satisfy § 51.20's requirements is a question of law. *See Bracegirdle v. Department of Regul. & Licens.*, 159 Wis.2d 402, 421, 464 N.W.2d 111 (Ct. App. 1990). We will not reverse unless, considering the evidence in the light most favorable to Barron County, there is no credible evidence to support the circuit court's conclusion. *See* WIS. STAT. § 805.14(1).

¶3 Dangerousness may be proven in several ways. *See* WIS. STAT. § 51.20(1)(a)2. In this case, the County and circuit court relied on § 51.20(1)(a)2.b., which provides that a person is dangerous if he or she:

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*

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<sup>1</sup> This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2). All references to the Wisconsin Statutes are to the 2007-08 version unless otherwise noted.

<sup>2</sup> Dennis does not separately attack the sufficiency of the evidence supporting the order for involuntary medication and treatment. Instead, he claims the involuntary medication order is invalid because the underlying order of commitment is not supported by sufficient evidence. We therefore confine our analysis to that claim.

<sup>3</sup> Both psychologists testifying at the commitment hearing asserted Dennis suffers from schizoaffective disorder featuring hypomania and intense paranoia.

*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.* (Emphasis added.)

The County does not claim Dennis engaged in homicidal or other violent behavior. Instead, it relies on the italicized language of § 51.20(1)(a)2.b., which requires evidence of (1) a recent overt act, attempt or threat to do serious physical harm that (2) placed others in reasonable fear of violent behavior and serious physical harm.

¶4 We first conclude the County satisfied its obligation to present evidence of a recent overt act, attempt or threat to do serious physical harm. Psychologist John Lapcewich testified that Dennis did, at times, display aggressive behavior:

There are times now when [Dennis] is very mellow and very calm and cooperative, but if staff approach him for something he does not want to do or objects to, he changes at the snap of the finger and will become highly excitable, very angry, pressured speech, threatening in his demeanor and menacing, and an ordinary layperson who is not used to this would, I think, undoubtedly turn around and run like heck.

Lapcewich conceded he was not aware of any incidents in which Dennis committed physical violence, but stated he and the staff always approach Dennis with caution because “there is no way to predict that the next time around that will not happen.” Lapcewich further testified, “[I]t’s not only his loudness and yelling and shouting, but he gets very close to you and violates boundaries in that manner and will really not back off when you ask him to do that.”

¶5 Psychiatrist Madan Uprety provided further evidence that Dennis’s composure conveyed a threat to do serious physical harm. Uprety testified that Dennis became aggressive during a recent attempt to evaluate him:

[Dennis] became angry, irritable, he was very impulsive. He started making threats toward me. It was very difficult for me to understand exactly what he was talking about because he was talking so fast in a very disorganized way. So finally I could not complete the evaluation and I had to walk out of the situation for the safety issue.

Uprety considered Dennis violent and unpredictable, but clarified that it was Dennis's overall conduct, not specific words, that gave rise to his belief:

Again, he was using words [that were] very difficult to make out but from his gesture[s], he was looking at me very intense and coming toward me, rambling, shouting, using all kinds of words, saying that "I don't need to be here. Go. I don't want to talk to you. Who are you? I don't care," and coming really, really closer and closer toward me. It was the combination of verbal and physical and whole demeanor. So as he came very close to me I had to back off and walk out from the patient.

Uprety further testified that Dennis once pushed another patient in the unit while arguing about a television show.<sup>4</sup>

¶6 Dennis contends, without citation to authority, that evidence of a threatening and menacing demeanor is insufficient to meet WIS. STAT. § 51.20(1)(a)2.b.'s "overt act, attempt or threat" requirement. We decline to so limit the statute. A risk of serious physical harm exists whether the respondent directly states, for example, that he or she is going to injure someone, or whether that statement may be reasonably inferred from the respondent's aggressive behavior. The objective evidence of Dennis's conduct—his angry, irritable

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<sup>4</sup> Uprety admitted he did not personally see the pushing incident; one of the nurses reported it to him. However, Uprety's testimony was not objected to during the hearing, and we will therefore consider it.

Uprety also testified that Dennis's medical record indicates he assaulted his father with a firearm, but there was some question how long ago that occurred. In light of WIS. STAT. § 51.20(1)(a)2.b.'s requirement that the "overt act, attempt or threat to do serious physical harm" be recent, we decline to consider that evidence.

shouting and excited rambling as he approaches the target of his verbal onslaught, his habit of getting in the faces of his treatment providers, and his physical contact with another patient—was sufficient to satisfy § 51.20(1)(a)2.b.’s “overt act, attempt or threat” requirement.

¶7 We next consider whether Dennis’s behavior placed others in reasonable fear of violence and serious physical harm. Lapcewich testified he and his staff are concerned Dennis may carry out his threats. Lapcewich stated he feared Dennis because of his behavior:

That incident I mentioned at the half door, ... our faces were probably no more than a foot apart and I didn’t know what he was gonna do. And when he moved suddenly, I would flinch. And there was another incident by the main door where the same thing happened, that he would move and I would flinch because we had to move him away and he was yelling and screaming. This is my job, but it doesn’t mean that I’m not afraid.

Lapcewich stated staff members are usually not permitted to speak with Dennis alone.

¶8 Uprety testified that he feared for his safety during his aborted evaluation attempt. Uprety further testified that, for safety reasons, he increased the dosage of Risperdal administered to Dennis.

¶9 Dennis contends the subjective fear of the doctors and staff is insufficient to satisfy the “reasonable fear” requirement of WIS. STAT. § 51.20(1)(a)2.b. In other words, Dennis asserts his actions would not have placed an ordinary person in fear of harm. *See R.J. v. Winnebago County*, 146 Wis. 2d 516, 522, 431 N.W.2d 708 (Ct. App. 1988) (evidence should focus on the objective acts of the disturbed person, not subjective feelings of the threatened individual). We disagree. If Dennis’s aggressive behavior caused trained

psychologists accustomed to dealing with unruly patients to fear for their safety, it would likely produce a greater effect in an ordinary individual without such training. The circuit court's finding that a reasonable person confronted by Dennis would fear violent behavior and serious physical harm is supported by credible evidence.

*By the Court.*—Orders affirmed.

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

