COURT OF APPEALS
DECISION
DATED AND FILED

March 17, 2011

A. John Voelker
Acting Clerk of Court of Appeals

Appeal No. 2010AP3044-FT **Cir. Ct. No. 2009ME485**

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

IN THE MATTER OF THE MENTAL COMMITMENT OF HENRY J. V.:

ROCK COUNTY,

PETITIONER-RESPONDENT,

V.

HENRY J. V.,

RESPONDENT-APPELLANT.

APPEAL from orders of the circuit court for Rock County: JAMES WELKER, Judge. *Affirmed*.

¶1 LUNDSTEN, J.[1] The County filed a petition to extend Henry J.V.'s mental commitment. An evidentiary hearing on that petition was held, and the court granted the petition. Orders were entered extending Henry's commitment and his involuntary medication and treatment. Henry argues on appeal that the evidence presented at the evidentiary hearing was insufficient to support an extension of his commitment because there was insufficient evidence proving that he would be dangerous if treatment were withdrawn. I disagree, and affirm the circuit court.

Background

¶2 Henry J.V. suffers from schizophrenia, paranoid type. The County filed a petition to extend Henry's mental commitment and involuntary medication order. At a hearing on that petition, the County presented the testimony of Dr. Jeffrey Marcus, the expert who had examined Henry. Dr. Marcus opined that "there's a substantial likelihood that [Henry] would have an exacerbation of symptoms and become a proper subject for commitment if his current psychiatric treatment were withdrawn." There was no dispute that Henry was currently cooperating with the administration of medication. Dr. Marcus testified, however, that Henry had an "impairment of insight" regarding his need for medication, and further opined that Henry was not "competent to accept or refuse his anti-psychotic medication at this point." Dr. Marcus testified that, if Henry stopped taking his medication, Henry would decompensate.

[1] This is an expedited appeal under WIS. STAT. RULE 809.17, decided by one judge pursuant to WIS. STAT. § 752.31(2)(d). All references to the Wisconsin Statutes are to the 2009-10 version unless otherwise noted.

Discussion

¶3 Henry argues that the evidence was insufficient to support an extension of his commitment because there was insufficient evidence proving that he would be dangerous if treatment were withdrawn. More specifically, Henry argues that there was insufficient evidence that, if treatment were withdrawn, he would meet any of the five dangerousness tests contained in WIS. STAT. § 51.20(1)(a)2. As I understand his argument, Henry is relying on the lack of specific evidence regarding dangerousness.

¶4 For example, as to the first dangerousness test in WIS. STAT. § 51.20(1)(a)2.a., Henry argues:

> Under Wis. Stat. § 51.20(1)(a)2.a., an individual is dangerous if he "[e]vidences a substantial probability of physical harm to himself or herself as manifested by evidence of recent threats of or attempts at suicide or serious bodily harm." There is no suggestion in the record that Henry had ever attempted or threatened suicide or serious bodily harm.

Henry's "no suggestion in the record" comment is an apparent reference to the fact that the County presented no evidence showing the nature of Henry's dangerousness preceding his commitment and no evidence that Henry had attempted or threatened suicide or serious bodily harm since his commitment. Following this pattern, Henry points to each of the remaining dangerousness tests in § 51.20(1)(a)2. and then discusses the lack of specific evidence.

¶5 I conclude that specific evidence regarding dangerousness was not required.

¶6 As Henry acknowledges, his proceeding was for an extension of his commitment, not for an original commitment, and, therefore, the following test for dangerousness applies:

> (am) … [I]f the individual has been the subject of outpatient treatment for mental illness … immediately prior to commencement of the proceedings as a result of a commitment ordered by a court under this section, … the requirements of a recent overt act, attempt or threat to act under par. (a)2.a. or b., pattern of recent acts or omissions under par. (a)2.c. or e., or recent behavior under par. (a)2.d. may be satisfied by a showing that there is a substantial likelihood, based on the subject individual's treatment record, that the individual would be a proper subject for commitment if treatment were withdrawn.

WIS. STAT. § 51.20(1)(am). Thus, the necessary dangerousness showing is that "there is a substantial likelihood, based on the subject individual's treatment record, that the individual would be a proper subject for commitment if treatment were withdrawn."

¶7 Here, the County presented expert testimony that there was a substantial likelihood that Henry would be a proper subject for commitment if treatment were withdrawn. It seems that Henry's complaint is that the County did not provide evidence of the details supporting this opinion. The County, however, was not required to provide the supporting evidentiary details.

¶8 The law permits the admission of expert testimony in the form of opinion on the ultimate issue to be decided. WIS. STAT. § 907.04. Henry could have cross-examined the County's expert about the facts on which the expert relied, WIS. STAT. § 907.05, but did not. *See* ***Klingman v. Kruschke***, 115 Wis. 2d 124, 127, 339 N.W.2d 603 (Ct. App. 1983) ("Expert opinions can be based on facts made known to the expert before the trial. If the facts are of a type reasonably relied upon by the expert in forming opinions, the facts need not be

admissible in evidence. The expert's opinion can address the ultimate issues of the case. Where the premises leading to the expert's conclusion are attacked as inadequate, it is the duty of opposing counsel to draw out the data that led to the expert's opinion." (citations omitted)).

¶9 Henry may also be arguing that the evidence was insufficient to support a finding that he would fail to continue taking his medication if treatment were withdrawn and, therefore, insufficient to show that he would become a proper subject for commitment if treatment were withdrawn. If Henry means to make this argument, I disagree. First, this factual issue is covered by my previous discussion because the issue is encompassed in the expert's opinion that there is a substantial likelihood that Henry would be a proper subject for commitment if treatment were withdrawn. Second, the circuit court was entitled to credit Dr. Marcus's testimony that Henry did not fully appreciate his condition or his need to continue with medication.

¶10 Accordingly, I perceive no reason why the evidence was insufficient with respect to dangerousness.

By the Court.—Orders affirmed.

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