COURT OF APPEALS
DECISION
DATED AND FILED

April 26, 2011

A. John Voelker
Acting Clerk of Court of Appeals

Appeal No. 2010AP3162 **Cir. Ct. No. 2010ME296**

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

IN THE MATTER OF THE MENTAL COMMITMENT OF QUINN M.:

BROWN COUNTY,

PETITIONER-RESPONDENT,

V.

QUINN M.,

RESPONDENT-APPELLANT.

APPEAL from orders of the circuit court for Brown County: TIMOTHY A. HINKFUSS, Judge. *Affirmed*.

¶1 HOOVER, P.J.[1] Quinn M. appeals an order extending his WIS. STAT. ch. 51 mental health commitment and an involuntary medication order.

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

Quinn asserts there was insufficient evidence to support the extension and involuntary medication orders. We disagree and affirm.

BACKGROUND

¶2 Quinn was under a WIS. STAT. ch. 51 mental health commitment. When the commitment neared expiration, the County sought an extension and an involuntary medication order.

¶3 At the extension hearing, the County called Dr. Edith Wolf as an expert witness. Wolf testified Quinn's probable diagnosis is schizo-affective disorder. She explained she was unable to make an accurate diagnosis because of Quinn's history of drug and alcohol use. However, Wolf was certain Quinn suffers from a mental illness. She described an instance when Quinn stopped taking his medication for two weeks, during which his mental health symptoms returned. Wolf explained that when she interviewed Quinn, his evasiveness was the only paranoid behavior she witnessed. Wolf found Quinn had no insight into his mental illness. She opined if treatment were withdrawn, Quinn would not take his medication or attend doctor appointments. She stated without the commitment, Quinn would "revert to his original condition where he was a substantial danger to himself" because of his paranoid delusions.

¶4 Additionally, Wolf testified she discussed Quinn's medication with him. She explained Quinn was lax about taking his medication and he was uncertain about whether he needed medication. Wolf admitted Quinn could identify the medication he was taking, but stated Quinn was "not very specific" about the medication's purpose. Quinn has not refused medication; however, when asked about taking his medication, Quinn started laughing and told Wolf that he only takes it if he remembers. Wolf testified Quinn needs the medication

to control his mental health symptoms. She opined Quinn is unable to understand the advantages, disadvantages, or alternatives to medication.

¶5 Quinn testified he is "unconvinced" he needs medication and "doesn't know" if he has a mental illness. Quinn explained he only takes his medication "on occasion" because he is forgetful. However, he agreed to voluntarily take any prescribed medication. Quinn also admitted he has missed appointments with his doctor and caseworker, but explained he always called to reschedule.

¶6 The court found Quinn mentally ill, a proper subject for treatment, and dangerous. Additionally, the court determined Quinn was incapable of expressing an understanding of the advantages, disadvantages, and alternatives to accepting or refusing medication or treatment. The court entered an extension of commitment order and an involuntary medication order.

DISCUSSION

¶7 Quinn raises two arguments on appeal. First, he alleges there was insufficient evidence to support the circuit court's extension order. Second, Quinn asserts there was insufficient evidence to prove he is incapable of expressing or applying an understanding of the advantages, disadvantages, or alternatives to medication or treatment.

¶8 On review, we will overturn the circuit court's findings of fact if they are clearly erroneous. ***K.N.K. v. Buhler***, 139 Wis. 2d 190, 198, 407 N.W.2d 281 (Ct. App. 1987). We must accept reasonable inferences drawn from the evidence by the circuit court. ***K.S. v. Winnebago Cnty.***, 147 Wis. 2d 575, 578, 433 N.W.2d 291 (Ct. App. 1988). However, application of the facts to the

statutory chapter 51 requirements presents a question of law we review independently. ***K.N.K.***, 139 Wis. 2d at 198.

I. Extension Order

¶9 To extend the WIS. STAT. ch. 51 commitment, the County needed to prove by clear and convincing evidence that Quinn was mentally ill, a proper subject for treatment, and dangerous. *See* WIS. STAT. § 51.20(1)(a), (13)(e). Quinn asserts the County failed to meet its burden.

¶10 First, Quinn argues the County failed to prove with clear and convincing evidence that he has a mental illness. Specifically, he contends that Wolf testified his diagnosis is "probably" schizo-affective disorder, and "probably" is not "clear and convincing." Quinn mischaracterizes the evidence. Although Wolf testified Quinn's diagnosis was probably schizo-affective disorder, she explained she could not make a certain diagnosis because of Quinn's drug and alcohol use. However, Wolf unequivocally testified that Quinn has a mental illness, and her report indicated Quinn's paranoia was evident during the interview. The evidence is sufficient to support the circuit court's finding that Quinn suffers from a mental illness.

¶11 Second, Quinn asserts there is insufficient evidence to support a determination that he is a proper subject for treatment. "Treatment" is defined as "those psychological, educational, social, chemical, medical or somatic techniques designed to bring about rehabilitation of a mentally ill ... person." WIS. STAT. § 51.01(17). Here, Wolf testified her review of the collateral information showed the medication has helped alleviate Quinn's mental health symptoms. Wolf referenced a time period when Quinn stopped taking his medication and his mental

health symptoms returned. We conclude the evidence shows Quinn is a proper subject for treatment.

¶12 Third, Quinn asserts the County failed to prove he is dangerous. Dangerousness can be proven in several ways. *See* WIS. STAT. § 51.20(1)(a)2. Quinn argues the County relied on WIS. STAT. § 51.20(1)(a)2.e., commonly known as the "fifth standard," to prove dangerousness, and asserts the County failed to prove all the requirements of that standard. We disagree. Instead of the "fifth standard," the record shows the County relied on WIS. STAT. § 51.20(1)(am) to prove dangerousness. Section 51.20(1)(am) provides that in an extension hearing:

> [T]he 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.

¶13 Wolf testified that if treatment were withdrawn, there is a substantial likelihood that Quinn would be a proper subject for commitment. She opined that without the commitment, Quinn would not take steps to control his mental illness. Specifically, he would probably stop taking his medication and would not follow through on medical appointments. Wolf stated Quinn seemed unclear about whether he needed to take his medication and was lax in taking it. Her report also indicated Quinn does not believe he has a mental illness. Wolf testified both medication and doctor appointments are needed to alleviate Quinn's mental health symptoms. We conclude there was sufficient evidence to support the court's finding that Quinn was "dangerous."

II. Involuntary Medication Order

¶14 Quinn argues the County failed to prove he was incompetent to refuse medication or treatment. He asserts he is competent because the record reveals he "has successfully applied an understanding of the advantages, disadvantages and alternatives to medication in several ways."

¶15 The petitioner bears the burden of proving by clear and convincing evidence that the patient is incompetent to refuse medication or treatment. ***Virgil D. v. Rock Cnty.***, 189 Wis. 2d 1, 11-12, 524 N.W.2d 894 (1994); *see also* WIS. STAT. § 51.20(13)(e). To prove incompetence, the petitioner must first establish that the advantages, disadvantages, and alternatives to medication or treatment have been adequately explained to the patient. WIS. STAT. § 51.61(1)(g)4. Then, after the explanation, the petitioner must prove the patient is either "incapable of expressing an understanding" or "substantially incapable of applying an understanding of" the advantages, disadvantages, and alternatives to medication or treatment. WIS. STAT. § 51.61(1)(g)4.a.-b. To determine whether the patient understands the medication or treatment, the court should consider the following factors:

> (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.

Virgil D., 189 Wis. 2d at 15.

¶16 Although our inquiry usually begins with whether the patient received an adequate explanation of the advantages, disadvantages, and alternatives to medication or treatment, Quinn does not contest whether he received an adequate explanation.[2] Therefore, we only need to determine whether Quinn is capable of expressing or applying an understanding of the advantages, disadvantages, and alternatives to medication or treatment.

¶17 Quinn argues he is capable of expressing and applying an understanding of the advantages, disadvantages, and alternatives to medication or treatment. He contends too much emphasis was placed on his forgetting to take medication. Quinn asserts the record shows he agreed to voluntarily take medication, is aware he currently takes Abilify, and knows it keeps him calm. This, he argues, demonstrates he is capable of understanding the advantages, disadvantages, and alternatives to medication or treatment.

¶18 Quinn's argument overlooks the deference we give to the circuit court's factual findings and reasonable inferences. *See* ***K.S.***, 147 Wis. 2d at 578. Wolf opined that Quinn is not able to understand the advantages, disadvantages,

[2] In the County's brief, the County gratuitously argued Quinn received an adequate explanation of the advantages, disadvantages, or alternatives to medication or treatment. Quinn, for the first time in his reply brief, asserts he did not receive an adequate explanation. We decline to address this issue because Quinn did not raise it in his brief-in-chief. *See* ***State v. Chu***, 2002 WI App 98, ¶42 n. 5, 253 Wis. 2d 666, 643 N.W.2d 878 (we do not consider issues raised for the first time in a reply brief).

and alternatives to medication or treatment, or able to apply that understanding to himself. Wolf testified that she formed this opinion based on Quinn's statements to her that he only takes his medication when he remembers, is uncertain about whether it helps him, and does not recognize that it is used to control his delusions and paranoia. Although Quinn testified he has been and would continue to voluntarily take medication, the record shows Quinn only takes his medication occasionally, is unconvinced he needs medication, and there has been at least one instance where he stopped taking medication for two weeks. Considering the ***Virgil*** factors, the record supports the circuit court's determination that Quinn is incapable of understanding the advantages, disadvantages, and alternatives to medication or treatment.

By the Court.—Orders affirmed.

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