

**COURT OF APPEALS
DECISION
DATED AND FILED**

June 28, 2011

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. 2011AP208

Cir. Ct. No. 2010ME384

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT III**

IN THE MATTER OF THE MENTAL COMMITMENT OF KEVIN Q.:

BROWN COUNTY,

PETITIONER-RESPONDENT,

V.

KEVIN Q.,

RESPONDENT-APPELLANT.

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

¶1 HOOVER, P.J.¹ Kevin Q. appeals an order extending his WIS. STAT. ch. 51 mental health commitment. Kevin asserts there was insufficient evidence to support a finding of dangerousness. We affirm.

BACKGROUND

¶2 Kevin was placed on a WIS. STAT. ch. 51 commitment in April 2010 after he overdosed on his prescribed Klonopin and an unknown amount of Benadryl. In September 2010, the County petitioned for an extension of Kevin's commitment.

¶3 Prior to the extension hearing, Kevin was evaluated by Dr. Pierre Slightam. Slightam prepared a written evaluation regarding Kevin, which was introduced into evidence. In the written evaluation, Slightam noted he had discussed with Kevin his "frequent overdose occurrences." He also opined that if treatment were withdrawn, there is a substantial likelihood that Kevin would be a proper subject for commitment. When describing the major findings supporting this opinion, Slightam wrote: "No insight. Past history of repeated overdose episodes and suicide attempts. Poor medication compliance."

¶4 During the extension hearing, Slightam testified that Kevin has limited insight into his mental illness. He acknowledged that "at the time of my exam[,] I thought he didn't have insight and I think he realizes that he has some problems ... but I don't think he has a very diligent understanding of how it all came about." Slightam opined that based on Kevin's history, if the commitment

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.

were withdrawn, Kevin would be a danger to himself. Slightam admitted Kevin is compliant with his medications; however, he opined that Kevin “needs a current case management program” similar to the one he is under, to supervise the administration of his medications.

¶5 Kevin testified he has overdosed on medication at least three times. He also explained that a medical monitoring program makes daily visits to his residence to administer his medication in the proper dosage.

¶6 The court determined if treatment were withdrawn, there is a substantial likelihood that Kevin would be a proper subject for commitment. It extended Kevin’s WIS. STAT. ch. 51 mental health commitment.

DISCUSSION

¶7 To extend a mental health commitment, the County must prove by clear and convincing evidence that an individual has a mental illness, is a proper subject for treatment, and is dangerous. *See* WIS. STAT. §§ 51.20(1)(a), 51.20(13)(e). Dangerousness usually requires a showing of a “recent act or omission.” *See* WIS. STAT. § 51.20(1)(a)2. However, for an extension hearing:

[T]he requirements of a recent overt act, attempt or threat to act ... 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).

¶8 Here, Kevin concedes he has a mental illness and is a proper subject for treatment. *See* WIS. STAT. § 51.20(1)(a)1. On appeal, he argues the circuit court erred because there is insufficient evidence to support the determination that

if treatment were withdrawn, there is a substantial likelihood, based on his treatment record, that Kevin would be a proper subject for commitment.

¶9 Application of the facts to the WIS. STAT. ch. 51 requirements presents a question of law we review independently. *K.N.K. v. Buhler*, 139 Wis. 2d 190, 198, 407 N.W.2d 281 (Ct. App. 1987). However, we will overturn the circuit court’s findings of fact if they are clearly erroneous. *Milwaukee Cnty. v. Delores M.*, 217 Wis. 2d 69, 73, 577 N.W.2d 371 (Ct. App. 1998). We will not reverse unless, considering the evidence in the light most favorable to the County, there is no credible evidence to support the circuit court’s conclusion. *See* WIS. STAT. § 805.14(1).

¶10 We conclude the evidence sufficiently shows there is a substantial likelihood Kevin would be a proper subject for commitment if treatment were withdrawn. Kevin acknowledged he has overdosed on medication at least three times. Slightam testified that without the commitment he was unsure “if [Kevin] would comply with all the medications.” He also opined Kevin’s medication administration needs to be supervised. Implicit in Slightam’s testimony is that even though Kevin cooperates with his medication and acknowledges he has a mental illness, Kevin remains a danger to himself because of his history of overdoses and his need for supervised medication administration.

By the Court.—Order affirmed.

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

