**COURT OF APPEALS**
**DECISION**
**DATED AND FILED**

**February 24, 2004**

**Cornelia G. Clark**
**Clerk of Court of Appeals**



**Appeal No. 03-2917-FT** **Cir. Ct. No. 94ME000219**

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

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**IN THE MATTER OF THE MENTAL COMMITMENT OF VICKI L.B.:**

**MARATHON COUNTY DEPARTMENT OF HEALTH AND FAMILY SERVICES,**

**PETITIONER-RESPONDENT,**

**V.**

**VICKI L.B.,**

**RESPONDENT-APPELLANT.**

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APPEAL from an order of the circuit court for Marathon County: PATRICK M. BRADY, Judge. *Affirmed*.

¶1 HOOVER, P.J.[1] Vicki L.B. appeals an order extending her WIS. STAT. ch. 51 commitment. She claims the County failed to meet its burden of demonstrating she was "dangerous." Because the evidence is sufficient, this court affirms the order.

## Background

¶2 Vicki suffers from paranoid schizophrenia. She is committed to the custody of the Community Board of Marathon County, although the record is unclear as to when she was initially committed. Although the County's petition mentions only her 2002 commitment, the circuit court case number implies an adjudication in 1994, and one of the doctors in this case testified he has seen Vicki in connection with mental health proceedings since at least 1989. In any event, the County petitioned to extend her commitment in 2003, alleging Vicki continued to be mentally ill and that she would be a proper subject for commitment if treatment were withdrawn.

¶3 The court appointed Drs. Sheldon Schooler and Michael Galli to examine Vicki for the recommitment proceedings. Schooler had evaluated Vicki multiple times since 1989, and Galli had evaluated her on four or five occasions during the last seven or eight years. Both doctors opined that Vicki continued to suffer from paranoid schizophrenia and that she would be a "proper subject for commitment if treatment were withdrawn." *See* WIS. STAT. § 51.20(1)(am). Based on the doctors' testimony, the court ordered Vicki recommitted. She

[1] This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(d) and is an expedited appeal under WIS. STAT. RULE 809.17. All references to the Wisconsin Statutes are to the 2001-02 version unless otherwise noted.

appeals, arguing the County failed to meet its burden of proof as to her "dangerousness."

## Discussion

¶4 The extension of a WIS. STAT. ch. 51 mental health commitment is regulated by § 51.20(13)(g)3:

> The county department … to whom the individual is committed … may discharge the individual at any time …. Upon application for extension of a commitment by the … county department having custody of the subject, the court shall proceed under subs. (10) to (13). If the court determines that the individual is a proper subject for commitment as prescribed in sub. (1)(a) 1. and evidences the conditions under sub. (1)(a) 2. or (am) … it shall order judgment to that effect and continue the commitment. The burden of proof is upon the county department … seeking commitment to establish evidence that the subject individual is in need of continued commitment.

¶5 The County's burden of proof is one of "clear and convincing evidence." WIS. STAT. § 51.20(13)(e). This court will not overturn the circuit court's factual findings unless they are clearly erroneous. ***K.N.K. v. Buhler***, 139 Wis. 2d 190, 198, 407 N.W.2d 281 (Ct. App. 1987). The findings will be upheld if supported by any credible evidence or reasonable inferences drawn therefrom. ***In re Estate of Cavanaugh v. Andrade***, 202 Wis. 2d 290, 306, 550 N.W.2d 103 (1996). However, application of the facts to the statutory requirements for recommitment presents a question of law this court reviews de novo. ***K.N.K.***, 139 Wis. 2d at 198.

¶6 To succeed on a petition for recommitment, the County must first show that the "individual is mentally ill." *See* WIS. STAT. § 51.20(1)(a)1 and 51.20(13)(g)3. Vicki does not challenge the diagnosis or evidence that she is mentally ill.

¶7 Second, the County must show the "individual is dangerous." *See* WIS. STAT. § 51.20(1)(a)2 and 51.20(13)(g)3. Subparagraphs 51.20(1)(a)2.a-e list alternate circumstances the County may prove to show dangerousness.[2] Each circumstance requires evidence of a recent, overt act. However, when an individual is subject to recommitment, dangerousness may be shown in accordance with § 51.20(1)(am). Instead of requiring evidence of recent acts, § 51.20(1)(am) allows the County to prove dangerousness by showing "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." Section 51.20(1)(am) was intended to avoid the "vicious circle of treatment, release, overt act, recommitment." *See* ***State v. W.R.B.***, 140 Wis. 2d 347, 351, 411 N.W.2d 142 (Ct. App. 1987).

¶8 Vicki argues that the County failed to meet its burden of proof because it failed to prove the existence of any act demonstrating her dangerousness. As explained, however, an overt act need not be shown in a recommitment proceeding. Thus, this court considers whether the County met its burden under WIS. STAT. § 51.20(1)(am).

¶9 Based on their experience with Vicki and her records, both doctors testified that if Vicki were released, she would probably cease taking her medication. Without her medication, her mental health would deteriorate in a

[2] The five alternatives under WIS. STAT. § 51.20(1)(a)2 are that the subject (a) poses a risk of physical harm to himself or herself; (b) poses a risk of physical harm to others; (c) suffers from impaired judgment that could lead to harm to self; (d) cannot fulfill the basic needs for nourishment, medical care, shelter, or safety; or (e) is incapable of giving informed consent about medication or treatment necessary to avoid suffering or severe mental, emotional, or physical harm.

matter of mere weeks. Schooler explained that Vicki would suffer disorganized thoughts and a return to "paranoid ideation." Galli noted that she would become suspicious of others' motives, causing her to be confrontational. Also, Vicki's "auditory hallucinations," under control with the medication, would return.

¶10 Both doctors concluded, to a reasonable degree of medical certainty, that Vicki would be a "proper subject for commitment if treatment were withdrawn." Vicki offered no evidence to the contrary. The circuit court accepted the doctors' opinions. It was not clearly erroneous to do so, and this court will not disturb those factual findings on appeal. *See* WIS. STAT. § 805.17(2). In addition, this evidence sufficiently meets the statutory requirement for proving dangerousness. The circuit court did not err by ordering Vicki recommitted.

¶11 Vicki also complains that there was insufficient evidence from which the circuit court could conclude that she was incapable of giving informed consent regarding her medication. To the extent this challenge relates to an order for involuntary medication, that order has not been appealed.

¶12 To the extent Vicki believes this relates to her dangerousness, it is true that WIS. STAT. § 51.20(1)(a)2.e allows the County to demonstrate dangerousness by showing an individual cannot give informed consent regarding medication. However, on recommitment, the County need not prove dangerousness by the method in § 51.20(1)(a)2.e if it has shown dangerousness under § 51.20(1)(am). *See* WIS. STAT. § 51.20(13)(g)3.

¶13 Even if Vicki's ability to give informed consent is relevant to her recommitment, there was adequate evidence from which the circuit court could conclude that Vicki was incapable of giving informed consent. Schooler opined

that the nature of Vicki's mental illness made it impossible for her to "express an understanding of the advantages and disadvantages" of her medication.[3]

¶14 Galli noted that Vicki said "all the right things," but based on his experience with her he did not believe Vicki really understood what she was saying. Galli testified that Vicki would sometimes arrive to receive her medication after hours, complained that it was too inconvenient for her, and once had to be threatened with police intervention before she would take her medication. Thus, while Vicki might have been able to recite answers she thought Galli would want to hear, her actions demonstrated she did not understand her answers' significance. From the doctors' testimony, the court could reasonably conclude that Vicki was incapable of giving informed consent.

*By the Court.*—Order affirmed.

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

[3] Vicki protests Schooler's report because he did not meet with her personally as required by statute. However, Vicki failed to keep her appointment with Schooler. While WIS. STAT. § 51.20(9)(a)4 allows the subject to remain silent during an examination, this does not authorize the subject to skip the court-ordered exam. Under Vicki's argument, subjects for recommitment could always defeat the government's petition simply by failing to attend their examination appointment. Schooler offered his opinion to a reasonable degree of medical certainty, testifying he had been seeing Vicki since at least 1989 and based his opinion on his experience and her treatment records. This is sufficient. *See* ***Walworth County v. Therese B.***, 2003 WI App 223, ¶17, 267 Wis. 2d 310, 671 N.W.2d 377.