COURT OF APPEALS
DECISION
DATED AND FILED

October 25, 2011

A. John Voelker
Acting Clerk of Court of Appeals

Appeal No. 2011AP1662 **Cir. Ct. No. 2011ME35**

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

IN THE MATTER OF THE MENTAL COMMITMENT OF LORNA G.:

OUTAGAMIE COUNTY,

PETITIONER-RESPONDENT,

V.

LORNA G.,

RESPONDENT-APPELLANT.

APPEAL from an order of the circuit court for Outagamie County: MITCHELL J. METROPULOS, Judge. *Affirmed.*

¶1 CANE, J.[1] Lorna G. appeals an order placing her on a WIS. STAT. ch. 51 mental health commitment. On appeal, Lorna contests the circuit court's finding that she was dangerous. We affirm.

BACKGROUND

¶2 In February 2011, Outagamie County filed a WIS. STAT. ch. 51 petition for involuntary commitment of Lorna. At the time of the petition, Lorna had a guardian and was subject to an order for protective placement and services under WIS. STAT. ch. 55.

¶3 At the final hearing, Dr. Indu Dave testified, as an expert, that she met with and evaluated Lorna. Dave explained Lorna had diagnoses of bipolar disorder, which is a treatable condition, and developmental disability. Prior to her evaluation of Lorna, Dave reviewed, in part, the staff statement prompting the chapter 51 petition. According to Dave, the staff statement indicated Lorna had punched out a window and was striking at workers. Dave admitted she did not personally observe any of Lorna's dangerous behavior; however, she opined that, if the information contained in the staff statement was substantially true, Lorna would be a danger to herself or others.

¶4 Mary Huebner, Lorna's group home program supervisor, testified she called police on February 20 in response to Lorna's behavior. Huebner explained that Lorna began "pacing, yelling, hollering, [and] stomping her feet" after Huebner requested Lorna take her morning medications. When Huebner asked Lorna if she could assist her with her personal cares, Lorna attempted to

[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.

push over a chair and tried to leave the group home. Lorna struck the patio door window and then pushed her body against the door. Lorna also hit Huebner's hand. When Huebner tried to redirect Lorna, Lorna then grabbed Huebner's "hand and squeezed and wouldn't let go." Lorna began stomping down the hall, bending over, and hitting the wall. Huebner explained she and another staff member at the home had to "remove other clients away from [Lorna's] path because [Lorna] would go through so fast and stomp, bend over, hit the wall, turn around, and she didn't – if you didn't move she would have kept going." Huebner conceded she did not have to seek medical attention for her hand and no one was injured by Lorna's behavior.

¶5 Officer Aaron Pynenberg testified that when he arrived at the home, he heard Lorna yelling and screaming. When he made contact with Lorna, she "flopped down on her bed [and] started kicking and screaming." Pynenberg explained Lorna was highly agitated and not making a lot of sense. Lorna told Pynenberg she wanted to harm people at the group home. Although Lorna would not elaborate on how she intended to harm people, Lorna repeatedly made these threats while at the group home and later at the hospital. Because Lorna was not making a lot of sense and was "physically agitated in terms of throwing herself," Pynenberg was concerned that she could hurt someone.

¶6 The court determined Lorna suffered from a mental illness, was a proper subject for treatment, and was dangerous. The court reasoned:

> With regards to the dangerousness aspect of the commitment, it has been reported that on February 20th she was acting disorderly, at a minimum, and it could be construed that she was acting out violently. The statute requires that her behaviors either are a danger to herself or to others or can be reasonably inferred to have that potential. Based on this record, the Court does conclude that she is a danger to others based on her behaviors on the

> 20th and the days before that where she struck out, grabbed one of the administrator's hands and squeezed it, was pacing, was acting in an agitated state, and threatened others generally, that that behavior can certainly be construed, could potentially be a danger to others, both at the residence to patients as well as staff members.

The court ordered a six-month commitment and an involuntary medication order.

DISCUSSION

¶7 To place an individual under a mental health commitment, the County must prove by clear and convincing evidence that the individual is mentally ill, a proper subject for treatment, and dangerous. *See* WIS. STAT. § 51.20(1)(a), (13)(e). On appeal, Lorna argues the court applied the wrong legal standard to the facts and, even under the proper legal standard, the facts are insufficient to support a finding of dangerousness.

¶8 To prove dangerousness under WIS. STAT. § 51.20(1)(a)2.b., the statute relied on in this case, the County must show there is a substantial probability that an individual will physically harm others. To make this showing, the County must introduce either (1) evidence of recent homicidal or other violent behavior, or (2) evidence that others are placed in reasonable fear of violent behavior and serious physical harm, which is shown by a recent overt act, attempt or threat to do serious physical harm.[2]

[2] WISCONSIN STAT. § 51.20(1)(a)2.b. provides, in its entirety, that an individual 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 others are placed in reasonable fear of violent behavior and serious physical harm to

(continued)

¶9 Lorna first asserts the circuit court applied the wrong legal standard for dangerousness when it stated "the statute [WIS. STAT. § 51.20(1)(a)2.b.] requires that her behaviors either are a danger to herself or to others or can be reasonably inferred to have that potential." Lorna argues the "potential" for dangerousness is not the same as a "substantial probability" of dangerousness.

¶10 We reject Lorna's argument that the court applied the wrong legal standard for two reasons. First, the court did not determine the County only needed to prove Lorna exhibited a "potential" of physical harm to others. Rather, the court's use of the word "potential" occurred when the court was commenting on one of the two ways the County could satisfy the "substantial probability of physical harm" statutory requirement. As stated above, one way the County can prove a substantial probability of physical harm is if it shows "evidence that others are placed in reasonable fear of violent behavior and serious physical harm." Here, the court summarized this requirement by stating the statute can be satisfied if the County proves Lorna's behaviors "can be reasonably inferred to have [the] potential [for dangerousness]." The court's imprecise summary of this method was not a deviation from the "substantial probability of harm" standard.

¶11 Second, and more importantly, Lorna's "potential" argument ignores that the court found her to be actually dangerous.[3] Because the court found her to be actually dangerous, Lorna had more than a potential for dangerousness. The court did not erroneously apply the wrong legal standard.

> them, as evidenced by a recent overt act, attempt or threat to do serious physical harm.

[3] Specifically, it determined Lorna was a danger to others because of the behavior she exhibited on February 20.

¶12 Lorna next argues the court erred by determining she was dangerous because she did not exhibit "homicidal or other violent behavior" or "behavior placing others in reasonable fear of violent behavior and serious physical harm." Specifically, Lorna, relying on a dictionary definition of violent, asserts "violent" means "marked by extreme force or sudden intense activity." She contends her behavior was not "marked by extreme force."

¶13 We disagree. Here, Huebner testified Lorna struck a patio window. She also hit Huebner's hand and pushed over a chair that would have fallen had a table not been in the way. Lorna then grabbed Huebner's hand, squeezed it, and would not let go. Lorna began stomping through the facility and other residents had to be moved to prevent Lorna from running into them. Lorna also hit the walls in the facility. When Pynenberg arrived, Lorna "flung herself on her bed" and started kicking. She was "throwing herself" around and repeatedly told Pynenberg that she wanted to harm people at the group home. Although Huebner conceded Lorna's behavior caused no injuries, the circuit court determined Lorna's behavior "could be construed [as] she was acting out violently." The court then found Lorna was dangerous. Based on Lorna's hitting, kicking, hand-squeezing, stomping, body throwing, and threats to harm the other residents, we agree with the court's determination that Lorna was dangerous.

By the Court.—Order affirmed.

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