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**DISTRICT IV**

December 29, 2023

To:

Hon. Troy Nielsen  
Circuit Court Judge  
Electronic Notice

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Angela Dahle  
Register in Probate  
Waupaca County Courthouse  
Electronic Notice

Diane L. Meulemans  
Electronic Notice

You are hereby notified that the Court has entered the following opinion and order:

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2023AP1568

In the Matter of the Condition of A.R.K: Waupaca County v.  
A.R.K. (L.C. # 2023ME14)

Before Graham, J.<sup>1</sup>

**Summary disposition orders may not be cited in any court of this state as precedent or authority, except for the limited purposes specified in WIS. STAT. RULE 809.23(3).**

A.R.K. appeals a circuit court order that involuntarily committed her to Waupaca County's custody for six months pursuant to WIS. STAT. ch. 51. For the reasons set forth below, I conclude that this case is appropriate for summary disposition, and I summarily reverse the commitment order and remand with directions. *See* WIS. STAT. RULE 809.21(1).<sup>2</sup>

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<sup>1</sup> This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(d) (2021-22). All references to the Wisconsin Statutes are to the 2021-22 version.

<sup>2</sup> WISCONSIN STAT. RULE 809.21(1) provides that, "upon its own motion or upon the motion of a party," this court "may dispose of an appeal summarily."

A.R.K. was taken into emergency custody on February 1, 2023, based on law enforcement's belief that she was mentally ill, that she posed a substantial risk of physical harm to herself or others, and that taking her into custody was the least restrictive alternative appropriate to her needs. *See* WIS. STAT. § 51.15(1)(ar). The County sought to commit A.R.K. for a period of six months, and a final commitment hearing took place on February 14, 2023.

To prevail in a WIS. STAT. ch. 51 commitment proceeding, a county must prove, by clear and convincing evidence, that the subject individual is: (1) mentally ill; (2) a proper subject for treatment; and (3) dangerous under one of five statutory dangerousness standards set forth in WIS. STAT. § 51.20(1)(a)2.a.-e. *Portage County v. J.W.K.*, 2019 WI 54, ¶17, 386 Wis. 2d 672, 927 N.W.2d 509; § 51.20(1)(a), (13)(e). At the commitment hearing in this case, a psychiatrist testified that A.R.K. has bipolar disorder and that, on January 31, 2023, A.R.K. left her home “inappropriately attired for the [weather] conditions” and gave “different stories to different people” about where she was going including “that she was going to Kansas.” The circuit court determined that the County had met its burden and that A.R.K. was dangerous under the third statutory standard, which requires proof of “such impaired judgment, manifested by evidence of a pattern of recent acts or omissions, that there is a substantial probability of physical impairment or injury to himself or herself or other individuals.” Sec. 51.20(1)(a)2.c. Specifically, the court determined that A.R.K. exhibited a “pattern of recent acts or omissions” on January 31, including the “act” of having “the idea to walk to Kansas,” the “act” of failing to wear weather-appropriate clothing, and the “omission” of “not wearing warmer clothes.” The court issued an order committing A.R.K. for a period of six months, which expired on August 14, 2023.

A.R.K. appeals.<sup>3</sup> In her appellant’s brief, A.R.K. argues that the commitment order should be reversed because the County failed to introduce sufficient evidence of dangerousness; specifically, that it failed to show the “pattern of recent acts or omissions” required under WIS. STAT. § 51.20(1)(a)2.c. In response, the County filed a letter indicating that it does not intend to file a respondent’s brief. The County observes that the commitment order A.R.K. is appealing has expired, and the County represents that it “is electing to not participate in [this] appeal.”

The “[f]ailure to file a respondent’s brief tacitly concedes that the [circuit] court erred,” *State ex rel. Blackdeer v. Township of Levis*, 176 Wis. 2d 252, 260, 500 N.W.2d 339 (Ct. App. 1993), and allows this court to assume that the respondent concedes the issues raised by the appellant, *see Charolais Breeding Ranches, Ltd. v. FPC Sec. Corp.*, 90 Wis. 2d 97, 108-09, 279 N.W.2d 493 (Ct. App. 1979). Here, the County has expressly declined to file a respondent’s brief or otherwise participate in this appeal, and I take this as a concession that the circuit court erred and that reversal is appropriate for the reasons set forth in A.R.K.’s brief. Based on the County’s concession and on the record, I deem it appropriate to summarily reverse the commitment order.

Therefore,

IT IS ORDERED that the commitment order is summarily reversed and the cause is remanded to the circuit court with directions to vacate the order.

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<sup>3</sup> A.R.K.’s appellant’s brief was filed on November 14, 2023, three months after the expiration of the commitment order. It appears that the delay in this case may have been due to difficulty in finding an attorney to represent her on appeal. Although A.R.K.’s notice of intent to pursue postconviction relief was filed promptly on February 16, 2023, the State Public Defender moved for and was granted additional time to appoint postconviction counsel and order transcripts. A.R.K.’s notice of appeal was not filed until August 28, 2023, by which time the appealed commitment order had already expired.

IT IS FURTHER ORDERED that this summary disposition order will not be published.

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*Samuel A. Christensen*  
*Clerk of Court of Appeals*