

**COURT OF APPEALS
DECISION
DATED AND FILED**

May 1, 2012

Diane M. Fremgen
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. 2011AP2794

Cir. Ct. No. 2011ME19

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT III**

IN THE MATTER OF THE MENTAL COMMITMENT OF CHARLES O.:

TREMPEALEAU COUNTY,

PETITIONER-RESPONDENT,

v.

CHARLES O.,

RESPONDENT-APPELLANT.

APPEAL from orders of the circuit court for Trempealeau County:
JOHN A. DAMON, Judge. *Affirmed.*

¶1 PETERSON, J.¹ Charles O. appeals a WIS. STAT. ch. 51 mental health commitment order and an order denying postdisposition relief. He argues

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.

the evidence was insufficient to support a determination that he was “dangerous,” pursuant to WIS. STAT. § 51.20(1)(a)2.e. We conclude the evidence was sufficient and affirm.

BACKGROUND

¶2 Charles’ daughter and two future daughters-in-law filed a three-party petition in Trempealeau County circuit court seeking to commit him pursuant to WIS. STAT. § 51.20(1)(a). The petition alleged Charles suffered from paranoid schizophrenia, would not take his medication, and was exhibiting bizarre behavior. Charles contested the petition.

¶3 At the final hearing, Dr. Emil Ibrahim confirmed that Charles suffers from paranoid schizophrenia. Charles’ treatment records showed that when he takes medication, his schizophrenia is controlled and he functions “properly.” Ibrahim explained that the behaviors highlighted in the commitment petition indicated Charles was “decompensating for his mental illness.” When Ibrahim met with Charles, Charles described a family conspiracy and told Ibrahim he does not have a mental illness and does not need medication.

¶4 Ibrahim opined that Charles needs medication and, if left untreated, there is a substantial probability that Charles would lack services necessary for his health and safety. He explained that “if [Charles’] behavior is dominated or controlled by paranoid delusions about conspiracy against him ..., his behavior will become more dangerous as far as caring for himself or functioning.” Ibrahim then testified that “if [left] untreated, [Charles] will deteriorate mentally and probably physically and he may not be able to function in the community.” When asked to explain the basis for that opinion, Ibrahim responded, “The same as I just indicated. If his thinking process is dominated by delusional paranoia ... that will

lead to deterioration in his activity and self-care, and I think the evidence is available from the history of his – I believe his previous treatments and previous decompensations.”

¶5 Doctor Brian Stress testified that when he met with Charles in the past, Charles was grounded, not paranoid, and had appropriate judgment and insight. However, he explained that Charles is now presenting as “very paranoid.” Charles is not taking medication, does not believe he needs medication, and believes his family is out to get him. Stress opined that Charles’ “mental status has changed dramatically where I do not believe that he’s safe” Stress explained that, until medication returned Charles to his previous functioning level, Charles needs to reside in something similar to a group home.

¶6 Charles’ family also testified at the hearing. His daughter testified that Charles was employed but when he stopped taking his medication, he quit all of his jobs and suffered “drastic” weight loss. Charles’ future daughter-in-law testified that since Charles stopped taking medication, he had become withdrawn and believes his family is stealing his property and taking his things.

¶7 The court entered a WIS. STAT. ch. 51 commitment order. Charles filed a postdisposition motion alleging insufficient evidence. The court denied Charles’ motion following a hearing.

DISCUSSION

¶8 To place an individual under a WIS. STAT. ch. 51 mental health commitment, the County must prove, by clear and convincing evidence, that the 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). The “dangerous” element can be

proven in various ways. See WIS. STAT. § 51.20(1)(a)2.a.-e. Here, the County relied on § 51.20(1)(a)2.e., commonly known as the “fifth-standard.” See *State v. Dennis H.*, 2002 WI 104, ¶14, 255 Wis. 2d 359, 647 N.W.2d 851.

¶9 The fifth standard provides that an individual is considered “dangerous” if:

[A]fter the advantages and disadvantages of and alternatives to accepting a particular medication or treatment have been explained to him or her and because of mental illness, evidences either incapability of expressing an understanding of the advantages and disadvantages of accepting medication or treatment and the alternatives, or substantial incapability of applying an understanding of the advantages, disadvantages, and alternatives to his or her mental illness in order to make an informed choice as to whether to accept or refuse medication or treatment; and evidences a substantial probability, as demonstrated by both the individual’s treatment history and his or her recent acts or omissions, that the individual needs care or treatment to prevent further disability or deterioration and a substantial probability that he or she will, if left untreated, lack services necessary for his or her health or safety and suffer severe mental, emotional, or physical harm that will result in the loss of the individual’s ability to function independently in the community or the loss of cognitive or volitional control over his or her thoughts or actions. ...

WIS. STAT. § 51.20(1)(a)2.e.

¶10 On appeal, Charles argues the evidence was insufficient to support one of the required fifth standard determinations. Specifically, he contends the evidence failed to show there is a “substantial probability that [Charles] will, if left untreated, ... suffer severe mental, emotional, or physical harm that will result in the loss of the individual’s ability to function independently in the community or the loss of cognitive or volitional control over his or her thoughts or actions.” See WIS. STAT. § 51.20(1)(a)2.e. In support, he points out that Ibrahim only testified that he “*may not* be able to function independently in the community.” (Emphasis

added). Charles argues that “may not” does not amount to a “substantial probability.”

¶11 When reviewing the sufficiency of the evidence, we will not reverse unless, after “considering all credible evidence and reasonable inferences therefrom in the light most favorable to the party against whom the motion is made, [we determine] there is no credible evidence to sustain a finding in favor of such party.” WIS. STAT. § 805.14(1). There must be “such a complete failure of proof that the verdict must have been based on speculation.” *Nieuwendorp v. American Family Ins. Co.*, 191 Wis. 2d 462, 472, 529 N.W.2d 594 (1995).

¶12 We conclude the evidence sufficiently shows there is a “substantial probability that ... if left untreated, [Charles] will ... suffer severe mental, emotional, or physical harm that will result in the loss of the ... ability to function independently in the community or the loss of cognitive or volitional control over ... thoughts or actions.” *See* WIS. STAT. § 51.20(1)(a)2.e. Here, both doctors testified Charles was experiencing paranoia regarding a family conspiracy and needed medication. Charles’ family testified that since he stopped taking his medication, he lost a “dramatic” amount of weight, quit all of his jobs, and has become withdrawn. Although Ibrahim only testified that Charles “may not” be able to function independently in the community, he also warned that if Charles’ “thinking process is dominated by delusional paranoia ... that will lead to deterioration in his activity and self-care[.]” Moreover, Stress opined that, given Charles’ current mental state, he is not safe and needed to be in a group home until he is stabilized on his medication.

By the Court.—Orders affirmed.

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

