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DISTRICT I

September 5, 2013

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Anthony R.

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

2013AP247-NM In the matter of the mental commitment of Anthony R.: Milwaukee County v. Anthony R. (L.C. #2012ME2974)

Before Brennan, J.[1]

Anthony R. appeals from an order involuntarily committing him for mental health treatment for six months. Appellate counsel, Hannah B. Schieber, has filed a no-merit report pursuant to ***Anders v. California***, 386 U.S. 738 (1967), and WIS. STAT. RULE 809.32. Anthony R. was provided with a copy of the report but has not responded. Upon this court's independent review of the record, as mandated by ***Anders***, and counsel's report, we conclude

[1] This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(d) (2011-12). All references to the Wisconsin Statutes are to the 2011-12 version unless otherwise noted.

there is no arguably meritorious issue that could be pursued on appeal. Therefore, we summarily affirm the order. *See* WIS. STAT. RULE 809.21.

Anthony R. was residing at Hilltop, a long-term residential treatment facility under the authority of the Milwaukee County Behavioral Health Division. On August 8, 2012, disabilities specialist Julie Bankston reported that Anthony R. had made concerning threats. According to the emergency detention form completed by the responding sheriff's deputy, Anthony R. had threated to kill Bankston, "to blow the whole place up," and "to get a gun and shoot everyone in the unit." Anthony R. was subject to emergency detention under WIS. STAT. § 51.15; this has the same effect of a petition for involuntary commitment under WIS. STAT. § 51.20. *See* WIS. STAT. § 51.15(4)(b).

Anthony R. was detained on August 8, 2012. A probable cause hearing was held on August 13, 2012, and the court commissioner found probable cause to order a final hearing. The final hearing was held on August 17, 2012, and the circuit court ordered Anthony R. committed for a period of six months.[2]

There is no arguable merit to any claim that the circuit court was deprived of competency because of any defect in the detention process. The procedures and timeframes of WIS. STAT. § 51.15(4) were properly observed. The August 13, 2012 probable cause hearing was held within seventy-two hours of Anthony R.'s detention, *see* WIS. STAT. § 51.20(7)(a), because the

[2] The appeal is not moot because the County petitioned for extension of the commitment, and on February 8, 2013, the extension was granted for an additional twelve months.

intervening Saturday and Sunday were excluded from the computation of time. Once probable cause was found, the subsequent hearing was also timely held. *See* WIS. STAT. § 51.20(7)(c).

There is no arguable merit to a claim that Milwaukee County failed to meet its evidentiary burden at either the probable cause or final hearing. In order to involuntarily commit a person, the County must show by clear and convincing evidence that the person is mentally ill, a proper subject for treatment, and dangerous to himself or others. *See* WIS. STAT. §§ 51.20(1)(a), 51.20(13)(e). The applicable standard for dangerousness in this case is whether Anthony R. "[e]vidences a substantial probability of physical harm to other individuals as manifested … by evidence that others are placed in reasonable fear of violent behavior and serious physical harm to them, as evidenced by a recent overt act, attempt or threat to do serious physical harm." *See* WIS. STAT. § 51.20(1)(a)2.b. On review, we overturn the circuit court's factual findings only if clearly erroneous, but we independently apply those facts to the statutory requirements. *See* ***K.N.K. v. Buhler***, 139 Wis. 2d 190, 198, 407 N.W.2d 281 (Ct. App. 1987).

At the probable cause hearing, Bankston testified, as did Dr. Christopher Ovide. Our review of their testimony satisfies us that the court commissioner properly found probable cause to order a final hearing. At the final hearing, Bankston again testified. There, she relayed Anthony R.'s threat:

> [T]he first statement was, "If I don't get my clothes I'm going to harm somebody." Then, he banged on my door, my office door and said, "Bitch, you know, if I don't get my clothes today, I'm going to get you and I'm going to blow this place up." And then he walked off and went to the dining room and continued.

Bankston further explained that she had worked on Anthony R.'s particular unit for the last ten years, and he had been there the entire time she had been. She explained that when Anthony R.

"gets in that state, that's a very dangerous state because he will do harm to you. Even if it's a day later, he will appear to be as if he's calm, but he's always plotting and planning to get you." Though Anthony R.'s counsel clarified on cross-examination that Anthony R. had no access to incendiary devices on his floor, Bankston indicated that in certain instances, Anthony R. would be allowed to leave the floor.

Dr. Joan Nuttal also testified at the final hearing. She was one of two court-appointed examiners for Anthony R. He did not cooperate with her, so she reviewed his chart and talked with staff to reach her conclusions. She concluded that Anthony R. suffered from schizoaffective disorder, bipolar type, which caused delusions. She noted that Anthony R. was taking medication meant to treat his disorder, primarily by reducing his symptoms, but that he refused to take his medication consistently, usually believing that he did not need it.[3] Anthony R. himself testified that he did not need medication because "[m]y daddy say I don't need no medication."

The above testimony was sufficient for the circuit court to conclude that Anthony R. is mentally ill, a proper subject for treatment of his mental illness, and dangerous. Based on these findings, the circuit court ordered Anthony R. be kept at a locked facility.

There is also no arguable merit to a claim that the circuit court failed to consider the least restrictive placement for Anthony R. *See* WIS. STAT. § 51.20(13)(c)2. Nuttal explained, over Anthony R.'s objection, that Anthony R. could not go back to Hilltop because he had been in an

[3] Nuttal's conclusions are consistent with the other examiner's conclusions. Dr. Judith Kisicki's report was filed with the court, but she did not testify.

altercation with another resident prior to Nuttal's evaluation. Further, he became agitated when staff tried to give him his medications. If Anthony R. were to take his medications, his stay in the locked ward would be shortened.

Finally, there is also no arguable merit to a claim that Nuttal's testimony was inadmissible hearsay. Anthony R. had stipulated that Nuttal was an expert for purposes of his hearing. The underlying hearsay—Anthony R.'s charts and information Nuttal obtained from staff—was not offered for its own truth, but allowed Nuttal to draw her own conclusions to which she testified, and Nuttal was not used simply as a conduit for the hearsay opinions of others. *See* ***Walworth Cnty. v. Therese B.***, 2003 WI App 223, ¶¶8-9, 267 Wis. 2d 310, 671 N.W.2d 377. Further, the underlying hearsay is, at least in this case, not so unreliable that we should question its utility. *See* ***id.***, ¶8. Thus, even assuming that the staff's reports and Anthony R.'s file constitute inadmissible hearsay, Nuttal was free to base her ultimate conclusions upon it. ***Id.***

Our independent review of the record reveals no other potential issues of arguable merit.

Upon the foregoing, therefore,

IT IS ORDERED that the judgment is summarily affirmed. *See* WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that Attorney Hannah B. Schieber is relieved of further representation of Anthony R. in this matter. *See* WIS. STAT. RULE 809.32(3).

Diane M. Fremgen
Clerk of Court of Appeals