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DISTRICT II

November 6, 2013

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

2013AP845-NM

In the matter of the mental commitment of Joseph A.: Winnebago
County v. Joseph A. (L.C. #2012ME239A)

Before Neubauer, P.J.¹

Joseph A. appeals from orders extending his mental health commitment and authorizing involuntary medication and treatment. His appellate counsel has filed a no-merit report pursuant to WIS. STAT. RULE 809.32, and *Anders v. California*, 386 U.S. 738 (1967). Joseph received

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.

a copy of the report, was advised of his right to file a response, and has elected not to do so.² Upon consideration of the report and an independent review of the record, we conclude that the orders may be summarily affirmed because there is no arguable merit to any issue that could be raised on appeal. *See* WIS. STAT. RULE 809.21.

Joseph is diagnosed with schizophrenia paranoid type disorder. After a prior mental health commitment was allowed to expire, Joseph stopped taking medication, became ill, was hospitalized, and committed for a six-month period. Joseph's treatment and administration of medication is managed on an outpatient basis. At the hearing on the petition to extend the commitment, Dr. David Zerrien testified that Joseph suffers from mental illness, is helped by the medication administered involuntarily, would cease medication if not under a commitment order, and would become the proper subject for commitment if treatment were withdrawn. He also indicated that he had explained the advantages and disadvantages of the treatment to Joseph. He opined that Joseph does not have sufficient insight into his mental illness to make an informed choice about treatment. Joseph testified that he would continue with a reduced medication regimen if the commitment ended.

The circuit court found credible Zerrien's testimony that Joseph would go off his medications if there was no commitment. It also found that given Joseph's belief that there was more bad than good value to the medication, Joseph would stop taking the medication and then become a proper subject for treatment. It recognized Joseph's disorder impairs his thought, perception and capacity to recognize reality. The commitment was extended with outpatient

² Joseph's motion to extend the time to file a response to the no-merit report was granted. The response time was extended to September 30, 2013, but Joseph did not file a response.

treatment and an order for the involuntary administration of medication was entered. The orders expire November 13, 2013.

The no-merit report addresses whether the evidence offered was sufficient to extend Joseph's mental health commitment and require involuntary medication and treatment. The report notes the appropriate standard for each intervention. *See* WIS. STAT. §§ 51.20(1)(a)2. and (am), 51.61(1)(g)4.

We note that Zerrien's testimony with regard to Joseph's inability to either express an understanding of the advantages or disadvantages of treatment or apply an understanding of the advantages and disadvantages in order to make an informed choice did not exactly track the statutory language.³ *See Outagamie County v. Melanie L.*, 2013 WI 67, ¶¶97, 349 Wis. 2d 148, 833 N.W.2d 607 ("Medical experts must apply the standards set out in the competency statute. An expert's use of different language to explain his or her conclusions should be linked back to the standards in the statute."). However, in *Melanie L.*, 349 Wis. 2d at ¶¶71, 72, our supreme court stated, "applying an understanding' requires a person to *make a connection between* an expressed understanding of the benefits and risks of medication and the person's own mental illness," and "if a person cannot recognize that he or she has a mental illness, logically the person

³ Zerrien was asked whether after explaining the advantages and disadvantages of treatment to Joseph, "is he capable of expressing an understanding of those advantages, disadvantages, or applying them to his own situation so as to make an informed choice?" Zerrien answered, "I don't feel that he has insight into his mental illness and can make an informed choice about treatment." When asked if it was his opinion that Joseph "is not able to apply how those benefits will benefit him to make an informed choice," Zerrien replied, "He does not appreciate the benefits."

cannot establish a connection between his or her expressed understanding of the benefits and risks of medication and the person's own illness." Thus, Zerrien's testimony that Joseph lacked insight into his mental illness was sufficient to establish that Joseph could not make a connection between the advantages and disadvantages of medication and his own condition. There was sufficient proof that Joseph was "substantially incapable of applying an understanding of the advantages, disadvantages and alternatives to his [] mental illness ... in order to make an informed choice as to whether to accept or refuse medication or treatment."⁴ Sec. 51.61(1)(g)4.b.

We conclude the County met its burden to prove all required facts by clear and convincing evidence. *See* WIS. STAT. § 51.20(13)(e). There is no arguable merit to challenging the sufficiency of the evidence on appeal.

Our review of the record discloses no other potential issues for appeal. Accordingly, this court accepts the no-merit report, affirms the orders of the circuit court and discharges appellate counsel of the obligation to represent Joseph further in this appeal.

⁴ The circuit court's finding was that Joseph "is not capable of expressing an understanding concerning the advantages and disadvantages of medication and how they would benefit him." This appears to be a finding under WIS. STAT. § 51.61(1)(g)4.a. We question whether the record supports a finding that Joseph was unable to express an understanding of the advantages and disadvantages, particularly in light of the finding that Joseph assessed the bad and good value to treatment. We decide as question of law whether statutory recommitment requirements are satisfied. *See K.N.K. v. Buhler*, 139 Wis. 2d 190, 198, 407 N.W.2d 281 (Ct. App. 1987). Section 51.61(1)(g)4.b. was satisfied by Zerrien's testimony.

Upon the foregoing reasons,

IT IS ORDERED that the orders are summarily affirmed. *See* WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that Attorney Tristan S. Breedlove is relieved from further representing Joseph A. in this matter. *See* WIS. STAT. RULE 809.32(3).

*Diane M. Fremgen
Clerk of Court of Appeals*