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DISTRICT II

November 20, 2013

To:

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

2013AP1768-NM

Waukesha County v. Edward A. B. (L.C. #2008ME103)

Before Reilly, J.¹

Edward A. B. appeals from orders extending his WIS. STAT. ch. 51 commitment and for involuntary medication after the trial court determined that Edward was mentally ill, a proper subject for treatment, and dangerous within the meaning of WIS. STAT. § 51.20(1)(am). Edward's appointed appellate counsel has filed a no-merit report pursuant to WIS. STAT. RULE 809.32 and *Anders v. California*, 386 U.S. 738 (1967). Edward was provided with a copy of the no-merit report and informed of his right to file a response, but he has not done so. Upon

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.

consideration of the report and an independent review of the record as mandated by *Anders*, we conclude that there are no issues with arguable merit for appeal. We therefore summarily affirm the orders. *See* WIS. STAT. RULE 809.21.

The no-merit report identifies as potential issues whether the evidence was sufficient to extend Edward's commitment order and to order involuntary medication and treatment. The report thoroughly addresses each issue. We agree with appellate counsel's analysis and his conclusion that these issues have no arguable appellate merit.

The no-merit report first addresses whether sufficient evidence supports the order extending commitment. An individual's WIS. STAT. ch. 51 commitment may be extended if the petitioner proves by clear and convincing evidence that the individual is mentally ill or developmentally disabled, is a proper subject for treatment or commitment, and meets one of the statutory criteria for dangerousness. *See* WIS. STAT. § 51.20(1)(a), (13)(e), and (13)(g)1.

Psychiatrist Dr. Charles Cahill and psychologist Dr. Robert VerWert evaluated Edward. Reports based on their evaluations were admitted into evidence at the hearing on the petition to be used as if the doctors testified under oath. Dr. Cahill reported that Edward suffers from post-traumatic brain disorder, a psychotic disorder likely organic in origin, and a history of alcohol and cannabis dependence. He opined that Edward remains mentally ill with little or no change in his condition since his last evaluation, believes his medications are "useless" and "nefarious," is a proper subject for treatment, is incapable of expressing an understanding of the advantages and disadvantages of psychotropic treatment or alternatives and of making an informed choice about accepting or refusing treatment, suffered "agitation" so serious when he last went off his medications that he nearly lost his group home placement, and is dangerous because there is a

substantial likelihood, based on his treatment record, that he would be a proper subject for commitment if treatment were withdrawn. *See* WIS. STAT. § 51.20(1)(am).

Dr. VerWert reported that Edward demonstrates inappropriate affect, delusional thinking, little insight into his mental illness, a need for psychotropic medications but no understanding of their advantages or how he decompensates when he stops his medications, signs of paranoid schizophrenia, and chronic mental illness from brain trauma. Like Dr. Cahill, Dr. VerWert opined that Edward does not believe he is mentally ill, is incapable of expressing an understanding of the advantages and disadvantages of psychotropic treatment or alternatives and of making an informed choice about accepting or refusing treatment and that he would be a proper subject for commitment if treatment were withdrawn.

The doctors' reports supported the court's findings that Edward is mentally ill, meets the requisite standard of dangerousness and is a proper subject for treatment. The circuit court's factual findings and the reasonable inferences drawn from them will not be disturbed unless they are clearly erroneous. *K.S. v. Winnebago Cnty.*, 147 Wis. 2d 575, 578, 433 N.W.2d 291 (Ct. App. 1988). The court's findings are amply supported by the record. We are satisfied that any argument challenging the sufficiency of the evidence to support the extension of Edward's commitment would lack arguable merit.

The no-merit report also addresses whether there was sufficient evidence to support the order for involuntary medication. An individual subject to commitment has a right to refuse medication unless a court determines he or she is not competent to do so. WIS. STAT. § 51.61(1)(g)3. A person may not be found incompetent to refuse medication unless, after the advantages, disadvantages and alternatives to accepting the medication are explained to the

person, the person either is “incapable of expressing an understanding” or is “substantially incapable of applying [that] understanding ... to his or her mental illness” to make an informed choice as to whether to accept or refuse the treatment or medication. WIS. STAT. § 51.61(1)(g)4.

As noted, the reports indicated that Edward does not believe he is mentally ill, is incapable of expressing an understanding of the medications’ advantages and disadvantages or of making an informed choice about accepting or refusing them, does not believe his medications are beneficial, and that medication is necessary to prevent Edward from decompensating. Based on the reports, the court’s conclusion that Edward is substantially incapable of applying an understanding of the advantages, disadvantages and alternatives is not clearly erroneous. Any argument challenging the sufficiency of the evidence to support the order for involuntary medication would lack arguable merit.

Our independent review of the record does not disclose any other potentially meritorious issue for appeal. Accordingly, we affirm the orders and relieve Attorney Donald T. Lang of further representation of Edward A.B. in this matter. Therefore,

IT IS ORDERED that the orders of the circuit court are summarily affirmed, pursuant to WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that Attorney Donald T. Lang is relieved of further representation of Edward A.B. in this matter.

Diane M. Fremgen
Clerk of Court of Appeals