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DISTRICT II

December 18, 2013

To:

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

2013AP1101-NM

In the matter of the mental commitment and involuntary medication
of Elizabeth S. W.: Fond du Lac County v. Elizabeth S. W.
(L.C. # 2012ME329)

Before Brown, C.J.¹

Elizabeth S.W. appeals from orders extending her WIS. STAT. ch. 51 outpatient mental health commitment and authorizing involuntary medication and treatment. Her appellate counsel has filed a no-merit report pursuant to WIS. STAT. RULE 809.32, and *Anders v. California*, 386 U.S. 738 (1967). Elizabeth has filed a response to the no-merit report. Upon consideration of the report, response, and our independent review of the record, we conclude that the orders may

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

be summarily affirmed because there is no arguable merit to any issue that could be raised on appeal. *See* WIS. STAT. RULE 809.21.

In the 1980s, Elizabeth S.W. was charged with felony arson and institutionalized for a number of years pursuant to a finding that she was not guilty by reason of mental disease or defect. Due to her diagnoses, including bipolar and schizoaffective disorders, she has been continuously prescribed psychotropic medications and has at times been subject to a WIS. STAT. ch. 51 commitment.

In September 2012, the county petitioned for a one-year extension of Elizabeth's outpatient commitment and order for involuntary medication and treatment. Attached to the petition was a recent court-ordered examining physician's report authored by Dr. John D. Whelan. At Elizabeth's request, the trial court also appointed an independent examiner, psychologist Toby Watson. At the recommitment hearing, Watson testified that Elizabeth, then sixty-six years old, had suffered from mental illness since adolescence, and opined that if treatment were withdrawn, "it is likely she will regress and become a serious danger to herself, as she has limited support and care without a supervision team." Watson testified that Elizabeth would likely decompensate in the absence of her psychotropic medication and that "she has struggled for decades with consistency, whereby she either takes too much medication or abruptly has terminated her medications, both of which led to problematic symptoms." He testified that Elizabeth "was unable to describe realistic alternatives" to or "[weigh] the pros and cons of" her psychotropic medication, and he opined that she was substantially incapable of applying any limited understanding of the advantages and disadvantages of accepting medication and alternatives. Dr. Whelan's report similarly opined that due to mental illness, Elizabeth was incapable of expressing an understanding of the advantages and disadvantages of accepting

medication and the alternatives, and was substantially incapable of applying any understanding to her mental illness in order to make an informed choice as to whether to accept or refuse medications.

The trial court did not permit Elizabeth to testify concerning her competency to accept or refuse medications, stating it agreed with the County that Elizabeth would not be able to refute Dr. Whelan's report. Based on the examiners' written reports² and Watson's testimony, the trial court found that Elizabeth met the criteria for recommitment and was incompetent to refuse medication or treatment.

Elizabeth appealed and the attached docketing statement asserted as the issue for appeal whether the trial court erred in denying Elizabeth the opportunity to testify. Appointed counsel soon filed a notice of voluntary dismissal, explaining that the parties had reached a stipulation that would require the trial court to reopen the hearing and allow Elizabeth to testify. We dismissed the appeal and the trial court held a continued recommitment hearing on the issue of Elizabeth's competency to refuse medication and treatment. After considering Elizabeth's testimony and the record as a whole, the trial court found that though the advantages and disadvantages of and alternatives to medication and treatment had been explained to Elizabeth, she was substantially incapable of applying any understanding to her mental illness in order to make an informed choice whether to accept or refuse medication or treatment. The trial court entered an order reaffirming its orders for recommitment and involuntary medication. Given the

² The parties stipulated to the admissibility of Watson's report. Dr. Whelan's report was in the record and neither party objected to the trial court's consideration of its content.

continued proceedings, appointed counsel filed a no-merit notice of appeal and report, which we now review.

First, we agree with appointed counsel that there is no arguably meritorious challenge to the trial court's order extending Elizabeth's outpatient commitment for one year. Though Elizabeth agreed to forego this issue as part of the parties' stipulation on appeal, we have independently reviewed the record and conclude that the trial court properly entered its order extending the mental health commitment. Elizabeth was served with notice of the extension hearing, the examiners submitted their reports more than forty-eight hours before the hearing, *see* WIS. STAT. § 51.20(10)(b), and the hearing was held before Elizabeth's previous commitment expired. Further, there was ample evidence for the trial court to find that the County had proven by a preponderance of the evidence that Elizabeth was mentally ill and, based on her treatment record, would become a proper subject for commitment if treatment were withdrawn. *See* WIS. STAT. § 51.20(1)(am).

Second, we conclude that the trial court properly exercised its discretion in determining that Elizabeth was not competent to refuse medication and treatment. Elizabeth was able to testify to the names of some of her medications, their purpose, and the undesirable side effects she had experienced on other medications. She testified that she agreed with her current treatment regimen and enjoyed a good relationship with her treatment provider. However, Watson testified that Elizabeth had struggled for years with taking her medications consistently and as prescribed. Both examination reports opined that Elizabeth was substantially incapable of "applying an understanding of the advantages, disadvantages and alternatives to ... mental illness ... in order to make an informed choice as to whether to accept or refuse medication or

treatment.” WIS. STAT. § 51.61(1)(g)4.b. Therefore, there was sufficient evidence supporting the trial court’s order for involuntary medication and treatment.

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

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 Colleen Marion is relieved from further representing Elizabeth S.W. in this matter. *See* WIS. STAT. RULE 809.32(3).

Diane M. Fremgen
Clerk of Court of Appeals