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DISTRICT IV

March 18, 2014

To:

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Ivy M. S.
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You are hereby notified that the Court has entered the following opinion and order:

2013AP2271-NM

In the matter of the mental commitment of Ivy M. S.: Dane County
v. Ivy M. S. (L.C. #2010ME156)

Before Sherman, J.

Ivy M.S. appeals an order extending her mental health commitment under Chapter 51 of the Wisconsin Statutes. Attorney William Schmaal has filed a no-merit report seeking to withdraw as appellate counsel. *See* WIS. STAT. RULE 809.32 (2011-12);¹ *Anders v. California*, 386 U.S. 738, 744 (1967); and *State ex rel. McCoy v. Wisconsin Court of Appeals*, 137 Wis. 2d 90, 403 N.W.2d 449 (1987). The no-merit report addresses whether an appeal would be moot,²

¹ All references to the Wisconsin Statutes are to the 2011-12 version unless otherwise noted.

² Although the six-month extension order that is the actual subject of this appeal has now expired, we will address its validity because it might affect subsequent extension orders.

the sufficiency of the evidence to support the extension and the circuit court's exercise of discretion at disposition. Ivy was sent a copy of the report, but has not filed a response. Upon reviewing the entire record, as well as the no-merit report, we agree with counsel's assessment that there are no arguably meritorious appellate issues.

At a hearing to extend a mental commitment order, the county bears the burden of proving that the subject is in need of continued commitment by clear and convincing evidence. WIS. STAT. § 51.20(13)(g)3. Here, based on the alleged grounds for the commitment extension under WIS. STAT. § 51.20(1)(am), the county needed to show that there was "a substantial likelihood, based on the subject individual's treatment record, that the individual would be a proper subject for commitment if treatment were withdrawn."

A person is a proper subject for commitment when he or she is mentally ill and, due to that mental illness, is "unable to satisfy basic needs for nourishment, medical care, shelter or safety without prompt and adequate treatment so that a substantial probability exists that death, serious physical injury, serious physical debilitation, or serious physical disease will imminently ensue unless the individual receives prompt and adequate treatment." WIS. STAT. § 51.20(1)(a)1. and 51.20(1)(a)2.d. "Mental illness" is defined as "a substantial disorder of thought, mood, perception, orientation, or memory which grossly impairs judgment, behavior, capacity to recognize reality, or ability to meet the ordinary demands of life, but does not include alcoholism." WIS. STAT. § 51.01(13)(b). To be a proper subject for commitment, the individual must also be a proper candidate for treatment—meaning that he or she is amenable to rehabilitation or treatment techniques that could control, improve or cure the underlying disorder. WIS. STAT. § 51.20(1)(a)1.; § 51.01(17); *C.J. v. State*, 120 Wis. 2d 355, 360-62, 354 N.W.2d 219 (Ct. App. 1984); WIS JI—CIVIL 7050.

Dr. David Lee testified that Ivy met the criteria for commitment because she suffers from bipolar disorder characterized by disorganized thoughts, irritability, and severe paranoia that has in the past led her to strike out at a nurse and a bicyclist and have several altercations with police; she had previously exhibited improvement in her symptoms on medication; she continued to dispute her diagnosis and be resistant to taking medication; and without medication, there would be a substantial risk that she would become aggressive and dangerous to others, particularly her children. Dr. Elliot Lee similarly testified that Ivy met the criteria for commitment because she suffers from paranoid-type schizophrenia with a history of delusional thought processes that led her to be a danger to herself and others, medication helps reduce her psychotic symptoms and her psychotic symptoms have increased when she has stopped taking her medications; and she does not see the need for medication due to a limited insight into her mental illness. The trial court could properly rely on the testimony of those experts to conclude that the criteria for extending the commitment had been satisfied.

We further agree with counsel that the circuit court properly exercised its discretion when it concluded that the least restrictive environment consistent with Ivy's needs was outpatient treatment for an additional six months. Upon our independent review of the record, we have found no other arguable basis for reversing the commitment order. *See generally State v. Allen*, 2010 WI 89, ¶¶81-82, 328 Wis. 2d 1, 786 N.W.2d 124.

IT IS ORDERED that the commitment order is summarily affirmed under WIS. STAT. RULE 809.21(1).

IT IS FURTHER ORDERED that Attorney William Schmaal is relieved of any further representation of Ivy M.S. in this matter. *See WIS. STAT. RULE 809.32(3)*.

Diane M. Fremgen
Clerk of Court of Appeals