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DISTRICT III

April 15, 2014

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

2014AP218-NM

Kewaunee County Department of Human Services v.
Christopher L. (L. C. No. 2013ME4)

Before Hoover, P.J.¹

Counsel for Christopher L. has filed a no-merit report concluding there is no arguable basis for challenging either the order extending Christopher's WIS. STAT. ch. 51 mental health commitment or the order for involuntary medication and treatment. Christopher was advised of his right to respond to the report and has not responded. Upon an independent review of the

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

record as mandated by WIS. STAT. RULE 809.32, this court concludes there is no arguable merit to any issue that could be raised on appeal. Therefore, the orders are summarily affirmed. *See* WIS. STAT. RULE 809.21.

Christopher was initially committed after causing a disturbance at his apartment by yelling that he was going to kill the voices telling him to hurt himself. This appeal involves Kewaunee County's application for a twelve-month extension of Christopher's original commitment. The County applied for the extension and the medication order based, in part, on a letter from Christopher's case manager indicating that daily supervision was necessary to maintain Christopher's safety and stabilize his psychiatric illness.

Christopher was served with notice of the extension hearing. Two 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 Christopher's previous commitment expired. Therefore, any challenge to the extension of Christopher's commitment based on a failure to comply with statutory deadlines or procedures would lack arguable merit.

There is likewise no arguable merit to a challenge to the sufficiency of the evidence to support either the order extending Christopher's commitment or the order for involuntary medication and treatment. WISCONSIN STAT. § 51.20(13)(g)3. requires continued commitment if the court determines the individual: (1) is a proper subject for commitment; and (2) meets certain statutory conditions of dangerousness. A person is a proper subject for commitment if he or she is mentally ill and a proper subject for treatment. WIS. STAT. § 51.20(1)(a)1. At an extension hearing, the dangerousness element may be satisfied by "a showing that there is 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.” WIS. STAT. § 51.20(1)(am). “The burden of proof is upon the county department or other person seeking commitment to establish evidence that the subject individual is in need of continued commitment.” WIS. STAT. § 51.20(13)(g)3. Further, the county must prove all required facts by clear and convincing evidence. WIS. STAT. § 51.20(13)(e).

With respect to the order for involuntary medication and treatment, WIS. STAT. § 51.61(1)(g)3. provides that, incident to a commitment order, a court may direct that the committed person not retain the right to refuse medication and treatment if the court determines, following a hearing, that the committed individual “is not competent to refuse medication or treatment.” An individual is not competent to refuse medication or treatment if,

because of mental illness, ... and after the advantages and disadvantages of and alternatives to accepting the particular medication or treatment have been explained to the individual, one of the following is true:

- a. The individual is incapable of expressing an understanding of the advantages and disadvantages of accepting medication or treatment and the alternatives.
- b. The individual is substantially incapable of applying an understanding of the advantages, disadvantages and alternatives to his or her 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.; *see also Outagamie Cnty. v. Melanie L.*, 2013 WI 67, ¶¶8-9, 349 Wis. 2d 148, 833 N.W.2d 607.

Here, examining physician Sangita Patel submitted a report opining that Christopher suffered from a mental illness and was a proper subject for commitment. Patel noted that while on medication, Christopher “continues to manifest some instability in mood [and] behaviors as

well as thoughts/psychosis.” Patel added that because of Christopher’s “rapid fluctuations in his moods, accompanied by paranoid ideations, he is not capable of consistently applying the knowledge on his own case and therefore, ... is incompetent to refuse [medication].” Psychologist Kevin Miller submitted a report opining that Christopher is mentally ill and would be a proper subject for commitment if treatment were withdrawn. Both examiners recommended continued commitment with the current therapeutic program.

At the extension hearing, Patel testified that Christopher had a mental illness—schizo-affective disorder, bipolar type, characterized by a combination of psychosis and mood disorder—and was a proper subject for continued treatment. Patel also noted that Christopher engages in continued alcohol abuse. Patel opined that if treatment were withdrawn, Christopher would revert to the same state he was in prior to commitment, with an “[i]nability to care for himself or dangerous [sic] towards himself or other people.” Patel further indicated that although she explained to Christopher the advantages, disadvantages and alternatives to accepting medication or treatment, Christopher’s mental illness makes him “substantially incapable of applying and understanding the advantages and disadvantages and alternatives in order to make an informed choice as to whether to accept or refuse the medication.” Patel explained that because Christopher lacks sufficient self-control, he does not have the ability “to take responsibility with the treatment or anything to remain stable on his own.”

In turn, Miller testified that Christopher has a pattern of binge drinking and suffers from a mood disorder due to cerebral palsy, characterized by anxiety and depression with chronic periods of irritability. Miller added that without medication, Christopher’s symptoms become worse and he suffers psychotic thinking, as evidenced by his past belief that he was President of the United States, President of World Wrestling Entertainment, Inc., and a physician who could

manage his own medications. Miller opined that Christopher would be a proper subject for commitment if treatment were withdrawn, noting his concern that without treatment, Christopher may attempt to hurt himself in an attempt to stop the voices in his head. Miller added that Christopher had compliance problems with medication even though he expressed awareness that the medications were helpful to him.

The evidence was sufficient to establish that Christopher was mentally ill, a proper subject for treatment, and would be a danger to himself or others if treatment were withdrawn. The evidence was likewise sufficient to support the order for involuntary medication and treatment. *See* WIS. STAT. § 51.61(1)(g)3.

The court's independent review of the record discloses no other potential issues for appeal.

Therefore,

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

IT IS FURTHER ORDERED that attorney Leonard D. Kachinsky is relieved of further representing Christopher L. in this matter. *See* WIS. STAT. RULE 809.32(3).

Diane M. Fremgen
Clerk of Court of Appeals