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**DISTRICT III**

July 28, 2015

To:

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

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2014AP2309-NM

Barron County v. Kimberly L. (L. C. #2013ME26)

Before Hoover, P.J.<sup>1</sup>

Counsel for Kimberly L. has filed a no-merit report concluding there is no basis for challenging an order for extension of commitment. Kimberly was advised of her right to respond and has not responded. Upon this court's independent review of the record as mandated by *Anders v. California*, 386 U.S. 738 (1967), we conclude there is no issue of arguable merit and summarily affirm.

Barron County filed a WIS. STAT. ch. 51 mental health commitment petition, to which Kimberly stipulated. She later stipulated to the County's petition to extend the commitment for six months. The County filed a subsequent extension petition, to which Kimberly objected.

A jury trial was held and Jennifer Frazer, a Barron County case manager, testified she had been meeting weekly with Kimberly to monitor Kimberly's mental health and to ensure Kimberly had been taking her prescribed medications. Frazer also testified that Kimberly did not believe she had a mental illness, and that Kimberly said without a commitment order in place she would stop taking her medications and participating in mental health treatment.

Doctor Filza Hussain also testified for the County. Doctor Hussain diagnosed Kimberly with paranoid schizophrenia. Doctor Hussain testified that in her opinion, Kimberly would become a proper subject for commitment if treatment were withdrawn.

Marcia Roberts-Seboe, a Barron County Department of Health and Human Services social worker, also testified concerning crisis calls received from Kimberly. Based on those calls and the reports of law enforcement and paramedics who responded, Roberts-Seboe went to Kimberly's apartment and found Kimberly "very dirty" and found moldy buns and expired perishable food items in her refrigerator and cupboards. Kimberly was very distraught, and at one point Roberts-Seboe asked her some questions about her health insurance. She showed her medical assistance card and then put it back in her pocket. Later, Kimberly stated she did not have a medical assistance card and that "somebody stole it." Roberts-Seboe then reminded her it

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<sup>1</sup> This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2). All references to the Wisconsin Statutes are to the 2013-14 version unless otherwise noted.

was in her pocket. The jury returned a unanimous verdict, finding that Kimberly met the criteria for commitment. The court extended Kimberly's outpatient commitment for one year, but declined to issue an involuntary medication order, despite the County's request to do so.

There is no basis for arguing the evidence was insufficient to extend Kimberly's commitment. See *State v. W.R.B.*, 140 Wis. 2d 347, 351-52, 411 N.W.2d 142 (Ct. App. 1987). A person's mental health commitment may be extended if there is evidence the person is mentally ill, is a proper subject of treatment, and would be a proper subject for commitment if the treatment were withdrawn. *Id.*

Doctor Hussain's testimony was sufficient to establish that Kimberly has a mental illness within the meaning of WIS. STAT. § 51.20(1)(a)1. She diagnosed Kimberly with paranoid schizophrenia. Doctor Hussain testified that Kimberly was "[a]bsolutely" treatable; further, the current medication regime—while causing some side effects—was effective, with Kimberly "doing quite well right now." If treatment were withdrawn, Dr. Hussain testified Kimberly would become a proper subject for commitment.

There is also no basis to challenge the court's exclusion of a 1998 psychiatric evaluation and reports made in guardianship/protective placement proceedings. The court ruled these were remote in time and irrelevant as they "are of a different character than the one we're here on today ...." As the court properly concluded, the criteria for guardianship/protective placement proceedings are much different from the criteria for mental commitment. See WIS. STAT. §§ 54.10(3)(a) & (b); 55.08(1) & (2). Furthermore, a report from 1998 would not assist the jury in answering the questions concerning Kimberly's present mental state, suitability for treatment and potential dangerousness. Had the 1998 report been part of the basis for Dr. Hussain's

current opinion, then Dr. Hussain could have been cross-examined on that report. The 1998 report would not have provided the jury any insight into Kimberly's current diagnosis and treatment and was therefore irrelevant.

There is also no arguable issue regarding Kimberly's decision not to testify. The court's colloquy satisfied the requirements of *State v. Weed*, 2003 WI 85, ¶43, 263 Wis. 2d 434, 666 N.W.2d 485. The record confirms that Kimberly was aware of her right to testify, and the court also discussed with her that she would be subject to cross-examination. The court gave Kimberly additional time to discuss the issue with her attorney. Following that discussion, Kimberly waived her right to testify.

The court's independent review of the record discloses no other issues of arguable merit. Therefore,

IT IS ORDERED that the order is summarily affirmed. WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that attorney Steven Grunder is relieved of further representing Kimberly in this matter.

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*Diane M. Fremgen*  
*Clerk of Court of Appeals*