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DISTRICT III

March 1, 2016

To:

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M.T.

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

2015AP1953-NM Brown County v. M.T. (L. C. #2010ME1044)

Before Hruz, J.¹

Counsel for M.T. filed a no-merit report concluding there is no arguable basis for M.T. to challenge orders extending his mental health commitment and authorizing involuntary medication and treatment. M.T. was advised of his right to respond to the report and has not responded. Upon this court's independent review of the record, no issue of arguable merit appears.

¹ 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.

M.T. was initially committed in 2010 and has been recommitted annually since then. The present petition incorporated by reference a letter from the Brown County Community Treatment Center, Outpatient Clinical Services Division, requesting M.T.'s recommitment based on a diagnosis of schizoaffective disorder, bipolar type, and an assessment that M.T. would have serious difficulties in daily functioning if he were not committed. The letter stated M.T. was placed in his home in December 2014, and was provided twice-daily medication contacts to ensure medication compliance and to monitor his symptoms. While in his home, M.T. was observed to be drinking alcohol on occasion and demonstrated difficulties being oriented to month, day of the week, or time of day. Even with medication monitoring in place, he demonstrated confusion in regard to his medication regimen. He reported being bothered by his neighbors "infiltrating his apartment with noise to make him move." M.T. caused a fire at his apartment when he forgot to turn off a burner on the stove, resulting in the fire department responding. M.T. could not remember that incident. The letter also noted M.T.'s limited insight into his mental illness and stated it was unlikely he could comply with treatment without a medication order.

Doctor Marshall Bales prepared a report for the circuit court and testified at the recommitment hearing. Bales noted M.T.'s paranoid ideations, difficulty with memory, and increasing confusion. When left on his own, M.T. would accidentally overdose on his medication at times due to his forgetfulness. Bales quoted M.T. as saying, "I am not mentally ill. I just have problems," and "I only take medication because I have to, not because I need them." Bales diagnosed M.T. with schizoaffective disorder, with ongoing psychotic features, mild dementia and polysubstance abuse dependence, currently in forced remission. He stated M.T. was not able to discuss his medications rationally because he does not believe he is mentally ill

and M.T. thinks he does not need medication. Bales opined M.T. was not competent to refuse psychotropic medications.

Kevin Miller, a licensed psychologist, also filed a report with the court. He stated M.T. understands one of the medications is for psychosis and, while M.T. does not believe he has psychosis, he feels the medication is helping him and is not opposed to continuing treatment. Although M.T.'s condition had improved, Miller stated M.T.'s insight was "fair to poor and judgment was poor." He opined there was a substantial likelihood that M.T. would be a proper subject for commitment if treatment were withdrawn and recommended a continued medication order and supervised living environment for M.T.

M.T. testified at the recommitment hearing that he was willing to take medication on his own for what he termed his "nervous breakdown." When asked if he wished to be "off the commitment," he responded, "I want to have control of my meds." He denied telling his doctor that he did not think he needed medication.

The circuit court found M.T. mentally ill and a proper subject for treatment. It found that M.T. would be dangerous to himself if treatment were withdrawn and that M.T. is substantially incapable of applying an understanding of his condition in order to make an informed choice of the advantages, disadvantages, and alternatives to the psychotropic medications.

The County presented sufficient evidence to support the order extending commitment. It was required to prove by clear and convincing evidence that M.T. was mentally ill, a proper subject for treatment, and meets one of the statutory criteria for dangerousness. *See* WIS. STAT. § 51.20(13)(g). Dangerousness is established if the person has been the subject of inpatient or outpatient treatment for mental illness as a result of a court order and the County established a

substantial likelihood, based on the treatment record, that the individual would be a proper subject for commitment if treatment were withdrawn. WIS. STAT. § 51.20(1)(am). Doctor Bales' testimony constituted sufficient evidence to support the findings. Although M.T. contradicted Bales on several facts, the trier of fact determines the credibility of the witnesses, and we must uphold its findings unless they are clearly erroneous. *See K.N.K. v. Buhler*, 139 Wis. 2d 190, 198, 407 N.W.2d 281 (Ct. App. 1987).

Sufficient evidence also supports the involuntary medication order. A person can be adjudged incompetent to refuse medication or treatment if he or she is either incapable of expressing an understanding of the advantages and disadvantages of receiving medication or treatment or is substantially incapable of applying that understanding to his or her mental illness in order to make an informed choice of whether to accept the treatment or medication. WIS. STAT. § 51.61(1)(g)4. Bales testified that he explained to M.T. the advantages, disadvantages, and alternatives to taking medication, and that M.T. was not able to understand or apply the explanation to himself. Bales testified M.T. only takes his medication because he is required to do so. As the arbiter of the witnesses' credibility, *see Gehr v. City of Sheboygan*, 81 Wis. 2d 117, 122, 260 N.W.2d 30 (1977), the circuit court could believe Bales' testimony rather than M.T.'s assertion that he would take the medication.

IT IS ORDERED that the orders are summarily affirmed.

IT IS FURTHER ORDERED that attorney Katie York is relieved of her obligation to further represent M.T. in this matter. *See* WIS. STAT. RULE 809.32(3).

Diane M. Fremgen
Clerk of Court of Appeals