OFFICE OF THE CLERK
**WISCONSIN COURT OF APPEALS**
110 EAST MAIN STREET, SUITE 215
P.O. BOX 1688
MADISON, WISCONSIN 53701-1688
Telephone (608) 266-1880
TTY: (800) 947-3529
Facsimile (608) 267-0640
Web Site: www.wicourts.gov

**DISTRICT IV**

May 11, 2017

*To*:

Hon. Barbara W. McCrory
Circuit Court Judge
Courthouse
51 S. Main St. - 5th Fl.
Janesville, WI 53545-3978

Louis X. Mineau
Register in Probate
Rock Co. Courthouse
51 S. Main Street
Janesville, WI 53545

Andrew Hinkel
Assistant State Public Defender
P. O. Box 7862
Madison, WI 53707-7862

Jeffrey S. Kuglitsch
Corporation Counsel
51 S. Main Street
Janesville, WI 53545

L. F. A.
6327 S. Kettle Rd.
Beloit, WI 53511-9443

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

---

2016AP1271-NM In the Matter of the Condition of L.F.A.: Rock County v. L.F.A. (L.C. # 2013ME152)

Before Blanchard, J.

L.F.A. appeals orders that extended her mental health commitment under Chapter 51 of the Wisconsin Statutes and authorized continued outpatient care with conditions including involuntary medication if necessary and compliance with other treatment directives.[1] Attorney Andrew R. Hinkel has filed a no-merit report seeking to withdraw as appellate counsel. *See* WIS.

[1] Although the commitment extension and involuntary medication orders that are the subject of this appeal have now expired, we will address their validity in case it might affect subsequent extension orders.

STAT. RULE 809.32 (2015-16);[2] ***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), *aff'd*, 486 U.S. 429 (1988). The no-merit report addresses the sufficiency of the evidence to support the extension of the commitment order, the circuit court's exercise of discretion regarding involuntary medication and treatment, and the lack of any prejudicial errors at trial. L.F.A. 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.

*Sufficiency of the Evidence to Extend the Commitment*

At the hearing to extend the mental commitment order, the County bore the burden of proving by clear and convincing evidence that L.F.A. was in need of continued commitment—meaning that she: (1) was mentally ill; (2) was a proper subject for treatment; and (3) met one of the statutory criteria for dangerousness. WIS. STAT. § 51.20(1).

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 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 be a proper candidate for treatment—meaning that he or she is amenable to rehabilitation or treatment techniques that

[2] All further references to the Wisconsin Statutes are to the 2015-16 version, unless otherwise noted.

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.

In the context of an extension petition, dangerousness is evaluated based on what would occur if treatment were withdrawn, rather than the individual's current condition. WIS. STAT. § 51.20(1)(am). The grounds of dangerousness set forth in the instant petition were that, due to mental illness, L.F.A. is substantially incapable of applying an understanding of the advantages, disadvantages, and alternatives of her mental illness to make an informed choice as to whether to accept or refuse medication or treatment; and there exists a substantial probability that, if left untreated, she would lack the services necessary for her health or safety, and would suffer severe mental, emotional, or physical harm that resulting in a loss of ability to function independently in the community or loss of cognitive or volitional control over her thoughts or actions; and there was no reasonable probability that L.F.A. would avail herself of services in the community for the care or treatment necessary to prevent her from suffering severe mental, emotional, or physical harm. *See* § 51.20(1)(a)2.e.

Here, court-appointed psychiatrist Dr. Jeffrey Marcus, who performed an annual review at the request of the County, testified that L.F.A. suffers from schizoaffective disorder, and had in the past experienced psychotic symptoms including episodes of agitated mania where she demonstrated significant aggressive behavior. If treatment in the form of psychotropic medication were to be withdrawn, Dr. Marcus opined that L.F.A. would "decompensate" in terms of becoming "more manic, potentially more aggressive," and "less organized" to the "point where she could become quite unsafe to herself." Dr. Marcus discussed the risks and benefits of psychotropic medication with L.F.A., but testified that L.F.A. demonstrated "poor insight into her mental illness and her need for treatment," denying that she was obtaining any benefit from

the medications and failing to understand what would happen if she discontinued them. Dr. Marcus also noted that L.F.A. had a history of noncompliance with medication directives.

In addition, psychologist Dr. Kent Berney, who performed an independent medical examination at the request of the defense, also testified that L.F.A. suffers from mental illness in the form of a substantial thought disorder that makes it difficult for her to stay on task and at times grossly impairs her judgment. This disorder had caused L.F.A. to be unable to maintain adequate self-care in the past, including an incident in which she started a fire in her home. Dr. Berney shared Dr. Marcus's opinion that L.F.A. had limited insight into her mental illness and that, because she did not appreciate the severity of her condition, would be unlikely to maintain continuous medication if left on her own. Absent medication, Dr. Berney believed that L.F.A. would decompensate, leaving her unable to meet the ordinary demands of life and resulting in a substantial risk of danger to herself. Dr. Berney did believe that L.F.A. had shown sufficient cooperation with her treatment team that she could transition from the adult family home where she was staying to assisted living in another placement closer to the city, with more opportunity for access to the community.

The circuit court could properly rely on the expert testimony before it to conclude that all of the criteria for extending the commitment had been satisfied, and that an order for involuntary medication was also warranted.

*Disposition*

The circuit court determined that outpatient care was the least restrictive alternative. Accordingly, it ordered that L.F.A. cooperate with psychological testing and therapy; keep all appointments with care providers and court appointed examiners; take all doses of psychotropic

medication; continue to reside in a supervised setting until approved for discharge by staff; keep case management or treatment staff advised of her current residential location after discharge; refrain from any act, attempts, or threats to harm herself or others; refrain from ingesting alcohol or any controlled substances not prescribed to her; and refrain from possessing any firearm. The conditions were all appropriate and well within the circuit court's discretion.

*Conclusion*

We agree with counsel that the record does not reveal any prejudicial errors at trial. Upon our independent review of the record, we have found no other arguable basis for reversing the commitment orders. *See* ***State v. Allen***, 2010 WI 89, ¶¶81-83, 328 Wis. 2d 1, 786 N.W.2d 124 (After reviewing the record, this court is not required "to specifically identify and reject the nearly infinite number of issues without arguable merit that are present in any trial transcript," but rather may discuss only the most "obvious" potential issues, or those specifically identified by counsel or the appellant.). We conclude that any further appellate proceedings would be wholly frivolous within the meaning of ***Anders*** and WIS. STAT. RULE 809.32.

IT IS ORDERED that the commitment and involuntary medication orders are summarily affirmed under WIS. STAT. RULE 809.21(1).

IT IS FURTHER ORDERED that Attorney Hinkel is relieved of any further representation of L.F.A. in this matter. *See* WIS. STAT. RULE 809.32(3).

IT IS FURTHER ORDERED that this summary disposition order will not be published and may not be cited under WIS. STAT. RULE 809.23(3)(b).

---

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