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DISTRICT I

September 15, 2017

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

2017AP430-NM In re the commitment of M. M.: Milwaukee County v. M. M. (L.C. # 2012ME4530)

Before Dugan, J.[1]

Summary disposition orders may not be cited in any court of this state as precedent or authority, except for the limited purposes specified in WIS. STAT. RULE 809.23(3).

M.M. appeals a June 12, 2015 order that extended her mental health commitment for twelve months. *See* WIS. STAT. § 51.20(13)(g)1. She also appeals a January 25, 2017 order denying postdisposition relief. Appointed counsel, Attorney Pamela Moorshead, filed and

[1] This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(d) (2015-16). All references to the Wisconsin Statutes are to the 2015-16 version unless otherwise noted.

served a no-merit report pursuant to WIS. STAT. RULE 809.32, and ***Anders v. California***, 386 U.S. 738 (1967). M.M. did not file a response. This court has independently reviewed the record and the no-merit report. We conclude that no potential issue is arguably meritorious, and we summarily affirm.

M.M. was first committed for a six-month period in December 2012 after she attacked a nurse who asked to check her vital signs. The circuit court subsequently twice extended her commitment. In May 2015, the County petitioned for a third extension. The circuit court conducted a hearing in June 2015, and found that M.M. was mentally ill, dangerous, and a proper subject for treatment. Based upon those findings, the circuit court extended her commitment for twelve months and ordered her placed in a locked treatment facility.

M.M. pursued postdisposition relief, arguing, as relevant here, that the circuit court improperly extended her commitment under WIS. STAT. ch. 51, because she was also subject to a protective placement ordered in a proceeding under WIS. STAT. ch. 55. In response, the County took the position that the circuit court had lacked competency to proceed in the protective placement matter. The circuit court agreed that it lacked competency in the protective placement proceeding and vacated the order for a protective placement.[2] M.M. then conceded that her challenge to the extension of her ch. 51 commitment was moot. The circuit court entered an

[2] The circuit court held a consolidated hearing to address M.M.'s challenges to the commitment extension ordered in this matter and to the protective placement ordered in a separate action. The order resolving the challenge to the protective placement is not before this court, but the transcript of the consolidated proceeding reflects the circuit court's decisions in both matters.

order denying her motion for postdisposition relief from the commitment extension, and this appeal followed.[3]

Mental health commitments are authorized by WIS. STAT. § 51.20(13). A person is a proper subject for commitment upon proof by clear and convincing evidence that the person is, *inter alia*, mentally ill and a proper subject for treatment, and that the person meets any one of the statutory criteria for dangerousness described in § 51.20(1)(a). *See* §§ 51.20(13)(a)3., 51.20(13)(e). 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." WIS. STAT. § 51.01(13)(b). A proper candidate for treatment is a person who is amenable to rehabilitation or treatment techniques that could control, improve or cure the person's underlying disorder. *See* § 51.01(17); WIS JI—CIVIL 7050; ***C.J. v. State***, 120 Wis. 2d 355, 357-58, 362, 354 N.W.2d 219 (Ct. App. 1984). As relevant to our review, a person is dangerous within the meaning of § 51.20(1)(a)2. if the person, by recent threat, act, or omission: (1) evidences a substantial probability of physical harm to himself or herself or to other individuals, *see* § 51.20(1)(a)2.a.-b.; or (2) evidences such impaired judgment that there is a substantial probability of physical impairment or injury to himself or herself, *see* § 51.20(1)(a)2.c.

When the County seeks to extend a commitment order, the proceeding is governed by WIS. STAT. § 51.20(13)(g)3. In such circumstances, the County may prove dangerousness

[3] The County and M.M. have litigated additional matters in regard to M.M.'s commitment, including matters concerning her medication, but the resulting final orders are not before the court in the instant proceeding. *See* WIS. STAT. RULE 809.10(4) (appeal from final order brings before the court only prior nonfinal judgments, orders, and rulings adverse to the appellant).

without offering evidence of a recent overt threat, act, or omission. *See* § 51.20(1)(am). Instead, the County may show "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." ***Id.*** Section 51.20(1)(am) is intended to avoid the "vicious circle of treatment, release, overt act, recommitment." *See* ***State v. W.R.B.***, 140 Wis. 2d 347, 351, 411 N.W.2d 142 (Ct. App. 1987). With these principles in mind, we turn to appellate counsel's no-merit report.

We agree with appellate counsel's conclusion that M.M. cannot mount an arguably meritorious challenge to the sufficiency of the evidence presented to support the commitment extension. When we review a challenge to the sufficiency of the evidence presented in an action heard by the circuit court without a jury, we defer to the circuit court's findings of fact unless they are clearly erroneous. *See* WIS. STAT. § 805.17(2); *see also* ***Global Steel Prods. Corp. v. Ecklund Carriers, Inc.***, 2002 WI App 91, ¶10, 253 Wis. 2d 588, 644 N.W.2d 269. The circuit court, not this court, determines the credibility of witnesses and resolves any conflicts in the evidence. *See* ***Global Steel Prods. Corp.***, 253 Wis. 2d 588, ¶10.

Here, Dr. Christopher Ovide testified that he is a clinical psychologist employed by the Milwaukee County Behavioral Health Division. He said he had treated M.M. intermittently during the previous five or six years and that he had served as her attending psychologist during portions of the previous eighteen months. Ovide testified that M.M. carries a diagnosis of schizoaffective disorder, bi-polar type. He described M.M.'s long history of failing to take medication, deteriorating in the community, and then being detained by police and brought to a mental health treatment facility based on her aggressive behavior. Ovide said that M.M. was presently refusing medication and had become aggressive and dangerous as a result. He went on to give examples of M.M.'s recent aggressive behavior while committed, including an episode

where she spat in another patient's food and provoked a physical altercation. Ovide opined that a locked inpatient facility was the least restrictive and most appropriate placement for M.M.

Dr. Peder Piering testified that he is a clinical psychologist and that he was appointed by the circuit court to evaluate M.M. He explained that M.M. refused to meet with him, so his evaluation involved a file review and interviews with her current treatment providers. He testified that this methodology constituted a normal assessment procedure relied on by professionals in his field. Piering opined that M.M. suffers from a treatable mental illness, namely, bi-polar disorder, and that it impairs her "judgment, behavior, capacity to recognize reality, or ability to meet the ordinary demands of life." He testified that inpatient treatment and medication would have a therapeutic effect and would minimize her psychotic symptoms. He went on to explain that M.M. was presently refusing medication and as a result posed an ongoing danger to herself or others. He said she displayed threatening behaviors and that her behavior had required placing her in restraints on multiple occasions during the previous year.

We conclude that the County met its burden to prove all required facts by clear and convincing evidence. *See* WIS. STAT. § 51.20(13)(e). There is no arguable merit to challenging the sufficiency of the evidence on appeal.

Appellate counsel additionally considers whether M.M. can pursue an arguably meritorious challenge to the commitment extension on the ground that she was also subject to a protective placement under WIS. STAT. ch. 55. We agree with appellate counsel that the issue is moot because the circuit court vacated the protective placement. *See* ***State ex rel. Olson v. Litscher***, 2000 WI App 61, ¶3, 233 Wis. 2d 685, 608 N.W.2d 425 (explaining that "[a]n issue is moot when its resolution will have no practical effect on the underlying controversy"). As a

general rule, courts do not consider moot issues. *See* ***id.*** Although some exceptions to the rule exist, *see* ***id.***, we agree with appellate counsel's conclusion that those exceptions are not applicable here. *See* ***G.S. v. State***, 118 Wis. 2d 803, 805-06, 348 N.W.2d 181 (1984) (declining to consider moot issues related to an involuntary commitment because the ramifications of a decision "cannot be adequately measured when rendered outside an existing dispute").

Based on our independent review of the record, no other issues warrant discussion. We conclude that any further proceedings would be wholly frivolous within the meaning of ***Anders*** and WIS. STAT. RULE 809.32.

IT IS ORDERED that the commitment extension order entered on June 12, 2015, and the order denying postdisposition relief entered on January 25, 2017, are summarily affirmed. *See* WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that Attorney Pamela Moorshead is relieved of any further representation of M.M. on appeal from the orders entered on June 12, 2015, and January 25, 2017. *See* WIS. STAT. RULE 809.32(3).

IT IS FURTHER ORDERED that this summary disposition order will not be published.

Diane M. Fremgen
Clerk of Court of Appeals