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DISTRICT II/IV

November 2, 2017

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

2016AP1070-NM In the matter of the mental commitment of M.L.G.: Ozaukee
County v. M.L.G. (L.C. # 2015ME65)

Before Fitzpatrick, 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).

Counsel for M.L.G. has filed a no-merit report concluding that there is no arguable basis for challenging either the order extending M.L.G.'s mental health commitment under WIS. STAT.

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.

ch. 51 or the order for involuntary medication and treatment. M.L.G. was advised of his right to respond to the report and has not responded. Upon an independent review of the record as mandated by WIS. STAT. RULE 809.32, this court concludes that 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.

On April 23, 2015, an Ozaukee County law enforcement officer filed a statement of emergency detention as to M.L.G. On May 5, 2015, the circuit court entered an order of commitment and order for involuntary medication and treatment with a duration of six months. On October 20, 2015, Ozaukee County petitioned the court for an extension of the orders for commitment and involuntary medication. The court held a hearing on November 3, 2015 that resulted in the entry of orders extending M.L.G.'s commitment as an outpatient with certain conditions and involuntary medication for a period of one year. M.L.G. appealed, and this no-merit appeal follows.

M.L.G. was served with notice of the extension hearing. Counsel had been appointed and was present at the hearing. The report of the examining physician was filed more than forty-eight hours before the hearing, *see* WIS. STAT. § 51.20(10)(b), and the hearing was held before M.L.G.'s previous commitment expired. Therefore, I agree with counsel that any challenge to the extension of M.L.G.'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 M.L.G.'s commitment or the order for involuntary medication and treatment. At a hearing to extend a mental commitment order, the county bears the burden

of proving that the subject is in need of continued commitment by clear and convincing evidence. WIS. STAT. § 51.20(13)(g)3. Section 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. Sec. 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.” Sec. 51.20(1)(am).

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.

Sec. 51.61(1)(g)4.

Here, psychiatrist Charles Grade submitted a report opining that M.L.G. suffered from a mental illness, was a proper subject for treatment, and would become a proper subject for

commitment if treatment were withdrawn. Grade testified at the extension hearing that M.L.G. suffers from schizophrenia, but that M.L.G. did not believe he had schizophrenia, despite documentation in his treatment records to the contrary. Grade further testified that, when he examined M.L.G., M.L.G. had been taking medication. Grade opined that M.L.G.'s symptoms appeared to be better under control with medication than his medical records indicated he behaved without it. However, Grade still observed symptoms consistent with schizophrenia. Grade opined that, if M.L.G. did not receive treatment, he would be at a substantial risk of harm to himself or others and likely would be the subject of a Chapter 51 proceeding once again, based on M.L.G.'s dangerous behaviors in the past.

Grade also testified that he did not believe M.L.G. was likely to comply with medication because M.L.G. said he was not interested in treatment and did not believe he had a mental illness. Grade further testified that, even though explained to M.L.G., M.L.G. was substantially incapable of applying his understanding of the advantages and disadvantages of medication to his situation to make an informed choice to accept or refuse medication. Grade opined that the least restrictive environment for M.L.G. to meet his treatment needs would be to continue outpatient treatment at Ozaukee County Human Services.

In light of all of the above, I am satisfied that the evidence was sufficient to support the orders for extension of commitment and involuntary medication and treatment. 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 counsel is relieved of further representing M.L.G. in this matter. *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