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DISTRICT IV

October 16, 2018

To:

Hon. Barbara W. McCrory
Circuit Court Judge
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You are hereby notified that the Court has entered the following opinion and order:

2017AP2410-NM

In the matter of the mental commitment of J.E.B.:
Rock County v. J.E.B. (L.C. # 2014ME267)

Before Lundsten, P.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).

Attorney Tristan Breedlove, appointed counsel for appellant J.E.B., has filed a no-merit report seeking to withdraw as appellate counsel. *See* WIS. STAT. RULE 809.32 and *Anders v. California*, 386 U.S. 738, 744 (1967). Attorney Catherine Malchow has filed a notice of

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.

appearance substituting as counsel for J.E.B. The no-merit report addresses the sufficiency of the evidence to support the order extending J.E.B.'s involuntary commitment and the court's exercise of discretion as to disposition.² J.E.B. was sent a copy of the report, but has not filed a response. Upon my independent review of the entire record, as well as the no-merit report, I agree with counsel's assessment that there are no arguably meritorious appellate issues.

On March 28, 2017, Rock County filed a petition to extend J.E.B.'s involuntary commitment. On May 24, 2017, the court held a recommitment hearing. Two psychiatrists testified as to the mental health condition examinations they recently conducted as to J.E.B. Following the hearing, the circuit court entered orders extending J.E.B.'s involuntary commitment and for involuntary treatment.

The first issue addressed in the no-merit report is whether there would be arguable merit to a challenge to the sufficiency of the evidence to support the court's decision to extend J.E.B.'s involuntary commitment. Under WIS. STAT. § 51.20(13)(g)3., the county department that has custody of an individual under an order for commitment may petition to extend the order for commitment, and has the burden to prove that the criteria for commitment are met. The criteria for mental health commitment are that the individual is: (1) mentally ill, (2) a proper subject for treatment, and (3) dangerous. *See* § 51.20(1)(a) and (am). Here, the examining psychiatrists both testified that J.E.B. has been diagnosed with schizoaffective disorder, thus meeting the statutory criteria of mental illness. They also both testified that J.E.B. responds positively to psychotropic medication, thus establishing that J.E.B. is a proper subject for treatment.

² Although the orders for involuntary commitment and treatment have now expired, I address their validity because issues arising from these orders may affect subsequent orders.

Additionally, they both testified that there is a substantial likelihood that J.E.B. would be a proper subject for commitment if treatment were withdrawn because J.E.B. has a history of withdrawing from her psychotropic medication, leading to unsafe behavior and police contacts, thereby meeting the statutory requirement of dangerousness. *See* § 51.20(1)(am) (dangerousness element for person under court order for treatment of mental illness immediately prior to current proceeding 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”). Accordingly, I agree with counsel’s assessment that a challenge to the evidence supporting the extension of the involuntary commitment would lack arguable merit.

Next, the no-merit report addresses whether there would be arguable merit to a challenge to the court’s exercise of discretion at disposition in extending J.E.B.’s commitment on an outpatient basis for one year and ordering involuntary treatment. Under WIS. STAT. § 51.20(13)(g)1., an order for recommitment may be for a period of up to one year. Additionally, under WIS. STAT. § 51.61(1)(g)3. and 4.a., a court may order involuntary treatment for a person subject to commitment if the person is not competent to refuse medication or treatment, in that the person is “incapable of expressing an understanding of the advantages and disadvantages” of treatment. Here, both testifying psychiatrists testified as to J.E.B.’s history of decompensating and engaging in inappropriate and unsafe behavior when treatment was withdrawn. They also both gave their opinion that J.E.B. was unable to understand the advantages and disadvantages of treatment as applied to her. Again, I agree with counsel that a challenge to the court’s exercise of discretion as to disposition would lack arguable merit.

Upon my independent review of the record, I have found no other arguable basis for reversing the court's orders. I conclude that any further appellate proceedings would be wholly frivolous within the meaning of *Anders* and WIS. STAT. RULE 809.32.

Therefore,

IT IS ORDERED that the orders are summarily affirmed. *See* WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that Attorney Catherine Malchow is relieved of any further representation of J.E.B. in this matter. *See* WIS. STAT. RULE 809.32(3).

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

Sheila T. Reiff
Clerk of Court of Appeals