



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 II

January 8, 2019

To:

Hon. Angela W. Sutkiewicz
Circuit Court Judge
615 N. 6th St.
Sheboygan, WI 53081

Samantha R. Bastil
Sheboygan County Corporation Counsel
615 N. 6th St.
Sheboygan, WI 53081

Paul Callan
Register in Probate
Sheboygan County Courthouse
615 N. 6th St.
Sheboygan, WI 53081

Gregory Bates
Bates Law Offices
P.O. Box 70
Kenosha, WI 53141-0070

R.J.S.
2009 N. 10th St.
Sheboygan, WI 53081

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

2018AP1807-NM

In the matter of the mental commitment of R.J.S.: Sheboygan
County v. R.J.S. (L.C. #2006ME59)

Before Gundrum, 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).

R.J.S. appeals from an order extending her mental health commitment which is accompanied by an order authorizing involuntary medication and treatment. Her appellate counsel has filed a no-merit report pursuant to WIS. STAT. RULE 809.32 and *Anders v. California*, 386 U.S. 738 (1967). R.J.S. received a copy of the report, was advised of her right to

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

file a response, and has elected not to do so. Upon consideration of the report and an independent review of the record, the order is summarily affirmed because there is no arguable merit to any issue that could be raised on appeal. *See* WIS. STAT. RULE 809.21.

R.J.S. is diagnosed with chronic schizophrenia and has been under a commitment order since at least 2006. After she was served with the extension petition, she retained counsel and moved to dismiss the extension proceeding on the ground that she was not properly served with the extension petition.² The circuit court denied the motion to dismiss because service, if improper, did not affect R.J.S.'s substantial rights. *See* WIS. STAT. § 51.20(10)(c) (“The court shall, in every stage of an action, disregard any error or defect in the pleadings or proceedings that does not affect the substantial rights of either party.”). At the start of the evidentiary hearing on the extension petition on January 9, 2018, R.J.S. objected to her treating psychiatrist testifying telephonically because she intended to cross-examine the psychiatrist on treatment records, and it was not known if the psychiatrist had treatment records available for effective cross-examination. *See* WIS. STAT. § 807.13(2)(c)4. (in determining whether the proponent of testimony has shown good cause to permit telephonic testimony, the court is to consider “[w]hether the procedure would allow full effective cross-examination, especially where availability to counsel of documents and exhibits available to the witness would affect such cross-examination”). The circuit court overruled the objection. After hearing the psychiatrist’s

² A Community Support Specialist with the county’s Health and Human Services Division of Community Programs served the extension petition on R.J.S. R.J.S. argued that service was improper because the Health and Human Services Division of Community Programs requested the extension and thereby is a party to the action. WISCONSIN STAT. § 801.10(1) prohibits service of a summons by a party to the action.

testimony, the circuit court ordered R.J.S.'s commitment extended for one year and the involuntary medication and treatment.

The no-merit report discusses whether there is arguable merit to challenge the circuit court's denial of the motion to dismiss and the allowance of telephonic testimony. It also addresses whether there was sufficient evidence to support the extension of the commitment and the involuntary administration of medication and treatment. This court is satisfied that the no-merit report properly analyzes the issues it raises as without merit, and this court will not discuss them further.³ Additionally, R.J.S.'s objections during the evidentiary hearing were properly overruled and present no issues of arguable merit.

Review of the record discloses no other potential issues for appeal. Accordingly, this court accepts the no-merit report, affirms the order extending the commitment and discharges appellate counsel of the obligation to represent R.J.S. further in this appeal.

³ The circuit court relied on WIS. STAT. § 51.20(10)(c) in denying R.J.S.'s motion to dismiss for improper service and did not decide whether the Health and Human Services Division of Community Programs was a party to the action for the purpose of considering whether service by its employee was improper under WIS. STAT. § 801.10(1). The application of § 801.10(1) is questionable. Section 801.10(1) applies to the service of a summons for the commencement of an action. An application for an extension of a commitment is filed in an existing case and does not commence a new action or special proceeding. *Cf. State v. Alger*, 2015 WI 3, ¶31, 360 Wis. 2d 193, 858 N.W.2d 346. Service of a pleading in an existing action is made by delivering a copy to the party and includes handing a copy to the party. Sec. 801.14(2). An application for an extension of commitment is governed by § 51.20(13)(g)3., which simply requires the court to proceed under § 51.20(10) to (13). Section 51.20(10) does not require "service" of a summons and only requires that the subject be "notified" of the time and place of the final hearing "[w]ithin a reasonable time prior to the final hearing." Here the circuit court's order for a hearing on the extension of commitment only required that notice of the hearing be served on R.J.S. by delivering a copy to her.

Upon the foregoing reasons,

IT IS ORDERED that the order is summarily affirmed. *See* WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that Attorney Gregory Bates is relieved from further representing R.J.S. in this appeal. *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