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DISTRICT IV

February 5, 2019

To:

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

2018AP1453

In the matter of the mental commitment of J.A.W.: La Crosse
County v. J.A.W. (L.C. # 2011ME133)

Before Lundsten, P.J.

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).

J.A.W. appeals an order extending his involuntary commitment.¹ J.A.W. argues that the evidence did not support the circuit court's conclusion that J.A.W. would be a proper subject for commitment if treatment were withdrawn. I conclude that there was sufficient evidence to support the circuit court's determination, and, therefore, affirm the circuit court.

¹ This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(d). All references to the Wisconsin Statutes are to the 2017-18 version.

J.A.W. was originally committed in 1978 after being found not guilty by reason of mental disease or defect for the murder of his stepfather. He was conditionally released in 1991, but J.A.W. stopped taking his medication and disappeared. In 1998, J.A.W. was arrested for disorderly conduct and then hospitalized due to his bizarre behavior. While in the hospital, J.A.W. sexually assaulted another patient. In the resulting criminal action, J.A.W. was again found incompetent. J.A.W. has been under continuous commitment since 2011.

La Crosse County petitioned for J.A.W.'s recommitment in December 2017. Prior to this petition, J.A.W. had been living in the community under Community Support Programs monitoring, and was obtaining his medication from a provider.

J.A.W. was evaluated by Dr. Leo Passov, a psychiatrist. Passov was the only witness at the recommitment hearing. Passov testified that J.A.W. told him J.A.W. would continue to take his medications if he were no longer committed. However, J.A.W. also stated that he "should not be medicated because he would feel so much better without the medications." In addition, Passov testified that J.A.W. did not understand why the medications were necessary, had a very poor understanding of his mental illness, and did not understand the risks of not taking the medications. Passov opined that, if treatment were withdrawn, J.A.W. would become a proper subject for commitment.

When asked why he came to that conclusion, Passov stated:

There is a history of [J.A.W.] stopping medications on his own because of his lack of understanding that he needs to be treated. And when he did so, he would be dangerous, including the violent behavior. He would need to be admitted to the hospital. He might end up in -- he might be incarcerated, which again, he has a history of, and, therefore, I do believe that if the commitment and supervision were withdrawn, he would, again, end up in the same

situation. He would most likely stop taking the medications because he doesn't believe [he] needs to take them, and he would, then, end up in the same situation where he would be recommitted and the whole process would need to be started again.

The circuit court found that J.A.W. had a history of violence when not under treatment and that J.A.W. felt he was “overly-medicated” and therefore likely to stop or reduce his medications. Therefore, the court concluded that it was substantially likely that J.A.W. would become a proper subject for commitment if treatment were withdrawn, and ordered that his commitment be extended. J.A.W. appeals.

I will address additional facts as necessary in the discussion.

This case requires review of whether the County has met its burden of proof to support extension of J.A.W.'s commitment. This presents a mixed question of law and fact. *Waukesha Cty. v. J.W.J.*, 2017 WI 57, ¶15, 375 Wis. 2d 542, 895 N.W.2d 783. A reviewing court upholds the circuit court's findings of fact unless those findings are clearly erroneous. *Id.* Whether the facts satisfy the statutory standard is a question of law that we review de novo. *Id.*

Under WIS. STAT. § 51.20, an involuntary commitment for treatment may be extended if the circuit court determines that the individual is: (1) mentally ill; (2) a proper subject for treatment; and (3) dangerous. *See* § 51.20(1)(a). The County has the burden of proving all required facts by clear and convincing evidence. *See* § 51.20(13)(e).

When, as here, the County seeks to extend the individual's commitment, 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.” WIS. STAT. § 51.20(1)(am).

J.A.W.'s challenge to the circuit court's order extending his commitment is directed only at the dangerousness element. J.A.W. effectively concedes that he would be a danger if he stopped taking his medications. J.A.W. argues, however, that the lack of evidence of dangerousness since 1998, combined with his statement to the psychiatrist that J.A.W. would continue taking his medications in the absence of a commitment order, compels the conclusion that there is insufficient evidence of dangerousness. I disagree.

I will assume that there was no evidence that J.A.W. exhibited dangerous behavior since 1998. And, it is undisputed that J.A.W. told Dr. Passov that J.A.W. would continue his treatment. But there is substantial evidence supporting a determination that J.A.W. was, nonetheless, dangerous.

Dr. Passov testified that J.A.W. committed violent crimes when he was untreated in the past. Passov also testified that J.A.W. told him J.A.W. did not want to be committed any more, and that "if I wasn't so heavily medicated, I would feel so much better." J.A.W. told Passov that there was a "50/50 chance that he would do well without the medications and that God would cure him." Although J.A.W. stated that he had schizophrenia, he also told Passov that "not everybody would agree" with that diagnosis, and he expressed delusional thoughts about the psychiatric profession.

Dr. Passov opined that J.A.W. "doesn't really understand why the medications need to be taken and what benefits he would get from taking the medications because he has a very poor and very limited understanding of his mental illness." Passov continued, stating: "[J.A.W.] doesn't understand the risks of not taking medications and the fact that he did engage in some pretty risky and violent behavior when he was untreated." Passov also opined that there was a

substantial likelihood that J.A.W. would become a proper subject for commitment if treatment were withdrawn.

This evidence is easily sufficient to meet the statutory standard. It provides a clear basis to believe that J.A.W. is strongly inclined to discontinue cooperating with his treatment. It follows that there is a substantial likelihood that J.A.W. is a proper subject for commitment.

J.A.W.'s argument that this evidence is insufficient is meritless. So far as I can tell, J.A.W. is simply asking me to look at the same evidence the circuit court had before it and to weigh that evidence differently. That I may not do.

The circuit court applied the proper standard, and the County met its burden to prove there was a substantial likelihood that J.A.W. would be a proper subject for commitment if treatment were withdrawn.

For the reasons stated, I affirm the order extending J.A.W.'s commitment.

IT IS ORDERED that the order is summarily affirmed pursuant to WIS. STAT. RULE 809.21.

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

Sheila T. Reiff
Clerk of Court of Appeals