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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

September 25, 2019

To:

Hon. L. Edward Stengel
Circuit Court Judge
Sheboygan County Courthouse
615 N. 6th Street
Sheboygan, WI 53081

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

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

Kelsey Jarecki Morin Loshaw
Assistant State Public Defender
P.O. Box 7862
Madison, WI 53707-7862

J.D.H.
4544 N. 84th Street
Milwaukee, WI 53225

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

2018AP548-NM

In the matter of the mental commitment of J.D.H.:
Sheboygan County v. J.D.H. (L.C. #2017ME70)

Before Neubauer, C.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).

J.D.H. appeals from an order extending his mental health commitment and authorizing his involuntary medication and treatment. His appellate counsel has filed a no-merit report

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

pursuant to WIS. STAT. RULE 809.32 and *Anders v. California*, 386 U.S. 738 (1967). J.D.H. received a copy of the report, was advised of his right to file a response, and has elected not to do so. Upon consideration of the report and an independent review of the record, we conclude that the order may be summarily affirmed because there is no arguable merit to any issue that could be raised on appeal. *See* WIS. STAT. RULE 809.21.

J.D.H. was originally committed for six months on April 20, 2017. The County filed a timely petition to extend the commitment and, following a hearing on October 19, 2017, the circuit court entered orders extending J.D.H.'s commitment by one year, and authorizing his involuntary medication and treatment.

Appellate counsel's no-merit report addresses whether the evidence offered was sufficient to extend J.D.H.'s mental health commitment and to require his involuntary medication and treatment. The no-merit report states the appropriate standard for each intervention. *See* WIS. STAT. § 51.20(1)(a)2., (am) (recommitment); WIS. STAT. § 51.61(1)(g)4. (involuntary medication and treatment). Through the testimony of Dr. Daniel Knoedler, a psychiatrist, the County met its burden to prove all required facts by clear and convincing evidence. *See* § 51.20(13)(e). Additionally, Knoedler's testimony satisfies the applicable standards for recommitment and involuntary medication. *See K.N.K. v. Buhler*, 139 Wis. 2d 190, 198, 407 N.W.2d 281 (Ct. App. 1987) (the application of the facts to statutory recommitment requirements presents a question of law we review de novo); *see also Outagamie Cty. v. Melanie L.*, 2013 WI 67, ¶39, 349 Wis. 2d 148, 833 N.W.2d 607 (whether the County has put forth sufficient evidence to meet its burden to prove the statutory elements for an involuntary medication order by clear and convincing evidence is a question of law). There is no arguable merit to challenging the sufficiency of the evidence on appeal.

Next, appellate counsel's no-merit report addresses whether the circuit court properly denied J.D.H.'s motions to dismiss the recommitment petition due to (1) alleged deficiencies in service occurring before his original commitment hearing and (2) the failure to reevaluate J.D.H. within thirty days after his original commitment as set forth in WIS. STAT. § 51.20(17). We agree with counsel's analysis and conclusion that neither point gives rise to an arguably meritorious issue. With regard to the alleged service deficiency, based on the undisputed facts and trial counsel's concession, the circuit court determined that any deficiency relating to the original commitment was waived.

As to the failure to conduct a reevaluation of J.D.H. within thirty days under WIS. STAT. § 51.20(17), it is undisputed that the evaluation was performed more than thirty days but less than sixty days² after his original commitment. Here again, we agree with appellate counsel's analysis and conclusion that the untimely evaluation did not cause the circuit court to lose competency and J.D.H. is not entitled to the drastic remedy of dismissal of the extension order. To appellate counsel's analysis, we add that the reevaluation was performed while J.D.H. remained subject to the original commitment order and in sufficient advance to permit the filing of a timely recommitment petition and hearing before the expiration of his original commitment. Further, the reevaluation opined that J.D.H. remained a proper subject for involuntary commitment and did not meet the criteria for discharge. The untimely reevaluation did not affect J.D.H.'s substantial rights and the circuit court properly disregarded it. *See* WIS. STAT.

² From the record and the parties' statements, it appears that J.D.H. was reevaluated no later than forty-eight days after his commitment.

§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.”).

Our review of the record discloses no other potential issues for appeal. Therefore,

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

IT IS FURTHER ORDERED that Attorney Kelsey Loshaw is relieved from further representing J.D.H. 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