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DISTRICT IV

December 26, 2019

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

2019AP457-NM Jackson County v. D.P.V. (L.C. # 2018ME30)

Before Fitzpatrick, 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 Melissa Petersen, appointed counsel for D.P.V., has filed a no-merit report concluding that there is no arguable basis for challenging circuit court orders committing D.P.V. for mental health treatment pursuant to WIS. STAT. ch. 51 and authorizing involuntary administration of medication. The no-merit report addresses whether the time limits and

[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.

procedures specified in ch. 51 were observed, as well as whether there was sufficient evidence to support the orders for commitment and involuntary medication. Counsel provided D.P.V. with a copy of the report, and both counsel and this court advised D.P.V. of the right to file a response. D.P.V. 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.

A law enforcement officer of the Black River Falls Police Department filed a statement of emergency detention as to D.P.V., after the officer was dispatched to D.P.V.'s residence for a welfare check and observed the bath tub overflowing, handwriting on the walls, garbage scattered around, and D.V.P acting confused and aggressive. The petition alleged that the officer had cause to believe that D.P.V. was mentally ill; that he was evincing behavior constituting a substantial probability of physical harm to himself or others; and that taking him into custody was the least restrictive alternative necessary to meet his needs. This WIS. STAT. ch. 51 proceeding was initiated after D.P.V. was hospitalized temporarily following the welfare check.

I agree with the conclusion in the no-merit report that there would be no arguable merit to a claim that the circuit court failed to comply with the statutory time limits of WIS. STAT. ch. 51. Counsel was appointed and a probable cause hearing was timely held pursuant to WIS. STAT. § 51.20(7). A jury trial was timely held pursuant to § 51.20(7)(c). The jury returned a special verdict finding that D.P.V. is mentally ill, is dangerous to himself or others, and is a proper subject for treatment. The court ordered that D.P.V. be committed to a locked inpatient facility for six months. The court also ordered involuntary medication and treatment during the period of D.P.V.'s commitment. Any challenge to D.P.V.'s commitment based on a failure to comply with mandatory statutory deadlines or procedures would lack arguable merit.

There likewise would be no arguable merit to challenging the sufficiency of the evidence to support either the commitment order or the order for involuntary medication and treatment. To obtain an order for D.P.V.'s commitment, the County had the burden of proving by clear and convincing evidence that: (1) D.P.V. is mentally ill; (2) he is a proper subject for treatment; and (3) he is dangerous to himself or others. *See* WIS. STAT. § 51.20(13)(e) and (1)(a). With respect to the order for involuntary medication, the County had the burden of proving by clear and convincing evidence that D.P.V. "is not competent to refuse medication or treatment." WIS. STAT. § 51.61(1)(g)3. A person is not competent to refuse medication or treatment if, because of mental illness, the individual is incapable of understanding the advantages and disadvantages of the medications and treatments being offered to him, after those advantages and disadvantages have been explained to him. Sec. 51.61(1)(g)4.

Court-appointed examiners Patrick Helfenbein, M.D., and Michael Lace, Ph.D., filed reports and also testified at trial. As to the first element for commitment, both examiners testified, consistent with their reports, that D.P.V. had a diagnosis of schizophrenia. As to the second element, Dr. Lace testified that D.P.V.'s mental illness was treatable with psychotropic medication, psychotherapy, and community support. As to the third element, Dr. Helfenbein testified that D.P.V. presents a danger to himself because he is not able to properly care for himself. Dr. Lace testified that D.P.V. is likely to be a danger to others as well until he is stabilized. Dr. Helfenbein opined that D.P.V.'s treatment initially needs to take place in a locked inpatient unit because of D.P.V.'s inability to take care of himself and his history of refusing medication. Regarding the administration of involuntary medication, Dr. Helfenbein opined that D.P.V.'s mental illness rendered him incapable of understanding the advantages and disadvantages of accepting treatment or medications.

To reach their verdict, the jury must have found the testimony of the two examiners to be credible, and there is nothing in the record to suggest otherwise. This court may not overturn a jury's credibility assessments unless those are inherently or patently incredible, or in conflict with the uniform course of nature or with fully established or conceded facts. *See* ***Chapman v. State***, 69 Wis. 2d 581, 583, 230 N.W.2d 824 (1975). I agree with counsel's conclusion in the no-merit report that the evidence was sufficient to support the jury's special verdict and the court's entry of orders for D.P.V.'s commitment and involuntary medication. Any assertion to the contrary would be without arguable merit on appeal.

Therefore,

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

IT IS FURTHER ORDERED that attorney Melissa Petersen is relieved of further representing D.P.V. 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