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DISTRICT II

January 15, 2020

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

2019AP1204-NM In the matter of the mental commitment of B.C.:
 Winnebago County v. B.C. (L.C. #2019ME47)

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).

B.C. appeals from orders extending his WIS. STAT. ch. 51 commitment and authorizing involuntary medication and treatment. His appellate counsel has filed a no-merit report pursuant to WIS. STAT. RULE 809.32 and *Anders v. California*, 386 U.S. 738 (1967). The 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.

discusses whether the evidence was sufficient to support the circuit court's orders for extension of B.C.'s commitment and for involuntary medication and treatment. The report also discusses whether the time limits and procedures specified in ch. 51 were observed. B.C. has filed a response to the no-merit report, and counsel has filed a supplemental response. Upon consideration of the report, response, supplemental response, and this court's independent review of the record, we conclude that the orders 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.

B.C., an inmate in the state prison system, was involuntarily committed on February 21, 2018, for a period of one year. On January 17, 2019, Winnebago County filed a petition for a one-year extension of B.C.'s orders for commitment and for involuntary administration of medication and treatment. Filed along with the petition was a report from B.C.'s treating psychiatrist, Dr. Thomas Michlowski. Counsel was appointed to represent B.C., and the court approved B.C.'s request for an independent examination. On February 21, 2019, Dr. Marshall Bales filed his independent examiner's report. The circuit court held a hearing on February 26, 2019, at which Michlowski, Bales, and B.C. testified. After hearing their testimony, the court found that there was sufficient evidence to support the County's petition for a twelve-month extension of B.C.'s outpatient commitment and order for involuntary medication and treatment. B.C. now appeals.

The no-merit report concludes that there would be no arguable merit to challenging the sufficiency of the evidence to support the commitment extension order and the order for involuntary medication and treatment. In his response, B.C. asserts that the circuit court erred when it found that he suffers from a mental illness and is a proper subject for treatment, and when it found that he did not clearly understand the advantages and disadvantages of his

prescribed medication. The no-merit report states the appropriate standard for each intervention. *See* WIS. STAT. § 51.20(1)(a)2., (1)(am), and (1)(ar) (recommitment); WIS. STAT. § 51.61(1)(g)4. (involuntary medication and treatment). The record reflects that, by the testimony of Bales and Michlowski, the County met its burden to prove all required facts by clear and convincing evidence. *See* § 51.20(13)(e). Additionally, the testimony of Bales and Michlowski satisfies the applicable standards for recommitment and involuntary medication. Although B.C.'s own testimony conflicted at times with that of the examiners, the circuit court was in the unique position of observing the witnesses and making findings as to the weight and credibility to be attributed to the witnesses' testimony. This court will not disturb those credibility findings on appeal. *See Plesko v. Figgie Int'l*, 190 Wis. 2d 764, 775, 528 N.W.2d 446 (Ct. App. 1994) (when circuit court acts as the finder of fact, it is the ultimate arbiter of the credibility of the witnesses and of the weight to be given to each witness's testimony). We agree with counsel's conclusion that any challenge to the sufficiency of the evidence would be without arguable merit on appeal.

The no-merit report also addresses whether the petition and proceedings complied with the WIS. STAT. ch. 51 statutory notice and time limit requirements. We agree with counsel's analysis and conclusion that no potential issue of arguable merit arises from this point. B.C. asserts in the no-merit response that the circuit court erred by not holding a probable cause hearing. This assertion is without arguable merit because there is no constitutional or statutory requirement for a probable cause hearing in a proceeding to extend a WIS. STAT. ch. 51 commitment if the subject is already under commitment.

This court's independent review of the record discloses no other potential issues for appeal. Accordingly, this court accepts the no-merit report, affirms the orders, and discharges appellate counsel of the obligation to represent B.C. further in this appeal.

Upon the foregoing reasons,

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

IT IS FURTHER ORDERED that Attorney Len D. Kachinsky is relieved from further representing B.C. 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