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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 IV

July 23, 2020

To:

Hon. Jeffrey Kuglitsch
Circuit Court Judge
51 S. Main St.
Janesville, WI 53545

Susan E. Alesia
Assistant State Public Defender
P.O. Box 7862
Madison, WI 53707-7862

Jodi Timmerman
Register in Probate
Rock Co. Courthouse
51 S. Main Street
Janesville, WI 53545

Richard Greenlee
Corporation Counsel
Rock County Courthouse
51 S. Main St.
Janesville, WI 53545

H. V.
7 E. Canal St.
Edgerton, WI 53534-1805

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

2018AP1481-NM In the matter of the mental commitment of H.V.:
Rock County v. H.V. (L.C. # 2014ME98)

Before Kloppenburg, 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 Jeremy Newman, appointed counsel for H.V., filed a no-merit report pursuant to WIS. STAT. RULE 809.32. Newman has since been replaced by Susan Alesia. Counsel provided H.V. with a copy of the report, and H.V. responded to it. I conclude that this case is appropriate

[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.

for summary disposition. *See* WIS. STAT. RULE 809.21. After my independent review of the record, I conclude that there is no arguable merit to any issue that could be raised on appeal.

The County petitioned to recommit H.V. under WIS. STAT. ch. 51. The circuit court held an evidentiary hearing, after which it ordered H.V. recommitted as an outpatient with treatment conditions.

The legal standard for involuntary mental commitment contains three elements: (1) that the person is mentally ill; (2) that the person is dangerous; and (3) that the person is a proper subject for treatment. WIS. STAT. § 51.20(1)(a). The element of dangerousness is met if any one of the five specific "definitions or standards" is satisfied under § 51.20(1)(a)2.a.-e. *See* ***State v. Dennis H.***, 2002 WI 104, ¶14, 255 Wis. 2d 359, 647 N.W.2d 851.

H.V. was recommitted using WIS. STAT. § 51.20(1)(am). Under that statute, a finding of dangerousness may be made if the petitioner shows there is a substantial likelihood, based on the respondent's treatment record, that the respondent would be a proper subject for commitment if treatment were withdrawn.

The no-merit report first addresses whether the evidence to recommit H.V. was sufficient. The report asserts, without citation to authority, that the standard of review for this issue involves viewing the evidence in the light most favorable to the County. The proper standard of review is as follows: "We uphold a circuit court's findings of fact unless they are clearly erroneous. Whether the facts satisfy the statutory standard is a question of law that we review de novo." ***Waukesha Cty. v. J.W.J.***, 2017 WI 57, ¶15, 375 Wis. 2d 542, 895 N.W.2d 783 (citations omitted).

Turning to the circuit court's findings here, as to the finding that H.V is mentally ill, the County's psychologist testified at the recommitment hearing that H.V. is diagnosed with schizophrenia, with symptoms that include periods of being paranoid and delusional, responding to voices, speaking nonsensically, and periods of aggression. It would be frivolous to argue that this diagnosis and these symptoms do not meet the definition of "mental illness" provided in WIS. STAT. § 51.01(13)(b).

As to the finding that H.V. is dangerous, the circuit court made a finding that H.V. would be a proper subject for commitment if treatment were withdrawn. While the court did not identify any specific provision of WIS. STAT. § 51.20(1)(a)2. that H.V. would be committable under, the record shows that H.V. was originally committed in 2014 under WIS. STAT. § 51.20(1)(a)2.e.[2] Without attempting to recite that standard or the evidence in detail here, I conclude that it would be frivolous to argue that the record does not support a finding that H.V. would be committable under that same provision if treatment were withdrawn. To summarize, the psychologist testified at the recommitment hearing that H.V. continues to have little insight into his mental illness and need for treatment, and described the behavior H.V. has engaged in when not treated. Based on that testimony, it would be frivolous to argue that the record does

[2] Our supreme court recently ruled that, as part of the showing under WIS. STAT. § 51.20(1)(am), the circuit court must make specific factual findings with reference to the specific dangerousness standard in § 52.20(1)(a)2. under which the respondent would be a proper subject for commitment if treatment were withdrawn. ***Langlade Cty. v. D.J.W.***, 2020 WI 41, ¶¶33-45, 391 Wis. 2d 231, 942 N.W.2d 277. The court imposed this requirement "going forward." ***Id.***, ¶¶40, 59. The opinion in ***D.J.W.*** was issued in April 2020, after the recommitment proceedings at issue here, which occurred in April 2018. The circuit court here did not make specific factual findings with reference to the specific dangerous standard under which the respondent would be a proper subject for commitment if treatment were withdrawn, so, as did the court in ***D.J.W.***, this opinion reviews the sufficiency of the evidence to recommit H.V. with reference to the dangerousness standard on which H.V. was initially committed. *See* ***id.***, at ¶¶45-6 (reviewing the sufficiency of the evidence regarding the dangerousness standard on which the initial commitment was based).

not support a finding that H.V. would be a proper subject for commitment if treatment were withdrawn.

The circuit court also found that H.V. is a proper subject for treatment. That finding was supported by the psychologist's testimony about the improvement in symptoms that H.V. experiences when medicated, and it would be frivolous to argue to the contrary.

In summary, it would be frivolous to argue that the evidence was not sufficient to support the recommitment of H.V.

The no-merit report also addresses whether the circuit court erroneously exercised its discretion in ordering outpatient commitment with treatment conditions. In light of the evidence at the hearing about H.V.'s treatment needs and reduction of symptoms when treated, it would be frivolous to argue that the court erroneously exercised its discretion on this point.

In the response to the no-merit report, H.V. asserts that the commitment order should be reversed because the psychologist did not report that H.V. has "signs of retardation," and H.V.'s intelligence quotient is above average. This argument does not have arguable merit because lack of retardation and above-average intelligence quotient do not negate the evidence of mental illness that was presented in the record.

Regarding evidence about H.V.'s tendency to become aggressive, H.V. asserts that, relating to a fight over a woman, H.V. has "the right to kill what is in my domain." This statement does not rebut the evidence of H.V.'s aggressive behavior when not treated.

H.V. also states that H.V. does not find the psychologist's testimony that H.V. does better on medication plausible, because the psychologist does not prescribe medicine and is not familiar

with side effects. While it may be true that H.V. believes side effects make H.V. feel bad, the psychologist's testimony about H.V. doing better when medicated was related to H.V.'s mental illness and other legal issues, not about whether H.V. feels better overall. That H.V. may feel side effects does not render the psychologist's testimony about those other issues implausible.

My review of the record discloses no other potential issues for appeal.

Therefore,

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

IT IS FURTHER ORDERED that Attorney Alesia is relieved of further representation of H.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