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DISTRICT III

April 20, 2021

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C. J. A.

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

2020AP290-NM Outagamie County v. C.J.A. (L. C. No. 2016ME157)

Before Seidl, 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).

Counsel for C.J.A. has filed a no-merit report concluding that no arguably meritorious basis exists for challenging the orders extending her WIS. STAT. ch. 51 mental health commitment and requiring her to receive prescribed medication and treatment regardless of her

[1] This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(d) (2019-20). All references to the Wisconsin Statutes are to the 2019-20 version unless otherwise noted.

consent.[2] C.J.A. was advised of her right to respond to the no-merit report, and she 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 C.J.A. could raise on appeal. Therefore, we summarily affirm the orders. *See* WIS. STAT. RULE 809.21.

In 2016, the circuit court entered an initial order committing C.J.A. and ordering involuntary medication and treatment. The circuit court concluded that she was mentally ill and dangerous pursuant to WIS. STAT. § 51.20(1)(a)2.e. We affirmed. *See* ***Outagamie Cnty. v. C.A.***, No. 2017AP450, unpublished slip op. (WI App Jan. 23, 2018). The circuit court entered subsequent orders extending C.J.A.'s mental health commitment and allowing involuntary medication and treatment. The instant appeal is from the orders entered on May 8, 2019, granting Outagamie County's application from February 28, 2019, as last amended on April 16, 2019, seeking a further extension.[3]

A petitioner may prove that a person is dangerous and warrants commitment under any of the five standards set forth in WIS. STAT. § 51.20(1)(a)2.a.-e. Section 51.20(1)(a)2.e., "known as the 'fifth standard,' 'permits commitment only when a mentally ill person needs care or treatment to prevent deterioration but is unable to make an informed choice to accept it.'" ***C.A.***, No. 2017AP450, ¶8 (citation omitted). The five elements that a petitioner must prove by clear

[2] Attorney Elizabeth Newton Nash filed the no-merit report on C.J.A.'s behalf. The court subsequently received notice from the State Public Defender's Office that attorney Megan Sanders-Drazen had been appointed as successor counsel for C.J.A.

[3] The court is aware that C.J.A. has filed an appeal from another order in this case and that she submitted a response to the no-merit report filed on her behalf in that proceeding. *See* ***Outagamie Cnty. v. C.J.A.***, No. 2019AP136-NM. The court will address that order in due course.

and convincing evidence before an individual is considered dangerous under the fifth standard are:

> (1) the individual is mentally ill; (2) the individual is unable to make an informed choice as to whether to accept or refuse treatment because of mental illness; (3) the individual shows a substantial probability that he or she needs care or treatment to prevent further disability or deterioration, based upon his or her treatment history and recent acts or omissions; (4) the individual evidences a substantial probability that he or she will lack services health and safety if he or she is left untreated; and (5) [the] individual evidences a substantial probability that he or she will suffer mental, emotional or physical harm if left untreated, resulting in the loss of either the individual's ability to function independently in the community or the individual's cognitive or volitional control over any thoughts or actions.

Id.

When the County seeks to continue the commitment of a person who is already under a commitment order, the County may prove dangerousness without offering evidence of a recent act or pattern of recent acts or omissions demonstrating a need for treatment. *See* WIS. STAT. § 51.20(1)(am). Instead, the County may show "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." *See* ***id.*** Section 51.20(1)(am) is intended to avoid the "vicious circle of treatment, release, overt act, recommitment." *See* ***State v. W.R.B.***, 140 Wis. 2d 347, 351, 411 N.W.2d 142 (Ct. App. 1987).

Here, the County petitioned to extend C.J.A.'s commitment and to continue administration of involuntary medication based on the recommendation of C.J.A.'s treating psychiatrist, Dr. Marshall Bales. In the recommendation, which was attached to both the petition and the amended petition, Bales stated that "[i]n many conversations, [C.J.A.] has indicated that she would have no intention of continuing her medication" if the commitment order expired.

The recommendation went on to state Bales' opinion that, absent an order for commitment and medication, C.J.A. "would stop seeing service providers. … She would stop taking her psychotropic medication, and therefore, likely return to the state she was in during 2016 in which she was violent and threatening."

At the May 8, 2019 recommitment hearing, the circuit court received Bales' written recommendation as an exhibit. Bales also testified. He said that C.J.A. was receiving treatment on an outpatient basis and was making progress but that she continued to suffer from schizoaffective disorder. He told the court that C.J.A. was receiving a very low dose of psychotropic medication and, while on that dosage, she sometimes displayed manic behavior and paranoid thinking. He described a recent incident in his office in which C.J.A. was "yelling, screaming," "accusatory," and "disorganized in her thinking." He said that if she discontinued her medication, her condition would deteriorate to the point that she would become dangerous and make threats to others, and he added that "without medication that's when she's in the past had to be hospitalized." Next, Bales testified that he had explained to C.J.A. the advantages, disadvantages, and alternatives to medication but that she is substantially incapable of applying the information to make an informed choice about accepting or refusing medication. He testified that this incapacity stems from her view that she is not mentally ill and her inability to recognize the benefits of the medication that she takes.

C.J.A. testified on her own behalf. She said that she was not mentally ill and that her alleged delusions reflect a reality that others do not acknowledge. She also admitted that she had been convicted of threatening a judge, but she asserted that she "took a plea deal for a crime [she] didn't commit."

At the conclusion of the hearing, the circuit court found, based on Bales' testimony and written recommendation, that the County had met its burden to prove that C.J.A. suffers from a mental illness, that she is a proper subject for treatment, and that if treatment were withdrawn, she would again exhibit dangerous behavior. The court further credited Bales' testimony that C.J.A. was substantially incapable of making an informed choice about medication. The court therefore ordered a one-year extension of C.J.A.'s commitment and ordered that she could be medicated during the period of her commitment regardless of her consent. [4]

In the no-merit report, C.J.A.'s appellate counsel first considers whether the circuit court failed to hold a timely hearing on the recommitment petition and therefore lost competency to hear the matter. *See* ***Portage Cnty. v. J.W.K.***, 2019 WI 54, ¶20, 386 Wis. 2d 672, 927 N.W.2d 509 (explaining that a circuit court loses competency to extend a commitment if the circuit court does not hold a hearing on the extension request before the previous order expires). We agree with appellate counsel that there is no arguable merit to this issue.

On February 28, 2019, before the previous commitment order expired on April 10, 2019, the County petitioned to extend that order. The parties then stipulated in writing to a thirty-day extension to permit the petition to be heard by a judge from a county other than Outagamie.[5] On April 9, 2019, the out-of-county circuit court judge assigned to hear the matter signed an order

[4] In ***Portage County v. J.W.K.***, 2019 WI 54, ¶¶8, 13-14, 386 Wis. 2d 672, 927 N.W.2d 509, our supreme court indicated that an appeal from a recommitment order is moot when the appeal was filed after expiration of the recommitment order at issue. C.J.A. filed her notice of appeal in this matter on February 3, 2020, while the one-year recommitment order entered on May 8, 2019, remained in effect. We therefore conclude that this matter is not moot.

[5] C.J.A. successfully moved to recuse all of the Outagamie County circuit court judges because a judge in that county was the alleged victim of her threats to kill a judge.

approving the stipulation and extending both the commitment and the medication order for thirty days. No arguable basis exists to challenge the stipulation. Parties to a recommitment proceeding may stipulate to extensions of the commitment. *See* ***Dane Cnty. v. N.W.***, No. 2019AP48, ¶1, unpublished slip op. (WI App Aug. 29, 2019).[6] On April 16, 2019, while the stipulated thirty-day extension was in effect, the County filed an amended recommitment petition. The circuit court held a hearing on the amended recommitment petition and resolved it on May 8, 2019, before expiration of the thirty-day extension period. A challenge to the circuit court's competency therefore would be frivolous. *Cf.* ***J.W.K.***, 386 Wis. 2d 672, ¶20.

The no-merit report also addresses whether the County presented sufficient evidence to support the twelve-month extension of C.J.A.'s commitment. We agree with appellate counsel that C.J.A. could not pursue an arguably meritorious appeal of this issue. When we review an extension order, we do not disturb the circuit court's findings of fact unless they are clearly erroneous, but we review independently whether those facts satisfy the statutory standard. *See* ***Winnebago Cnty. v. S.H.***, 2020 WI App 46, ¶10, 393 Wis. 2d 511, 947 N.W.2d 761. The circuit court here made findings of fact based on Bales' testimony and written recommendation and concluded that the County met its burden to present evidence that satisfied the statutory factors

[6] Pursuant to WIS. STAT. RULE 809.23(3), unpublished opinions authored by a single judge and issued on or after July 1, 2009, are citable for their persuasive value. ***Dane County v. N.W.***, No. 2019AP48, unpublished slip op. (WI App Aug. 29, 2019), is particularly persuasive in recognizing that parties may extend a mental health commitment by stipulation. ***N.W.*** rests in part on ***Waukesha County v. S.L.L.***, 2019 WI 66, ¶27, 387 Wis. 2d 333, 929 N.W.2d 140. *See* ***N.W.***, No. 2019AP48, ¶10. Our supreme court held in ***S.L.L.*** that commitment extensions under WIS. STAT. ch. 51 are governed by the rules of civil procedure to the extent those rules do not conflict with ch. 51. *See* ***S.L.L.***, 387 Wis. 2d 333, ¶27. Accordingly, because ch. 51 does not include a provision addressing stipulations, the rules of civil procedure apply. Those rules include WIS. STAT. § 807.05, which provides that a stipulation may bind the parties when, as in this case, the stipulation is in writing and signed by each party's attorney of record.

for extending C.J.A.'s commitment. *See* WIS. STAT. § 51.20(1)(a)2., (1)(am). Upon our independent review, we agree that the record supports the court's findings and conclusions.[7] We also agree with appellate counsel that the evidence was sufficient to support the court's order requiring C.J.A. to receive prescribed medication and treatment involuntarily during the period of commitment. *See* WIS. STAT § 51.61(1)(g)4.b.

This court's independent review of the record discloses no other potential issues for appeal warranting discussion. Therefore,

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

IT IS FURTHER ORDERED that attorney Megan Sanders-Drazen is relieved of further representation of C.J.A. 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

[7] In ***Langlade County v. D.J.W.***, 2020 WI 41, ¶40, 391 Wis. 2d 231, 942 N.W.2d 277, our supreme court held that "going forward circuit courts in recommitment proceedings are to make specific factual findings with reference to the subdivision paragraph of [WIS. STAT.] § 51.20(1)(a)2. on which the recommitment is based." Because the May 8, 2019 orders in this case predate the April 2020 decision in ***D.J.W.***, its holding does not apply. *See* ***Winnebago Cnty. v. S.H.***, 2020 WI App 46, ¶14, 393 Wis. 2d 511, 947 N.W.2d 761. The record, however, must nonetheless contain evidence that links past dangerousness to the substantial likelihood of recurring dangerousness absent an extension order. *See* ***id.***, ¶17. Here, although the circuit court did not reference the statutory subdivision on which the recommitment is based, the court explicitly accepted Bales' conclusions that C.J.A. did not recognize that she was ill, that she would discontinue her medication absent a commitment order, and that she would return to the dangerous behavior she exhibited in 2016 absent treatment and medication.