OFFICE OF THE CLERK
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 III

May 25, 2021

To:

Hon. Gregory B. Gill, Jr.
Circuit Court Judge
320 S. Walnut St.
Appleton, WI 54911

Susan Lutz
Register in Probate
Outagamie County Courthouse
320 S. Walnut St.
Appleton, WI 54911

Jordan Feest
Manitowoc Co. District Attorney's Office
1010 South 8th St.
Manitowoc, WI 54220

Joseph P. Guidote, Jr.
Outagamie County Corporation Counsel
County Administration Bldg.
320 S. Walnut St.
Appleton, WI 54911

Ralph Sczygelski
Sczygelski & Feest Law Firm, LLC.
713 Washington St.
Manitowoc, WI 54220-4525

C. J. A.

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

2019AP136-NM Outagamie County v. C. J. A. (L. C. No. 2016ME157)

Before Stark, 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).

Counsel for C.J.A. has filed a no-merit report concluding there is no arguable basis for challenging either the order extending C.J.A.'s WIS. STAT. ch. 51 mental health commitment or

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

the order for her involuntary medication and treatment.[2] C.J.A. has filed a response that we construe as challenging the sufficiency of the evidence to support the extension of her commitment. Upon an independent review of the record as mandated by WIS. STAT. RULE 809.32, this court concludes there is no arguable merit to any issue that could be raised on appeal. Therefore, the orders are summarily affirmed. *See* WIS. STAT. RULE 809.21.

In 2016, the circuit court entered an initial order committing C.J.A. and ordering her to receive involuntary medication and treatment after concluding that C.J.A. 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 v. C.A.***, No. 2017AP450, unpublished slip op.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 subsequently entered orders extending C.J.A.'s mental health commitment for six months and allowing for her involuntary medication and treatment during that time. The instant appeal is from the orders entered on April 10, 2018, granting Outagamie County's application from August 31, 2017, as last amended on September 12, 2017, seeking a twelve-month extension of the commitment order.

At a September 15, 2017 hearing, C.J.A., by counsel, requested an extension of the commitment order to allow for completion of an independent evaluation. C.J.A. sought and received three more extensions to pursue an independent evaluation, and a hearing was ultimately held on April 10, 2018, the day C.J.A.'s previous commitment was scheduled to expire. An examiner submitted his report more than forty-eight hours before the hearing. *See*

[2] Although the notice of appeal does not reference the medication order, nor does the no-merit report specifically address it, we will review that order as part of this appeal.

WIS. STAT. § 51.20(10)(b). Any challenge to the extension of C.J.A.'s commitment based on a failure to comply with statutory deadlines or procedures would lack arguable merit.

There is likewise no arguable merit to a challenge to the sufficiency of the evidence to support either the order extending C.J.A.'s commitment or the order for her involuntary medication and treatment. 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.

WISCONSIN STAT. § 51.20(13)(g)3. requires an individual's continued commitment if the court determines the individual: (1) is a proper subject for commitment; and (2) meets certain statutory conditions of dangerousness. A person is a proper subject for commitment if he or she is mentally ill and a proper subject for treatment. Sec. 51.20(1)(a)1. At an extension hearing, the dangerousness element may be satisfied by "a showing that there is 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." Sec. 51.20(1)(am). "The burden of proof is upon the county department or other person seeking commitment to establish evidence that the subject individual is in need of continued commitment." Sec. 51.20(13)(g)3. Further, the county must prove all required facts by clear and convincing evidence. Sec. 51.20(13)(e).

With respect to the order for involuntary medication and treatment, WIS. STAT. § 51.61(1)(g)3. provides that, incident to a commitment order, a court may direct that the committed person not retain the right to refuse medication and treatment if the court determines,

following a hearing, that the committed individual "is not competent to refuse medication or treatment." An individual is not competent to refuse medication or treatment if,

> because of mental illness, … and after the advantages and disadvantages of and alternatives to accepting the particular medication or treatment have been explained to the individual, one of the following is true:
>
> a. The individual is incapable of expressing an understanding of the advantages and disadvantages of accepting medication or treatment and the alternatives.
>
> b. The individual is substantially incapable of applying an understanding of the advantages, disadvantages and alternatives to his or her mental illness … in order to make an informed choice as to whether to accept or refuse medication or treatment.

Sec. 51.61(1)(g)4.; *see also* ***Outagamie Cnty. v. Melanie L.***, 2013 WI 67, ¶¶8-9, 349 Wis. 2d 148, 833 N.W.2d 607.

Here, C.J.A.'s examining psychiatrist Marshall J. Bales, M.D., submitted a report recounting that although C.J.A. refused to cooperate with the examination, the doctor had interviewed C.J.A.'s case manager and reviewed medical records, along with his previous court-ordered evaluation of C.J.A., in preparing the examination report. Bales opined that C.J.A. suffered from a mental illness—specifically, schizoaffective disorder with persistent psychotic symptoms—and that she would be a proper subject for commitment if treatment were withdrawn. Bales noted that while receiving treatment, C.J.A. had been able to care for her basic needs, maintain steady employment, and "function quite well." Bales added: "She has been dangerous in the past and if treatment is withdrawn, in my opinion, she will deteriorate [and] she will decline in mental health functioning. She will become threatening and dangerous again in some way and then she will become a proper subject for commitment again shortly thereafter."

Bales "strongly recommended" a twelve-month extension of C.J.A.'s commitment and a medication order with treatment on an outpatient basis.

At the extension hearing, Dr. Bales testified consistent with his report, further explaining that C.J.A. expresses paranoia and feelings of persecution by the "courts, lawyers, judges, [and] psychiatrists." Although Bales characterized C.J.A. as "treatable," he emphasized that C.J.A. does not believe that she is mentally ill and exhibits a "chronic lack of insight into the need for treatment." Bales further indicated that although he had explained to C.J.A. the advantages, disadvantages and alternatives to accepting medication or treatment during one of her previous examinations, C.J.A.'s mental illness renders her incapable of making an informed choice about accepting or refusing medication. Bales opined that if treatment were withdrawn, C.J.A. would not seek appropriate treatment for her mental illness.

C.J.A.'s treating psychiatrist Indu Dave, M.D., testified that C.J.A. has schizophrenia, but she continuously denies having a mental illness. Dave recounted that she had discussions with C.J.A. about the advantages, disadvantages, and alternatives to taking psychotropic medication. Dave opined, however, that because C.J.A. lacks insight into her own mental illness, she would not comply with treatment without a court order; and she could not make an informed choice about accepting or refusing medications.

C.J.A.'s community support specialist, Benjamin Warnke, testified that he had met with C.J.A. one to three times per month for the last year. During those meetings, C.J.A. expressed her belief that she was not mentally ill, she consistently presented with persecutory delusions, and she became "quickly agitated and escalated" when discussing her delusions. In turn, C.J.A.

testified on her own behalf, expressing her belief that she did not suffer from schizophrenia, that she was being persecuted, and that recommitment was not necessary.

Based on the evidence at trial, with specific emphasis on the testimony of Warnke and Dr. Bales, the circuit court determined that the statutory criteria for recommitment were met. The court further determined that a medication order was appropriate, as the evidence showed that C.J.A. was "significantly incapable of appreciating the advantages or disadvantages of the same."

In her response to the no-merit report, C.J.A. asserts, consistent with her hearing testimony, that she does not suffer from delusions or schizophrenia, and that she is the victim of a conspiracy that is based on distorted facts. Several of the attachments to her response, however, are related to her 2005 divorce case. C.J.A. also challenges the grounds forming the basis of her original emergency detention, specifically claiming that she never threatened a judge.[3] To the extent C.J.A. appears to be challenging the credibility of witness testimony at the hearing, the circuit court, as the arbiter of the witnesses' credibility, could believe the experts' testimony over C.J.A.'s claims to the contrary. *See* ***Gehr v. City of Sheboygan***, 81 Wis. 2d 117, 122, 260 N.W.2d 30 (1977).

[3] At the extension hearing, C.J.A. acknowledged that she was convicted of threatening a judge, but she claimed she was innocent despite her no-contest plea to the crime.

The record supports the circuit court's findings and conclusions, and the evidence was sufficient to satisfy the statutory factors for extending C.J.A.'s commitment.[4] *See* WIS. STAT. § 51.20(1)(a)2., (1)(am). The evidence was likewise sufficient to support the order for involuntary medication and treatment. *See* WIS. STAT. § 51.61(1)(g)4.b.

The court's independent review of the record discloses no other potential issues for appeal.

Therefore,

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

IT IS FURTHER ORDERED that attorney Ralph J. Sczygelski is relieved of his obligation to further represent 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

[4] 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 April 10, 2018 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 implicitly accepted Bales' conclusions that C.J.A. did not recognize that she was mentally ill; that she would discontinue her medication absent a commitment order; and that absent treatment and medication, she would deteriorate and again become an appropriate subject for commitment, thus satisfying the statutory basis for dangerousness set forth in § 51.20(1)(a)2.e. *See also* § 51.20(1)(am).