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**DISTRICT III**

June 2, 2021

*To*:

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J. R. D.

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

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2019AP1840-NM Eau Claire County v. J. R. D. (L. C. No. 2011ME129)

Before Hruz, 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 J.R.D. has filed a no-merit report concluding there is no arguable basis for challenging either the order extending J.R.D.'s WIS. STAT. ch. 51 mental health commitment or the order permitting involuntary medication and treatment. J.R.D. was advised of his right to respond to the report and has not responded. Upon an independent review of the record as

[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.

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.

J.R.D. was initially committed in July 2011. The instant appeal is from the orders entered on January 3, 2019, granting Eau Claire County's application from December 28, 2018, seeking another twelve-month extension of J.R.D.'s commitment. An examiner submitted his report more than forty-eight hours before the hearing, and the hearing was held before J.R.D.'s previous commitment was scheduled to expire. *See* WIS. STAT. § 51.20(10)(b). Therefore, any challenge to the extension of J.R.D.'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 J.R.D.'s commitment or the order allowing for 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 permitting 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, J.R.D.'s examining neuropsychologist, Paul M. Caillier, Ph.D., submitted a report opining that J.R.D. suffered from a mental illness—specifically, bipolar disorder with both depressive and rapid onset manic periods, as well as delusional disorder with respect to his physical condition. Caillier further opined that J.R.D. would be a proper subject for commitment

if treatment were withdrawn. Caillier stated that J.R.D. "demonstrated dangerousness when he goes into one of his manic periods and becomes very loud and vulgar." Although Caillier acknowledged this conduct had not happened in the recent past, he stated that J.R.D. "still demonstrates periodic acceleration into manic moods," and if he is not in a structured setting, "he would be extremely dangerous to himself, as he would stop his medication[.]"

At the extension hearing, Dr. Caillier testified, consistent with his examination report, that J.R.D. has bipolar disorder and a "strong delusional process" making him believe that he is "unable to ambulate independently" even though there is nothing physically preventing him from doing so. Caillier opined that J.R.D. would be a proper subject for commitment if treatment were withdrawn because J.R.D. "has no insight into the fact that he could work and rehabilitate himself so that he could move independently," and "[w]ithout independent movement the probability of him surviving in independent living, particularly in the absence of medication, would be zero." Caillier ultimately opined that J.R.D. needed commitment on an outpatient basis to prevent further disability or illness.

With respect to medication, Dr. Caillier testified that he had an "extensive discussion" with J.R.D. regarding the advantages and disadvantages of medication, and J.R.D. acknowledged dry mouth as a result of his medication. Caillier added that when he told J.R.D. that his medication will help him "keep in touch with reality and regulate his mood," J.R.D. "didn't really respond" but, rather, "just sort of smiled at me." Caillier opined that because J.R.D. thinks his mental illness stigmatizes him, he has been "noncompliant with medication in the past."

Based on the evidence at trial, 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 the medication has therapeutic value for J.R.D.; the advantages, disadvantages, and alternatives were explained to him; and J.R.D. is "not competent to refuse the medications because of his inability to understand what is going on."

The record supports the circuit court's findings and conclusions, and the evidence was sufficient to satisfy the statutory factors for extending J.R.D.'s commitment.[2] *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.

[2] 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 January 3, 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 implicitly accepted Dr. Caillier's conclusions that J.R.D.'s mental illness prevented him from expressing or understanding the advantages and disadvantages of accepting medication; that he would discontinue his medication absent a commitment order; and that treatment and medication were necessary to prevent further disability or illness, thus satisfying the statutory basis for dangerousness set forth in § 51.20(1)(a)2.e. *See also* § 51.20(1)(am).

IT IS FURTHER ORDERED that attorney Melissa Petersen is relieved of further representing J.R.D. in this matter. *See* WIS. STAT. RULE 809.32(3).

IT IS FURTHER ORDERED that this summary disposition order will not be published.

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*Sheila T. Reiff*
*Clerk of Court of Appeals*