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DISTRICT III

July 15, 2021

To:

Hon. Emily I. Lonergan
Circuit Court Judge
Outagamie County Courthouse
Electronic Notice

Susan Lutz
Register in Probate
Outagamie County Courthouse
Electronic Notice

Joseph P. Guidote, Jr.
Electronic Notice

Suzanne L. Hagopian
Assistant State Public Defender
Electronic Notice

S. M. B.

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

2021AP61-NM Outagamie County v. S. M. B. (L. C. No. 2020ME12)

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 S.M.B. has filed a no-merit report concluding there is no basis to challenge an order extending for twelve months his WIS. STAT. ch. 51 mental health commitment. S.M.B. has been advised of his right to respond and has not responded. Upon our independent review of the record as mandated by WIS. STAT. RULE 809.32, we conclude there is no arguable merit to any issue that could be raised on appeal, and we summarily affirm.

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

A statement of emergency detention was filed on January 14, 2020, after S.M.B. was taken into custody and transported to Winnebago Mental Health Institute (“Winnebago”), following his taking thirty to sixty Lorazepam pills and telling his girlfriend that he wanted to “end it.” Two psychiatrists who examined him following the detention concluded that he was suffering from depression and was drug dependent. Both psychiatrists also concluded S.M.B. was a proper subject for treatment and dangerous. Both opined there was a substantial probability of physical harm to himself, as manifested by S.M.B.’s recent suicide attempt. One examiner further concluded S.M.B. also posed a risk of harm to others. Following a January 22, 2020 hearing, the circuit court ordered a six-month commitment on an outpatient basis with treatment conditions.

Approximately two months prior to the expiration of the six-month commitment, a petition was filed to extend the commitment, alleging that S.M.B. had returned to Winnebago twice in March 2020 due to continued drug use and paranoia. Following each hospitalization, he was placed in treatment programs—first, at Eastwood Crisis Center and then at Pathways for Independent Living—but S.M.B. had eloped from both programs. When the petition for recommitment was filed, S.M.B.’s case manager did not know where he was located, but he would occasionally call her.

At the recommitment hearing on July 17, 2020, at which S.M.B. was represented by counsel, Dr. Marshall Bales testified. S.M.B.’s case manager also testified that the original commitment stemmed from a suicide attempt. The circuit court ordered a twelve-month extension of the outpatient commitment with treatment conditions. The court found that S.M.B. is mentally ill—specifically, that he was diagnosed with depression and has a serious and significant drug addiction, as well as a personality disorder. As to dangerousness, the court

found by clear and convincing evidence that there was a substantial likelihood that S.M.B. would be a proper subject for commitment if treatment were withdrawn. The court also found that S.M.B. was a proper subject for treatment.²

Any challenges to the extension of S.M.B.'s commitment based on a failure to comply with statutory deadlines or procedures would lack arguable merit. We also agree with counsel's conclusion that any challenge to the sufficiency of the evidence to prove the elements necessary for an extension of the outpatient commitment would lack arguable merit. *See* WIS. STAT. § 51.20(1)(a); WIS JI—CIVIL 7050 (2020).

The evidence was undisputed that S.M.B. is both mentally ill and drug dependent. *See* WIS. STAT. § 51.20(1)(a). Bales diagnosed S.M.B. with "Major Depression," which he described as "a major illness" that results in a "substantial disorder of thought, mood [and] perception." *See* WIS. STAT. § 51.01(13)(b). During the original commitment proceedings six months earlier, S.M.B. was also diagnosed with a depressive disorder. Bales reported that S.M.B. had a long history of addiction to numerous drugs, his drug use continued during the original six-month commitment, he had eloped from two treatment programs, he had been asked to leave a nursing

² As to S.M.B.'s dangerousness, the circuit court referenced WIS. STAT. § 51.20(1)(am) and the fifth standard under subd. para. (1)(a)2.e., the latter of which removes those "alleged to be drug dependent or developmentally disabled" from its scope. *See* § 51.20(1)(a)1. & 2.e.; *State v. Dennis H.*, 2002 WI 104, ¶19 n. 6, 255 Wis. 2d 359, 647 N.W.2d 851. While reference to the fifth standard may have been inappropriate here, it was proven by clear and convincing evidence that S.M.B. is dangerous to himself under subd. para. (1)(a)2.a. because he "[e]vidences a substantial probability of physical harm to himself ... as manifested by evidence of recent threats of or attempts at suicide or serious bodily harm." Because this proceeding was a recommitment, a recent threat or attempt of suicide or serious bodily harm did not have to be proven. Rather, it had to be proven that there was a substantial likelihood, based on S.M.B.'s treatment record, that he would be a proper subject for commitment due to the risk of suicide or other serious bodily harm if treatment were withdrawn. *See* § 51.20(1)(am).

program due to drug use, and he was unemployed with an unknown source of income and unknown housing status.

There is also no arguable issue as to whether S.M.B. was a proper subject for treatment. *See* WIS. STAT. § 51.20(1)(a). Bales testified that S.M.B.’s “overall condition is treatable” Bales noted that treatment can result in “harm reduction” by trying to “help him not to be so self-destructive” *See id.*

There is also no arguable issue that S.M.B. is dangerous to himself. Bales concluded S.M.B. remained a high risk for suicide. In January 2020, S.M.B. had been committed for six months following a suicide attempt, and he was then hospitalized twice in March 2020 for drug use and paranoia. Although S.M.B. had not attempted or threatened suicide during the six-month commitment, he was experiencing symptoms of his mental illness and drug dependence that put him at risk of suicide or serious bodily harm. For example, on May 29, 2020—less than two months before his recommitment hearing—he was admitted to St. Elizabeth’s Hospital, during which he experienced suicidal ideations and engaged in drug-seeking activities, which included banging his head against the wall while demanding benzodiazepines. Bales testified that S.M.B. is a high risk for suicide and that extension of the commitment “could be life-saving.” Accordingly, clear and convincing evidence was presented of a substantial likelihood that if treatment were withdrawn, S.M.B. would be a proper subject for commitment due to the risk of suicide or other serious bodily harm. *See* WIS. STAT. § 51.20(1)(a)2.a., (1)(am).

The record supports the circuit court’s finding and conclusions, and the evidence was sufficient to satisfy the statutory factors for extending S.M.B.’s commitment. Our independent review of the record discloses no other potential issues for appeal.

Therefore,

IT IS ORDERED that the order is summarily affirmed. WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that attorney Suzanne Hagopian is relieved of further representing S.M.B. 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