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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  
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**DISTRICT IV**

July 22, 2021

To:

Hon. Ellen K. Berz  
Circuit Court Judge  
Dane County Courthouse, Br. 11  
Electronic Notice

Carlo Esqueda  
Clerk of Circuit Court  
Dane County Courthouse  
Electronic Notice

Frances Philomene Colbert  
Assistant State Public Defender  
Electronic Notice

Marcia A. MacKenzie  
Dane County Corporation Counsel  
Electronic Notice

G. F. L.

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

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2021AP521-NM

In the matter of the condition of G. F. L.  
Dane County v. G. F. L. (L.C. # 2019ME443)

Before Kloppenburg, J.<sup>1</sup>

**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 Frances Philomene Colbert, appointed counsel for G.F.L., has filed a no-merit report pursuant to WIS. STAT. RULE 809.32 seeking to withdraw as appellate counsel. The report addresses whether there is any arguable basis to challenge either the order extending G.F.L.'s WIS. STAT. ch. 51 commitment or the order for G.F.L.'s involuntary medication and treatment. G.F.L. was sent a copy of the report and has not filed a response. Based upon the report and an

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<sup>1</sup> 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.

independent review of the record, I conclude there is no arguable merit to any issue that could be raised on appeal. Accordingly, I affirm.

While G.F.L. was still subject to a previous commitment order, Dane County petitioned for recommitment. The circuit court timely held a hearing on the date that G.F.L.'s previous six-month commitment would have otherwise expired. Two court-appointed examiners submitted written reports in advance of the hearing, and both examiners testified. G.F.L. and his mother also testified. The circuit court extended G.F.L.'s commitment for twelve months on an outpatient basis and ordered involuntary medication and treatment during the commitment period.

The no-merit report addresses whether the evidence was sufficient to support the order extending G.F.L.'s commitment and the order for involuntary medication and treatment. As to each order, the County had the burden of proof by clear and convincing evidence. *See Langlade Cnty. v. D.J.W.*, 2020 WI 41, ¶23, 391 Wis. 2d 231, 942 N.W.2d 277; *Outagamie Cnty. v. Melanie L.*, 2013 WI 67, ¶37, 349 Wis. 2d 148, 833 N.W.2d 607. Without reciting all of the evidence here, I agree with counsel that it would be frivolous to argue that the evidence was insufficient as to either order. The examiners' reports and testimony provided sufficient evidence to support the court's orders.

In *D.J.W.*, 391 Wis. 2d 231, ¶40, 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." The circuit court made the required findings here, referencing both the second and third standards in § 51.20(1)(a)2.:

b. .... a substantial probability of physical harm to other individuals as manifested by evidence of recent homicidal or other violent behavior, or by evidence that others are placed in reasonable fear of violent behavior and serious physical harm to them, as evidenced by a recent overt act, attempt or threat to do serious physical harm....

c. .... such impaired judgment, manifested by evidence of a pattern of recent acts or omissions, that there is a substantial probability of physical impairment or injury to himself or herself or other individuals.

Additionally, the court found that G.F.L. met the standard for recommitment under § 51.20(1)(am), which requires “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.”<sup>2</sup>

I discuss one additional issue that is also addressed in the no-merit report. The issue relates to G.F.L.’s original commitment. Counsel points out that there is nothing in the record showing that G.F.L.’s stipulation to the original commitment constituted a knowing and valid waiver. Counsel states that, although this might have created a basis to challenge G.F.L.’s original commitment, it does not provide a basis to challenge the extension of G.F.L.’s commitment in this appeal. I agree. The circuit court in this appeal does not have jurisdiction over the original commitment order. Further, the validity of the extension order does not depend on whether a challenge to a prior commitment order might have succeeded. Rather, “[a]s long as the extension is made prior to the expiration of the previous commitment order, the circuit court

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<sup>2</sup> In making these findings, the circuit court did not cite to the statutory subsections by number and letter. However, based on the evidence and the court’s references to the statutory language, it is apparent that the circuit court made findings under WIS. STAT. § 51.20(1)(a)2.b. and c. and (1)(am).

may order the extension if the County proves its case under the statutory criteria.” *Portage Cnty. v. J.W.K.*, 2019 WI 54, ¶21, 386 Wis. 2d 672, 927 N.W.2d 509.

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

Therefore,

IT IS ORDERED that the circuit court’s order is summarily affirmed. *See* WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that Attorney Frances Philomene Colbert is relieved of any further representation of G.F.L. in this matter.

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

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