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**DISTRICT II**

May 4, 2022

To:

Hon. Daniel J. Bissett  
Circuit Court Judge  
Electronic Notice

Sara Henke  
Register in Probate  
Winnebago County Courthouse  
Electronic Notice

Thomas Brady Aquino  
Electronic Notice

Jeffrey Mann  
Winnebago County Corporation Counsel  
P.O. Box 2808  
Oshkosh, WI 54903

Catherine B. Scherer  
Electronic Notice

A.A.

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

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2021AP1896-NM      Winnebago County v. A.A. (L.C. #2021ME54)

Before Grogan, 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).**

A.A. appeals from WIS. STAT. ch. 51 orders extending his commitment for twelve months due to mental illness and requiring involuntary medication and treatment. A.A.'s appellate counsel has filed a no-merit report pursuant to WIS. STAT. RULE 809.32 and *Anders v. California*, 386 U.S. 738 (1967). A.A. received a copy of the report and was advised of his right to file a response. He has not done so. Upon consideration of the report and an independent

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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.

review of the record as mandated by *Anders* and RULE 809.32, we summarily affirm the orders because there are no issues that would have arguable merit for appeal. WIS. STAT. RULE 809.21.

The no-merit report addresses whether there was sufficient evidence to support the twelve-month extension of A.A.’s commitment. We agree with appellate counsel that this issue lacks arguable merit for appeal. After hearing testimony from the treating psychiatrist, the circuit court concluded that Winnebago County met its burden to present evidence that satisfied the statutory factors for extending A.A.’s commitment: A.A. is mentally ill, a proper subject for treatment, and dangerous. WIS. STAT. § 51.20(1)(a)1. and 2. As the no-merit report discusses, the record supports the circuit court’s decision to extend A.A.’s commitment. See *Waukesha County v. J.W.J.*, 2017 WI 57, ¶15, 375 Wis. 2d 542, 895 N.W.2d 783 (we independently review whether the facts found by the circuit court satisfy the statutory standard).

The no-merit report notes that the circuit court did not “make specific factual findings with reference to the subdivision paragraph of [WIS. STAT.] § 51.20(1)(a)2. on which the recommitment is based.” *Langlade County v. D.J.W.*, 2020 WI 41, ¶40, 391 Wis. 2d 231, 942 N.W.2d 277. *D.J.W.* clearly states that the circuit court shall make such findings. *Id.* Nevertheless, on this record, we conclude that an appellate challenge to the absence of the *D.J.W.* findings would lack arguable merit. As the no-merit report persuasively states, Winnebago County specifically cited to the applicable subdivision paragraphs, § 51.20(1)(a)2. (b) and (e),<sup>2</sup> in its petition and at the hearing. The circuit court’s findings that A.A. recently

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<sup>2</sup> WISCONSIN STAT. § 51.20(1)(a)2.b. provides in pertinent part:

(continued)

carried a shank in the mental health facility (a manifestation of his mental illness per the treating psychiatrist) and he deteriorated when he was not under commitment and medication orders fit those subdivision paragraphs. A.A.’s case is distinguishable from *D.J.W.* because although the circuit court did not specifically reference the applicable subdivision paragraphs, the circuit court’s findings were specific, tracked the statutory criteria, and are supported by the record. The record is clear as to which theory of dangerousness was applied by the circuit court. *Cf. D.J.W.*, 391 Wis. 2d 231, ¶36 (“The statutory basis for D.J.W.’s commitment in this case has been somewhat of a moving target. It was not clear at either the initial commitment hearing or the extension hearing on which subdivision paragraph of WIS. STAT. § 51.20(1)(a)2. the commitment was based.”).

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Evidences 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.

WISCONSIN STAT. § 51.20(1)(a)2.e. provides in pertinent part:

For an individual, other than an individual who is alleged to be drug dependent or developmentally disabled, after the advantages and disadvantages of and alternatives to accepting a particular medication or treatment have been explained to him or her and because of mental illness, evidences either incapability of expressing an understanding of the advantages and disadvantages of accepting medication or treatment and the alternatives, or substantial incapability 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; and evidences a substantial probability, as demonstrated by both the individual’s treatment history and his or her recent acts or omissions, that the individual needs care or treatment to prevent further disability or deterioration and a substantial probability that he or she will, if left untreated, lack services necessary for his or her health or safety and suffer severe mental, emotional, or physical harm that will result in the loss of the individual’s ability to function independently in the community or the loss of cognitive or volitional control over his or her thoughts or actions.

With regard to the order for involuntary medication and treatment, we agree with appellate counsel that there was sufficient evidence to support the circuit court's findings that A.A. was not competent to refuse medication or treatment, he deteriorated when medication was not compelled, and he informed his treating psychiatrist that he would not take medication if not compelled to do so. The court determined that the WIS. STAT. § 51.61(1)(g) criteria for involuntary medication were met. No issue with arguable merit is present.

In addition to the issues discussed above, we have independently reviewed the record. Our independent review of the record does not disclose any potentially meritorious issues for appeal. Because we conclude that there would be no arguable merit to any issue that could be raised on appeal, we accept the no-merit report, affirm the orders, and relieve Attorney Thomas Brady Aquino of further representation of A.A. in this matter.

Upon the foregoing reasons,

IT IS ORDERED that the orders of the circuit court are summarily affirmed pursuant to WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that Attorney Thomas Brady Aquino is relieved of further representation of A.A. 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*