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DISTRICT I

November 15, 2022

To:

Hon. Marshall B. Murray
Circuit Court Judge
Electronic Notice

Colleen Ball
Electronic Notice

Josh Steib
Register in Probate
Milwaukee County Courthouse
Electronic Notice

Christopher Morgan
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Alan Polan
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You are hereby notified that the Court has entered the following opinion and order:

2020AP1524

Milwaukee County v. K.M. (L.C. # 2018ME1454)

Before Donald, 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).

K.M. appeals from an order extending her commitment due to mental illness. She argues this appeal is not moot, the evidence was insufficient to support the circuit court's recommitment order, and the circuit court erroneously admitted hearsay evidence of her alleged dangerousness. In lieu of a response brief, Milwaukee County filed a motion seeking a summary disposition reversing the extension order. Milwaukee County explains that "[g]iven the recent developments in the law and K.M.'s changed circumstances, Milwaukee County no longer believes it is in the

¹ 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.

interest of the Public to contest this appeal or the relief sought by K.M.”² K.M. responded and asserted that in light of Milwaukee County’s filing indicating that it no longer wishes to contest the merits of this appeal, this court should reverse the order extending her commitment. Upon review of the parties’ submissions and the record, this court will grant the requested relief.

In December 2019, Milwaukee County petitioned for K.M.’s recommitment. As a preliminary matter, we observe that K.M.’s recommitment has since expired. This appeal, however, is not moot. “An issue is moot when its resolution will have no practical effect on the underlying controversy.” *Portage Cnty. v. J.W.K.*, 2019 WI 54, ¶11, 386 Wis. 2d 672, 927 N.W.2d 509 (citation omitted). Here, vacating K.M.’s recommitment order would have an effect on her right to bear arms and her liability for the cost of care during her recommitment. *See Sauk Cnty. v. S.A.M.*, 2022 WI 46, ¶¶23, 27, 402 Wis. 2d 379, 975 N.W.2d 162.

We next turn to the merits of K.M.’s appeal. A recommitment requires clear and convincing evidence of “recent acts, omissions, or behaviors exhibiting dangerousness” or evidence “that if treatment were withdrawn the person would be substantially likely to engage in the types of dangerous acts, omissions, or behaviors that meet one of the five dangerousness standards.” *Id.*, ¶30; WIS. STAT. § 51.20(1)(a)2., (1)(am).

In this case, the circuit court entered an order, which stated that “[t]he subject is dangerous because the subject evidences behavior within one or more of the standards under [WIS. STAT.] § 51.20(1) or (1m)[.]” As K.M. observes, the order, however, did not provide any

² This appeal was previously on hold pending the Wisconsin Supreme Court’s decisions in *Sauk County v. S.A.M.*, 2022 WI 46, 402 Wis. 2d 379, 975 N.W.2d 162, and *Waupaca County v. K.E.K.*, 2021 WI 9, 395 Wis. 2d 460, 954 N.W.2d 366.

facts to support its finding of dangerousness. Nor did the circuit court make any factual findings or summarize the evidence relating to this finding on the record. As a result, the standard of dangerousness applied here is not clear. *Cf. S.A.M.*, 402 Wis. 2d 379, ¶36 (holding that while the witnesses did not recite the specific standard of dangerousness at issue, it was clear from the record that the witnesses, parties, and circuit court were all applying the third standard of dangerousness). We cannot make findings of fact for the circuit court. *See Wurtz v. Fleischman*, 97 Wis. 2d 100, 107 n.3, 293 N.W.2d 155 (1980).

Generally, when a circuit court has failed to make the appropriate factual findings, we will remand and order the circuit court to make findings of fact. *See, e.g., Douglas L. v. Arika B.*, 2015 WI App 80, ¶18, 365 Wis. 2d 257, 872 N.W.2d 357. However, as our supreme court recently explained, when a recommitment order has expired, the circuit court lacks competency to conduct any proceedings on remand. *Sheboygan Cnty. v. M.W.*, 2022 WI 40, ¶38, 402 Wis. 2d 1, 974 N.W.2d 733. Accordingly, because the recommitment order in this case has expired, we conclude that reversal is appropriate based on the circuit court's failure to make factual findings. As a result, we do not address the other arguments raised in this case. *See State v. Blalock*, 150 Wis. 2d 688, 703, 442 N.W.2d 514 (Ct. App. 1989) (“[C]ases should be decided on the narrowest possible ground[.]”).

Therefore,

IT IS ORDERED that the order of the circuit court is summarily reversed pursuant to WIS. STAT. RULE 809.21.

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

Sheila T. Reiff
Clerk of Court of Appeals