



OFFICE OF THE CLERK
WISCONSIN COURT OF APPEALS

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
Web Site: www.wicourts.gov

DISTRICT I

November 22, 2022

To:

Hon. Paul R. Van Grunsven
Circuit Court Judge
Electronic Notice

Jennifer O'Neill Hemmer
Electronic Notice

Josh Steib
Register in Probate
Milwaukee County Courthouse
Electronic Notice

Christopher Morgan
Electronic Notice

Alan Polan
Electronic Notice

Colleen Ball
Electronic Notice

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

2021AP266

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 that: (1) she was denied her right to procedural due process because Milwaukee County failed to provide her with advance notice of the facts and legal standard justifying the extension; (2) the evidence was insufficient to support the circuit court's extension order; (3) the circuit court erroneously admitted hearsay evidence of her alleged dangerousness; and (4) this appeal is not

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.

moot. In lieu of a response brief, Milwaukee County filed a motion seeking a summary disposition reversing the extension order. Milwaukee County explained that “[g]iven the recent developments in the law and K.M.’s changed circumstances, Milwaukee County no longer believes it is in the 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, 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 August 2020, Milwaukee County filed a petition to extend K.M.’s commitment, which the circuit court granted. The extension order has since expired. Nonetheless, this appeal 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 the extension order would have an effect on K.M.’s right to bear arms and her liability for the cost of care during the extension. *See Sauk Cnty. v. S.A.M.*, 2022 WI 46, ¶¶23, 27, 402 Wis. 2d 379, 975 N.W.2d 162.

Turning now to the merits of K.M.’s appeal, I conclude that there was insufficient evidence to support the circuit court’s extension order. At the hearing in this case, Milwaukee County argued an extension was appropriate under the second standard of dangerousness, pursuant to WIS. STAT. § 51.20(1)(a)2.b., as viewed through the lens of § 51.20(1)(am). The second standard of dangerousness provides that a mentally ill person may be committed if there is:

² This appeal was previously on hold pending the Wisconsin Supreme Court’s decision in *Sauk County v. S.A.M.*, 2022 WI 46, 402 Wis. 2d 379, 975 N.W.2d 162.

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.

WIS. STAT. § 51.20(1)(a)2.b. (emphasis added). Here, no witnesses testified that if treatment were withdrawn, K.M. would become “homicidal,” “violent,” or place others in fear of “violent behavior and serious physical harm.”³

In its decision, the circuit court emphasized that K.M. had testified that there were “men in [her] building that are stalking her” and “coming to her door.” The circuit court then stated that without medication, there is a “risk and likelihood that she opens that door, and exposes herself to self harm from those individuals that she admits” and “we can extrapolate their intentions to—coming to her door are not good intentions.” Nothing in the statutes, however, authorizes a circuit court to commit a person because someone else in the future might potentially harass or perpetrate a crime against the person. *See* WIS. STAT. § 51.20(1)(a)2., (1)(am).

Thus, I conclude that the record does not contain clear and convincing evidence to support the extension order, and, as a result, reverse on this ground.⁴ *See Sheboygan Cnty. v. M.W.*, 2022 WI 40, ¶38, 402 Wis. 2d 1, 974 N.W.2d 733 (holding that reversal is appropriate

³ I note that the case manager testified that at the time of K.M.’s original commitment she was “aggressive” with someone in her housing and used “pepper spray” on another person on the bus. However, there was no testimony presented regarding the circumstances of K.M.’s alleged aggression or use of pepper spray.

⁴ Because I reverse on sufficiency grounds, I 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[.]”).

when a recommitment order has expired because the circuit court lacks competency to conduct any proceedings on remand).

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