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 IV

November 22, 2023

To:

Hon. Elliott M. Levine
Circuit Court Judge
Electronic Notice

Nicole Schroeder
Register in Probate
La Crosse County Courthouse
Electronic Notice

Thomas Brady Aquino
Electronic Notice

Stephen D. Woodward
212 6th St. N., Ste. 2400
La Crosse, WI 54601

B. B.

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

2022AP1572-NM In the matter of the mental commitment of B.B.
(L.C. # 2022ME30)

Before Blanchard, 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 B.B. has filed a no-merit report concluding that there is no arguable basis for challenging orders committing B.B. for mental health treatment pursuant to WIS. STAT. ch. 51 and authorizing involuntary medication and treatment. B.B. was sent a copy of the report and was advised of her right to file a response. She has not done so. Upon an independent review of the record as mandated by WIS. STAT. RULE 809.32 and ***Anders v. California***, 386 U.S. 738

[1] This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(d) (2021-22). All references to the Wisconsin Statutes are to the 2021-22 version unless otherwise noted.

(1967), 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 the statutory time limits were complied with, thereby eliminating any claim that the circuit court lost competency to enter the commitment and treatment orders. The record reflects that counsel was appointed for B.B. pursuant to WIS. STAT. § 51.20(3) on the same day that a statement of emergency detention was filed. The circuit court held a probable cause hearing within the 72-hour time limit required by WIS. STAT. §§ 51.15(5) and 51.20(7)(a). A final hearing was held within 14 days from the time of B.B.'s emergency detention, as required under WIS. STAT. § 51.20(7)(c). At the conclusion of the final hearing, the court ordered that B.B. be committed to a locked inpatient facility for six months, but noted that, if B.B. were to stabilize, the court would approve outpatient treatment if recommended by the treating physician. The court also ordered involuntary medication and treatment during the period of B.B.'s commitment. We agree with counsel's conclusion in the no-merit report that any challenge to the orders for commitment and involuntary medication based on a claim that the circuit court failed to comply with mandatory statutory deadlines or procedures would lack arguable merit on appeal.

The next issue addressed in the no-merit report is whether there would be any arguable merit to challenging the sufficiency of the evidence to support the commitment order. Counsel begins the discussion of this issue by acknowledging that the six-month commitment order being appealed in this case has already expired. However, counsel argues that the issue of sufficiency of the evidence is not moot due to collateral consequences stemming from the commitment. Counsel points out that the commitment order specifies that B.B. is prohibited from possessing any firearm. In ***Marathon County v. D.K.***, 2020 WI 8, ¶¶3 & 25, 390 Wis. 2d 50, 937 N.W.2d

901, the supreme court held that an appeal from an expired six-month, original commitment was not moot because of the collateral consequence of the firearms ban, which extended beyond the term of the commitment. The commitment order in this case, just like the order in ***D.K.***, specifies, "'Expiration of the mental commitment proceeding does not terminate this restriction.'" ***Id.***, ¶24 (emphasis omitted; quoted source omitted). We agree with counsel's conclusion that, under the facts of this case, the sufficiency of the evidence to support the commitment order is not a moot issue.

We also agree with counsel that there would be no arguable merit to challenging the sufficiency of the evidence to support the commitment order. To obtain an order for B.B.'s commitment, the County had the burden of proving by clear and convincing evidence that (1) B.B. is mentally ill, (2) she is a proper subject for treatment, and (3) she is dangerous to herself or others. *See* WIS. STAT. § 51.20(1)(a), (13)(e). At the final hearing, the County elicited testimony from Dr. Rhianon Groom, a psychiatrist who had evaluated B.B. and also filed a report with the court. Dr. Groom opined that B.B. was mentally ill with a diagnosis of schizophrenia, that B.B. was a proper subject for and would benefit from treatment, and that B.B. was dangerous, such that there was a substantial probability of physical impairment or injury to herself or others. The circuit court concluded that it was presented with evidence that established each of these factors and found that there was a basis for commitment. Sec. 51.20(1)(a). As the no-merit report discusses, the record supports the circuit court's conclusion. *See* ***Waukesha Cnty. v. J.W.J.***, 2017 WI 57, ¶15, 375 Wis. 2d 542, 895 N.W.2d 783 (we independently review whether the facts satisfy the statutory standard). There would be no arguable merit to challenging the sufficiency of the evidence to support the commitment order.

The no-merit report also discusses whether there would be any arguably meritorious basis for challenging the circuit court's order for involuntary medication and treatment. Like the commitment order, the six-month order for involuntary medication and treatment has expired. This court could decline to review the order for involuntary medication and treatment on mootness grounds. However, there are several established exceptions under which this court may elect to address an otherwise moot issue: "(1) 'the issues are of great public importance'; (2) 'the constitutionality of a statute is involved'; (3) the situation arises so often 'a definitive decision is essential to guide the [circuit] courts'; (4) 'the issue is likely to arise again and should be resolved by the court to avoid uncertainty'; or (5) the issue is 'capable and likely of repetition and yet evades review.'" ***Portage Cnty. v. J.W.K.***, 2019 WI 54, ¶12, 386 Wis. 2d 672, 927 N.W.2d 509 (quoted source omitted). In this case, both the fourth and fifth exceptions to the mootness doctrine apply. The fourth exception applies because the record shows that B.B.'s mental health concerns are ongoing and that she may be subject to future commitment and medication orders. The fifth exception applies because, given the short duration of commitment orders and the corresponding medication orders, the issue presented by this appeal is likely to evade appellate review. *See* WIS. STAT. § 51.20(13)(g)1.

We turn, then, to examine the issue of whether there would be any arguable merit to challenging the order for involuntary medication and treatment in this case. The County had the burden of proving, by clear and convincing evidence, that B.B. was incompetent to refuse medication. ***Outagamie Cnty. v. Melanie L.***, 2013 WI 67, ¶37, 349 Wis. 2d 148, 833 N.W.2d 607; *see also* WIS. STAT. § 51.20(13)(e). To meet that burden, the County was required to show that the advantages and disadvantages of and alternatives to accepting the particular medication or treatment had been explained to B.B. and that B.B. was either (1) incapable of expressing an

understanding of the advantages and disadvantages of, and the alternatives to, the medication; or (2) substantially incapable of applying an understanding of the advantages, disadvantages, and alternatives to her mental illness in order to make an informed choice. WIS. STAT. § 51.61(1)(g)4.; *see also* ***Melanie L.***, 349 Wis. 2d 148, ¶¶53, 67.

The evidence supports the circuit court's conclusion that B.B. was substantially incapable of applying an understanding of the advantages, disadvantages, and alternatives to her mental illness. The court found that, although B.B. was able to repeat the doctor's explanation of the advantages and disadvantages, she could not apply an understanding of that information to her condition because B.B. did not believe that she was mentally ill. The court's findings are supported by Dr. Groom's testimony and report. Any challenge to the circuit court's order allowing the involuntary administration of medication and treatment would be without arguable merit.

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.

IT IS ORDERED that the orders are summarily affirmed. *See* WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that Attorney Thomas B. Aquino is relieved of any further representation of B.B. in this matter. *See* WIS. STAT. RULE 809.32(3).

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

Samuel A. Christensen
Clerk of Court of Appeals