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DISTRICT IV

February 19, 2013

To:

Hon. C. William Foust
Circuit Court Judge
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Madison, WI 53703

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

2011AP2704-NM

In the matter of the mental commitment of Thomas F. W.: Dane County v. Thomas F. W. (L.C. # 2001ME263)

Before Lundsten, P.J.

Thomas F.W. appeals orders extending his mental health commitment under Chapter 51 of the Wisconsin Statutes and authorizing continued involuntary medication.¹ Attorney Shunette Campbell has filed a no-merit report seeking to withdraw as appellate counsel. *See Anders v.*

¹ Although the extension order which is the actual subject of this appeal has now expired, we will address its validity in case it might affect subsequent orders. A subsequent extension order was entered on April 11, 2012, and is the subject of an additional no-merit appeal, No. 2012AP2650-NM, pending with this court.

California, 386 U.S. 738, 744 (1967); WIS. STAT. RULE 809.32 (2011-12)²; and *State ex rel. McCoy v. Wisconsin Court of Appeals*, 137 Wis. 2d 90, 403 N.W.2d 449 (1987), *aff'd*, 486 U.S. 429 (1988). The no-merit report addresses the sufficiency of the evidence to support the extension order and the order for involuntary medication and treatment. Thomas was sent a copy of the report, but has not filed a response. Upon reviewing the entire record, as well as the no-merit report, we agree with counsel's assessment that there are no arguably meritorious appellate issues.

In petitioning for extension of a mental commitment order, a county has the burden of showing that there is “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subject individual’s treatment record, that the individual would be a proper subject for commitment if treatment were withdrawn.” WIS. STAT. § 51.20(1)(am). Following a final commitment order, the circuit court has authority to determine whether an individual is competent to refuse medication or treatment and, if the individual is not competent, the court may order administration of medication, treatment, or both. WIS. STAT. § 51.61(1)(g)3. and 3m. An individual is not competent to refuse medication or treatment if, after the advantages and disadvantages of medication and treatment have been explained, the individual “is substantially incapable 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.” WIS. STAT. § 51.61(1)(g)4.

² All references to the Wisconsin Statutes are to the 2011-12 version unless otherwise noted.

The County presented testimony at the commitment extension hearing from psychiatrist Dr. Matthew Felgus. Felgus examined Thomas at Mendota Mental Health Institute, where Thomas was housed in the most restrictive unit, the Management Treatment Unit. Felgus stated that he has done prior examinations of Thomas. He testified that Thomas has been diagnosed with schizoaffective disorder and that his mental illness impairs his judgment, causes paranoid thoughts, diminishes his capacity to recognize reality, and causes him to act out aggressively against staff and patients at Mendota. Felgus opined that there was a substantial likelihood that Thomas would become a proper subject for commitment if treatment were withdrawn. He further opined that Thomas is incapable of understanding the advantages and disadvantages of medication because Thomas does not acknowledge that he is mentally ill. Felgus stated that the Management Treatment Unit is the least restrictive environment for Thomas consistent with his needs.

Court-appointed psychologist Dr. Robert Barahal also testified at the hearing by telephone. Barahal stated that Thomas refused to meet with him, but that he reviewed Thomas's records and had a discussion with Mendota staff. Like Felgus, Barahal concluded that Thomas suffers from schizoaffective disorder and is a proper subject for treatment. Barahal also opined that, based on Thomas's history, it was likely Thomas would become more mentally ill and aggressive in the absence of effective treatment. Barahal concluded that treatment in a locked inpatient setting is the least restrictive environment for Thomas, considering his history of aggressive behavior.

The County also presented testimony from Dr. Philip Lomas, Thomas's treating psychiatrist. Lomas stated that, in addition to suffering from schizoaffective disorder, Thomas is diagnosed as alcohol dependent and as having antisocial personality disorder. Lomas opined that

Thomas is a proper subject for treatment, and that he has benefitted to some extent from antipsychotic and psychiatric medications. Lomas stated that, when taken off medications in the past, Thomas exhibited behavior that resulted in him being placed in the exclusion room at the Management Treatment Unit. Lomas also stated that, when Thomas was off medication, he did not eat or sleep normally, had increased delusional thoughts, had poor hygiene, hoarded food under his bed, and refused to flush the toilet in his room. Lomas stated that it was his professional opinion that the Management Treatment Unit was the least restrictive environment consistent with Thomas's needs.

Thomas also testified on his own behalf, and stated that he had been receiving treatment from Mendota since 1999, beginning with outpatient therapy. When asked if he believed that he was mentally ill, Thomas responded that he is a social drinker and that he feels that his main problem is anxiety due to physical ailments. Thomas indicated that he would not take antipsychotic medications if he were released from Mendota.

The circuit court could properly rely on the testimony before it to conclude that the criteria for extending the commitment and continuing involuntary medication and treatment had been satisfied. Upon our independent review of the record, we have found no other arguable basis for reversing the orders. *See State v. Allen*, 2010 WI 89, ¶¶81-82, 328 Wis. 2d 1, 786 N.W.2d 124.

IT IS ORDERED that the orders are summarily affirmed under WIS. STAT. RULE 809.21(1).

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

Diane M. Fremgen
Clerk of Court of Appeals