

WISCONSIN SUPREME COURT
FRIDAY, DECEMBER 2, 2011
10:45 a.m.

This is a review of a decision of the Wisconsin Court of Appeals, District II (headquartered in Waukesha), which reversed a Fond du Lac County Circuit Court decision, Judge Richard J. Nuss, presiding.

2010AP2061

[Fond du Lac Co. v. Helen E.F.](#)

This case examines whether a person who has Alzheimer's or similar dementia may also be found to have a mental illness for purposes of a ch. 51 involuntary commitment and whether certain medications constitute "treatment" under the statute.

A decision by the Supreme Court could have wide-ranging implications, as virtually every county in the state has filed proceedings under ch. 51, seeking the involuntary commitment of persons with dementia who exhibit attributes of mental illness in the form of a treatable mood or psychotic disorder.

Some background: Helen E.F. has been in a nursing home for about six years. Her dementia has progressed to the point where she is very limited in her verbal communications. Her appearance at the commitment proceedings was waived since she would not be able to understand or participate meaningfully.

Helen was taken to St. Agnes Hospital on April 12, 2010. On April 15, 2010, a probable cause hearing was conducted on a prior ch. 51 petition. After this hearing, the court commissioner concluded there was not sufficient probable cause to proceed, and the petition was converted to a ch. 55, Stats., protective placement action.

A 30-day temporary guardianship was issued. The 30-day time period to proceed with the ch. 55 protective placement expired and a second ch. 51 petition was filed. Helen's attorney argued that the filing of the new ch. 51 petition amounted to an impermissible attempt to circumvent the 30-day time limit. The county argued that the new ch. 51 petition was a separate petition and that Helen had not been detained continuously under the old order because after the 30-day time period expired for the ch. 55 protective placement and temporary guardianship, Helen was "wheeled off the unit, and then she was brought back on."

During the probable cause hearing on the ch. 51 petition, and the final commitment hearing, psychiatrists testified about Helen's condition and that she posed a potential danger to herself and others.

The circuit court found that grounds for a ch. 51 commitment and an involuntary medication order had been proven by clear and convincing evidence. Helen appealed, and the Court of Appeals reversed and remanded.

The Court of Appeals said the question presented was whether the evidence presented at trial was sufficient, as a matter of law, to sustain Helen's ch. 51 involuntary commitment.

The Court of Appeals said its consideration of the law, the parties' arguments, the amicus briefs filed in the case and the task force report led it to conclude that Helen was not a proper subject for detainment or treatment under ch. 51 because Alzheimer's disease is not a qualifying mental condition under that chapter.

The Court of Appeals said contrary to ch. 51, ch. 55 specifically includes people with degenerative brain disorders when defining the scope of who may receive protective services and for whom emergency and temporary protective placements may be made.

Fond du Lac County argues that the Court of Appeals' decision will have a far reaching impact on nursing homes that provide care to dementia patients and may be subject to liability because the nursing facility must continue to house a patient who is striking out at staff or other residents, without access to available in-patient psychiatric treatment to address and alleviate the problem.

The county argues that the Court of Appeals' decision is in conflict with its earlier decision in In the Matter of the Mental Condition of C.J., 120 Wis. 2d 355, 354 N.W.2d 219 (Ct. App. 1984).

Helen says if the county truly believes that Alzheimer's patients could be better served by ch. 51 commitments, then the county's remedy is to ask the legislature to re-write the commitment statutes. Helen says plainly, Alzheimer's disease is a degenerative brain disorder that causes irreversible decline.