STATE OF WISCONSIN

COURT OF APPEALS

DISTRICT III

Case No. 2020AP1580

In the matter of the mental commitment of A.A.:

RUSK COUNTY,

Petitioner-Respondent

v.

A.A.

Respondent-Appellant.

Appeal from an Order of Extension of Commitment and an Order for Involuntary Medication or Treatment Entered by the Rusk County Circuit Court, the Hon. Steven P. Anderson Presiding

RESPONDENT BRIEF OF PETITIONER-RESPONDENT

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES CITED

CONSTITUTIONAL PROVISIONS AND STATUTES CITED

POSITION ON ORAL ARGUMENT AND PUBLICATION

Oral argument is not necessary. It is Rusk County's opinion that this opinion should not be published.

ARGUMENT

I. This Court should uphold the January 9, 2020 recommitment as §51.20(1) was substantially complied with.

The brief of the Respondent-Appellant argues the Petition for re-commitment was insufficient in three (3) respects, which are: (i) the petition for recommitment did not identify any facts to indicate that A.A. currently satisfies §51.20(1)(am); (ii) the petition stated that this was a recommitment of the original commitment entered on August 2nd, 2019, instead of the extension of commitment which was entered on January 9th, 2020; (iii) the petition failed to allege clear and concise facts warranting a commitment to begin at the end of the August 2nd, 2019 commitment.

The allegations contained in (i) and (ii) above are harmless errors,

commitment is to inform the petitioner that it seeks to obtain an order extending the commitment to which the individual is currently under. Under §51.20(10)(c) the rules of civil procedure are incorporated to the extent that they do not conflict with Chapter 51. § 802.02(1)(a) requires the petitioner to provide a short and plain statement of the claim, identifying the transaction or occurrence or series of transactions or occurrences out of which the claim arises, and showing the pleader is entitled to relief. §802.02(1)(b) also requires a demand for judgment for the relief the pleader seeks.

The Petition for Extension of Involuntary Commitment explicitly motions the court for a 12 month extension of the involuntary commitment ordered by the court on August 2nd, 2019. Also, the affidavit alleges that A.A. was found to be dangerous to himself and others. (R.38). And the Affidavit alleges that if treatment were withdrawn there is a substantial likelihood based upon A.A.'s treatment records that he or she would be a proper subject for treatment under §51.20(1)(a). The above pleadings provided A.A. with notice of what the County was going to attempt to do, i.e. recommit him. The argument contained in (iii) above fails as it is not required:

> Although the County must establish all of those elements at the Extension Hearing, there is no statutory mandate that it must serve a document with such a factual recitation in advance. 387 Wis. 2d. 333, 355 *In the matter of the Mental Commitment of S.L.L.*

II. Chapter 51's recommitment provisions do not violate due process or equal protection.

A.A.'s first argument states that the 14th Amendment and Wisconsin statutes require a county to allege facts in support of a petition for recommitment. In support of the argument, A.A. cites *Data Key Partners v. Permira Advisers LLC*, 2014 WI 86, ¶21, 849 N.W. 2d 693. These arguments fail as mental commitments are different than protective placement hearings. More rights are provided to the subject of a re-commitment. For example, in a WATTS Review, no attorney is appointed to represent the Ward. A guardian ad litem is appointed to meet with and evaluate the Ward and determine, among other things, whether or not the Ward objects to the current guardianship or placement. Only if a Ward objects to the guardianship or protective placement does an adversary counsel get appointed. In a mental commitment a court appointed public defender is appointed to represent the interests of the individual in the re-commitment hearing.

The appointment of counsel also satisfies A.A's objection to not having a "personal examination." The Chapter 51 procedure, upon request by the person subject to the commitment or their attorney, may request an independent evaluation.

Under due process and equal protection the appointment of counsel, regardless of whether or not the person subject to the commitment objects, satisfies those constitutional requirements.

III. The circuit court did not err in holding that Andy's motion for dismissal was late.

A.A. articulates an inaccurate reading of §802.06. Section 802.06(b) states:

> If on a motion asserting the defense described in par. (a) 6. to dismiss for failure of the pleading to state a claim upon which relief can be granted, or on a motion asserting the defenses described in par. (a) 8. or 9., matters outside of the pleadings are presented to and not excluded by the court, the motion shall be treated as one for summary judgment and disposed of as provided in s. 802.08, and all parties shall be given reasonable opportunity to present all material made pertinent to such a motion by s. 802.08.

A.A. states in his brief that the circuit court should have "dismissed the County's petition for recommitment." (p.20). A.A. did not include pertinent features of §802.06 in his argument and

the circuit court should not have dismissed the county's petition. A.A. delayed his defensive motion and neglected to describe the statutory language stating that all parties shall be given an opportunity to present material made pertinent to such a motion. The circuit court did not err in holding that A.A.'s motion for dismissal was late; A.A. was not prepared to present matters outside of the pleadings and Petitioner was not offered an opportunity to present all material made pertinent to such a motion.

IV. The circuit court did not admit hearsay evidence of A.A.'s dangerousness and A.A. was not prejudiced.

A.A.'s argument is flawed and inaccurate because the court in *S.Y. v. Eau Claire County*, 162 Wis. 2d 320, 469 N.W. 2d 836 (1991) stated that the admission of hearsay evidence was harmless error:

> "The court of appeals concluded that the statement was hearsay and inadmissible. It held, nevertheless, that the error was harmless in light of the plethora of other evidence that convincingly demonstrated that S.Y. was dangerous to himself as well as to others. To decide the case, we need not determine that the admission of the examining physician's testimony was inadmissible. Its thrust was that S.Y. was dangerous and, hence, an appropriate subject for commitment." *See S.Y. v. Eau Claire County*, 162 Wis. 2d 320, 469 N.W. 2d 836 (1991).

Dr. Helfenbein presented expert witness testimony related to Andy's dangerous behavior and this testimony was sufficient to establish the circuit court's determination that Andy was a danger to himself and others in the community. §51.20(1)(2)(b) states that an individual is dangerous if he or she "evidences 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." Dr. Helfenbein testified as follows: "He was being disorganized and psychotic in front of the police…telling them to kill him and saying that he wanted, you know, he was trying to get their gun. I think that makes him dangerous." (R.59:17). The court does not need to determine if Dr. Helfenbein's testimony was inadmissible. Dr. Helfenbein's expert testimony established that Andy was dangerous and a proper subject for commitment. Dr. Helfenbein's testimony was based on his understanding of medical records but his interpretation of those records is not inadmissible hearsay. As an expert witness, Dr. Helfenbein's testimony is admissible and provides the court with a professional evaluation of A.A.'s dangerousness based on accurate medical records.

CONCLUSION

For the reasons stated above, the Court should uphold the circuit court's January 9th, 2020 recommitment of A.A.

Dated this 30th day of December, 2020.

Respectfully submitted

electronically signed by Richard J. Summerfield
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CERTIFICATION AS TO FORM/LEGNTH

I hereby certify that this brief conforms to the rules contained in §809-19(8)(b) and (c) for a brief produced with a proportional serif font. The length of this brief is 1,503.

CERITIFICATE OF COMPLIANCE WITH RULE 809.19(12)

I hereby certify that:

I have submitted an electronic copy of this brief which complied with the requirements of Interim Rule for Appellate Electronic Filing Project, Order 19-02.

I further certify that copy of this certificate has been served with the brief filed with the court and served on all parties either by electronic filing or by paper copy.

Dated this 30th day of December, 2020

Signed:

Electronically signed by Richard J. Summerfield
Richard J. Summerfield
Rusk County Corporation Counsel