STATE OF WISCONSIN
SUPREME COURT
Case No. 2022AP000502

IN THE MATTER OF THE MENTAL COMMITMENT OF K.L.:

Barron County,
Petitioner-Respondent,

-vs-

K.L.,
Respondent-Appellant-Petitioner.

RESPONSE TO PETITION FOR REVIEW

Samantha L. Mohns
State Bar No. 1061920
Barron County Corporation Counsel, Deputy Corporation Counsel
Office of Corporation Counsel
335 E. Monroe Avenue – Room 2130
Barron, WI 54812
Phone (715) 537-6393

Attorney for Petitioner-Respondent
Dated: March 21, 2023

I. TABLE OF CONTENTS

II. STATEMENT OF THE ISSUES

1. Whether checked boxes on a standard form court order are an adequate substitute for a court's on-the-record dangerousness findings required by *Langlade County v. D.J.W.*, 2020 WI App 41, 391 Wis. 2d 231, 942 N.W.2d 277?

   The court of appeals found the court's written order, together with the court's oral ruling, satisfied the requirements of *D.J.W.*

   Barron County agrees with the courts' decision.

2. Whether the evidence as to dangerousness was sufficient to extend Katie's[1] commitment?

   The court of appeals found that it was.

   Barron County agrees with the court's decision.

[1] Pursuant to Wis. Stat. § (Rule) 809.19(1)(g), K.L. is referred to by the pseudonym, Katie.

III. CRITERIA FOR REVIEW

Barron County opposes the petition for review. "Supreme court review is a matter of judicial discretion, not of right, and will be granted only when special and important reasons are presented." Wis. Stat. § (Rule) 809.62(1r). The unpublished opinion in this matter does not merit review by this Court as outlined in Wis. Stat. § (Rule) 809.62(1r) for either of Katie's issues. Nor does it give rise to any other substantial or compelling reason that would merit review.

IV. ARGUMENT

A. Katie submits that her first issue, "...whether checked boxes on a standard form court order are an adequate substitute for a court's on-the-record dangerousness findings," involves a novel legal question that is likely to recur. (Pet.3).[2] Review of this issue should be denied for the following reasons.

1. The use of standard form court orders is not a new requirement in mental commitment cases, or many other types of cases.[3] State form orders have been utilized for years on mental commitments, guardianships, protective placements, etc...and Katie does not cite any cases of precedential value to support the likelihood of reoccurring issues of circuit courts substituting them for any on-the-record findings. While the standard court order form utilized for commitments (and extensions) was modified post-*D.J.W.*, to include new findings with check boxes, the court of appeals reference to it in this

[2] When citing to the petition filed by Katie, the County will cite to the page numbers at the top of each page and not to the numbers at the bottom.

[3] Wis. Stat. § 807.001(1)("In all civil actions and proceedings in circuit court, the parties and court officials shall use the standard court forms adopted by the judicial conference...").

particular case should not equate to a novel legal question for this Court to decide.[4]

2. The court of appeals decision in the case at hand, when read in full, made clear it did not utilize the standard form court order as a complete substitute for the circuit court's on-the-record dangerousness findings. This is illustrated perhaps most clearly when the court of appeals stated:

> While the circuit court did not explicitly reference a dangerousness standard in its oral ruling, the court's written order- *which followed its oral decision*- specified that the court concluded Katie was dangerous under Wis. Stat. § 51.20(1)(a)2.c. and d., the third and fourth dangerousness standards. *Together with the court's oral ruling* that Katie's behavior due to her mental illness "created a substantial probability of risk of harm to herself or others" and that Katie "had certainly significantly impaired judgment," the court satisfied D.J.W.'s specificity requirements. *The court's comments at the conclusion of the hearing, reviewed in light of the written order*, show that the court considered specific facts in connection to dangerousness. Further, there is no question which dangerousness standards the court relied on when it ordered Katie's recommitment.

(Pet-App.12. *Emphasis added*).

Moreover, the "court's comments at the conclusion of the hearing," as indicated in the quote above, were prefaced by,

> The Court has listened carefully to the evidence and testimony that's been presented this afternoon. I've also reviewed the reports that have been admitted into the record. The Court finds, based upon all the information presented, that grounds for the extension of the commitment for Katie have been established....

(R.366:29-30; Pet-App. 47-48); and

> I think there is significant risk, and I agree with the testimony of the witnesses, that if Katie were left to her own devices, she would stop taking the

[4] ME-911 (04/21), (R.356:1; Pet-App.15).

> medications, she would spiral downward, her symptoms would become worse, and it would likely result in her injuring herself or being rehospitalized or worse. That certainly meets the standard for recommitment under the law.

(R.366:31; Pet-App.49). Therefore, the court of appeals was not completely substituting the court's written order for on-the-record findings.

3. If the court of appeals did not believe *D.J.W.* was satisfied, or did not believe the record was clear with respect to which dangerousness standard the circuit court was relying on, it could have reversed the circuit court.[5] On the contrary, however, the court of appeals specifically found, "Further, there is no question which dangerousness standards the court relied on when it ordered Katie's recommitment." (Pet-App.12).
4. Katie's concern that a court might rely solely on the written court form order and not make any on-the-record ruling is speculative and should not trigger review by this Court. Katie concedes (Pet. 18), the court of appeals found that the checked boxes supplemented the oral ruling, and did not go so far as to say that the checked boxes would, on their own, be sufficient. Rather, the court of appeals, like the circuit court, relied on many parts of the record, not just the findings laid out in the order.
5. Katie's defense attorney did not object to the order's form at the conclusion of the hearing. Rather, her attorney indicated, "Your Honor, I've reviewed both orders, and we have no

[5] At the time of the appeal, Katie's recommitment order had expired.

objections." (R.366:32; Pet-App. 50. Re: Order for Extension of Commitment and Order for Involuntary Medication and Treatment). This confirms that Katie was put on notice as to what subsections the court relied upon, and given extra clarity regarding the underlying basis for the recommitment.[6] The addition of stating the letters in its oral ruling would neither have affected the outcome of this case nor significantly enhanced the court of appeals ability to review the record on appeal.

6. The County argued on appeal that, "In addition to its oral findings, the circuit court's written order further served the requirements set forth by the Wisconsin Supreme Court… Said order codified the specific subsections relied upon by the Court and provided Katie with notice and a clear record for appeal…" and Katie did not file a Reply Brief. (Resp. Br. 16-17).
7. The County's direct examination of Dr. Platz, included but was not limited to, the specific dangerousness statutory language. Reciting the statutory language of Wis. Stat. § 51.20(1)(a)2.(c), Dr. Platz was asked on direct:

> Q: Would it be your opinion that K.L. evidences such impaired judgment manifested by evidence of a recent pattern of – a pattern of recent acts or omissions that there's a substantial probability of physical impairment or injury to herself?
> A: If she stops, yes, I think there would be.

(R.366:9-10; Pet-App. 27-28; Referencing taking medication.) Immediately after which, Dr. Platz was asked:

[6] The Court noted in *D.J.W.* that the circuit courts reference to subdivision paragraphs "provides clarity and extra protection to patients regarding the underlying basis for a recommitment" and that "issues raised on appeal of recommitment orders" would be clear. *D.J.W.*, 2020 WI 41, ¶¶42, 44.

> Q: So based on a review of her treatment record, do you have an opinion whether there's a substantial likelihood that she would become a proper subject for commitment again under this standard if treatment were withdrawn?
> A: Yes, I believe she would.

(R.366:10; Pet-App.28). Thereby echoing the statutory recommitment language of Wis. Stat. § 51.20(1)(am). Then, reciting the statutory language of Wis. Stat. § 51.20(1)(a)2.(d), Dr. Platz was asked:

> Q: Would you have an opinion of whether she evidence behavior that's manifested by recent acts or omissions that due to her mental illness, she's unable to satisfy her basic needs for nourishment, medical care, shelter or safety without prompt and adequate treatment, and so that substantial probability exists of serious physical injury, serious physical debilitation or serious physical disease would immediately ensue unless the individual receives prompt and adequate treatment?
> A: Yes, I believe that would likely occur.

(R.366:10; Pet-App.28). Immediately afterwards, Dr. Platz was again asked the recommitment standard:

> Q: And again, based upon your review of her record, do you have an opinion whether there's a substantial likelihood that she would become a proper subject for commitment again under this standard if treatment were withdrawn?
> A: Yes, I believe she would.

(R.366:10; Pet-App. 28). Dr. Platz was later asked if everything that he testified to was consistent with what's in his report, to which he responded, "Yes, it is." (R.366:12; Pet-App.30).

8. The County's closing argument specifically stated the dangerousness paragraphs it was asking the court to rely on:

> ...based upon the testimony of Dr. Platz and his examination report, he has set forth the criteria necessary

> for the Court to extend the commitment. He did testify to the mental illness, did testify to the dangerousness and specifically the standards under ...51.20(1)(a)2.c. and d. regarding the inability to care for herself. He also testified that if treatment were withdrawn that there would be a substantial probability that she would become a likely candidate for commitment again. I think those are the required standards under the law.

(R.366:28; Pet-App.46).

9. This was not a case with similar facts to *D.J.W.* in which the court of appeals was in the position of guessing which dangerousness standard provided the basis for the court's decision. *See D.J.W.*, 2020 WI App 41. In Katie's case, the circuit court made numerous, specific findings pulled straight from testimony that had been given in direct support of specific dangerousness paragraphs. The circuit court had testimony, reports and a closing argument that all specifically tracked and/or stated the letters of the specific dangerousness paragraphs- Wis. Stat. §51.20(1)(a)c. and d.. However, even if the circuit court could have made more specific findings, the court of appeals review found that, "The circuit court made specific factual findings related to dangerousness under that standard, and its findings were not clearly erroneous." (Pet-App. 13).

Therefore, the facts of this case should not give rise to a novel legal question likely to recur and the petition for review pertaining to this issue should be denied.

B. Katie submits that her second issue:

> Whether the County met its burden of proof to demonstrate that Katie was dangerous, where the evidence showed that: Katie asked intrusive questions; did not always respect people's personal boundaries; needed assistance with hygiene and meals; occasionally went partially undressed around other people; did not

> believe she was mentally ill; and was reluctant to take her prescribed medication,

involves a real and significant question of constitutional law because due process requires proof of dangerousness by clear and convincing evidence. (Pet-4). While the County will not dispute that recommitment cases have liberty interests at stake, there were no due process violations in the case at hand. Rather, Katie's recitation of the evidence appears over-simplified or minimized.

1. The evidence was sufficient to prove by clear and convincing evidence that Katie was dangerous under Wis. Stat. § 51.20(1)(am), linked with Wis. Stat. § 51.20(1)(a)2.d.

The court of appeals found that the County met its burden to prove by clear and convincing evidence that Katie was dangerous under Wis. Stat. § 51.20(1)(a)2.d.[7] In an initial commitment proceeding, the petitioner must establish that the subject individual is dangerous under one of the five subdivision paragraphs in Wis. Stat. § 51.20(1)(a)2. *D.J.W.*, 2020 WI 41. Each of those subdivision paragraphs requires the petitioner to "identify recent acts or omissions demonstrating that the individual is a danger to himself [or herself] or to others." *Portage County v. J.W.K.*, 2019 WI 54, ¶17, 386 Wis. 2d 672, 927 N.W.2d 509; see also § 51.20(1)(a)2.a.-e.

In a recommitment proceeding, however, the petitioner is not required to identify recent acts or omissions demonstrating danger, but rather may satisfy the dangerousness requirement by showing "that there is a substantial likelihood, based upon 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). The recommitment standard in §

[7] The circuit court also concluded that Katie was dangerous under the third dangerousness standard, however, because the court of appeals concluded the evidence was sufficient under § 51.20(1)(a)2.d. they did not address the third dangerousness standard. *Barron Cty v. K.L.*, No. 2022AP502, unpublished slip op. ¶7, FN 4. (Pet-App.9).

51.20(1)(am) "recognizes that an individual receiving treatment may not have exhibited any recent overt acts or omissions demonstrating dangerousness because the treatment ameliorated such behavior, but if treatment were withdrawn, there may be a substantial likelihood such behavior would recur." *J.W.K.*, 2019 WI 54, ¶19. Reliance on § 51.20(1)(am) establishes that the person is still dangerous because if treatment is withdrawn, one of the five criteria in § 51.20(1)(a)2 would recur. Therefore, a circuit court in extending a commitment in reliance on (am), must link that determination to one of the five dangerousness criteria in § 51.20(1)(a)2. *D.J.W.*, 2020 WI 41, ¶¶3, 32-34.

There was substantial evidence that without treatment, including but not limited to group home staff supervision and assistance, Katie would become a proper subject for commitment under Wis. Stat. § 51.20(1)(a)2.d. An individual is dangerous pursuant to Wis. Stat. § 51.20(1)(a)2.d. if he or she:

> Evidences behavior manifested by recent acts or omissions that, due to mental illness, he or she is unable to satisfy basic needs for nourishment, medical care, shelter or safety without prompt and adequate treatment so that a substantial probability exists that death, serious physical injury, serious physical debilitation, or serious physical disease will imminently ensue unless the individual receives prompt and adequate treatment for this mental illness.

Ms. Mandera, from the group home, testified that Katie cannot fully complete all her activities of daily living on her own. (R.366:15; Pet-App.33). The group home staff must use "single-step directives for Katie and also physical assist." (R.366:15; Pet-App.33). When asked for examples, Ms. Mandera provided,

> Katie has difficulty remembering multiple-step directives, so if you were to tell her to comb her hair, brush her teeth and put clean clothes on, she wouldn't be able to complete all of those tasks by memory. So we break it down for her to just do one step at a time. Oftentimes it takes even multiple prompts for single-step tasks

> such as brushing her teeth. And then oftentimes we even have to provide her physical assistance with tasks like making her bed, getting her clothes on correctly, feeding. She has real difficulty with sitting up to the table and keeping her head out of her plate.

(R.366: 15; Pet-App.33). Ms. Mandera went on to describe "physical assists" as, "Going in the room with her, actually physically assisting, like helping her button, helping her make sure like underwear aren't hanging out, her pants are on correctly, she's got her shoes on correctly." (R.366:16; Pet-App.34).

Ms. Mandera also indicated that, in her opinion, Katie could not manage her medications without assistance due to the "level of steps it takes to even get her medications, have accurate prescriptions, fill them at the pharmacy…" (R.366:16-17; Pet-App.34-35). Ms. Mandera indicated that Katie needs reminders to take her medications and there were two instances in the last year where the staff found her to be attempting to "cheek" her medications. (R.366:17; Pet-App.35).

Ms. Mandera provided that, "We have had several occasions where Katie has come out of her room with her breasts exposed or walking from the bathroom to her bedroom without any clothing on. Those are times when staff step in and assist her." (R.366:18; Pet-App.36).

Lastly, which goes to safety, Dr. Platz provided that Katie "…reached into another resident's pocket while they had their eyes closed to grab some cigarettes, just not being aware of those boundaries." (R.366:13; Pet-App.31).

The foregoing behaviors demonstrate there is a substantial likelihood that if treatment were withdrawn, she would become a proper subject for commitment under the fourth standard, or § 51.20(1)(a)2.d. The circuit court found,

> While she may have a long life of living independently, at this stage of her life, it's clear to the Court that she does not have the ability to be independent without creating a substantial

> risk of physical harm to herself or perhaps others. When she goes out exposed, that creates a vulnerability. When she doesn't appreciate boundaries and makes contact with people, that creates the risk of harm to herself or others from reactions by people that may be either offended or threatened by her behavior....

(R.366:30; Pet-App.48).

Katie's inability to: take medications, get dressed without exposing herself, eating and "keeping her head out of her plate," and also walking in public areas without exposed breasts or nudity, all while in a group home setting and receiving treatment, was reasonable to link to a finding that without such treatment, Katie would become a proper subject for commitment under § 51.20(1)(a)2.d.

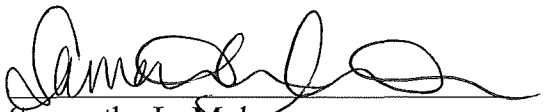
The foregoing evidence was properly considered by the circuit court and properly applied to the dangerousness statutes. Katie's behaviors during the review period were part of her treatment record which can be relied upon. There was no reason to question the credibility of the witnesses. Aside from herself, Katie had no rebuttal witnesses or independent examiners. Katie disagreed with some of the testimony, however, the circuit court specifically found the testimony and evidence of the doctors and the other witnesses more credible than Katie's. (R.366:31; Pet-App.49). It was all evidence that was properly heard and duly considered. Therefore, there is also no real and significant question triggering review by this Court.

V. CONCLUSION

Barron County respectfully requests this Court deny Katie's petition for review. The case is unpublished, routine and correctly decided.

Respectfully submitted this 21st day of March, 2023.

Signed:



Samantha L. Mohns
Deputy Corporation Counsel
State Bar No. 1061920
335 E. Monroe Avenue- Room 2130
Barron, WI 54812
Phone (715) 537-6393

Attorney for Petitioner-Respondent

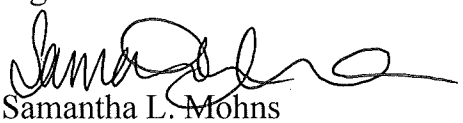
VI. CERTIFICATIONS

CERTIFICATION AS TO FORM AND LENGTH

I certify that this Response to Petition for Review conforms to the rules contained in Wis. Stat. § 809.19(8)(b) and (c), for a brief produced using proportional serif font: Times New Roman, 13-point body text, 11 point for quotes and footnotes. The length of this Response to Petition for Review is 3,105 words.

Dated this 21st day of March, 2023

Signed:



Samantha L. Mohns
Deputy Corporation Counsel
Barron County Corporation Counsel 335 E Monroe Avenue- Room 2130
Barron, WI 54812
(715) 537-6393

Attorney for Petitioner-Respondent

CERTIFICATE OF COMPLIANCE WITH RULE 809.19(12)

I hereby certify that:
I have submitted an electronic copy of this brief, excluding the appendix, if any, which complies with the requirements of § 809.19(12).

I further certify that:
This electronic brief is identical in content and format to the printed form of the brief filed on or after this date.

A copy of this certificate has been served with the paper copies of this brief filed with the court and served on all opposing parties.

Dated this 21st day of March, 2023

Signed:

Samantha L. Mohns
Deputy Corporation Counsel
Barron County Corporation Counsel 335 E Monroe Avenue- Room 2130
Barron, WI 54812
(715) 537-6393

Attorney for Petitioner-Respondent

CERTIFICATION OF MAILING

I hereby certify that ten (10) copies of the foregoing Response to Petition for Review were deposited in the United States mail for delivery to the Wisconsin Supreme Court, Office of the Clerk, by first-class mail, or other class of mail that is at least as expeditious on March 21, 2023, at the following address:

Wisconsin Supreme Court
Office of the Clerk
PO BOX 1688
Madison, WI 53701-1688

and;

I hereby certify that one copy of the foregoing Response to Petition for Review was deposited in the United States mail for delivery to the Attorney for Respondent-Appellant-Petitioner, Colleen Marion, by first-class mail, or other class of mail that is at least as expeditious on March 21, 2023 at the following address:

Attorney Colleen Marion
Office of the State Public Defender
Post Office Box 7862
Madison, WI 53707-7862

I further certify that the Response to Petition for Review was correctly addressed and postage was pre-paid.

Dated this 21st day of March, 2023

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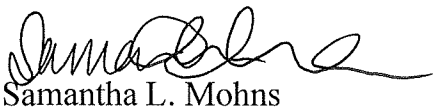

Samantha L. Mohns
Deputy Corporation Counsel
Barron County Corporation Counsel 335 E Monroe Avenue- Room 2130
Barron, WI 54812
(715) 537-6393

Attorney for Petitioner-Respondent