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11-17-2022
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STATE OF WISCONSIN

COURT OF APPEALS

DISTRICT II

Case No. 2022AP001563-FT

In the matter of the mental commitment of T.M.S.

CALUMET COUNTY DH & HS,
Petitioner-Respondent,
vs.

T.M.S.,
Respondent - Appellant.

On Appeal from an Involuntary Recommitment and
Medication Order Entered in the Calumet County
Circuit Court, the Honorable Jeffrey S.
Froehlich, Presiding

BRIEF OF
PETITIONER-RESPONDENT' S

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Based on the one issue presented in Appellant's Brief, the Respondent makes the following arguments.

ARGUMENTS

I. The County met its burden in showing that Mr. Snider¹ is dangerous and is a proper subject for recommitment.

A. Statement of the Case and Facts

The County does not contest the Statement of the Case and Facts as outlined in Appellant's Brief (App Brief: 4-12). The County will also address Dr. Bales' submitted and admitted Report of Examination to the court (R. 119).

B. Argument

In a recommitment proceeding, the evidence of dangerousness may take the form of either (1) recent acts, omissions, or behaviors exhibiting dangerousness; or (2) evidence that if treatment were withdrawn the person would be substantially likely to engage in the types of dangerous acts, omissions, or behaviors that meet one of the five dangerousness standards. See Wis. Stat. §51.20(1)(a)2., (1)(am).

¹ Pursuant to Wis. Stat. §809.19(1)(g), Petitioner-Respondent will continue to use the same pseudonym as used by the Respondent-Appellant to protect confidentiality.

In the present case, the evidence presented by the County was of the second type - evidence that if treatment were withdrawn Mr. Snider would be substantially likely to engage in the types of dangerous acts, omissions, or behaviors that meet one of the five dangerous standards.

In this case, evidence was presented through Dr. Bales and Social Worker Kim Hopp. Both being very familiar with Mr. Snider; Dr Bales through prior evaluations and Kim Hopp who has been working with Mr. Snider for the past 4 years. (R.239:6 30; App.11 35). Dr. Bales testified that Mr. Snider would be a danger to himself in that he would stop taking his medications, would continue to talk incoherently, would not be able to care for himself, could not make food for himself, would not bath or brush his teeth, would not be able to secure housing, and could become a threat to others. (R.239:9-11; App.14-17). Mr. Snider was not going to be able to function in the community safely in his current mental state. (R.239:10; App.15). Further, Dr. Bales testified that based on Mr. Snider's history, he could begin again to use drugs as he had in the past. (R.239.12; App.17). At present, Mr. Snider could not

even talk to Dr. Bales logically, rationally, or reasonably, about his medications. (R.239.13; App.18). Again, Dr. Bales testified that Mr. Snider would only talk to him for about ten minutes but it was mostly nonsensical, incoherent, made-up words, and illogical. (R.239:25-26; App.30-31). Further, Dr. Bales testified that Mr. Snider would not be amenable to services if not on a commitment because Mr. Snider does not believe he has a mental issue and lacks insight into his condition. (R.239:16; App.21). Moreover, Dr. Bales testified that his inability to provide for his own care would create a substantial risk of serious harm to himself or others. (R.239:18; App.23).

Kim Hopp testified that Mr. Snider would be unable to take care of himself. (R.239:31; App.36). Mr. Snider wanders the unit, needs prompting for taking a shower, participating in activities, combing his hair, brushing his teeth, and is not really in tune with what is going on at the present time. (R.239:31-32; App.36-37). Ms. Hopp also believes Mr. Snider would not take his medications if he was not ordered to do so. (R.239:32; App.37). Ms. Hopp also testified that Mr. Snider can act in a threatening manner to other people at the VA

but the VA staff interject themselves into that behavior between Mr. Snider and the other person, before it escalates. (R.239:43; App.48). Further, Ms. Hopp testified that Mr. Snider would not have this deflection of others if in the community at large. (R.239:43; App.48).

Dr. Bales testified that there is a substantial probability that Mr. Snider would not be able to care for himself, and based upon his history, without treatment, in a very short period of time, would decompensate and end up being either a danger to himself or endanger himself. In Dr. Bales' Report of Examination, he identified the fourth standard for dangerousness for which all the identified testimony supports. (R.119:4). Dr Bales' testimony and conclusion indicate that Mr. Snider is unable to satisfy his basic needs. Kim Hopp only added support to this testimony.

The court based the recommitment order on the third and fourth standard of dangerousness. (App.3). The court noted, as it relates to the third standard, that the dangerousness in the present case is based on the substantial probability of physical impairment or injury to himself due to his impaired judgment - his inability

to communicate, and that based on Mr. Snider's treatment records he would be a proper subject for commitment if treatment were withdrawn. (R.239:56; App.61).

Mr. Snider argues that because there was no argument presented that Mr. Snider was dangerous to others it is dispositive. Mr. Snider's impaired judgment is shown by the evidence of his inability to communicate, as he is incoherent and nonsensical when speaking. Further, both Dr. Bales and Ms. Hopp testified that he historically and currently intimidates others in a threatening fashion; however, the staff is able to deflect this behavior. In addition, both testified to his wandering and his inability to understand or "be in tune" to what is going on. These are all recent acts or omissions, although historically have been present as well.

Mr. Snider further argues that there is no substantial probability of physical impairment or injury to himself or others. As Mr. Snider correctly cites *Marathon County v. DK*, defining, the term "substantial probability" as "much more likely than not." *Marathon Cty v. D.K.*, 2020 WI 8 ¶72, 390 Wis. 2d 50, 937 N.W.2d 90. Physical impairment, however, is not defined in

Chapter 51. It was defined, however, in an employment law case. "A "physical impairment" is an actual lessening, deterioration, or damage to a normal bodily function or bodily condition, including the absence of such function or condition, as that term is used in provision of Wisconsin Fair Employment Act (WFEA) defining individual with a disability as an individual who has a "physical impairment," which makes achievement unusually difficult or limits the capacity to work." *Erickson v. Labor and Industry Review Com'n* (App. 2005), 704 N.W.2d 398, 287 Wis.2d 204, review denied 705 N.W.2d 662, 286 Wis.2d 101. Due to Mr. Snider not taking his medications, his inability to understand what is going on, his inability to coherently communicate, and his inability to care for himself, all of these things separately or combined, are much more likely than not, to create a deterioration of his overall condition.

Alternatively, when using the fourth standard, the court noted the findings of *DJW* when considering what was necessary. (R.239:54; App.59). The court detailed the doctor's testimony which indicated there was a substantial probability that Mr. Snider would not be able to care for himself based on his history and

without treatment, would decompensate and be a danger to himself or endanger himself. (R.239:55; App.60). At present, Mr. Snider is not able to care for himself without prompting. Furthermore, both witnesses testified that Mr. Snider would not take his medications. Without his medications, he would further decompensate in his ability to care for his daily needs.

While Mr. Snider argues he has a guardian, a guardian is not with the ward 24 hours a day/7 days a week. An individual with a guardian still needs to be able to handle the moment by moment activities. Further, there is no medication order or ability for the guardian to mandate psychotropic medications. The only testimony presented was from Dr. Bales and Ms. Hopp. Both witnesses were clear - Mr. Snider would not take his meds, would not be able to take care of himself without the recommitment order and would be a danger to himself.

CONCLUSION

For the reasons stated above, the County respectfully asks the Court to uphold the Order for Extension of Commitment and Order for Involuntary Medication & Treatment.

Dated this 17th day of November, 2022.

Respectfully submitted,

Electronically signed by:

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CERTIFICATION OF FORM AND LENGTH

I hereby certify that this brief conforms to the rules contained in S. 809.19(8)(b) and (c) as modified by the Court's order for an expedited appeal. The length of this brief is 10 pages.

Dated this 17th day of November, 2022.

Electronically signed by:

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