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SUPREME COURT

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August 30, 2023

Samuel A. Christensen
Clerk, Wisconsin Supreme Court
110 East Main Street, Suite 215
P.O. Box 1688
Madison, Wisconsin 53701-1688

RE: Petitioner-Respondent's Letter Response to D.E.W.'s Petition for Review
In the Matter of the Mental Commitment of D.E.W.
Winnebago County v. D.E.W. Appeal No. 2023AP00215
Winnebago County Case Number: 2022ME335

Dear Clerk Christensen,

The purpose of this letter is to move the Court to deny D.E.W.'s Petition for Review because this Court's primary function is to clarify or interpret the law, not review facts, review issues forfeited at trial or review discretionary acts of the court. "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. § 809.62(1r). No such reasons have been presented by

D.E.W.. Nor have the criteria in Wis. Stat. § 809.62(1r) been met. In fact, Petitioner raises an issue for this Court to consider that was forfeited at both the trial and appellate levels.

The Petition at issue does not present a real and significant question of federal or state constitutional law that was properly pleaded and decided in the courts below. Petitioner alleges that a real and significant constitutional question exists yet does not identify what constitution (state or federal) is at play and how any right conferred was violated. This vague constitutional question raised on page 4 of his Petition was not raised first in the trial and appellate courts and was, therefore, forfeited.

A decision by this Court in this case will not help develop, clarify or harmonize the rules of evidence nor the law concerning the sufficiency of the evidence required for an involuntary medication order because the questions presented are both factual in nature and concern the application of clear legal direction from this court in *Winnebago County v. Christopher S.*, 2016 WI 1, 366 Wis.2d 1, 878 N.W.2d 109. First, in his brief-in-chief, D.E.W. presented a basic sufficiency of the evidence argument to the appellate court. He also argued the court erred by admitting hearsay evidence over D.E.W.'s objection. The Court of Appeals reviewed the court's decision which followed a trial to the court complete with testimony from an expert witness and a psychiatric care technician presented by the County, and from D.E.W. in his own defense. The expert's testimony concerning D.E.W.'s competency to refuse recommended medication closely tracked the statutory language and was corroborated by D.E.W.'s admissions and testimony. The Court of Appeals correctly observed that the doctor's testimony, like that of the doctor in *Christopher S.*, mirrored the language of the statute. Unlike the doctor in *Outagamie County v. Melanie L.* 2013 WI 67, 349 Wis. 2d 148, 833 N.W. 2d 607, the doctor linked D.E.W.'s need for medication, the information provided to D.E.W. and his inability to either express an understanding or apply an understanding to the information received to the statutory requirements.

Second, a decision by this Court will not help to clarify the law concerning well-understood rules of evidence in Wisconsin such as opinion and hearsay testimony. Each case on appellate review presents a set of unique facts and legal issues. Contrary to D.E.W.'s argument in his Petition to this Court, while there are a variety of different outcomes in the unpublished cases decided by different judges in different districts, upon closer view, each case is entirely unique. A close reading of the decisions reveals that the unique facts and legal issues raised created unique outcomes tailored specifically to the individual case. In D.E.W.'s case, the Court of Appeals did not analyze whether out-of-court statements by care providers in D.E.W.'s treatment records were hearsay because it held that even if they were hearsay and an exception to the hearsay rule did not apply, any possible error was harmless because of D.E.W.'s admissions to the doctor about the content of at least one of the objectionable statements. D.E.W.'s case simply does not present a compelling enough set of circumstances to warrant review of basic

evidentiary issues that are well-defined in Wisconsin jurisprudence when any possible error found is clearly harmless.

Lastly, D.E.W. has not shown that the Court of Appeals decision in this case is in conflict with controlling opinions of the United States Supreme Court or Wisconsin courts. To the contrary, the decision fits squarely within this Court's holdings in *Christopher S. and Outagamie County v. Melanie L.*, 2013 WI67, 349 Wis.2d 148, 833 N.W.2d 607.

For these reasons, the County respectfully requests that this Court deny D.E.W.'s Petition. The County's letter response is being filed within 14 days of D.E.W.'s Petition which the County received on August 24, 2023.

Sincerely,

A handwritten signature in blue ink, reading "Catherine B. Scherer". The signature is fluid and cursive, with the first name "Catherine" being more prominent than the last name "Scherer".

Catherine B. Scherer

Assistant Corporation Counsel for Winnebago County

cc: Attorney, Christopher August, Assistant State Public Defender
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