STATE OF WISCONSIN

IN SUPREME COURT

Case No. 2023AP001484

In the Matter of the Condition of D.S.:
WINNEBAGO COUNTY,

Petitioner-Respondent,

v.

D.S.,

Respondent-Appellant-Petitioner.

PETITION FOR REVIEW

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ISSUES PRESENTED

1. This Court should accept review to determine that circuit courts may not rely on vague, conclusory and clearly erroneous findings to meet the *Langlade County v. D.J.W.*, 2020 WI 41, ¶40, 391 Wis. 2d 231, 942 N.W.2d 277, requirement that the circuit court make "specific factual findings with reference to the subdivision paragraph of § 51.20(1)(a)2. on which the recommitment is based."

The circuit court entered the recommitment order despite not making factual findings to support each of the fifth standard's statutory elements.

The court of appeals affirmed. *Winnebago County v. D.S.*, No. 2023AP1484, unpublished slip op. (Jan. 24, 2024). (App. 3-16). The court held that although the circuit court "quoted heavily from Wis. Stat. § 51.20" and did not identify how the facts lined up with the elements of the fifth standard, referencing the doctor's testimony in its ruling "laid a sufficient factual predicate to establish" dangerousness. *Id.*, ¶¶24-28. (App. 13-15).

2. If the Court grants review it should determine that the evidence failed to prove that D.S. was dangerous to himself or others as required to involuntarily commit him.

The circuit court entered the commitment order.

The court of appeals affirmed. *D.S.*, No. 2023AP1484, unpublished slip op., ¶¶5-15. (App. 6-10).

CRITERIA FOR REVIEW

Review is warranted for two reasons. First, this case presents the Court with an opportunity to examine what constitutes sufficient proof of "dangerousness" in the context of a recommitment, and whether the hearsay testimony of an expert examiner alone can be sufficient evidence.

Second, this case presents the Court with an opportunity to revisit the directive from *D.J.W.*, that circuit courts must make specific factual findings. This will allow the Court to provide circuit courts with clarification on what constitutes sufficient factual findings to support a conclusion of dangerousness under the Wis. Stat. § 51.20(1)(a)2. subdivision paragraphs. Specifically, that unlike the court of appeals' decision in this case, reciting the elements of the dangerousness subdivision paragraph and making general factual findings based on the doctor's conclusory testimony is insufficient. The factual findings must be specific and must line up with the dangerousness standard. Review of these issues is warranted because neither the circuit court nor the court of appeals identified factual findings that meet each of the elements of the fifth standard. Thus, this issue qualifies for review under Wis. Stat. § 809.62(1r)(d).

Finally, the court of appeals rejected D.S.'s argument that the evidence of dangerousness was insufficient to support his involuntary commitment. *D.S.*, No. 2023AP1484, unpublished slip op., ¶¶5-15. (App. 6-10). This fact-specific question does not on its own meet an enumerated criterion for review; however, if the Court grants review, D.S. requests that the Court decide it.

STATEMENT OF FACTS

On April 18, 2023, Winnebago County filed a petition for recommitment and for involuntary medication and treatment, which sought to extend D.S.'s involuntary civil commitment for twelve months. (34:1) The petition alleged that D.S. "is not competent to refuse medication and treatment" and attached the report of D.S.'s treating psychiatrist, Dr. Michael Vicente. (34:1; 36:1).

The circuit court, the Honorable Michael S. Gibbs, presiding, held D.S.'s recommitment hearing on May 2, 2022. (128:1-3). The sole witness the county called was Dr. Vicente, the treating psychiatrist. (128:2-3). The county admitted Dr. Vicente's report into evidence over D.S.'s objection, which was based on the "multiple layers of hearsay within the report." (128:17).

Dr. Vicente testified that he is familiar with D.S. and has examined him, with the most recent examination taking place on March 27, 2023. (128:4). He opined that D.S. suffers from a mental illness,

specifically from schizophrenia. (128:5). Dr. Vicente agreed that D.S.'s mental illness is a substantial disorder and that it affects his thought and perception. (128:5-6). He also opined that D.S. is a proper subject for treatment in the form of medications and case management. (128:6).

As to dangerousness, Dr. Vicente opined that D.S. "falls under the fifth standard." (128:6-7). He explained that based on his treatment history, D.S. "when he has not been under commitment, has stopped his treatment" and that "[i]t's happened on two previous occasions, and he starts displaying some of the symptoms, such as he believed that his influences were telling him to go to other homes because they belonged to him even though they belonged to other people." (128:7). Counsel for D.S. objected to this testimony on the basis that it was hearsay. (128:7). The circuit court overruled the objection, concluding that it was not being offered for the truth of the matter asserted, "rather it's being offered as the basis for his opinion."

Dr. Vicente also testified that D.S. had told him that it happened "a few months ago" that D.S. "feared for his own safety because whether it was the military, or Germans, or other things that the influences informed him that they would do things . . . ." (128:8). At the time, D.S. was under a commitment and was Dr. Vicente's patient. (35:1; 36:1; 128:4).

The county then asked, "is it your opinion that this evidences, basically, a substantial probability that, if left untreated, he would lack services necessary for his health and safety that could result in the loss of his ability to function independently in the community?" (128:8) Defense counsel objected on the basis that the question was leading, and the circuit court overruled the objection because it was not asking a "yes or no type question." (128:8-9). In response, Dr. Vicente stated, "[D.S.]'s actions, due to the influences, put him in dangerous situations, such as going to someone's house and trying to enter it, believing it's his." (128:9). Further, he testified that D.S. "has also repeated that he does not believe he suffers from an illness and therefore does not need any treatment." (128:9-10).

As to the specific danger D.S. faced, Dr. Vicente explained that D.S. "could be putting himself in danger" by "believing it's his home and going to a stranger's house[.]" (128:11).

Over defense counsel's repeated objections, Dr. Vicente testified that he became aware—either from his examination of D.S., his review of D.S.'s treatment records, or looking at his own examination report—that D.S.'s neighbors had obtained a temporary restraining order against D.S. due to his trespassing. (128:11-12). The county then asked whether Dr. Vicente knew if D.S. obeyed the restraining order, and defense counsel again objected on the basis of hearsay. (128:13). The circuit court again allowed the question, ruling that it was not

being offered for the truth of the matter asserted. (128:13). Dr. Vicente answered that "It was reported that he didn't [obey the restraining order]." (128:13).

Dr. Vicente also testified that D.S. would become a proper subject for commitment if treatment were withdrawn because, "The medications are helpful in addressing the behaviors associated with his symptoms, and when he's been under treatment, we have seen a decrease in the behaviors with the symptoms." (128:14). He explained, "When [D.S.] has stopped treatment after prior commitments have expired, he did become a proper subject again" on two prior occasions. (128:14). He also agreed that D.S. "would be dangerous if treatment were withdrawn." (128:15).

The doctor testified that D.S. that he was requesting that D.S. take Fluphenazine, and that D.S. was not competent to refuse medication. (128:15). He explained to D.S. the following advantages, disadvantages and alternatives to medication:

> The advantages are decreasing his symptoms of psychosis and also impulsivity related to that. Some disadvantages include muscle movements, dry mouth, dizziness, tiredness, some weight changes. We did talk about some of the other treatment available, whether there be more medications. He is involved in case management and had seen counselors in the past . . . ."

(128:15-16). It was Dr. Vicente's opinion that D.S. was not capable of expressing an understanding of the advantages, disadvantages, and alternatives of accepting medication. (128:16).

On cross examination, Dr. Vicente agreed that D.S. "has a supportive family" and "currently has a stable residence" as he "lives with his parents right now[.]" (128:20). In addition, he agreed that D.S. is "able to communicate his needs[.]" (128:21). As to the efficacy of the treatment, Dr. Vicente testified that D.S.'s delusions were ongoing, but that his behaviors "seemed to have improved." (128:18-19).

The county argued that there were grounds for extension of D.S.'s commitment under the fifth standard only. (128:22). The county also asked for an involuntary medication order. (128:22). The county further argued,

> Again, going to the E standard, Your Honor, I would say that the County has met its burden. There has been evidence from Dr. Vicente showing that [D.S.] evidences an incapability of expressing an understanding of the advantages and disadvantages of accepting medication; and a substantial probability demonstrated by both the treatment history of his going on and off treatment, and his recent acts or omissions that he needs care to prevent further disability; and a substantial probability, if left untreated, that this will result in a loss of his ability to function independently in the community.

(128:23). And asked that the court find that the fact that D.S. "believes he's under influences, and then suggests that he goes to other peoples' homes, poses a significant danger to [D.S.]." (128:23).

Defense counsel argued that the county failed to meet the commitment standard because the underlying illness has to be able to be cured, improved or controlled by treatment, and Dr. Vicente's testimony was that D.S.'s mental illness could not be controlled. (128:24). As to the fifth standard of dangerousness, counsel argued that the county did not present any evidence of recent acts or omissions, further disability or deterioration without treatment, or that D.S. would lack the services necessary for his health and safety. (128:24-25). Counsel also pointed to the doctor's positive testimony about D.S., and argued that "the E standard would have to go so far as saying that he would not be able to function independently in the community and that he would suffer severe mental, emotional, or physical harm, and so I don't believe that that's appropriate." (128:25).

The circuit court stated that it "does rely heavily upon the opinions of treating medical providers." (128:26; App. 20). The court therefore found that D.S. was mentally ill, specifically that he has schizophrenia, which "is a substantial disorder of [D.S.]'s thought and perception, and that it grossly impairs his judgment, his behavior, as well as his capacity to recognize reality." (128:26; App. 20). The circuit court also made the legal conclusion that D.S.

is a proper subject for treatment, because Dr. Vicente "did indicate" as much. (128:26; App. 20).

As to dangerousness, the circuit court made the following factual findings:

> As to the dangerousness, under the fifth standard, the [d]octor had indicated through prior treatment that when [D.S.] goes off of his medications and is not involved in treatment, he decompensates. And, here, there was testimony that he was a danger to himself or others through his actions.
>
> [D.S.] himself admitted to the [d]octor the same of going to other peoples' houses primarily resulting from his delusions that there are -- that he owns the houses or should be inside the houses. There was testimony that, in the past, there were restraining orders that were taken out against him. Certainly, in today's climate, when one goes into a house or near a window of another person without their permission, there is inherent risk in doing so.
>
> As for recent acts or omissions that [D.S.] has done, he has indicated his intention not to take the medication to the doctor. . . .

(128:26-27; App. 20-21). The court then recited the fifth standard, applying it to D.S.:

> [D.S.] is mentally ill and incompetent to make medication or treatment decisions, and dangerous because there is a substantial probability that he is incapable of expressing the advantages, disadvantages, and alternatives of accepting

> medication or treatment, and incapable of applying an understanding of the advantages, disadvantages, and alternatives to his mental illness. He needs care and treatment in order to prevent further disability, and, if untreated, will lack the services necessary for his health or safety.

(128:27-28; App. 21-22).

However, the circuit court also found that D.S. had "a stable living environment" but concluded that there was "no reasonable provision for his care in the community without the medication and case management that the [d]octor is suggesting here." (128:28; App. 22). The court then recited the recommitment standard, concluding that there was "also a substantial likelihood, based on his treatment record, that [D.S.] would be a proper subject for commitment if treatment were withdrawn." (128:28; App. 22).

The circuit court extended D.S.'s commitment for twelve months and order authorizing involuntary medication during the commitment. (118; 119; App. 17-19). D.S. appealed.

D.S. argued that the county failed to prove that he was dangerous by clear and convincing evidence under the fifth standard, and that the circuit court failed to make specific factual findings, pursuant to *Langlade County v. D.J.W.*, 2020 WI 41, 391 Wis. 2d 231, 942 N.W.2d 277, to support its conclusion that D.S. was dangerous. The court of appeals affirmed. First it determined that the doctor's testimony and

report were sufficient to prove dangerousness by clear and convincing evidence. *D.S.*, No. 2023AP1484, unpublished slip op., ¶¶12-15. (App. 9-10).

Next, the court of appeals addressed whether the circuit court's findings met the *D.J.W.* requirement "to make specific factual findings with reference to the subdivision paragraph of Wis. Stat. § 51.20(1)(a)2. on which the recommitment is based." It determined that the circuit court's ruling met the dual goals underlying the directive in *D.J.W.* and addressed two specific arguments D.S. made as to the factual findings. *D.S.*, No. 2023AP1484, unpublished slip op., ¶¶16-28. (App. 11-15).

The court of appeals then distinguished D.S.'s case from *Ozaukee County v. J.D.A.*, No. 2021AP1148, unpublished slip op. (WI App Dec. 15, 2021), because in that case, the circuit court had referenced on a portion of the applicable statutory language setting forth the elements of the fifth standard in making its findings. *D.S.*, No. 2023AP1484, unpublished slip op., ¶29. (App. 15-16).

ARGUMENT

I. In order to meet the DJW requirement "to make specific factual findings with reference to the subdivision paragraph of Wis. Stat. § 51.20(1)(a)2. on which the recommitment is based" the circuit court cannot rely on a vague recitation of facts that does not correspond to the dangerousness elements.

A. Introduction and statute.

Wis. Stat. § 51.20(1)(a)2.e., referred to as the "fifth standard," requires something above and beyond a diagnosis of mental illness. Instead, it requires proof of five elements: (1) "[A] substantial probability of a 'loss of the individual's ability to function independently in the community or the loss of cognitive or volitional control over his or her thoughts or actions[;]'" (2) that the subject is "incompetent to make medication or treatment decisions[;]" (3) a "'substantial probability' that he or she 'needs care or treatment to prevent further disability or deterioration[;]'" (4) "a 'substantial probability that he or she will, if left untreated, lack services necessary for his or her health or safety[;]'" and (5) "'a substantial probability that he or she will, if left untreated, . . . suffer severe mental, emotional, or physical harm that will result in the loss of the individual's ability to function independently in the community or the loss of cognitive or volitional control over his or her thoughts or actions.'" *State v.*

Dennis H., 2002 WI 104, ¶¶20-24, 255 Wis. 2d 359, 647 N.W.2d 851.

As the quoted language shows, the fifth standard is complex, and requires numerous pieces of specialized evidence to support a recommitment under its terms. The circuit court must conclude, above all else, that the individual demonstrates "a substantial probability of an incapacity to care for oneself." *Id.*, ¶28. The statute allows government intervention only to prevent "acute" deterioration that would otherwise result in a total loss of independent functioning. *Id.*, ¶33-34.

Moreover, Wis. Stat. § 51.20(1)(a)2.e. also contains an "explicit limitation on its reach." *Dennis H.*, 255 Wis. 2d 359, ¶26. Under the statute, "the probability of suffering severe mental, emotional, or physical harm is not substantial . . . if reasonable provision for the individual's care or treatment is available in the community and there is a reasonable probability that the individual will avail himself or herself of these services."

In *D.J.W.* this Court mandated that going forward, circuit courts make "specific factual findings with reference to the subdivision paragraph of [Wis. Stat.] § 51.20(1)(a)2. on which the recommitment is based." *D.J.W.*, 391 Wis. 2d 231, ¶40. The Court explained that the purpose of this requirement is twofold: (1) to provide "clarity and extra protection to patients regarding the underlying basis for a recommitment[,]" because in mental commitment

proceedings, "such an important liberty interest [is] at stake[;]" and (2) to "clarify issues raised on appeal of recommitment orders and ensure the soundness of judicial decision making, specifically with regard to challenges based on the sufficiency of the evidence." *Id.*, ¶¶42-44 (citations omitted).

This is necessary because an involuntary civil commitment "constitutes a significant deprivation of liberty that requires due process protection." *Id.* (*quoting Addington v. Texas*, 441 U.S. 418, 425 (1979)). Thus, the mandate to make "specific factual findings with reference to the subdivision paragraph of Wis. Stat. § 51.20(1)(a)2. on which the recommitment is based provides increased protection to patients to ensure that recommitments are based on sufficient evidence." *Id.*, ¶43.

Second, the Court in *D.J.W.* explained that its mandate "will clarify issues raised on appeal of recommitment orders and ensure the soundness of judicial decision making, especially with regard to challenges to the sufficiency of the evidence." *Id.*, ¶44. Continuing, the Court explained, "[a] more substantial record will better equip appellate courts to do their job, further ensure meaningful appellate review of the evidence presented in recommitment proceedings." *Id.*

B. The circuit court must make sufficient "specific factual findings" to support its conclusion that D.S. was dangerous under the elements of the fifth standard.

Here, the circuit court specifically identified the fifth standard of dangerousness by reciting the statutory language. (*See* 128:27-28; App. 21-22). The court of appeals noted this recitation of the elements to be the circuit court's "specific determinations." *D.S.*, No. 2023AP1484, unpublished slip op., ¶¶5-15. (App. 14-15). However, while it recited the language of the statute in its legal determination, the circuit court did not make sufficient factual findings to support that legal conclusion. Instead, the court recited the expert's vague, conclusory testimony.

The circuit court made the following factual findings as to the evidence of dangerousness:

> As to the dangerousness, under the fifth standard, the [d]octor had indicated through prior treatment that when [D.S.] goes off of his medications and is not involved in treatment, he decompensates. And, here, there was testimony that he was a danger to himself or others through his actions.
>
> [D.S.] himself admitted to the [d]octor the same of going to other peoples' houses primarily resulting from his delusions that there are -- that he owns the houses or should be inside the houses. There was testimony that, in the past, there were restraining orders that were taken out against him. Certainly, in today's climate, when one goes

> into a house or near a window of another person without their permission, there is inherent risk in doing so.
>
> As for recent acts or omissions that [D.S.] has done, he has indicated his intention not to take the medication to the doctor. . . .

(128:26-27; App. 20-21). The court of appeals specifically referenced the first two paragraphs above, concluding that the circuit court's "discussion of the behavior [D.S.] repeatedly engaged in on prior occasions when he stopped taking medication, along with [D.S.]'s repeated assertions that he will not continue taking medication voluntarily, laid a sufficient factual predicate to establish the elements of dangerousness under the fifth standard."

However, the circuit court's factual finding related to "restraining orders" taken out against D.S. was based on testimony that the court had determined was hearsay. When the testimony was offered, defense counsel objected as to foundation and hearsay, and the court overruled the objection. (128:11-13). The court determined that the testimony was not being offered for the truth of the matter asserted. (128:13). Therefore, it was not admissible evidence upon which the court could conclude that restraining orders had in fact been taken out against D.S. *See* Wis. Stat. § 908.01(3). If the testimony was not offered for the truth of the matter asserted, it cannot be relied on in the court's factual findings. As a result, the court's factual finding on this point was clearly erroneous.

In addition, the circuit court made a factual finding that D.S.'s "recent act or omission," a necessary factor under the fifth standard, was his statement to Dr. Vicente that he did not intend to take the medication. (128:27; App. 21). A statement of one's future intent is neither a recent act nor a recent omission. Acts or omissions must be completed occurrences. Therefore, as the court's specific factual finding is illogical at best, it is clearly erroneous.

As the circuit court made some specific factual findings here, reviewing courts must take the next step and analyze whether the factual findings "fit into the statute." *See Ozaukee County v. J.D.A.*, No. 2021AP1148, unpublished slip op., ¶19 (WI App Dec. 15, 2021) (App. 32-33).[1] The statute requires that all five elements of Wis. Stat. § 51.20(1)(a)2.e. be met in order to support a conclusion of dangerousness under this section. *Dennis H.*, 255 Wis. 2d 359, ¶25 ("Only after each of these elements is proven may the person be considered 'dangerous' under the fifth standard.").

In this case, the only element of the fifth standard on which the circuit court made a specific, non-erroneous factual finding was that D.S. is mentally ill. The court did not make any factual findings related to D.S.'s competency to refuse medications, and merely stated the

[1] Pursuant to Wis. Stat. § (Rule) 809.23(3)(b), *Ozaukee County v. J.D.A.* is cited only for its persuasive value and a copy is included in the appendix to this brief.

legal conclusion that D.S. was not competent. Therefore, the circuit court made only three factual findings—that D.S. had, while under a commitment, walked up to another person's house based on his delusions, that there were restraining orders against D.S., and that D.S. telling the doctor that he would stop treatment—are not sufficient to establish dangerousness under the fifth standard. Nor are they sufficient to comply with *D.J.W.*'s mandate for circuit courts to make "specific factual findings" because the court's findings must actually support a conclusion that the individual is dangerous under the necessary elements.

"It is not enough that the individual was at one point dangerous. Thus, [e]ach extension hearing requires proof of current dangerousness." *D.J.W.*, 391 Wis. 2d 231, ¶34 (alteration and emphasis in original). In this case, the circuit court failed to comply with this mandate and make the necessary "specific factual findings" as to each of the elements of the fifth standard. *See id.*, ¶¶3, 59. If reviewing courts are not to analyze the circuit court's factual rulings in light of the legal standard, the *D.J.W.* holding is toothless when it comes to sufficiency claims. The circuit court's factual findings must correspond to the dangerousness elements that it ultimately finds.

II. The county failed to prove by clear and convincing evidence that D.S. was dangerous to himself or others.

The County failed to prove by clear and convincing evidence that D.S. was dangerous to himself or others, as required to involuntarily commit him under Wis. Stat. § 51.20(13)(e). The relevant standard largely the same as above. To prove dangerousness, the county must satisfy one or more of the five standards of dangerousness set forth in Wis. Stat. § 51.20(1)(a)2.a.-e. In a recommitment hearing, the county can take the alternative route under Wis. Stat. § 51.20(1)(am), "by a showing that there is a substantial likelihood, based on the subject individual's treatment record, that the individual would be a proper subject for commitment if treatment were withdrawn." Appellate courts review a circuit court's findings of fact for clear error, but independently determines whether the facts satisfy the legal standard. *Waukesha Cty. v. J.W.J.*, 2017 WI 57, ¶15, 375 Wis. 2d 542, 895 N.W.2d 783.

The circuit court found that D.S. met the standard of dangerousness in Wis. Stat. § 51.20(1)(a) 2.-e. The court of appeals affirmed. *D.S.*, No. 2023AP1484, unpublished slip op., ¶15. (App. 10).

A. The county failed to prove D.S. dangerous under the Wis. Stat. § 51.20(1)(a)2.e. ("fifth") standard.

Under Wis. Stat. § 51.20(1)(a)2.e., the county must prove: (1) the person is mentally ill; (2) the person is incompetent to make medication or treatment decisions; (3) there is a "substantial probability" that the person "needs care or treatment to prevent further disability or deterioration" (as "demonstrated by both the individual's treatment history and his or her recent acts or omissions"); (4) there is a "substantial probability that he or she will, if left untreated, lack services necessary for his or her health or safety;" and (5) the person evidences "a substantial probability that he or she will, if left untreated, ... suffer severe mental, emotional, or physical harm that will result in the loss of the individual's ability to function independently in the community or the loss of cognitive or volitional control over his or her thoughts or actions." *See State v. Dennis H.*, 2002 WI 104, ¶¶18-24, 255 Wis. 2d 359, 647 N.W.2d 841.

"The probability of suffering severe mental, emotional or physical harm is not substantial . . . if reasonable provision for the individual's care or treatment is available in the community and there is a reasonable probability that the individual will avail himself or herself of these services." *Id.* The fifth standard is complex, and requires numerous pieces of specialized evidence to support a recommitment under its terms. The county must

prove, above all else, "a substantial probability of an incapacity to care for oneself." *Id.*, ¶28. The statute allows government intervention only to prevent "acute" deterioration that would otherwise result in a total loss of independent functioning. *Id.*, ¶33-34.

Here, the county presented little evidence as to these five elements was to the circuit court. Instead, the record establishes that D.S. lived with his parents, could communicate his needs, and attended appointments with Dr. Vicente at the doctor's office. (128:4, 20-21). While the county feared that D.S. would stop taking medication and "go up the wrong driveway and get shot and murdered," (128:10-11), it failed to present evidence establishing that D.S.'s living conditions would satisfy the fifth standard dangerousness criteria if treatment were withdrawn. In fact, the county's sole witness testified that D.S. had gone up to others' homes as recently as a couple of months prior to the hearing. (128:8).

Moreover, Wis. Stat. § 51.20(1)(a)2.e. also contains an "explicit limitation on its reach." *Dennis H.*, 255 Wis. 2d 359, ¶26 Under the statute, "the probability of suffering severe mental, emotional, or physical harm is not substantial . . . if reasonable provision for the individual's care or treatment is available in the community and there is a reasonable probability that the individual will avail himself or herself of these services." Here, the county offered no testimony to establish that reasonable provision for D.S.'s care or treatment is not available in the community. In fact, D.S. lived at his parents'

home and the court found it to be "a stable home environment." (128:28; App. 22). Accordingly, based on the doctor's testimony, the county failed to prove by clear and convincing evidence that a recommitment was warranted to prevent D.S. from suffering severe mental, emotional or physical harm.

Instead, the county asked the court to recommit D.S. based on Dr. Vicente's conclusory testimony, agreeing in often one-worded answers that D.S. met the legal standards such as that D.S. would be dangerous if treatment were withdrawn and that "[h]e is not" capable of expressing an understanding of the advantages, disadvantages, and alternatives of accepting medication. (128:15, 16).

The statute and the constitution require more. Accordingly, this Court should find that the evidence was insufficient to extend the commitment under § 51.20(1)(a)2.e. and reverse.

CONCLUSION

For the reasons stated above, D.S. respectfully requests that this Court grant this petition for review.

Dated this 23rd day of February, 2024.

Respectfully submitted,

Electronically signed by Laura M. Force
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CERTIFICATION AS TO FORM/LENGTH

I hereby certify that this petition conforms to the rules contained in s. 809.19(8)(b), (bm) and 809.62(4). The length of this petition is 4,710 words.

CERTIFICATION AS TO APPENDIX

I hereby certify that filed with this petition is an appendix that complies with s. 809.19(2)(a) and that contains, at a minimum: (1) a table of contents; (2) the findings or opinion of the circuit court; (3) a copy of any unpublished opinion cited under s. 809.23(3)(a) or (b); and (4) portions of the record essential to an understanding of the issues raised, including oral or written rules or decisions showing the circuit court's reasoning regarding those issues.

I further certify that if this appeal is taken from a circuit court order or judgment entered in a judicial review or an administrative decision, the appendix contains the findings of fact and conclusions of law, if any, and final decision of the administrative agency.

I further certify that if the record is required by law to be confidential, the portions of the record included in the appendix are reproduced using one or more initials or other appropriate pseudonym or designation instead of full names of persons, specifically including juveniles and parents of juveniles, with a notation that the portions of the record have been so reproduced to preserve confidentiality and with appropriate references to the record.

Dated this 23rd day of February, 2024.

Signed:
Electronically signed by
Laura M. Force
LAURA M. FORCE
Assistant State Public Defender