STATE OF WISCONSIN

IN SUPREME COURT

Case No. 2023AP2018-FT

In the matter of the Mental Commitment of C.B.:

RACINE COUNTY,
Petitioner-Respondent,

v.

C.B.,
Respondent-Appellant-Petitioner.

RESPONSE TO PETITION FOR REVIEW

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INTRODUCTION

Racine County ("County") opposes C.B.'s petition for review. The court of appeals applied the correct standard of review and principles of law when it affirmed the circuit court's order extending C.B.'s mental commitment under Wisconsin Chapter 51 for one year. C.B.'s petition for review does not meet the criteria enumerated in Wis. Stat. § (Rule) 809.62(1r). Accordingly, the County respectfully contends this Court should deny C.B.'s petition for review.

On March 14, 2023, the Racine County Human Services Department filed an Evaluation and Recommendation Regarding Recommitment and Petition for Recommitment regarding C.B.. (R. 128.)[1] On May 9, 2023, the recommitment petition was heard at a contested hearing in Racine County Circuit Court before the Honorable Wynne Laufenberg. (R. 157:1). C.B. appeared in person and was represented by counsel. (R. 157:2).

At the hearing, Dr. Bjerregaard and Angela Townsend testified on behalf of Racine County and in favor of the recommitment. (R. 157:3). No witnesses or exhibits were offered on behalf of C.B. In addition to his testimony, the Report of Examination completed by Dr. Bjerregaard was received into evidence. (R. 135; 157:12).

Upon conclusion of the hearing, the circuit court found that the County had met its burden regarding the petition for recommitment and the involuntary medication order and entered both orders. (R. 157:26-27.)

[1] C.B. was originally committed to the Chapter 51 Board on November 23, 2015. (R. 14). His commitment has been extended annually since 2015. (R. 23, 33, 43, 59, 78, 99, 123).

The court of appeals affirmed.

This case does not meet any of this Court's criteria for review, and there are no compelling reasons for this Court to hear it. Accordingly, this Court should deny C.B.'s petition for review.

THIS COURT SHOULD DENY THE PETITION FOR REVIEW BECAUSE IT DOES NOT SATISFY THE CRITERIA IN WIS. STAT. § (RULE) 809.62(1r).

This Court should deny review of this case as the court of appeals correctly determined that the County proved C.B.'s dangerousness. Racine County v. C.B., 2023AP2018-FT, ¶25, unpublished slip op., (Wis. Ct. App. March 20, 2024). There is no argument that the evidence relied upon by the circuit court in ordering C.B.'s extension was properly admitted and relevant. C.B. did not contest any of the evidence at the hearing. Furthermore, C.B. also does not overtly dispute that the evidence demonstrative of C.B.'s dangerous behavior. Instead, C.B. presents minor theoretical challenges – most of which are arguably answered by the court record – and that C.B.'s dangerous behavior occurred in the past, but as the mere passage of time does not negate the dangerousness of an individual's conduct, such challenges do not show that County failed to prove dangerousness. Accordingly, the court of appeals appropriately held that the testimony was sufficient as were the circuit court's comments about the dangerousness. C.B., 2023AP2018-FT, ¶ 25. Therefore, there are no criteria presented that warrants this Court's review and this petition should be denied.

Contrary to C.B.'s declaration that "litigants need more guidance[,]" the plain requirements established by this Court for oral rulings made by circuit courts at recommitment hearings in D.J.W. need no further clarification. Although C.B. contends that this Court intended for a circuit court to "echo the precise statutory elements at issue" when making its oral ruling, this Court instead held when providing an oral ruling, a circuit court is not required under D.J.W. to specifically cite to the dangerousness substandard(s) set forth in Wis. Stat. § 51.20(1)(a)2.a. – e. on which the court's factual findings are based. Langlade County v. D.J.W., 2020 WI 41, ¶ 40, 391 Wis. 2d 231, 942 N.W.2d 277. This Court ruled: At extension hearings, when a subject's dangerousness is found to be evidenced under (am), a court must also find the specific dangerousness the subject would evidence "with reference to" Wis. Stat. §§ 51.20(1)(a)2.a. – e. Id. Thus, C.B.'s request for more guidance that would establish that circuit courts are required to specifically recite the statutory language of the dangerousness substandard(s) set forth in Wis. Stat. § 51.20(1)(a)2.a. – e would expand this Court's holding in D.J.W., an act that would not only be inconsistent with this Court's opinion but also unnecessary as evidenced here by decision of the court of appeals decision.

In applying this Court's holding D.J.W., the court of appeals held "[t]hough a bit inartful, the court was effectively saying that there is a substantial likelihood that if [C.B.'s] treatment is withdrawn, he "would be a proper subject for commitment," which

means, inter alia, his dangerous behavior would recur." Racine County v. C.B., 2023AP2018-FT, ¶ 23, unpublished slip op., (Wis. Ct. App. March 20, 2024). Further, that court held, ". . . in its written order, the court specifically indicates that [C.B.] is dangerous because he evidences "a substantial probability of physical harm to himself" and "to other individuals." Id. "[C.B.] cites to no law indicating a court's written determination of dangerousness signed the same day as its oral ruling does not suffice for identifying the specific dangerousness provision the court's determination is grounded on." Id. "Scouring through D.J.W. ourselves, we do not find it there." Id.

The court of appeals appropriately held that the County provided sufficient evidence to support an involuntary medication order pursuant to Wis. Stat. § 51.61(1)(g)4., and that C.B. was specifically "substantially incapable of applying an understanding of the advantages, disadvantages and alternatives to his ... mental illness ... in order to make an informed choice as to whether to accept or refuse medication or treatment." This Court has explained this requirement to be one "requir[ing] a person to make a connection between an expressed understanding of the benefits and risks of medication and the person's own mental illness." Outagamie County v. Melanie L., 2013 WI 67, ¶ 71, 349 Wis. 2d 148, 833 N.W.2d 607.

C.B. does not develop any arguments in regards to his specific case and request for this Court to review this issue. Despite any specific arguments, through the testimony of licensed psychiatrist Dr. William Bjerregaard, who had examined C.B. on four prior occasions

since 2020 to evaluate C.B. for purposes of recommitment, Dr. Bjerregaard's Report of Examination, and the testimony of Angela Townsend, C.B's assigned case manager from the Racine County Human Services Department, the court of appeals correctly determined the County's evidence was sufficient to support an involuntary medication order.

Consistent with this Court's holding in Melanie L., in which this Court opined that it is "logical[]" that "if a person cannot recognize that he or she has a mental illness, … the person cannot establish a connection between his or her expressed understanding of the benefits and risks of medication and the person's own illness," the court of appeals found that through the testimony and report of Dr. Bjerregaard, that C.B. is unable to apply an understanding of medications to his mental illness because he does not believe that he has a mental illness and "[d]oes not see a need for any form of treatment." Melanie L., 349 Wis. 2d 148, ¶ 72; C.B., 2023AP2018-FT, ¶¶ 37-38. Such finding was further supported through the testimony of Ms. Townsend, who testified that C.B. told her on multiple occasions "that medications were not helpful because he [does] not have a mental illness and that he was only taking medications because he was court-ordered to do so." Id. at ¶ 38. As a result, C.B.'s petition does not establish that additional review or clarification is warranted, and his petition should be denied.

CONCLUSION

For the foregoing reasons, this Court should deny the petition for review.

Dated this 24th day of April, 2024.

Respectfully submitted,

Electronically signed by Erika Frank Motsch
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CERTIFICATION AS TO FORM AND LENGTH

I hereby certify that this response conforms to the rules contained in Wis. Stat. § 809.19(8)(b), (bm), and (c) and 806.62(4) for a response. The length of this response is 1421 words.

Dated this 24th day of April, 2024.

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