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**SUPREME COURT**

STATE OF WISCONSIN  
COURT OF APPEALS  
DISTRICT II  
Case No. 2024AP1195

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In the Matter of the Mental Commitment of N.A.L.:

**SHEBOYGAN COUNTY,**

Petitioner-Respondent,

v.

**N.A.L.,**

Respondent-Appellant-Petitioner.

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**RESPONSE TO PETITION FOR REVIEW**

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### **STATEMENT OF ISSUES**

1. Are circuit courts required to conduct a formal colloquy with the subject of a Chapter 51 civil commitment, similar to defendants in a criminal proceeding, before allowing them to waive a final hearing?

Answer by the circuit court: no

Answer by the court of appeals: no

### **STATEMENT OF CRITERIA FOR REVIEW**

Sheboygan County, Petitioner-Respondent, opposes the petition for review requested by N.A.L., Respondent-Appellant-Petitioner, because it does not meet the criteria for review. The criteria for review are set forth in § 809.62(1r), Wis. Stats., as follows:

**CRITERIA FOR GRANTING 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. The following, while neither controlling nor fully measuring the courts discretion, indicate criteria that will be considered:

- (a) A real and significant question of federal or state constitutional law is presented.
- (b) The petition for review demonstrates a need for the Supreme Court to consider establishing, implementing or changing a policy within its authority.

- (c) A decision by the Supreme Court will help develop, clarify or harmonize the law, and:
  - 1. The case calls for the application of a new doctrine rather than merely the application of well-settled principles to the factual situation; or
  - 2. The question presented is a novel one, the resolution of which will have statewide impact; or
  - 3. The question presented is not factual in nature but rather is a question of law of the type that is likely to recur unless resolved by the Supreme Court.
- (d) The Court of Appeals decision is in conflict with controlling opinions of the United States Supreme Court or the Supreme Court or other Court of Appeals decisions.
- (e) The Court of Appeals decision is in accord with opinions of the Supreme Court or the Court of Appeals but due to the passage of time or changing circumstances, such opinions are ripe for reexamination.

Wis. Stat. § 809.62(1r). None of the reasons raised in the petition for review sufficiently meet any of the criteria to warrant a decision from this Court.

## ARGUMENT

### **I. Respondent-Appellant-Petitioner raises a new argument that has not been previously addressed by either the circuit court or the court of appeals**

The Respondent-Appellant-Petitioner argues in their petition for review that there is no legal basis for any kind of stipulation to involuntary commitments under Chapter 51. This is the first time this argument has been made, as it was not presented to the circuit court in N.A.L.'s post disposition motion or in any of the briefs to the court of appeals.

While questions of law are determined independently from the circuit court and the court of appeals, this Court has found it beneficial to consider their analyses and prior rulings. *Ranes v. Am. Fam. Mut. Ins. Co.*, 219 Wis. 2d 49, 54, 580 N.W.2d 197, 199 (1998). The Respondent-Appellant-Petitioner offers no explanation as to why this argument was not previously made, nor why it would be beneficial for this Court to hear this issue when there are no prior rulings or analysis. If this issue needs to be addressed, it would be more beneficial to have a different case heard with rulings from both the circuit court and court of appeals on whether stipulations in Chapter 51 cases are permitted at all.

It is also worth noting that this new argument is not a slight change in the Respondent-Appellant-Petitioner's argument, but rather a complete reversal. While previously it was argued that a more in-depth colloquy is required before the circuit court can accept a stipulation, now it is argued that neither a colloquy nor a stipulation should have ever been done. A completely new and novel argument such as this should be considered by lower courts first before being addressed at the highest level.

**II. Granting the petition for review would not help develop, clarify, or harmonize the law because the court of appeals has been clear and consistent in their rulings**

The Respondent-Appellant-Petitioner has argued that a circuit court must conduct a formal colloquy with the subject of Chapter 51 civil commitment before accepting a stipulation, much like the circuit court would conduct a colloquy of a criminal defendant before accepting a guilty/no contest plea. As noted by the court of appeals in this case, this argument has already been squarely addressed by the court of appeals in previous decisions. *In re Mental Commitment of N.A.L.*, no. 2024AP1195, ¶12, unpublished slip op. (WI App Feb. 5, 2025). The court of appeals' decision in this case tracks the same legal framework the court applied in prior decisions, and followed precedent by declining to adopt plea-type requirements into the context of a stipulation under Wis. Stat. ch. 51. *Id.* at ¶19.

A decision by this Court will not help develop, clarify or harmonize the law since the rulings on this issue have been consistent. The Respondent-Appellant-Petitioner wants circuit courts to be required to conduct a formal colloquy, despite no relevant authority requiring them to do so, citing simply that due process requires it. The court of appeals has already heard the argument and consistently rejected it, creating a well-settled legal principle that can be applied to all Chapter 51 cases. No further rulings by this Court are necessary to further clarify this point or to give guidance to circuit courts and litigants.

**CONCLUSION**

For the reasons stated above, the Petitioner-Respondent respectfully requests that this Court deny the petition for review requested by the Respondent-Appellant-Petitioner.

Dated April 24<sup>th</sup>, 2025

Respectfully submitted,

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**CERTIFICATION AS TO FORM/LENGTH**

I hereby certify that this response conforms to the rules contained in s. 809.19(8)(b), (bm), and 809.62(4). The length of this response is 915 words.

Dated April 24<sup>th</sup>, 2025

Electronically signed by:

A handwritten signature in blue ink, appearing to read "K. Lepak", is positioned above a horizontal line.

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