STATE OF WISCONSIN

IN SUPREME COURT

Case No. 2024AP1333

In the matter of the mental commitment of J.S.:
WINNEBAGO COUNTY,

Petitioner-Respondent,

v.

J.S.,

Respondent-Appellant-Petitioner.

PETITION FOR REVIEW

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ISSUE PRESENTED

1. May an appellate court assume that the circuit court determined a fact in a manner that supports the circuit court's ultimate decision when the circuit court failed to explicitly make that finding and the committed person has alleged a violation of the circuit court's duty to make specific factual findings under *Langlade Cty. v. D.J.W.*, 2020 WI 41, ¶ 40, 391 Wis. 2d 231, 942 N.W.2d 277?

This issue was not directly raised below. The court of appeals did not analyze whether it could assume that the circuit court made a particular factual finding that the circuit court failed to explicitly make consistent with this Court's mandate in *D.J.W.*

The court of appeals, however, presumed that the circuit court adopted a witness's opinion where the circuit court did not explicitly do so. *Winnebago Cty. v. J.S.*, 2024AP1333, unpublished slip. op., ¶ 15 (WI App Mar. 5, 2025) (App. 58). This Court should grant review to clarify that, where the circuit court is required to make explicit factual findings to support its decision, reviewing courts may not "assume that the circuit court determined the fact in a manner that supports the circuit court's ultimate decision." *Contra State v. Martwick*, 2000 WI 5, ¶ 31, 231 Wis. 2d 801, 604 N.W.2d 552.

CRITERIA FOR REVIEW

"[S]pecial and important reasons" exist to grant this petition. *See* Wis. Stat. § (Rule) 809.62(1r). Two such reasons stand out. First, the decision of the court of appeals "is in conflict with controlling opinions of" this Court. *See* Wis. Stat. § (Rule) 809.62(1r)(d). In this Court's decision in *D.J.W.*, it made clear that circuit courts are to make "*specific* factual findings" on which it based the recommitment. *Langlade Cty. v. D.J.W.*, 2020 WI 41, ¶ 40, 391 Wis. 2d 231, 942 N.W.2d 277 (emphasis added). The decision of the court of appeals in this case conflicts with that holding in that it allows reviewing courts to presume that the circuit court made a particular finding that the circuit court did not explicitly make.

Second, a decision by this Court regarding whether a reviewing court may assume that the circuit court determined a fact in a manner that supports the circuit court's ultimate decision "will help develop, clarify [and] harmonize the law" and both is a "novel [question], the resolution of which will have statewide impact" and is "not factual in nature but rather is a question of law of the type likely to recur unless resolved" by this Court. *See* Wis. Stat. § (Rule) 809.62(1r)(c)2.-3. No published case in Wisconsin has addressed whether an appellate court may search the record for findings that the circuit court could have made but did not explicitly make in the context of a claimed *D.J.W.* violation.

This Court should grant review to provide clarity and guidance to the court of appeals regarding how *D.J.W.* violations should be analyzed. Since this Court required circuit courts to make specific factual findings in recommitment proceedings, the number of appeals in mental health commitment cases has significantly increased and does not appear to show any signs of slowing. *See Winnebago Cty. v. C.H.*, 2023AP505, unpublished slip. op., ¶ 16 fn. 6 (WI App Aug. 30, 2023) (App. 86). Because these appeals continue to increase in volume before the court of appeals, this Court should definitively resolve the recurring question of whether the court of appeals may rely on factual findings that the circuit court did not explicitly make. A definitive decision by this Court will further assist appellate review of commitment matters by clarifying what the reviewing court may look to in order to evaluate whether the circuit court complied with its obligations under *D.J.W.*

STATEMENT OF FACTS

On June 8, 2023, the circuit court entered an order committing J.S. to the care and custody of Winnebago County for a period of six months. (27:2).

On November 7, 2023, Winnebago County filed a Petition for Recommitment. (43:1). An examination of J.S. was conducted on October 25, 2023, by Dr. Michael Vincente, MD. (45:1). This report was filed with the court on November 7, 2023. (45:1).

A hearing on the extension of commitment was held on November 30, 2023, before the Honorable Teresa S. Basiliere. (82:1; App. 6). At the hearing, the County called two witnesses: Dr. Michael Vincente and Officer Brent Wittman. (82:2; App. 7). Dr. Vincente testified that J.S. had been a patient at his clinic for over a year and he conducted an evaluation on October 25, 2023. (82:6; App. 11). Dr. Vincente also reviewed notes from J.S.'s treatment history. (82:6-7; App. 11-12). Dr. Vincente opined that J.S. had a substantial disorder of thought and perception, namely "unspecified schizophrenia spectrum and other psychotic disorders." (82:7; App. 12). Dr. Vincente testified that this disorder caused J.S. to experience auditory hallucinations, paranoid thoughts, and suicidal ideation. (82:8; App. 13). Dr. Vincente acknowledged that at the time he examined J.S., he did not present with recent suicidal thoughts. (82:25; App. 30).

Dr. Vincente further testified that it was his opinion that J.S. was a danger to himself or others when not under treatment. (82:8; App. 13). Dr. Vincente believed this to be the case because J.S. indicated that he did not believe that he had a mental illness and that J.S. had a recent history of discontinuing treatment when no longer under a commitment order. (82:12; App. 17). Dr. Vincente further testified that he believed J.S. satisfied the standard for involuntary medication. (82:13; App. 18).

The County also called Officer Brent Wittman, a police officer with the City of Neenah Police

Department. (82:28; App. 33). Officer Wittman testified that he was dispatched to J.S.'s home on July 3, 2023. (82:29; App. 34). J.S.'s mother called to report that J.S. "had a hammer and [was] out of control." (82:29; App. 34). However, J.S.'s mother indicated that none of J.S.'s behavior "threatened her, but [was] very erratic." (82:29; App. 34). Officer Wittman also noted that he never saw J.S. armed with a hammer as they were talking through a window. (82:32; App. 37).

Finally, J.S. testified. (82:35; App. 40). J.S. acknowledged suffering from depression and anxiety, and testified about the medications he was taking, and his willingness to keep taking them as prescribed. (82:35; App. 40). J.S. further testified that he had to be taken off one of the medications because of an infection due to low white blood cell count. (82:35-36; App. 40-41). Finally, J.S. testified that he did not tell Dr. Vincente about any suicidal thoughts. (82:36; App. 41).

At the conclusion of the hearing, the court entered an order extending J.S.'s commitment for one year. (82:41; 71:2; App. 46, 4). The court also entered an order allowing J.S. to be medicated without consent. (82:43; 72; App. 48, 5). The court placed the following findings on the record:

> All right. Court finds, basically, upon the hearing that was held today and upon the Dr. Vincente's testimony, together with the officer's testimony, the [c]ourt finds that grounds for extension of the commitment have been established, that the subject does have a mental illness as specified by

the doctor, unspecified schizophrenia spectrum with psychosis.

Court finds that there was testimony by the doctor, and with some substantiation of that testimony of the factors that the doctor was relying upon, indicating that [J.S.] was incompetent to take medication or treatment and dangerous because there was a substantial probability that he is incapable of expressing an understanding of the advantages and disadvantages of accepting mediation or treatment, the alternatives and if the – and – or the alternatives to the treatment, and also incapable of applying an understanding of the advantages, disadvantages, and alternatives.

Court does find that he does need treatment to prevent further disability. Again, the doctor testified of concerns if he was untreated. Also talked about decompensation when he was not treated.

Court finds if untreated the subject will lack services necessary for his health, safety, and he will suffer – likely will suffer if left untreated. Severe mental, emotional, physical harm will result in a loss of his ability to function independently in a community or loss of volitional control over his thoughts, which was the paranoia, delusions. There is no reasonable provision for his care or treatment in the community. And the [c]ourt finds that this is manifested both from [J.S.'s] treatment history and there is a substantial likelihood, based upon his treatment record, that he would be a proper subject for commitment if treatment were withdrawn.

> Court finds, again, he is a proper subject for treatment. He is a resident of Winnebago County.
>
> Court orders that the petition is granted. [J.S.] is committed for an extension from the date of this hearing for – hearing for a period of 12 months. Committed to the care and custody of Winnebago County Department, and the maximum level of treatment the [c]ourt is going to note is outpatient with conditions.

(82:40-42; App. 45-47).

The circuit court entered written orders extended J.S.'s commitment under Wis. Stat. §§ 51.20(1)(a)2.e. and (1)(am) and authorizing involuntary medication and treatment on December 1, 2023 (71:1; 72:1; App. 3, 5).

J.S. filed a notice of appeal on July 3, 2024. (88). He argued that the circuit court failed to comply with this Court's requirement in *D.J.W.* to make specific factual findings regarding the standard of dangerousness under which it recommitted him. *Winnebago Cty. v. J.S.*, 2024AP1333, unpublished slip. op., ¶ 1 (WI App. Mar. 5, 2025) (App. 52).

The court of appeals held that the circuit court made sufficient factual findings to satisfy this Court's *D.J.W.* requirement, "(even if barely)." *Id.* at ¶ 17 (App. 59). In coming to its conclusion that the circuit court made sufficient factual findings, the court of appeals analyzed the factual findings that the circuit court made in connection with the elements of the

"fifth standard," under which J.S. was recommitted. *Id.* at ¶¶ 15-16 (App. 58-59).

The court of appeals noted that as to the first element—J.S.'s mental illness—the circuit court found J.S. to be mentally ill, "as specified by the doctor, unspecified schizophrenia spectrum with psychosis." *Id.* at ¶ 15 (App. 58).

Second—as to J.S.'s competence to make medication or treatment decisions—the court of appeals noted that "[a]lthough [the circuit court] did not summarize the testimony in any detail, it found that [J.S.] was not able to express the requisite understanding on this issue." *Id.* (App. 58). The court of appeals went on to express that "[t]his suggests that the [circuit] court adopted Vincente's opinion, reflected in both his testimony and report, with respect to [J.S.]'s ability to appreciate the advantages and disadvantages of medication and treatment." *Id.* (App. 58). To support this supposition, the court of appeals cited to *State v. Martwick*, 2000 WI 5, ¶ 31, 231 Wis. 2d 801, 604 N.W.2d 552. *Id.* (App. 58) ("If a [trial] court fails to make a finding that exists in the record, an appellate court can assume that the [trial]court determined the fact in a manner that supports the [trial] court's ultimate decision.").

As to the third and fourth elements—a substantial probability that J.S. needs care or treatment to prevent further disability or deterioration and a substantial probability that J.S. will, if left untreated, lack services necessary for his

health or safety—the court of appeals noted that the circuit "court referred to Vincente's 'concerns' that [J.S.] would experience 'decompensation when he was not treated' . . . and mentioned the loss of 'volitional control over his thoughts' and 'paranoia' that was in [J.S.]'s history when he was not receiving treatment. . .." *Id.* at ¶ 16 (App. 58-59).

Finally, as to the fifth element—a substantial probability that J.S. will, if left untreated, suffer severe mental, emotional, or physical harm that will result in the loss of his ability to function independently in the community or the loss of cognitive or volitional control over his thoughts or actions—the court of appeals noted that the circuit "court mentioned Vincente's testimony about [J.S.]'s delusions, which would result in him 'suffer[ing] if left untreated.'" *Id.* (App. 59) (second alteration in original).

Ultimately, the court of appeals concluded that the record made by the circuit court "did enough (even if barely) to satisfy" the requirements of *D.J.W. Id.* at ¶ 17 (App. 59). The court of appeals affirmed the circuit court. *Id.* at ¶ 18 (App. 59).

ARGUMENT

I. This Court should grant review to clarify that reviewing courts may not rely on inferences not explicitly made by the circuit court when a *D.J.W.* violation is alleged.

This Court should grant this petition to resolve the unsettled questions of whether and to what extent a reviewing court may search the record for facts that support the circuit court's decision or rely on inferences from facts in the record that the circuit court did not explicitly make. Reviewing courts should not search the record to support the circuit court's ultimate decision nor should reviewing courts rely on inferences that the circuit court did not make. To hold otherwise would entirely collapse any purported enhanced protections under *D.J.W.* for individuals that the county seeks to commit.

A. General principles of involuntary commitment under Chapter 51.

To involuntarily commit a person under Chapter 51, the County must prove that the person is mentally ill, a proper subject for treatment, and dangerous. Wis. Stat. § 51.20(1). At the impending expiration of the initial six-month commitment order, the County may seek an extension of the order for up to one year. Wis. Stat. § 51.20(13)(g). The County must prove the same three elements in order to recommit an individual. *Waukesha Cty. v. J.W.J.*, 2017 WI 57, ¶ 20, 375 Wis. 2d 542, 895 N.W.2d 783. The County must prove these

elements by clear and convincing evidence. Wis. Stat. § 51.20(13)(e)

Wisconsin law provides five different definitions for "dangerous." *See* Wis. Stat. § 51.20(1)(a)2.a.-e. As relevant to this case, a person is dangerous if:

> . . .after the advantages and disadvantages of and alternatives to accepting a particular medication or treatment have been explained to him or her and because of mental illness, evidences either incapability of expressing an understanding of the advantages and disadvantages of accepting medication or treatment and the alternatives, or substantial incapability of applying an understanding of the advantages, disadvantages, and alternatives to his or her mental illness in order to make an informed choice as to whether to accept or refuse medication or treatment; and evidences a substantial probability as demonstrated by both the individual's treatment history and his or her recent acts or omissions, that the individual needs care or treatment to prevent further disability or deterioration and a substantial probability that he or she will, if left untreated, lack services necessary for his or her health or safety and 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. . ..

Wis. Stat. § 51.20(1)(a)2.e.

In recommitment hearings, dangerousness may also be proven in the following manner:

> If the individual has been the subject of inpatient treatment for mental illness . . . immediately prior to the commencement of the proceedings as a result of . . . a commitment or protective placement ordered by a court under this section . . . the requirements of a recent overt act, attempt or threat to act under par. (a)2.a. or b., pattern of recent acts or omissions under par. (a)2.c. or e., or recent behavior under par. (a)2.d. may be satisfied by 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.

Wis. Stat. § 51.20(1)(am).

Regarding the different dangerousness standards set forth in Wis. Stat. §§ 51.20(1)(a)2. and 51.20(1)(am), this Court held in *D.J.W.* that it would henceforth require circuit courts in recommitment proceedings "to make specific factual findings with references to the subdivision paragraph of § 51.20(1)(a)2. on which the recommitment is based." *D.J.W.*, 2020 WI 41, at ¶ 40. Providing specific factual findings, this Court stated, will serve two purposes. *Id.* at ¶ 42.

First, it will provide clarity and extra protection to patients regarding the underlying basis for the recommitment. *Id.* at ¶¶ 42-43. In this respect, this Court noted that the "United States Supreme Court

'repeatedly has recognized that civil commitment for any purpose constitutes a significant deprivation of liberty that requires due process protection.'" *Id.* (quoting *Addington v. Texas*, 441 U.S. 418, 425 (1979)). "Freedom from physical restraint," this Court explained, "is a fundamental right that 'has always been at the core of the liberty protected by the Due Process Clause from arbitrary governmental action.'" *Id.* (quoting *State v. Post*, 197 Wis. 2d 279, 302, 541 N.W.2d 115 (1995)). This Court further emphasized that, given the importance of the liberty interest at stake, the accompanying protections should mirror the serious nature of the proceedings. *Id.* at ¶ 43. Therefore, this Court required circuit courts to provide *specific factual findings* with reference to the subdivision paragraph on Wis. Stat. § 51.20(1)(a)2. on which the recommitment is based. *Id.*

Second, this Court stated that the requirement of specific factual findings with reference to a subdivision paragraph of Wis. Stat. § 51.20(1)(a)2. will clarify issues raised on appeal of recommitment orders and thereby ensure the soundness of judicial decision-making, especially with respect to challenges based on the sufficiency of the evidence. *Id.* at ¶ 44. "A more substantial record will better equip appellate courts to do their job, further ensuring meaningful appellate review of the evidence presented in recommitment proceedings." *Id.*

Shortly after this Court required circuit courts to make specific factual findings in recommitment proceedings, it considered the proper remedy for a

D.J.W. violation. *Sheboygan Cty. v. M.W.*, 2022 WI 40, ¶ 26, 402 Wis. 2d 1, 974 N.W.2d 733. The County, in support for its position that reversal and remand for the circuit court to make the appropriate findings was the appropriate remedy, argued that the circuit court's failure to make the required factual findings was nothing more than "a 'minor procedural violation' akin to a failure to adhere to 'magic words' or to provide a simple statutory citation." *Id.* at ¶ 32. Ultimately, this Court concluded that reversal rather than reversal and remand to be the proper remedy based on concerns of circuit court competency. *Id.* at ¶ 34. While this Court ultimately decided the matter on court competency grounds, it also noted arguments that had been accepted by the court of appeals that to allow remand for the circuit court to make the factual findings "would cause the 'clarity' and 'extra protection' *D.J.W.* sought to engender to come 'far too late to be meaningful.'" *Id.* at ¶ 29.

B. Allowing reviewing courts to adopt inferences that the circuit court did not explicitly adopt would eviscerate the requirement that circuit courts make specific factual findings regarding the standard of dangerousness.

This Court has repeatedly acknowledged and reaffirmed *D.J.W.*'s core holding that circuit courts must make *specific* factual findings regarding the standard of dangerousness it found applied. *See M.W. M.W.*, 2022 WI 40, ¶¶ 23-24; *Sauk Cty. v. S.A.M.*, 2022 WI 46, ¶ 29, 402 Wis. 2d 379, 975 N.W.2d 162 (holding

that *D.J.W.* did not apply to the recommitment that occurred prior to its holding being announced), *Waukesha Cty. v. M.A.C.*, 2024 WI 30, ¶ 71, 412 Wis. 2d 462, 8 N.W.3d 365.

The court of appeals, in a decision that appears contrary to *D.J.W.*'s requirement of specific factual findings, held that the circuit court made sufficient factual findings by "refer[encing] the doctor's testimony." *J.S.* at ¶ 15. The court of appeals held that "[a]lthough [the circuit court] did not summarize [the doctor's] testimony in any detail, it found that [J.S.] was not able to express the requisite understanding on this issue." *Id.* "This *suggests*," the court of appeals continued, "that the [circuit court] adopted [the doctor]'s opinion. . .." *Id.* (emphasis added). The court of appeals supported this assumption by citing to *State v. Martwick*, 2000 WI 5, ¶ 31, 231 Wis. 2d 801, 604 N.W.2d 552, for the proposition that "if a circuit court fails to make a finding that exists in the record, an appellate court can assume that the circuit court determined the fact in a manner that supports the circuit court's ultimate decision." *Id.*

The court of appeals' assumption that the circuit court determined the fact in a manner that supports the circuit court's ultimate decision, however, is contrary to this Court's mandate in *D.J.W.* that required circuit courts to make "*specific* factual findings. . .." *See D.J.W.*, 2020 WI 41, ¶ 40 (emphasis added). In *D.J.W.*, this Court concluded that a mandate to circuit courts to make specific factual findings was necessary because, by the time it reached

the supreme court, "[t]he statutory basis for D.J.W.'s commitment . . . has been somewhat of a moving target." *Id.* at ¶ 36.

If reviewing courts may simply assume that the circuit court made a factual finding that supports the ultimate recommitment decision, *D.J.W.*'s requirement that circuit courts make specific factual findings in recommitment hearings would be eviscerated. The court of appeals, indeed, has appeared to recognize that the onus is on the *circuit court* to apply the facts of the case to the elements of the dangerousness standard. *See J.S.*, 2024AP1333 at ¶ 14 ("This court has encouraged [circuit] courts to communicate what evidence [it] relied upon, summarize testimony, tie the evidence to the standard, and read from the standard order form for commitments. . .."); *see also Winnebago Cty. v. B.R.C.*, 2023AP1842, unpublished slip. op., ¶ 21 fn. 7 (WI App. Feb. 14, 2024) (App. 71) (noting that if circuit courts are not required to explain how the facts applied to each element of the standard under which it committed the individual, "*D.J.W.* would be gutted because a [circuit] court could summarily say 'ditto' and commit the individual for up to one year."). Despite that recognition, however, the court of appeals held that the circuit court made specific factual findings as to each element when the court of appeals had to infer a factual finding as to an element. *See J.S.*, 2024AP1333 at ¶ 15, 17.

Additionally, permitting the court of appeals — on review of a recommitment and involuntary

medication order that alleges a violation of the circuit court's duty to make specific factual findings—to make its own factual findings long after the prior commitment order expired would be contrary to this Court's decision in *M.W.* There, the recommitment order from which the committee appeals had expired; this Court held the circuit court lacked competency to conduct any additional proceedings, including to make additional factual findings. *M.W.*, 2022 WI 40, ¶ 38. To allow the court of appeals to make factual findings when the circuit court would not have the competency to runs contrary to logic.

Further, allowing reviewing courts to simply assume that the circuit court made a factual finding that supports the ultimate decision would not further either of the justifications for the requirement that circuit courts make specific factual findings. The first justification was to provide "clarity and extra protection to patients regarding the underlying basis for a recommitment." *D.J.W.*, 2020 WI 41, ¶ 42. If the circuit court may simply allude to certain testimony, but is not required to place its specific factual findings on the record, patients are not provided the additional clarity and protection that *D.J.W.* sought to provide—or if they are provided that clarity in the court of appeals' decision, it would "come 'far too late to be meaningful.'" *See M.W.*, 2022 WI 40, ¶ 29.

The second justification was to "clarify issues raised on appeal of recommitment orders and ensure the soundness of judicial decision making. . .." *Id.* at ¶ 44. "A more substantial record," this Court explained,

"will better equip appellate courts to do their job, further ensuring meaningful appellate review of the evidence presented in recommitment proceedings." *Id.* Similarly, this justification is not furthered by allowing circuit courts to make threadbare factual findings and allowing appellate courts to "assume" that the circuit court made a particular factual finding that it did not explicitly make. A record that requires a reviewing court to presume that the circuit court made a particular finding does not provide clarity regarding the issues that could be raised on appeal nor does it provide an adequate record for meaningful appellate review.

CONCLUSION

For the foregoing reasons, J.S. respectfully requests that this Court grant this petition to provide additional clarity and guidance to lower courts regarding the sufficiency of a circuit court's factual findings under *D.J.W.*

Dated this 4th day of April, 2025.

Respectfully submitted,

Electronically signed by Olivia Garman

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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 3,517 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 4th day of April, 2025.

Signed:
Electronically signed by
Olivia Garman
OLIVIA GARMAN
Assistant State Public Defender

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