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SUPREME COURT

STATE OF WISCONSIN

IN SUPREME COURT

Case No. 2025AP000066 – FT

In the matter of the mental commitment of D.P.E.:
FOND DU LAC COUNTY

Petitioner-Respondent,

v.

D.P.E.,

Respondent-Appellant-Petitioner.

NO-MERIT PETITION FOR REVIEW

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ISSUE PRESENTED

The respondent-appellant-petitioner D.P.E., by his attorney, Assistant State Public Defender Lena Archer, petitions this court pursuant to Wis. Stat. §§ (Rules) 809.32(4) and 809.62 to review the decision and order of the Court of Appeals, District 2, dated April 30, 2025. (App. 3-18).

STATEMENT OF THE CASE AND FACTS

On November 10, 2023, Fond du Lac County filed a petition to commit D.P.E. (“Donald”)¹ under Wis. Stat. § 51.20. (22). The petition and documents filed detailed multiple threats of physical violence Donald made to staff at WRC. (22:1).

On December 21, 2023, Fond du Lac County committed Donald involuntarily for six months. (64:2).

On June 4, 2024, the County filed an application to extend Donald’s involuntary commitment and corresponding order for involuntary medication. (68).

At the recommitment hearing held on June 25, 2024, the County called two witnesses, Dr. Wilbur Sarino and Nehls Brown, a psychiatric care technician at the Wisconsin Resource Center. (90).

¹ A pseudonym, as required by Wis. Stat. § (Rule) 809.81(8).

Sarino testified that he had met with Donald in October of 2023 and reviewed WRC records. (90:9-10). Sarino prepared a report in support of the County's request for extension, which was received into evidence. He stated Donald suffers from Schizoaffective Disorder, which presents as a substantial disorder of thought, mood, and perception that grossly impairs Donald's judgment, behavior, and capacity to recognize reality. (90:11, 17). According to Sarino, Donald has "very grandiose" thoughts, such as "that he invented the graphics card for Intel." And "very panicked beliefs," such as "that the staff at WRC are supplying the black inmates with prostitutes"; "[t]hat sex is being held in the units"; and that Sarino is "being bribed" by former President Barack Obama and former Wisconsin Governor Scott Walker "to bring [Donald] to [c]ourt." Sarino also cited Donald's belief "that people are plotting against him" as support for his opinion that his mental illness substantially impairs his ability to recognize reality. (90:17).

Sarino described him as being "very volatile, very angry at times, [and] very intense." (90:16). He testified that Donald "has made threatening statements to staff" at the WRC, previously assaulted a peer, and has in the past not been "compliant to medications." (Slip op. ¶6; App. 5). He testified Donald's noncompliance with medication and alleged assault of a fellow inmate prompted his transfer to WRC.

Sarino's report lists threatening statements and behavior attributable to Donald during his six-month initial commitment, including the following:

"Jan. 17, 2024—kicking his door very hard. Told staff 'I have rules too, and if you break one it is the death sentence.'"

"Jan. 19, 2024—"Tired of being treated like shit.' Gave detailed plans of getting revenge towards others who he believes mistreated him."

"March 18, 2024—refused mouth check. He began performing karate moves by punching the air, yelling."

"March 18—told [a psychiatric care technician], 'I will rape your ass hole every day, you nigger loving faggot bitch!'"

(Slip op. ¶6; App. 5-6).

Sarino testified that Donald had been "transferred to the high-management unit" at the WRC on May 22, 2024, and on that occasion, "told staff that he knew self[-]defense and that he was not afraid to use it." During Sarino's testimony about these incidents, Donald objected multiple times on the basis that the statements attributed to him were lies. (Slip op. ¶6; App. 6).

Sarino listed three medications that Donald is prescribed currently, which Sarino believed control and improve Donald's symptoms and are necessary to prevent him from seriously harming himself or others. (90:18-19). Sarino stated that he had explained the

advantages and disadvantages of and alternatives to taking medications to Donald “on multiple occasions.” (90:19). Sarino opined that Donald was substantially incapable of expressing or applying an understanding of them. (90:20-21).

Sarino agreed that Donald would be a proper subject for commitment if treatment were withdrawn. (90:18).

The County’s second witness, Brown, testified that he worked on Donald’s WRC unit in October 2023. (90:33). Brown testified that Donald has threatened him, his coworkers, and a nurse. (90:33). Brown testified that Donald had “directly threatened” him and his coworkers, including “threaten[ing] to come and find me with a firearm when he is released.” (90:33). Specifically, Brown testified about an occasion in which he looked into Donald’s cell during a medication pass, and Donald said, “Are you looking for a gun? I don’t have one in here, but maybe I will get one when I get out and come and find you.” (90:36). Brown also testified about a threat Donald made in March 2024 to “beat [him]” and an incident in December 2023 in which Donald “was striking his own hand with his elbow” and said he “would do that to my head, knock me out.” (90:34, 36).

Brown stated he was in fear of Donald and concerned for the safety of his coworkers. (90:34). He said he was present when Donald threatened to assault a nurse. (90:35). He also stated that Donald made threats to staff, but Brown could not disclose the

nature of the threat because he “did not have the opportunity to read that report this morning.” (90:35).

Donald appeared in court with appointed counsel, but Donald personally addressed the court, cross-examined witnesses, and made his own closing argument. Donald made several objections during Sarino’s testimony, including to hearsay, speculation, and also substantively denying the allegations that Sarino reported. (90:9-11, 13-14, 22-25).

Donald did not call any witnesses and did not testify. (90:44).

The County argued for an extension of Donald’s involuntary commitment and medication orders and Donald opposed the County’s requests and argued that his civil and personal rights were violated. (90:49; App. 23).

Regarding the County’s request to extend Donald’s commitment, the court stated:

...besides your statement, we don't have anything that would contradict the statements of the doctor. And the doctor was really more of the witness that the Court was interested in. Not that I wasn't interested in the other witness. I just think that the doctor's testimony itself was enough under the clear and convincing standard.

(90:50; App. 24). The court continued:

...there exists a substantial probability that [Donald] may cause physical harm to himself or others. Some of these statements or threats at

least that the doctor testifies to that were in his record point that out. And there's a substantial likelihood that based on the subject's individual treatment record that the individual would be a proper subject for commitment if treatment were withdrawn and there would be a probability that if the treatment was withdrawn, physical harm ... may result to himself. And that is kind of borne out by the fact that I think that [Donald] acknowledges to some degree the medication is helping him.

(90:51; App. 25). With regard to involuntary medication, the court stated:

I think that that administration of his medications is in the best interest of [Donald]. I think he does have insight into the pros and cons of that. But I think at times that either through stress or maybe some of the side effects of his diagnosis is that he would not take his medication. I think as he sits here today, he thinks it's in his best interest and he would likely take the medication.

(90:54; App. 28).

The court entered orders extending Donald's commitment and authorizing involuntary administration of medication by twelve months based on the second standard. (90:50; App. 19-22, 24).

Donald appealed. He argued the evidence was insufficient to prove he was dangerous to others under the § 51.20(1)(a)2.b. standard. The court of appeals affirmed, holding that the evidence was sufficient.

(Slip op. ¶¶1, 18-22; App. 3, 12-14). Donald also argued the evidence was insufficient to show he was incompetent to refuse medications.

The court of appeals held that Sarino's report and testimony and Brown's testimony provided sufficient evidence under the second standard. (Slip op. ¶23; App. 14).

The court further found that Donald's objections to Sarino's report and testimony did not identify any legal ground for excluding the report. (Slip op. ¶20; App. 13).

The court also found, "Brown identified multiple specific threats Donald made in his testimony." His testimony was "sufficiently detailed to explain why Brown feared Donald and was concerned about the threat he presents to his and his coworkers' safety." (Slip op. ¶22; App. 14).

As it related to the involuntary medication order, the court found,

Donald's arguments do not furnish a sufficient basis to set aside the medication order. Though Donald did indicate that he believed that two of the three medications he was currently prescribed were "sufficient," he does not dispute that he has a history of imperfect medication compliance. The circuit court recognized as much, finding that Donald had not always taken medication voluntarily because of "stress" or "side effects of his diagnosis." This court may not disturb this finding unless Donald establishes that it is clearly

erroneous—that is, “against the great weight and clear preponderance of the evidence.” *Metropolitan Assocs. v. City of Milwaukee*, 2018 WI 4, ¶62, 379 Wis. 2d 141, 905 N.W.2d 784. He has not done so.

(Slip op. ¶29-30; App. 17-18).

While the court of appeals acknowledged that Donald’s “best interest” is not a ground in Wis. Stat. § 51.61(1)(g) for imposing an involuntary medication order, it pointed to the circuit court’s written order which “contains additional findings and conclusions, that track the statutory standards for the imposition of such an order.” (Slip op. ¶ 31; App. 18).

Donald subsequently requested undersigned counsel to file this petition for review under Wis. Stat. § 809.32(4).

CONCLUSION

This petition is filed pursuant to Rule 809.32(4). Donald has been advised of his responsibility to prepare and file a supplemental petition that includes the other portions of the petition for review required under Rule 809.62.

Dated this 30th day of May, 2025.

Respectfully submitted,

Electronically signed by

Lena D. Archer

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CERTIFICATIONS

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 1,628 words.

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 30th day of May, 2025.

Signed:

Electronically signed by

Lena D. Archer

LENA D. ARCHER

Assistant State Public Defender