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Office of the Clerk
Supreme Court of Wisconsin
110 E. Main St., Suite 215
P.O. Box 1688
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VIA HAND DELIVERY

Re: Appellant's response to Order dated June 23, 2022
Jackson Cty v. C.A.D.
Appeal No. 2020AP69
L.C. #2018ME21

To the Court:

This letter is written in response to the Court's order dated June 23, 2022, requiring the parties to discuss the impact of its recent decision in *Sauk Cty v. S.A.M.* on the above-captioned case. The Court accepted C.A.D.'s petition for review, then ordered the case held in abeyance pending the decision in *S.A.M.*

C.A.D. raised three issues in his Petition for Review:

1. Whether his case was moot, because his recommitment had expired before the Court of Appeals decided his case;

2. Whether C.A.D. was denied procedural due process because he did not receive particularized notice of the basis for his recommitment, including which of the standards of dangerousness was being alleged; and

3. Whether the County failed to prove, by clear and convincing evidence, that C.A.D. was dangerous.

The first issue, regarding mootness, was thoroughly and fully addressed in *S.A.M.* and need not be revisited in this case. *S.A.M.* established that C.A.D.'s case is not moot due to the collateral consequences of the recommitment: specifically, the firearms ban and financial liability for costs of care. This Court in *S.A.M.* rejected the court of appeals' reasoning in *C.A.D.* that the case was moot because (1) the analysis regarding the firearms ban in Marathon Cty v. D.K., 2020 WI 8, 390 Wis. 2d 50, 937 N.W.2d 901 was inapplicable to a recommitment, as opposed to an initial commitment; and (2) C.A.D. did not allege specific facts personal to him regarding collateral consequences he argued arose from his recommitment. Thus, C.A.D.'s appeal is not moot.

The second issue was raised in *S.A.M.* Like C.A.D., S.A.M. argued that he was denied procedural due process because he did not receive particularized notice of the basis for his recommitment. This Court concluded that S.A.M.'s due process claim failed because his argument relied solely on the Court's decision in *Langlade Cty v. D.J.W.*, 2020 WI 41, 391 Wis. 2d 231, 942 N.W.2d 277. *S.A.M.* ¶29.

In so holding, the Court did not foreclose the argument that a person subjected to a recommitment has a due process right to notice of which standard of dangerousness the County is proceeding under. C.A.D. will argue that many Wisconsin and United Supreme Court cases support the principle that a person has a due process right to notice of the legal standard that the government is proceeding under. *See, e.g., Lessard v. Schmidt,* 349 F. Supp. 1078 (E.D. Wis.1972), *vacated on other grounds,* 414 U.S. 473 (1974) (involuntary commitment proceedings); *In re Gault,* 387 U.S. 1, 33 (1967) (juvenile delinquency proceedings); *In the Matter of Ruffalo,* 390 U.S. 544 (lawyer disbarment proceedings); *Cole v. Arkansas,* 333 U.S. 196, 201 (criminal proceedings); *State v. VanBronkhorst,* 2001 WI App 190, 247 Wis. 2d 247, 633 N.W.2d 236 (revocation proceedings). The Fourteenth Amendment to the United States Constitution extends the right to notice and an opportunity to be heard to civil cases as well. *Boddie v. Connecticut*, 401 U.S. 371, 378 (1971). *See also Schramek v. Bohren*, 145 Wis. 2d 695, 704, 429 N.W.2d 501 (Ct. App. 1988)(for a domestic abuse injunction, due process requires notice of information sufficient to prepare a defense).

The statute further supports the argument that the respondent in a Chapter 51 recommitment is entitled to particularized notice of the basis for the

recommitment. *See* Wis. Stat. 51.20(2)(a), which expressly references (1)(am), the recommitment statute, when setting forth the requirement that the trial court review the County's petition to determine whether it is based on "recent overt acts, attempts or threats to act or on a pattern of recent acts or omissions made by the individual." This may contradict this Court's holding in *Waukesha County v. S.L.L.*, 2019 WI 66, ¶24, 387 Wis. 2d 333, 929 N.W.2d 140 that §51.20(1) applies to (a) but not (am). It would appear that, if §51.20(1)(c)'s requirement that thee petition must contain a clear and concise statement of the facts justifying the recommitment, then the trial court cannot fulfill its obligations under 51.20(a). If *S.L.L.* is a correct statement of the law on this point, and if only §51.20(10)-(13) apply to a recommitment (as opposed to an initial commitment), then 51.20 may violate due process and equal protection. Counties would have to give due process notice of the factual basis and legal standard for an initial commitment, but not for a recommitment. And if §51.20(9) does not apply to recommitments, examination by two doctors would be required for an initial commitment, but no examination at all would be required for a recommitment. *See, e.g., Rusk County v. A.A.*, Appeal No. 2019AP839 and 2020AP1580 (consolidated) District 3 certification to the Supreme Court of Wisconsin.

This issue warrants consideration by this Court, as the constitutional issues are exceedingly important and are highly likely to recur in future cases. The Court's decision "will help develop, clarify or harmonize the law." Wis. Stat. §809.62(1r)(c).

The third and final issue raised in C.A.D.'s Petition for Review is whether the County failed to prove, by clear and convincing evidence, that C.A.D. was dangerous. In *S.A.M.*, this court concluded that the evidence on S.A.M.'s dangerousness sufficiently justified his recommitment. The sufficiency of the evidence arguments made by C.A.D. are very different from those made by S.A.M., and thus the holding in S.A.M. will not likely have an impact on this case. Nonetheless, the Court's decision on C.A.D.'s sufficiency of the evidence argument will provide much-needed guidance to trial courts, defense counsel, and counties' corporation counsel on what evidence is sufficient to justify a recommitment. The issue has been heavily litigated in recent years, with trial courts often recommitting based on insufficient and/or inconsistent standards. *See, e.g., Winnebago Cty v. S.H.*, 2020 WI App 46, ¶47, 393 Wis. 2d 511, 947 N.W.2d 761 ("conclusory opinions parroting the statutory language without actually discussing dangerousness, are insufficient to prove dangerousness in an extension hearing").

In summary, based on this Court's holding in *S.A.M.*, C.A.D.'s appeal is not moot. C.A.D. asks the Court to order briefing on the remaining two issues in his appeal.

Very truly yours,

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