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**CLERK OF SUPREME COURT
OF WISCONSIN**

STATE OF WISCONSIN

SUPREME COURT

Case No. 2021AP002026

In the matter of the mental commitment of H.I.B.:

WAUPACA COUNTY,

Petitioner-Respondent,

v.

H.I.B.,

Respondent-Appellant-Petitioner.

RESPONSE TO PETITION FOR REVIEW

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Waupaca County respectfully submits this response to the petition for review filed by H.I.B. (hereinafter Hazel)¹ pursuant to Wis. Stat. § 809.62(3). The petition for review should be denied. It fails to satisfy the criteria, set forth in Wis. Stat. § 809.62(1r), that this Court consistently uses to guide its discretion in determining whether to grant review.

The Court should not review this case where there is long settled deference to jury verdicts as applied to a set of factual circumstances involving Respondent-Appellant-Petitioner Hazel, including whether the evidence presented to the jury was sufficient to sustain its verdict and the orders that were entered by the trial court as a result of the jury's verdict. The issues presented are neither significant nor novel questions of law; there is no special or important reason for this Court's review. As such, reviewing the appellate court's decision is not warranted. Accordingly, Hazel's Petition for Review should be denied by this Court.

¹ Pursuant to Wis. Stat. § 809.19(1)(g), the pseudonym "Hazel" is used to refer to Respondent-Appellant-Petitioner.

STATEMENT OF THE CASE

In its response to a petition for review, the County may include any perceived misstatements of facts or law set forth in a petition that have a bearing on the question of what issues properly would be before the Court if the petition were granted. As such, Waupaca County raises the following issues.

Hazel incorrectly asserts that the County “presented zero evidence that being under the commitment prevented death or serious physical harm.” (Petition for Review (“Pet. Rev.”) 4). This contention glosses over important facts in the record, such as Hazel’s 2018 multiple day hospitalization to which all witnesses testified. Hazel mistakenly concludes that her inpatient hospitalizations did nothing to prevent serious physical injury when the very nature of being “inpatient” presupposes an emergent condition of the person requiring admittance, as well as stabilization and/or recovery from the condition that the individual could not have otherwise achieved without intervention, monitoring, and treatment. The County disagrees with Hazel’s assertion that this case is in direct conflict with controlling opinions issued by this Court. As detailed in the argument section below, the facts of this case are distinguishable from recent case law; therefore, review by this Court is not warranted.

Additionally, Hazel mistakenly requests clarification surrounding the deferential standard of review regarding a challenge to the sufficiency of the evidence to support a jury verdict. The County agrees the threshold of evidence should be the same for jury trials and court trials and contends the appellate and trial

courts, by way of the jury's verdict, properly applied the same legal standard to the facts presented at trial. However, Hazel contends this Court should take review "to reiterate that the verdict must be based on articulable facts." (Pet. Rev. 6). Reiterating what is already required and established by common law does not present a question for this Court to help develop, clarify or harmonize the law and as such, a review by this Court is not warranted.

Hazel by inference references that she is being forcibly medicated (Pet. Rev. 6) without an adequate finding of dangerousness. However, this argument rests on the same sufficiency of the evidence argument that she raises regarding the jury's finding as to dangerousness based on the Fourth Standard. Every witness testified that Hazel lacked insight into her mental illness, which was corroborated by Hazel herself who testified she did not believe she was mentally ill. The record reflects Hazel's intention and desire to discontinue taking her psychotropic medications. Hazel's treatment record as to her compliance with taking court ordered prescribed medications is relevant as to the substantial risk of dangerousness to herself if treatment were withdrawn. As stated previously, sufficiency of the evidence as to a jury's verdict is not a criterion for review by this Court as the standard of deference as to the jury's verdict is well established and no clarification is needed; therefore, review by this Court is not warranted.

Hazel does not provide any argument to challenge the Order for Involuntary Medication or Treatment that was entered by the trial court based on the jury's findings. The County proved by clear and

convincing evidence that Hazel was not competent to refuse medication or treatment pursuant to Wis. Stat. §51.61(1)(g)4. There was uncontroverted testimony by Dr. Bales that he had attempted to explain the advantages and disadvantages of accepting the prescribed medications to Hazel, and in his professional opinion she was unable to express an understanding of these advantages and disadvantages of accepting her treatment and the alternatives fundamentally because she denied being mentally ill. (R. 273:70-71). The Order for Involuntary Medication or Treatment does not warrant this Court's review.

Finally, Hazel argues that this case has constitutional implications that merit this Court's review. The County argues this argument is inadequately developed; therefore, this Court should not further address Hazel's claims.

CRITERIA FOR REVIEW

Pursuant to Wis. Stat. §809.62(3), the Petitioner-Respondent, Waupaca County, submits this response to the Petition for Review filed by the Respondent-Appellant-Petitioner, Hazel. The Petition for Review does not meet the criteria for review as outlined in Wis. Stat. §809.62(1r) and should therefore be denied. There is no real and significant question of either federal or state constitutional law at issue. The case does not involve any need to establish, implement or change a policy within the authority of this Court. A decision is not needed to develop, clarify, or harmonize the law, as the issues presented involve well-established and unambiguous law. The decision of the court of appeals is not contrary to prior opinions of

this Court or the court of appeals, or with controlling opinions of the United States Supreme Court.

The issues presented are issues recently addressed by this Court regarding sufficiency of the evidence arguments. The facts and issues of this case do not present a special or important reason for this Court to grant review. As such, this presents no opportunity for the Court to develop the law, as is the Court's practice. See *Cook v. Cook*, 208 Wis. 2d 166, 189, 560 N.W.2d 246, 255 (1977) ("the supreme court's primary function is that of law defining and law development"). Accordingly, Hazel's Petition for Review should be denied.

ARGUMENT

I. The Court's Established Criteria Do Not Support Review of the Court of Appeal's Decision

A. Evidence Presented To The Jury Was Sufficient To Prove Dangerousness Under the Fourth Standard.

The jury heard from four witnesses during the trial as stated in the Petition for Review. Hazel concedes she does not always take her psychotropic medication, yet incorrectly asserts that this does not render her dangerous under the Fourth Standard. (Pet. Rev. 4). Hazel is incorrect because she focuses only on the disorganized thoughts or psychosis that return when she does not take her medications, and misconstrues or ignores relevant testimony given by the witnesses at trial. While Hazel correctly quotes Ms. Renee Mykisen's testimony that Hazel became "very very sick," she completely dismisses this as irrelevant and erroneously concludes

that there was no evidence offered that her resulting illness was related to dehydration or anything physical – which directly contradicts Ms. Mykisen’s testimony that Hazel had failed to hydrate or take breaks on a very hot day that lead up to her hospitalization. (Pet. Rev. 16; R. 273:89). Additionally, she overlooks Mr. Cary Ogden’s testimony there were medical conditions that required her inpatient hospitalization:

Counsel for Hazel: ... In regards to this 2018 incident that Attorney Been brought up, are you aware of the specific diagnosis or reason for her inpatient treatment?

Mr. Cary Ogden: It was primarily her mental health and her mental health diagnosis. She, along with that, had developed some medical conditions as a result of cares.

Counsel for Hazel: But there were also medical conditions that required inpatient treatment?

Mr. Cary Ogden: Absolutely.

(R. 273:61).

Here, Hazel’s decompensation and the medical conditions that occurred requiring an immediate hospitalization indicates that, at minimum, there was a “substantial probability” that Hazel suffered “serious physical debilitation.” Wis. Stat. § 51.20(1)(a)2.d. Hazel continues to minimize the severity of her hospitalizations, indicating the county presented evidence only that she would “become delusional or even psychotic without treatment,” but wrongly concludes that such failure to take medication would not result in dangerousness. (Pet. Rev. 16-17). Hazel minimizes these episodes as struggling with her medication levels in the past. (Pet. Rev. 15). However, Hazel would not have been admitted for treatment if her

condition did not pose a serious threat to her physical well-being. Admittance to a hospital for medical treatment or inpatient mental health treatment at a facility presupposes an emergent condition of the person requiring admittance. Likewise, to require “stabilization” indicates that Hazel was unstable in the community, and therefore unable to care for herself without subsequent intervention and hospitalization to stabilize for discharge back to the community. Ultimately, Hazel could not have otherwise achieved stability on her own without intervention and monitoring, rendering her unable to satisfy her basic needs for nourishment, medical care, safety, or possibly even shelter without prompt treatment to avoid any serious physical injury or debilitation. Wis. Stat. § 51.20(1)(a)2.d.

Hazel also relies on *D.J.W.* to argue she is not dangerous because an “inability to care for oneself does not equate with a ‘substantial probability’ that ‘death, serious physical injury, serious physical debilitation, or serious physical disease’ would ensue if treatment were withdrawn.” *Langlade County v. D.J.W.*, 2020 WI 41, ¶ 53, 391 Wis. 2d 231, 942 N.W.2d 277. In *D.J.W.*, the testimony indicated D.J.W. would be unable to care for himself because he would be unable to maintain a job, rely on disability for income, and live with family. *Id.* at ¶51. However, the facts of this case are distinguishable from *D.J.W.* in that the testimony at Hazel’s trial specifically pointed to a “serious physical consequence” to Hazel “if treatment were to be discontinued.” *Id.* at ¶53. The jury heard extensive testimony that showed she faced serious physical consequences when she did not take her medications as prescribed,

requiring hospitalization to be stabilized. As previously stated, the need for stabilization provides the reasonable inference of a “serious physical consequence” if Helen had been left untreated.

Additionally, the duration of hospitalization is significant because it also illustrates the seriousness of the condition such that a person requires extensive intervention by professionals. When she decompensates because of not taking her medication, Hazel has been admitted to a facility to be closely monitored – for days – to remove the threat of any serious physical injury or debilitation before she is then allowed her to return home. These facts distinguish the severity of Hazel’s treatment history and interventions from D.J.W.’s and as such the jury properly found Hazel to be dangerous under Wis. Stat. § 51.20(1)(a)2.d. Therefore, because further clarification of the Fourth Standard is unnecessary, review by this Court is not warranted.

B. Non-Compliance With Medication Is Part of Hazel’s Treatment History That The Jury Considered in Making the Dangerous Determination Under the Fourth Standard.

Notwithstanding the evidence regarding physical consequences suffered by Hazel as described above, Hazel argues that “being noncompliant with prescribed medications alone – even if it results in the return of disorganized thought or even psychosis – does not prove, by clear and convincing evidence, that death or serious physical harm with imminently ensue without a commitment.” (Pet. Rev. 5). Hazel’s non-compliance with prescribed

medication provides additional information to the jury regarding the substantial risk of physical harm should treatment be withdrawn.

As stated above, the jury heard significant testimony offered by all witnesses established that Hazel has a pattern of noncompliance with her medication when she is not monitored, which thus triggered a pattern of hospitalizations following her decompensation that ultimately posed a serious threat to her physical well-being. All witnesses opined that Hazel lacks insight into her own mental illness because she does not believe she is mentally ill. Dr. Bales testified he had attempted to explain the advantages and disadvantages of accepting the prescribed medications to Hazel, and in his professional opinion she was unable to express an understanding of these advantages and disadvantages of accepting her treatment and the alternatives fundamentally because she denied being mentally ill. (R. 273:70-71). Indeed, Hazel herself testified that she does not believe she is mentally ill. Hazel's disagreement with the jury's reasonable inferences of the physical consequences of non-compliance with medications does not turn this fact-based determination into an issue warranting review by this Court.

II. The Deferential Standard Of Review for Jury Verdicts Remains Clear Under the Facts of This Case.

Hazel argues that this Court should “clarify that deference to the jury’s fact finding role doesn’t alter the county’s burden to present clear and convincing evidence of dangerousness.” (Pet. Rev. 13). Further, Hazel requests the Court to “reiterate that the verdict must be based on articulable facts.” (Pet. Rev. 6). The County

maintains that this Court's review of the deferential standard of review is not warranted by the facts of this case; there is simply nothing to "reiterate."

The County agrees that the standard of review does not, and should not, alter what the County must present to establish dangerousness as required by Wis. Stat. § 51.20(1)(a)2.d. Hazel relies on *Winnebago County v. S.H.*, 2020 WI App 46, ¶ 17, 393 Wis. 2d 511, 523, 947 N.W.2d 761, 767, arguing that neither the court nor jury should rely on assumptions or make conclusory opinions parroting the statutory language. (Pet. Rev. 6). However, *S.H.* goes on to discuss how the doctor in that case, Michael Vicente, provided the important "link" with regard to a specific prior instance of dangerous behavior on which the court relied to affirm the commitment, which linked S.H.'s "past dangerousness and the substantial likelihood of reoccurrence of such behavior absent an extension order." *Id.* Again, Hazel fails to acknowledge specific testimony in the record regarding the dangerous nature of her 2018 hospitalization as previously discussed. Mr. Ogden testified that in 2018 "due to discontinuing medications, her condition deteriorated to the point it affected her health" and she required stabilization. (R. 273:60). Ms. Mykisen also testified to concerns in 2018 regarding her self-care with regard to eating or forgetting medications. (R. 273:89). This importantly links her medication non-compliance with her potential severe physical injury or debilitation, the severity of her situation required hospitalization and stabilization to prevent further physical debilitation.

Importantly, Dr. Bales testified that in the absence of treatment, Hazel would suffer “severe” impairments of “judgment, behavior, capability to recognize reality, or her ability to meet the ordinary demands of life,” which he specified met the requirements of the Fourth Standard in his medical opinion. (R. 273:66-67). When coupled with the extensive testimony that Hazel wished to discontinue taking her medications, there is a significant link between Hazel’s treatment history regarding dangerousness caused by her mental illness, including non-compliance with her prescribed medications, and the substantial likelihood this dangerous behavior would reoccur should treatment be withdrawn.

Hazel places great weight on *D.J.W.* in an effort to allege the County did not meet its burden. (Pet. Rev. 12). However, the above-discussed trial evidence shows that the jury appropriately found a concrete risk of danger related to Hazel’s medication non-compliance and the physical consequence that arose in 2018 that distinguishes her case from *D.J.W.* This is further supported by the appellate court decision, which found credible evidence that the jury could make reasonable inferences relevant to dangerousness under the Fourth Standard to support the verdict. *See In re Michael H.*, 2014 WI 127, ¶ 21, 359 Wis. 2d 272, 284, 856 N.W.2d 603, 609 (cleaned up) (when all of the evidence is viewed in the light most favorable to the verdict).

As such, this case does not present any novel question or new doctrine that requires development, clarification or harmonization of the law. In fact, the question presented is purely factual in nature, which directly contradicts Wis. Stat. § 809.62(1r)(c)3., that

specifically requires “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.” (emphasis added). Therefore, review by this Court is not warranted.


III. The County Requests Leave To Amend Its Response To Include Arguments For Mootness Should They Arise.

Hazel’s current Order of Extension of Commitment expires on June 16, 2022. If the Order for Extension of Commitment expires, then the Order for Involuntary Medication and Treatment also expires. Therefore, should this Court decide to accept review of this case at the time at which Hazel may no longer be subject to the Order of Extension of Commitment and Order for Involuntary Medication and Treatment, the County requests leave to amend its Response to address the additional, then present factor of mootness for the Court’s consideration of the Petition for Review.

CONCLUSION

In consideration of the foregoing arguments, Waupaca County respectfully requests that this Court deny Hazel's Petition for Review.

Dated this 23rd day of May, 2022.


Respectfully submitted,

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CERTIFICATION OF FORM AND LENGTH

I hereby certify that this brief conforms to the rules contained in Wis. Stat. § 809.19(8)(b), (bm) and (c) for a brief using proportional serif font. The length of this brief is 16 pages and 2,982 words.

Dated this 23rd day of May, 2022.

26th
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CERTIFICATION OF ELECTRONIC COPY

I hereby certify that I have submitted an electronic copy of this Response to Petition for Review which complies with the requirements of Wis. Stat. § 809.19(12).

I further certify that this electronic brief is identical in content and format to the printed form of the Response filed.

A copy of this certificate has been served with the paper copies of this Response to Petition for Review and filed with the court and served on all opposing parties.

Dated this 26th day of May, 2022.

Respectfully submitted,

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CONCLUSION

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