STATE OF WISCONSIN

C O U R T O F A P P E A L S

DISTRICT X

Case No. XXXXAPXXX NM

In the matter of the mental commitment of John S.:

BAY COUNTY DEPARTMENT OF HUMAN SERVICES,

Petitioner-Respondent,

v.

JOHN S.,

Respondent-Appellant.

On No-Merit Notice of Appeal From the Order for Extension of Commitment and Order for Involuntary Medication and Treatment Entered in Bay County, the Honorable Grover Cleveland, Presiding, in place of the Honorable Benjamin Harrison

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NO-MERIT BRIEF OF RESPONDENT-APPELLANT PURSUANT TO WIS. STAT. RULE 809.32

[NAME OF ATTORNEY]
[State Bar No.]

[Contact information]

Attorney for Defendant-Appellant

ISSUES PRESENTED

I. Was the evidence sufficient to extend John S.'s commitment order?

II. Are there any arguably meritorious issues that would support a motion for a new trial?

III. Was the evidence sufficient to order involuntary medication and treatment for John S.?

STATEMENT OF THE CASE AND FACTS

On September 28, 2012, Bay County Corporation Counsel filed a petition for the extension of John S.'s mental health commitment. (1). The petition included a letter from Dr. John Watson, John's treating psychiatrist at the Wisconsin Resource Center, requesting that John's civil commitment be extended. (2). Dr. Watson's letter alleged that John suffers from schizophrenia, paranoid type. It further opined John remained a proper subject for treatment and that if treatment were withdrawn, he would become a proper subject for commitment. (2). Dr. Watson also stated that after explaining the advantages and disadvantages of psychotropic medications to John, he did not believe that John was capable of expressing an understanding of the effects of those medications.

Counsel was appointed for John. Through his attorney, John requested an independent evaluation. (5). The court appointed Dr. Faye Dunaway, M.D. to examine John to determine his mental condition and to submit a report to the court and the parties. (6). At the recommitment hearing, both parties and the court acknowledged receipt of Dr. Dunaway's report. (7, 15:2). Neither party called Dr. Dunaway as a witness and her report was not admitted into evidence.

Dr. Watson testified at the November 15, 2012 recommitment hearing. (15). He explained that he had been John's treating psychiatrist since June. (15:3). Dr. Watson diagnosed John with paranoid schizophrenia, which was consistent with the diagnosis contained in his medical chart. (15:4). He characterized paranoid schizophrenia as a disorder of thought that impairs John's behavior to a severe degree if he is not under a treatment order. (15:4).

Under the treatment order, Dr. Watson explained that John continues to report hearing voices, although the voices are not always suicidal. (15:12). Dr. Watson also testified that approximately one month prior to the hearing, John suffered from increased agitation and threatened to hang himself. (15:5).

Dr. Watson increased John's medications in response to this incident. (15:5). When asked if he had explained the advantages, disadvantages and alternatives to medications to John, Dr. Watson replied that he had done so "at least a half a dozen times." (15:5). However, he did not believe John was capable of applying an understanding of those advantages, disadvantages and alternatives to medication to his own situation in order to make an informed choice as to whether to accept or refuse the drugs. (15:5-6). Although acknowledging that John was currently compliant with the medication that was administered orally, Dr. Watson did not believe that John would continue to take medication if not under a treatment order based on his history of not taking medication as instructed. (15:7-8).

The case was tried to the court, which extended John's commitment and involuntary medication order. (15:15).

ARGUMENT

I. Was the Evidence Sufficient to Extend John S.'s Commitment Order?

Wisconsin Statutes § 51.20(13)(g)3. permits the extension of a ch. 51 commitment if the petitioning party proves by clear and convincing evidence the individual (1) is mentally ill, (2) is a proper subject for treatment, and (3) meets one of the statutory criteria for dangerousness. The burden is on the party seeking to extend the commitment to prove each fact by clear and convincing evidence. Wis. Stat. § 51.20(13)(g)3. On review, the factual findings by the trial court will be upheld unless clearly erroneous. ***K.N.K. v. Buhler***, 139 Wis. 2d 190, 198, 407 N.W.2d 281 (Ct. App. 1987). However, whether the facts satisfy the requisite standard for the extension of a commitment is a question of law reviewed de novo. ***Id.***

The first element – whether the individual is mentally ill – is a medical judgment. ***State v. Dennis H.***, 2002 WI 104, ¶9, 255 Wis. 2d 359, 647 N.W.2d 851. Mental illness means a "substantial disorder of thought, mood, perception orientation, or memory which grossly impairs judgment, behavior, capacity to recognize reality or ability to meet the ordinary demands of life…" Wis. Stat. § 51.01(13)(b). Dr. Watson testified that John suffers from paranoid schizophrenia, a disorder falling within the Chapter 51 definition of mental illness because it is a disorder of thought that impairs John's behavior to a severe degree if he is not under a treatment order. (15:4).

Regarding the second element, Dr. Watson described John as a "proper subject for treatment" in his letter requesting an extension. (2). Further, during his testimony, Dr. Watson was asked, "in your opinion is he a proper subject

for treatment?" To which he responded, "Oh, he is." (15:4). He testified that medications do have therapeutic value for John. (15:6).

With respect to the third element, dangerousness, Wis. Stat. § 51.20(1)(am) provides that if a person has been the subject of inpatient or outpatient treatment for mental illness as the result of a court order immediately preceding the proceeding, this criteria "may be satisfied by a 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."

Here, Dr. Watson was asked if John was dangerous under the extension of commitment standard or, in other words, "…based on his treatment history if treatment were withdrawn, would he become a proper subject for commitment?" He answered, "He would be." (15:5). Dr. Watson explained that he did not believe that John would take his medications if not under a treatment order and that he had a history of not taking medications as directed. (15:5, 7). He also expressed concern that John recently suffered from increased agitation and threats to hang himself and needed his medication adjusted. (15:5).

Based on the doctor's testimony, the circuit court concluded that the county had met its burden to prove by clear and convincing evidence that John is mentally ill, a proper subject for treatment, and that he would be a proper subject for commitment if treatment were withdrawn. (15:15). Given the testimony at the final hearing, there appear to be no grounds to argue that the evidence was insufficient to extend John's mental health commitment.

II. Are There Any Arguably Meritorious Issues That Would Support a Motion for a New Trial?

A review of the record reveals no error in the trial process that might support a motion for a new trial. First, this case was tried to the court and John's counsel did not object at any point during argument or testimony. (15).

Second, after the first witness was called, defense counsel moved to exclude and sequester any other witnesses. (15:2). Counsel for the County stated he would not be calling other witnesses and, in fact, called Dr. Watson as his only witness. (15:2). Although the court did not grant or deny this motion, the issue is moot since no other witnesses were called.

Third, when Dr. Watson testified, the County asked John to enter a stipulation agreeing that Dr. Watson is an expert in the field of psychiatry. (15:3). John's counsel stated she would "leave that by a question-to-question basis." (Id.). Dr. Watson stated that he had an M.D. degree and that he had been treating John since June. (Id.). John's counsel did not object to his expertise to answer any of the questions that were asked of him.

Based on a review of the record it is evident that any challenge to the court's fact-finding is without arguable merit.

III. Was the Evidence Sufficient to Support the Involuntary Medication Order?

Pursuant to Wis. Stat. § 51.61(1)(g)3, an individual subject to commitment has a right to refuse treatment and medication unless a court determines he or she is not competent to do so. A person may not be found incompetent to refuse medication or treatment unless, after the advantages and disadvantages and alternatives to accepting the

medication or treatment are explained to the person, the person either is "incapable of expressing an understanding of the advantages and disadvantages" or is substantially incapable of applying that understanding to his or her mental illness in order to make an informed choice of whether to accept the treatment or medication. Wis. Stat. § 51.61(1)(g)4.

Whether the County met its burden of proving that John is incompetent to refuse medication is a mixed question of law and fact. ***K.N.K.***, 139 Wis. 2d at 198. The circuit court's factual findings will not be overturned unless clearly erroneous. However, the "higher question" regarding whether the presumption of competency was overcome is one of law because it involves the application of the facts as found by the circuit court to a statutory concept. ***Id.***

Dr. Watson wrote in the request for an extension hearing that he had recently explained to John the advantages and disadvantages of the psychotropic medications. (2). At the recommitment hearing, when asked if he had explained the advantages, disadvantages and alternatives to medications to John, Dr. Watson replied that he had done so "at least a half a dozen times." (15:5). However, he did not believe John was capable of applying an understanding of those advantages, disadvantages and alternatives to medication to his own situation in order to make an informed choice as to whether to accept or refuse the drugs. (15:5-6). Although acknowledging that John was currently compliant with the medication that was administered orally, Dr. Watson did not believe that John would continue to take medication if not under a treatment order based on his history of not taking medication as instructed. (15:7-8).

Given the record, there is no basis to challenge the involuntary medication order.

CONCLUSION

For all the reasons set forth above, undersigned counsel respectfully requests, pursuant to Wis. Stat. Rule 809.32, that this court enter an order relieving her of further representation of the respondent in this matter.

Dated this 2nd day of July, 2013.

Respectfully submitted,

[NAME OF ATTORNEY]
[State Bar No.]

[Contact information]

Attorney for Defendant-Appellant

CERTIFICATION IN COMPLIANCE WITH 809.32(1)(b)

I hereby certify that I have discussed with my client all potential issues identified by me and by my client and the merit of an appeal on these issues, and I have informed my client that he/she must choose one of the following 3 options: 1) to have me file a no-merit report; 2) to have me close the file without an appeal; or 3) to have me close the file and to proceed without an attorney or with another attorney retained at my client's expense. I have informed my client that a no-merit report will be filed if he/she either requests a no-merit report or does not consent to have me close the file without further representation. I have informed my client that the transcripts and circuit court case record will be forwarded at his/her request. I have also informed my client that he/she may file a response to the no-merit report and that I may file a supplemental no-merit report and affidavit or affidavits containing matters outside the record, possibly including confidential information, to rebut allegations made in my client's response to the no-merit report.

Dated this 2nd day of July, 2013.

Signed:

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[NAME OF ATTORNEY]
[State Bar No.]

[Contact information]

Attorney for Defendant-Appellant

CERTIFICATE OF COMPLIANCE WITH RULE 809.19(12)

I hereby certify that:

I have submitted an electronic copy of this no-merit brief, excluding the appendix, if any, which complies with the requirements of § 809.19(12). I further certify that:

This electronic no-merit brief is identical in content and format to the printed form of the no-merit brief filed on or after this date.

A copy of this certificate has been served with the paper copies of this no-merit brief filed with the court and served on all opposing parties.

Dated this 2nd day of July, 2013.

Signed:

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[NAME OF ATTORNEY]
[State Bar No.]

[Contact information]

Attorney for Defendant-Appellant