WISCONSIN SUPREME COURT CLARIFIES BURDEN OF PROOF REQUIRED TO GRANT INVOLUNTARY MEDICATION EXTENSION ORDER

On July 11, 2013, the Wisconsin Supreme Court ("Court") released its decision in *Outagamie County v. Melanie L.*, reversing the decision of the Wisconsin Court of Appeals which affirmed the circuit court's extension of an involuntary medication order. The full text of the opinion can be found here.

PROCEDURAL POSTURE

The case involved review of an involuntary medication order under Wis. Stat. § 51.61(1)(g)4.b to ensure that Melanie L. would not refuse psychotropic medication during her outpatient mental health commitment. Outagamie County ("County") originally sought and obtained a court order for Melanie L.'s commitment under Chapter 51. The circuit court issued orders for Melanie L.'s commitment and her involuntary medication and treatment for a period of six months. Shortly before the expiration of the orders, the County petitioned to extend both orders for an additional 12 months. The circuit court granted the extension, and Melanie L. appealed. The court of appeals affirmed, concluding that the examining doctor's report and testimony, along with other evidence in the record, supported the circuit court's findings. Melanie L. petitioned the Wisconsin Supreme Court for review.

THE SUBSTANTIVE ISSUE PRESENTED

On review, Melanie L. argued that the County failed to prove by clear and convincing evidence that she was incompetent to refuse medication under Wisconsin law. Melanie L. was able to express an understanding of the advantages and disadvantages of medication; therefore, the issue on appeal was whether the County had established that Melanie L. was substantially incapable of making an informed choice as to whether she should accept or refuse the medication.

Generally, a person has the right to refuse medication unless a court determines that the individual is incompetent to make such a decision. Wis. Stat. § 51.61. A person may be deemed incompetent under two circumstances: (1) if the individual is incapable of expressing an understanding of the advantages and disadvantages of accepting medication or treatment and the alternatives; or (2) if the individual is substantially incapable of applying an understanding of the advantages, disadvantages and alternatives to his or her mental illness, developmental disability, alcoholism or drug dependence in order to make an informed choice as to whether to accept or refuse medication or treatment. Wis. Stat. § 51.61(1)(g)4.

In holding that the circuit court failed to apply the correct burden of proof, the Supreme Court noted that the doctor testifying in favor of extending the order did not frame his answer to comport with the competency standards set forth in the statute. The Supreme Court observed: "Whatever the circumstances may be, the County bears the burden of proof on the issue of competency in a hearing on an involuntary medication order. These hearings cannot be perfunctory under the law. Attention to detail is important.... When a county disapproves of the choices made by a person under an involuntary medication order, it should make a detailed record of the person's noncompliance in taking prescribed medication and show why the noncompliance demonstrates the person's substantial incapability of applying his or her understanding of the medication to his or her mental illness."

PRACTICAL TAKEAWAYS

This decision clarifies that the County bears the burden of proof on the issue of competency, and that, under Wisconsin law, a person is presumed competent to refuse medication and treatment unless and until the State proves otherwise by clear and convincing evidence. If you need additional information about mental health commitments, please contact Sara J. MacCarthy at smaccarthy@hallrender.com or (414) 721-0478, Timothy W. Feeley at tfeeley@hallrender.com or (414) 721-0461, or your regular Hall Render attorney.

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