

SUPREME COURT OF WISCONSIN

Manitowoc County v. Samuel J. H.

349 Wis. 2d 202 (2013) · No. 2012AP665 · Decided July 11, 2013

SUMMARY

The Wisconsin Supreme Court affirmed an order denying Samuel J.H.'s petition to return him from inpatient to outpatient treatment. The court held that Wis. Stat. § 51.35(1)(e) does not require a hearing within ten days when a transfer to a more restrictive placement is based on reasonable medical and clinical judgment. A ten-day hearing is required when the transfer lasts more than five days and is based on an alleged violation of a condition of less restrictive treatment, and the court withdrew contrary language from *Fond du Lac County v. Elizabeth M.P.*

CASE DETAILS

COURT	Supreme Court of Wisconsin
WRITING FOR THE COURT	Annette Kingsland Ziegler, J.; Shirley S. Abrahamson, C.J.
JURISDICTION	Wisconsin
DECIDED	July 11, 2013
DOCKET	2012AP665
DISPOSITION	affirmed
PROCEDURAL POSTURE	Appeal from a Manitowoc County Circuit Court order denying Samuel's petition to transfer him from inpatient to outpatient treatment; the Wisconsin Supreme Court accepted certification from the court of appeals.
STANDARD OF REVIEW	Statutory interpretation and application of Wis. Stat. § 51.35 are reviewed de novo. The circuit court's factual findings concerning the reason for the transfer are upheld unless clearly erroneous.
PRECEDENTIAL VALUE	published and precedential
PARTIES	Samuel J. H. v. Manitowoc County

TOPICS

[health law](#)[statutory interpretation](#)[legislative history](#)[appellate procedure](#)[standard of review](#)

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether Wis. Stat. § 51.35(1)(e) requires a hearing within ten days for every transfer to a more restrictive placement, including transfers based on reasonable medical and clinical judgment.
2. Whether the contrary language in *Fond du Lac County v. Elizabeth M.P.* should be withdrawn.
3. Whether Samuel was entitled to transfer back to outpatient status because he did not receive a ten-day hearing.

HOLDINGS

1. Wis. Stat. § 51.35(1)(e) does not require a hearing within ten days when a transfer to a more restrictive placement is based on reasonable medical and clinical judgment under § 51.35(1)(e)1.
2. A hearing must be held within ten days when the transfer results in a greater restriction of personal freedom for more than five days, or is from outpatient to inpatient status for more than five days, and the transfer is based on an alleged violation of a condition of transfer to less restrictive treatment.
3. Samuel was not entitled to a ten-day hearing or transfer back to outpatient treatment because the circuit court properly found that his transfer was based on reasonable medical and clinical judgment rather than a treatment-condition violation.
4. The Wisconsin Supreme Court withdrew the portions of *Fond du Lac County v. Elizabeth M.P.* stating that all transfers under § 51.35(1)(e) require a hearing within ten days.

KEY QUOTATIONS

“We hold that Wis. Stat. § 51.35(1)(e) does not require a hearing to be conducted within ten days of a transfer when the transfer is based on reasonable medical and clinical judgment under § 51.35(1)(e)1. We withdraw any language from Elizabeth M.P. to the contrary.” (349 Wis. 2d 202, 205)

“We further hold that a hearing must be conducted within ten days of a transfer when (1) the transfer “results in a greater restriction of personal freedom for the patient for a period of more than 5 days” or is “from outpatient to inpatient status for a period of more than 5 days” and (2) the transfer is based on “an alleged violation of a condition of a transfer to less restrictive treatment” under § 51.35(1)(e)2.- 3.” (349 Wis. 2d 202, 205-06)

“The County should not be asked to falsify its reasons for transfer. Thus, it is absurd to interpret the statute to provide for a hearing within ten days for all transfers under § 51.35(1)(e) and to require the County to prove a violation of a treatment condition regardless of the reason for transfer.” (349 Wis. 2d 202, 220)

FACTUAL BACKGROUND

Samuel was committed to the care and custody of the Manitowoc County Human Services Department and initially placed in outpatient care. The Department transferred him to inpatient treatment after he became increasingly delusional, confused, agitated, and out of control, including punching a wall and door and putting a hole in the door. The circuit court found that the transfer was based on reasonable medical and clinical judgment

rather than a violation of treatment conditions, and determined that inpatient care was the least restrictive appropriate placement.

PROCEDURAL HISTORY

Samuel was transferred from outpatient to inpatient treatment and petitioned the circuit court for review, arguing that he was entitled to a hearing within ten days under Wis. Stat. § 51.35(1)(e) and *Fond du Lac County v. Elizabeth M.P.* He also sought transfer back to outpatient status as a remedy for the allegedly untimely hearing. The circuit court found that the transfer was based on reasonable medical and clinical judgment rather than a treatment-condition violation, denied the requested transfer, and concluded that a ten-day hearing was not required. The court of appeals certified the statutory-interpretation question to the Wisconsin Supreme Court, which affirmed.

DISPOSITION

affirmed

CASES CITED

- *Fond du Lac County v. Elizabeth M.P.*, 2003 WI App 232, 267 Wis. 2d 739, 672 N.W.2d 88
- *Wenke v. Gehl Co.*, 2004 WI 103, 274 Wis. 2d 220, 682 N.W.2d 405
- *State v. Douangmala*, 2002 WI 62, 253 Wis. 2d 173, 646 N.W.2d 1
- *Cook v. Cook*, 208 Wis. 2d 166, 560 N.W.2d 246 (1997)
- *State ex rel. Kalal v. Circuit Court for Dane County*, 2004 WI 58, 271 Wis. 2d 633, 681 N.W.2d 110
- *Seider v. O'Connell*, 2000 WI 76, 236 Wis. 2d 211, 612 N.W.2d 659
- *State v. Ziegler*, 2012 WI 73, 342 Wis. 2d 256, 816 N.W.2d 238
- *Heritage Farms, Inc. v. Markel Insurance Co.*, 2012 WI 26, 339 Wis. 2d 125, 810 N.W.2d 465
- *Phelps v. Physicians Insurance Co. of Wisconsin, Inc.*, 2009 WI 74, 319 Wis. 2d 1, 768 N.W.2d 615
- *Outagamie County v. Melanie L.*, 2013 WI 67