evidence that supported § 922(g)(3)'s facial constitutionality supported § 922(d)(3)'s facial constitutionality as well; thus, Ms. Connelly's facial challenges to § 922(g)(3) and § 922(d)(3) failed.

Discussion

This case has implications for mental health clinicians and experts because questions about gun rights for persons with behavioral health conditions are often raised by patients and courts alike. The relevant provisions here, § 922(g)(3) and § 922(d)(3), are part of the Gun Control Act of 1968 (GCA), which bars nine categories of individuals from possessing firearms or ammunition. In 18 U.S.C. § 922(g)(4) (2024), which is also part of the GCA, the law prohibits any person who has been "adjudicated as a mental defective" or "committed to a mental institution" from possessing firearms or ammunition under federal law. The Fifth Circuit mentioned § 922(g)(4) in its analysis. It stated there were no clear set of laws concerning mental illness and firearms during the time of the country's founding, with the federal ban on gun possession by those adjudicated mentally ill being enacted no sooner than 1968, the same year as § 922(g)(4). The Fifth Circuit pointed out scholars suggested that the tradition was implicit at the country's founding because justices of the peace could "lock up" the mentally ill who were "dangerous" to be allowed to go overseas. It mentioned common law heritage had recognized that mental illness was not a permanent condition, and there was no historical justification to disarm citizens adjudicated mentally ill but who have been "reevaluated and deemed healthy."

The Fifth Circuit did not clarify § 922(g)(4) or its constitutionality. The Fifth Circuit examined the history and tradition behind disarming the mentally ill as part of its analysis of the government's attempt to analogize these laws as supporting § 922(g)(3)'s application to Ms. Connelly. But the Fifth Circuit's discussion could give rise to cases challenging § 922(g)(4)'s constitutionality post *Bruen* and *Rahimi 2024*.

Of note, in a letter addressed from Solicitor General Elizabeth Prelogar to Senate Minority Leader Mitch McConnell, dated November 15, 2024, the Department of Justice decided not to file a petition for a writ of *certiorari* to the U.S. Supreme Court in this case (available at www.justice.gov/oip/media/1379361/dl?inline, accessed March 6, 2025). The DOJ stated it did not agree with the Fifth Circuit's affirmation of the district court's dismissal based on Ms. Connelly's as-applied challenge. But the DOJ stated, based on factual developments since its filing of the appeal to the Fifth Circuit, it would no longer be able to prove beyond a reasonable doubt that Ms. Connelly violated § 922(g)(3). The DOJ conceded it would dismiss the § 922(g)(3) charge even if the Fifth Circuit's Second Amendment holding were reversed.

Procedural Protections in Civil Commitment Proceedings

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Procedural Requirements for Notice, Dispositioning, and Sufficient Evidence to Support Recommitment and Involuntary Medication in Civil Commitment Proceedings

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Key words: civil commitment; involuntary medication; notice

In *Matter of Commitment of M.A.C.*, 8 N.W.3d 365 (Wis. 2024), the Supreme Court of Wisconsin held that, under Wis Stat. § 51.20(10)(a) (2023), notice of a civil recommitment and involuntary medication hearing must be given to the subject individual and not just to the individual's counsel, that the circuit court may not enter default judgment in recommitment proceedings, and that the county did not provide sufficient evidence for the court to order involuntary medication for the committed person.

Facts of the Case

M.A.C. was placed under a mental health commitment with an order for involuntary medication in Waukesha County in 2020. Under this commitment, M.A.C. was being treated as an outpatient and taking three medications, one of which was an injection. The commitment was extended twice between 2020 and 2022. During 2022, M.A.C. was homeless and missed multiple psychiatric appointments, including for administration of her injectable medication.

On July 19, 2022, as the commitment again approached expiration, Waukesha County petitioned the Waukesha County Circuit Court to extend both M.A.C.'s commitment and the order for involuntary medication. Multiple notices of the hearing were sent to M.A.C.'s attorney and her case manager. Notice was also to be sent to M.A.C., but M.A.C.'s address was listed as "homeless," and the notice was never delivered to her. M.A.C.'s attorney and her case manager attempted to find M.A.C. but were unable to locate her prior to the recommitment hearing.

The notice also included directions for M.A.C. to contact two physicians for a court-appointed examination to evaluate her fitness for recommitment and whether she needed involuntary medication. The physician examiners were advised that M.A.C. "was currently located at 'Homeless, please send documents to her Case Manager'" (*M.A.C.*, p 368). Neither physician was able to speak to M.A.C. before completing their reports so were unable to explain to her the advantages, disadvantages, and alternatives of taking psychotropic medications. Nonetheless, both examiners opined that M.A.C. was "incapable of applying an understanding of the advantages, disadvantages and alternatives to make an informed choice as to whether to accept or refuse psychotropic medication" (*M.A.C.*, p 369). In coming to an opinion, one examiner reviewed M.A.C.'s treatment records and court documents and spoke with her case manager, whereas the other did not indicate what records he reviewed.

In August 2022, M.A.C. did not appear at the recommitment hearing. M.A.C.'s attorney did not know how M.A.C. would like to proceed. Waukesha County asked the court to enter default judgment to extend M.A.C.'s commitment and medication order, noting that the alternative would be to detain M.A.C. for another hearing. Such a detention would require M.A.C. to return to a carceral or inpatient setting, which the county did not feel was in M.A.C.'s best interests or the least restrictive setting required for her care. The county also had identified three proposed witnesses to testify but did not call them. Instead, they asked the court to rely on the physician expert reports to extend M.A.C.'s commitment and involuntary medication order. The court agreed with the county and ordered a 12-month extension of M.A.C.'s commitment and involuntary medication order.

M.A.C. appealed this decision, arguing that notice should have been delivered to her and not just to her attorney and case manager, that default judgment should not have been an available option in a recommitment hearing, and that insufficient evidence was given to justify the court's extension of her involuntary medication order. The Wisconsin Court of Appeals affirmed the circuit court's decision, and M.A.C. appealed to the Supreme Court of Wisconsin.

Ruling and Rationale

The Supreme Court of Wisconsin agreed with M.A.C. that she should have been given direct notice of the recommitment proceedings, that default judgment was in error, and that insufficient evidence had been given to justify the circuit court's order to continue involuntary medication.

The court examined the plain text of Wisconsin's civil commitment statute, which states that "the petitioner's counsel shall notify the subject individual and his or her counsel of the time and place of the final hearing" (Wis Stat. § 51.20(10)(a)). Based on "the plain, clear words of the statute" (*M.A.C.*, p 372), the court determined that the legislature requires that notice be given to both the subject individual and counsel and that attempting to deliver notice to a subject individual *via* counsel is insufficient. In coming to their decision, the court overruled *Waukesha County v. S.L.L.*, 929 N.W.2d 140 (Wis. 2019). In *S.L.L.*, also a case regarding recommitment proceedings, the court ruled that "'notice to counsel . . . was sufficient' under our statutes" (*M.A.C.*, p 373). In *M.A.C.*, the court determined that this prior holding was "unsound because the *S.L.L.* court did not adequately address the plain text of Wis. Stat. § 51.20(10)(a)" (*M.A.C.*, p 373). Thus, the court determined that M.A.C.'s due process rights were violated because she was not given personal notice of the recommitment proceedings.

The court also agreed with M.A.C. that default judgment should not be available in recommitment and involuntary medication hearings, noting that this would "shortchange subject individuals by depriving them of a commitment hearing" (*M.A.C.*, p 376). The Wisconsin Supreme Court concluded that, if a subject individual does not appear for a recommitment hearing, the two options available are to either detain the individual and hold a final hearing within seven days of detention or to adjourn and hold another hearing prior to the commitment's expiration.

Finally, the county carries the burden to prove, by clear and convincing evidence, that the subject individual requires involuntary medication. The court held that the county provided insufficient evidence to meet this standard, citing *Addington v. Texas*, 441 U.S. 418 (1979), and noting that involuntary medication hearings cannot simply be "perfunctory." Wis Stat. § 51.61(1)(g)) (2023) requires that petitions for involuntary medication orders "shall include a statement . . . based on an examination of the individual by a licensed physician" demonstrating that the subject individual is "incapable of expressing an understanding of the advantages and disadvantages of accepting medication or treatment and the alternatives" or 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 to make an informed choice as to whether to accept or refuse medication or treatment." The court noted that the court-appointed physicians did not explain the disadvantages, advantages, and alternatives to medication to M.A.C. and the court only relied on these physician reports in ordering involuntary medication. The county did not call other witnesses or enter other information into evidence to support its argument that M.A.C. was incompetent to refuse medication. Thus, the government did not meet the required standard of proof.

Discussion

Matter of Commitment of M.A.C. affirms the importance of protecting the rights of people who are subject to mental health commitments while balancing the government's interest in personal and public safety. One of the first Wisconsin cases establishing these protections was the landmark case of *Lessard v. Schmidt*, 349 F. Supp. 1078 (E.D. Wis. 1972). Subsequent Wisconsin cases, such as *Marathon County v. D.K.*, 921 N.W.2d 14 (Wis. Ct. App. 2018) and *In re J.W.J.*, 895 N.W.2d 783 (Wis. 2017), noted that mental health commitments involve a significant infringement on an individual's liberties and outlined the precise procedures to safeguard these liberties. These procedures include limiting civil commitments only to those who are mentally ill, treatable, and imminently dangerous to themselves or others as a result of that mental illness; timely notice of hearings to the subject individual; access to counsel; adequate time to prepare for hearings; opportunity for the individuals to attend the hearing and argue their case; and placement of individuals in the least restrictive environment necessary to appropriately manage their care.

Additionally, *M.A.C.* has important implications for forensic examiners who conduct involuntary medication examinations. In this case, because the physicians were unable to contact or locate M.A.C., they were unable to explain the advantages and disadvantages of certain medications or evaluate M.A.C.'s present capacity to accept or refuse medications. Additionally, M.A.C. did not receive notice and did not appear at the medication hearing. The county also did not call any of their proposed witnesses. The court emphasized that involuntary medication is a serious matter and the standard of clear and convincing evidence requires the county to produce more than it did in this case. The court did not outline the exact steps to take when a subject cannot be personally evaluated, but it appears that a forensic opinion based entirely on medical record review and collateral information may not be sufficient for a court to order involuntary medication. Ultimately, this may mean that the subject will be detained to conduct the examination or that the county must find additional witnesses or information to enter into evidence to supplement the expert reports.

Equal Protection in Healthcare

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Exclusion of Gender-Affirming Care Deemed Discriminatory Under Equal Protection

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In *Kadel v. Folwell*, 100 F.4th 122 (4th Cir. 2024), the Fourth Circuit Court of Appeals ruled that health care plans in North Carolina and West Virginia violated the Equal Protection Clause of the Fourteenth