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STATE OF WISCONSIN,

**FILED**

DECISION

MAY 24 2016

vs.

Case No. 03-CI-0001

CLERK OF CIRCUIT COURT  
RACINE COUNTY

MICHAEL L. MCGEE,

Defendant.

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On 4 May 2016 the Court authorized and ordered the supervised release of Michael L. McGee (McGee hereinafter). McGee was released pursuant to the plan submitted to the Court which was dated 21 April 2016 by the Department of Health Services over the signature of Angie Serwa. Placement of McGee was to occur at a Kenosha County residence on or before 26 May 2016.

The Town of Wheatland and the County of Kenosha alleged that the order for supervised release did not comply with law and therefore was not valid. As a result of several petitions to intervene the Court stayed its supervised placement order and set the matter for a hearing on 24 May 2016.

At a hearing with regard to the requested intervention the Court determined that the Town of Wheatland was not an appropriate party for intervention; however, determined the County of Kenosha was a proper party for intervention. At the

hearing on the 24th of May the County of Kenosha appeared, the State of Wisconsin through the Racine County District Attorney's office appeared, McGee appeared, and the Attorney General's office appeared.

McGee was convicted in 1987 in case number 87-CF-436 on two criminal counts. Count 1 was a conviction for burglary; Count 2 was a conviction for 2nd degree sexual assault. Both counts arose from a single incident in which McGee entered a residence in Racine, Wisconsin, and in the course of committing a burglary also sexually assaulted an adult woman in the residence.

Upon serving the majority of his sentence McGee was found to be a sexually violent person on 25 May 2014; and since that time has been detained at the Sand Ridge Treatment Center until his petitions causing the immediate proceeding were filed.

Upon McGee's petitions the evaluation team of the Sand Ridge Secure Treatment Center, Division of Mental Health and Substance Abuse Services of the Department of Health Sciences attempted to secure a residence.

This Court had previously found good cause to expand the residence search for McGee outside of Racine County.

Upon the passage on 1 March 2016 of 2015 Act 156 the Health Services Department continued to work on the release plan for McGee which resulted in the plan submitted to the Court and approved on 4 May 2016.

The intervener submits that the release plan was defective

in several respects. Kenosha County submits that subsequent to 2015 Act 156 there had not been a hearing to determine "good cause" to continue a residence search outside of Racine County. Kenosha County also submits that the Department of Health Services did not provide the necessary and required information to the Court when it submitted its supervised release plan. And lastly the release plan was not adequate in that it did not protect the public; specifically that the plan did not disclose that a child approximately one year of age lived in the residence next to the residence in which McGee was going to be located.

The Racine District Attorney appeared and objected to the plan on the basis that the plan did not submit complete details with regards to the safety needs; again, dealing with the non disclosure of the child in the adjacent residence.

McGee and the Attorney General submitted that the plan complied, in all respects, with the law prior to 2015 Act 156 and complied with the requirements enacted and promulgated by 2015 Act 156.

At the hearing the Court heard testimony from Detective David Smith of the Kenosha County Sheriff's Department, Sensitive Crimes Unit; Sheriff David Beth of Kenosha County; Heather Beasy I the Victim/Witness Coordinator for the Kenosha County Victim/Witness coordinator for the Kenosha County District Attorney's Office; Angie Serwa, the Supervised Release Specialist that drafted and presented the release plan to the Court; a

citizen residing in the residence next to the proposed residence; namely Anthony Smith Rogers and Dr. Stephen Kopetskie, the person in charge of the units preparing reports and recommendations for discharge and/or supervised discharge from Sand Ridge.

The Court received nine exhibits of the ten marked. Exhibit 5 was identified but never submitted.

The Court is satisfied that the enactment of 2015 Act 156 does not, in this case, require a subsequent good cause hearing as it relates to searching and locating a residence for McGee outside of the County of Racine. Notwithstanding the Court's opinion in this respect; Dr. Kopetskie testified that there are no residences available in Racine County. That is, there are no residences in Racine County either before or after the enactment of 2015 Act 156 and he described the method and means by which the Department located and secured residences.

The Court's opinion is predicated upon the fact that 2015 Act 156, while addressing specific portions of Sec. 980.08 Wis. Stats. did not provide for a subsequent good cause hearing. Further, the good cause requirement is found in Sec. 980.08(4)(cm). 2015 Act 156 created a new section; to-wit: Sec. 980.08(4)(em). Kenosha County's second position was that the Department of Health Services did not either follow the statute or failed to provide the Court with all necessary information. This particular position is solely predicated upon the Court not being advised that a one-year-old child lived when the 1,500-foot

zone set out in Sec. 980.08 Stats. The County submits that such lack of disclosure was done to purposely mislead the Court and/or was simply omitted in an effort to deceive the Court.

The Court concludes that such information, in this case, is not required. McGee does not fall within that class of persons in which his placement by the Department of Health Services requires the Court to be informed of children in the prohibited zone.

This position of opposition was also the position of the Racine County District Attorney in opposing the release plan.

The Court concludes that since such information is not required by the statute and upon the testimony at the hearing the Court concludes the plan is in conformity with the statute both prior to and after the enactment of 2015 Act 156.

The Court has considered the testimony of Detective David Smith and Sheriff David Beth and concludes that the information sought by the Health Services Department was that required by the statute. As pointed out, in fact emphasized, the inquiry required of law enforcement and the victim/witness division of the District Attorney's office is only that as it deals with the residence, not the proposed resident. The concerns expressed by Kenosha County officials and in fact the neighbor, Mr. Smith-Rogers is not a criteria required by the statute.

The last issue Kenosha County believes affects the placement is that the Court did not have adequate information with regard

to safety. This issue concerns not only the child that currently resides in the residence adjacent to the residence but also Kenosha County's position that the bike trail is a park. In that respect the prohibitions set forth in 2015 Act 156 prohibits placement within 1,500 feet of a park. Kenosha County urges the Court to find that the bike trail is a park under the state statute and thus the residence is within the prohibited zone.

The Court concludes that Kenosha County's interpretation of "park" is not correct. The clear meaning of "park" or "county park" means land within the boundaries designated by the lot line of such a location. While a bike trail may go through a park; a bike trail under the Kenosha County ordinance will not be construed by this Court to be a park.

The other activities testified to such as people fishing in the area, the area being a recreational area for various groups, or other usage may be true but it does not create a prohibition within the prohibited zone of the statute.

Kenosha County also submitted that McGee's criminal activities and record would classify him differently than that of his conviction in Count 2 of 87-CF-0436. Kenosha County submits that McGee's revocation on a criminal charge may have been the result of a sexual assault of some sort on a child, again, this Court finds that Kenosha County's position is inappropriate with regard to this case.

Exhibit 7 submitted by Kenosha County clearly identifies

that targeted victims in McGee's case would be adult females and prepubescent males. Clearly adult females are not involved in this residence location. However the act alleged to be committed by McGee on a..."10-year-old male related-to-him is an exception to the considerations that the Health Services must consider in its release plan.

The Court concludes that the intervener's position is without merit. The Court concludes that the supervised release plan is appropriate for McGee at the location in Kenosha County identified.

The Court vacates its stay for the implementation of the supervised release plan. The Court orders that McGee be placed by the Health Services Department within 10 days of the date of this decision.

Dated this 24th day of May, 2016

BY THE COURT:

  
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Hon. Allan B. Torhorst, Circuit Judge

