COURT OF APPEALS
DECISION
DATED AND FILED

March 19, 2003

Cornelia G. Clark
Clerk of Court of Appeals

Appeal No. 02-2684 **Cir. Ct. No. 97-GN-65**

STATE OF WISCONSIN **IN COURT OF APPEALS**
DISTRICT II

IN THE MATTER OF THE GUARDIANSHIP OF MATTHEW M.:

MATTHEW M.,

PETITIONER-APPELLANT,

V.

WALWORTH COUNTY DEPARTMENT OF HEALTH AND HUMAN SERVICES,

RESPONDENT-RESPONDENT.

APPEAL from an order of the circuit court for Walworth County: JAMES L. CARLSON, Judge. *Affirmed.*

¶1 SNYDER, J.[1] Matthew M. appeals from a protective placement order in which the circuit court placed him in the home of his guardian, Sharon Baker, but also concluded that Walworth County Department of Health and Human Services (Department) had no further obligation for funding except to maintain funding for services currently provided, maintain Matthew on eligibility lists and inform the guardian when future funding is available. Matthew does not challenge his placement with Baker but argues that the Department did not make an affirmative showing of a good faith, reasonable effort to fund the placement. While we are sympathetic to Matthew's predicament, we conclude that the Department has made such a good faith showing. We therefore affirm the order.

FACTS

¶2 Matthew is a twenty-seven-year-old man with several mental and physical disabilities sustained from child abuse at the hands of his natural parents. He was placed in foster care at thirteen months and was formally adopted by his foster parents in 1985. After Matthew's mother died, his father secured home health care services that employed Sharon Baker. In 1997, Baker was named as Matthew's guardian in Racine county. In July 1997, Matthew's father passed away after which Matthew went to live with Baker and her family in their home in Walworth county. At that time, a motion for change of venue to Walworth county was granted.

¶3 In September 1997, Matthew's name was submitted to the Department; he was informed that he qualified for various programs and funds that

[1] This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(d) (2001-02). All references to the Wisconsin Statutes are to the 2001-02 version unless otherwise noted.

the Department provided. At that time, Baker was told that Matthew was placed on waiting lists for these programs. Today, Matthew is still on the waiting lists for funding services.

¶4 Matthew had a trust when Baker was named as his guardian; however that trust has been depleted. Currently Baker receives some services from the Department, but no actual funding, and Baker asserts the services are insufficient to provide full-time care of Matthew in her home. In September 1998, Baker filed a petition for protective placement in an effort to receive county funds to keep Matthew in her home.

¶5 On September 23, 2002, the circuit court issued an order finding Matthew to be in need of protective placement and that the least restrictive place for Matthew is in Baker's home. However, the court determined that the Department has no further obligation to fund Matthew's placement in this matter but shall continue to maintain Matthew's placement on the eligibility lists and shall notify Baker when funding is available. It is from this latter finding that Matthew appeals.

DISCUSSION

¶6 Matthew contends that the Department did not make an affirmative showing of a good faith, reasonable effort to find and fund an appropriate placement for him. He acknowledges that there is no dispute regarding the circuit court's factual determinations but merely seeks review of the legal conclusion that the Department has met its burden of proof in accordance with the factors outlined in WIS. STAT. § 55.06(9)(a).

¶7 Whether a party has met the burden of proof is a question of law we review de novo. ***Brandt v. Brandt***, 145 Wis. 2d 394, 409, 427 N.W.2d 126 (Ct. App. 1988). However, we defer to the circuit court's findings of fact unless they are unsupported by the record and therefore clearly erroneous. ***Dunn County v. Judy K.***, 2002 WI 87, ¶38, 254 Wis. 2d 383, 647 N.W.2d 799.

¶8 Here, Laura Kleber, assistant director of the Department, testified that Matthew was determined to be eligible for the Community Options Program (COP), the Medical Assistance Community Waiver Program (CIP 1B) and the Developmentally Disabled (DD) Respite Program. Matthew was placed on a waiting list for DD Respite and COP and placed on a list of potential CIP 1B recipients. Kleber further testified that Matthew was waiting for approval on an SSIE application, a federal aid program through the Social Security Administration.

¶9 Kleber testified that 20% of the Department's budget went to DD clientele and that the Department is limited not only by federal funds but also funds provided by the county board. Kleber testified that the Department was expected to have a 0% budget increase, meaning they were given no increase in county appropriations.

¶10 The circuit court found that the Department provides Matthew respite programming two days per week at a cost of $129 per week with an additional $30 per week for transportation. The court also found that the "issue of funding for Matthew is a complex one and Matthew has progressed on the waiting list since he was determined eligible." In addition, the circuit court found that Kleber had adequately demonstrated the limitations on state and federal funding and that the Department had almost doubled its matching funds from 1998 to

2001. The court further found Kleber to be credible and based its conclusions of law on her testimony and on other testimony contained in the record. Matthew does not dispute these facts.

¶11 In ***Judy K.***, the case relied upon almost exclusively by Matthew, the Wisconsin Supreme Court addressed the question of whether in a protective placement pursuant to WIS. STAT. § 55.06(9)(a), a county may be required to make affirmative efforts to find and fund an appropriate placement. ***Judy K.***, 2002 WI 87 at ¶13. Matthew acknowledges this is the appropriate standard and asserts that here, the Department has not met this burden in accordance with the factors outlined in § 55.06(9)(a). We must disagree.

¶12 WISCONSIN STAT. § 55.06 addresses protective placement; para. (9)(a) specifically states:

> The court may order protective services under s. 55.05(2)(d) as an alternative to placement. When ordering placement, the court, on the basis of the evaluation and other relevant evidence shall order the appropriate board specified under s. 55.02 or an agency designated by it to protectively place the individual. Placement by the appropriate board or designated agency shall be made in the least restrictive environment *consistent with the needs of the person to be placed and with the placement resources of the appropriate board specified under s. 55.02. Factors to be considered in making protective placement shall include the needs of the person to be protected for health, social or rehabilitative services; the level of supervision needed; the reasonableness of the placement given the cost and the actual benefits in the level of functioning to be realized by the individual; the limits of available state and federal funds and of county funds required to be appropriated to match state funds; and the reasonableness of the placement given the number or projected number of individuals who will need protective placement and given the limited funds available*. The county may not be required to provide funding, in addition to its funds that are required to be appropriated to match state funds, in order to protectively place an individual.

> Placement under this section does not replace commitment of a person in need of acute psychiatric treatment under s. 51.20 or 51.45(13). Placement may be made to such facilities as nursing homes, public medical institutions, centers for the developmentally disabled under the requirements of s. 51.06(3), foster care services and other home placements, or to other appropriate facilities but may not be made to units for the acutely mentally ill. The prohibition of placements in units for the acutely mentally ill does not prevent placement by a court for short-term diagnostic procedures under par. (d). Placement in a locked unit shall require a specific finding of the court as to the need for such action. A placement facility may transfer a patient from a locked unit to a less restrictive environment without court approval. (Emphasis added.)

¶13 ***Judy K.*** does provide that WIS. STAT. § 55.06(9)(a) mandates consideration of "the needs of the person to be protected" and the "level of supervision needed" and demands that placement be in "the least restrictive environment consistent with the needs of the person to be placed" and the "placement resources of the appropriate board." ***Judy K.***, 2002 WI 87 at ¶22. However, as ***Judy K.*** also illustrates, § 55.06(9)(a) indicates that the availability of funds must be considered in an individual protective placement decision and provides a limitation on county financial liability. ***Judy K.***, 2002 WI 87 at ¶21.

¶14 The ***Judy K.*** court recognized that WIS. STAT. § 55.06(9)(a) indicates that the legislature intended that the availability of funds be considered in protective placement decisions as it provides a limitation on county financial liability. ***Judy K.***, 2002 WI 87 at ¶26. Counties must bear the burden of showing whether funds are available and whether appropriate placements may be developed within the limits of required funds. ***Id***. at ¶27. The ***Judy K.*** court then determined that in protective placements pursuant to § 55.06(9)(a), counties must make an affirmative showing of a good faith, reasonable effort to secure funding to pay for an appropriate placement. ***Judy K.***, 2002 WI 87 at ¶28. This standard

recognizes that resources are not limitless and that counties carry a substantial burden in meeting the needs of individuals subject to protective placements. ***Id***. at ¶32.

¶15 Matthew acknowledges that in 1997, he was determined eligible for funding such as CIP 1B, COP and DD respite programming and that he was placed on the waiting lists for these programs. In 1997, Matthew was 27th on the list for respite programming and number 207 on the list for the COP programming. Now, he is 16th on the respite programming waiting list and 45th on the COP list.

¶16 Again, Kleber testified that Matthew was determined to be eligible for several county programs and was placed on each program's waiting list. Furthermore, Matthew was waiting for approval on an application for a federal aid program through Social Security. Moreover, Kleber testified that 20% of the Department's budget went to DD clientele such as Matthew and that the Department is limited not only by federal funds but also funds provided by the county board. The circuit court found Kleber to be credible and based its legal conclusions, in part, upon her testimony.

¶17 Again, while we are sensitive to Matthew's and Baker's circumstances, we conclude that the Department demonstrated a good faith, reasonable effort to fund Matthew's placement, considering "the needs of the person to be protected," the "level of supervision needed" in "the least restrictive environment consistent with the needs of the person to be placed," the "placement resources of the appropriate board" and the availability of funds coupled with the

limitations on county financial liability. ***Id.*** at ¶¶21-22; *see also* WIS. STAT. § 55.06(9)(a).[2] We therefore affirm the circuit court order.

By the Court.—Order affirmed.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)4.

[2] Matthew argues that both the circuit court and the Department were incorrect as to who carried the burden of proof; Matthew specifically argues that the court placed the burden on him to demonstrate bad faith and unreasonableness on the part of the Department. However, the court's written conclusions of law indicate otherwise; the court made a specific conclusion of law that the Department had "made an affirmative showing of a good faith, reasonable effort to find and fund an appropriate placement for Matthew in accordance with the factors outlined in sec. 55.06(9)(a)." The circuit court order unquestionably indicates that the burden of proof was properly placed on the Department. In addition, the court directly stated at the July 22, 2002 hearing that ***Judy K.*** demonstrates that "the county has an affirmative duty to show good faith, reasonable efforts to find an appropriate placement."