

**COURT OF APPEALS
DECISION
DATED AND FILED**

November 14, 2012

Diane M. Fremgen
Clerk of Court of Appeals

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

Appeal No. 2012AP1508

Cir. Ct. No. 2011GN57

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT III**

**IN THE MATTER OF THE GUARDIANSHIP AND PROTECTIVE PLACEMENT OF
ALICIA H.,**

OUTAGAMIE COUNTY DEPARTMENT OF HEALTH AND HUMAN SERVICES,

PETITIONER-RESPONDENT,

v.

ALICIA H.,

RESPONDENT-APPELLANT.

APPEAL from an order of the circuit court for Outagamie County:
MITCHELL J. METROPULOS, Judge. *Affirmed.*

¶1 PETERSON, J.¹ Alicia H. appeals an order for protective placement. She argues the evidence in support of the order is insufficient. We disagree and affirm.

BACKGROUND

¶2 In July 2011, Outagamie County petitioned the circuit court for guardianship of eighteen-year-old Alicia’s person and estate and for protective placement. At the hearing, Dr. Christina Couch, a clinical psychologist, testified that she evaluated Alicia. Alicia’s intelligence quotient was sixty-four, which indicated she suffers from mild mental retardation. Alicia also has bipolar disorder, attention deficit hyperactivity disorder, and post-traumatic stress disorder.

¶3 Couch testified that Alicia’s judgment and reasoning abilities were at a ten-year-old level. On the ABAS-II test, which measures adaptive functioning skills such as cooking, cleaning, and functioning in the community, Alicia placed in the “extremely low” range. Couch elaborated that, compared to her peers, Alicia’s ABAS-II test result showed “she wasn’t even functioning at the first percentile, so 99 percent of the peers would be doing better than her in these areas.”

¶4 Alicia also placed in the “extremely low” category for health and safety. Couch testified that this category covers Alicia’s ability to protect herself, to keep herself safe in the community, to follow rules, to understand dangerous

¹ This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2). All references to the Wisconsin Statutes are to the 2009-10 version unless otherwise noted.

situations, and to respond to medical needs, such as taking her psychotropic medications.

¶5 Couch opined Alicia was in need of a guardian of her person and of her estate. Couch also opined that Alicia has a primary need for residential care and custody and that Alicia would not be able to “safely maintain herself” if she lived alone and without assistance. Alicia did not have the skills to live by herself and she needed to be supervised. Based on information Couch learned about the instability and volatility of Alicia’s family home, Couch believed placement in a community-based residential facility or group home would be the least restrictive placement that would keep Alicia safe.

¶6 Judy Hug, the Outagamie County supervisor of child protection intake, testified she had received eighteen referrals or investigations for child protective matters relating to Alicia’s residence. Hug began receiving referrals for Alicia in 1993. In 1994, Alicia was removed from the home and placed in foster care. In 1995, after Alicia was returned home, Hug began receiving referrals based on injuries Alicia and her siblings sustained. Hug stated there were allegations that Alicia had marks on her stomach, burn marks on her person, and bruises on her neck. Hug was unable to determine who caused these injuries, but believed they occurred in the home. Hug also stated some allegations of abuse were substantiated and others were not. As an example of a substantiated allegation, Hug described an incident involving Alicia’s brother who lost a front tooth after his mother threw him. Hug conceded she has not received any referrals involving Alicia within the last twelve months. She explained, however, she would not have received referrals for Alicia after Alicia turned eighteen.

¶7 Donna Rasmussen, an Outagamie County provider of adult protective services, testified she became involved with Alicia after Alicia's two stays at the Harbor House, a domestic abuse shelter. Rasmussen said the Harbor House staff reported Alicia was "very dependent" during her stays—Alicia was unable to prepare meals for herself, do her own laundry, put sheets on her bed, and did not seem to know how to take the medications she brought with her. Alicia also needed to be prompted to bathe, change her clothing, and do personal hygiene.

¶8 Rasmussen testified that Alicia told her she has been spending time at the downtown Transit Center, which Rasmussen explained is a "hang out" for substance abusers, the homeless, and people with criminal histories. Alicia also said that "she had been sexually assaulted by a friend of a friend, she did not know the person's last name, and she described an incident where she was attacked in the person's home and he chased her to the library."

¶9 Rasmussen concluded Alicia "does not have good judgment when it comes to making decisions for her safety and well-being, and she doesn't have insight into the fact that she needs assistance with her daily cares and making good decisions for herself." Rasmussen believed it would not be appropriate for Alicia to live in the family home due to concerns about the family household: staff reported that when calling Alicia's household, one of Alicia's parents was always yelling in the background; Alicia was sexually abused twice in the home, once by a step-brother and once by a son of a family friend; and Alicia's father has a history of alcohol and physical abuse. Rasmussen opined that a community-based residential facility was currently the least restrictive placement, although she believed Alicia had the potential to learn skills that would allow her to live somewhat independently.

¶10 Alicia's mother, Karen H., testified Alicia could not yet live independently but Alicia did well taking her medications, helping with chores, and maintaining proper grooming habits. As far as the allegations of abuse, Karen testified that those incidents were in the past and she worked through them with child protective services. Karen also testified about an incident in 2010 where Alicia pushed her and she pushed Alicia in return, causing Alicia to fall into a bookcase and cut her face. Alicia testified she graduated from Appleton North High School and wanted to continue to live with her family.

¶11 The circuit court found, based on Couch's testimony, Alicia was incompetent and in need of a guardianship of her person and of her estate. As for protective placement, the court determined:

There's been indications, and indications recently, that Alicia has had conflict within the family, and whether it's Alicia's fault, her brother's fault, her parents' fault, that's really not the concern; the issue is that there appears to be a dangerous situation within the home, and Alicia needs to learn how to deal with other individuals without resorting to pushing, shoving, hitting, and that can be addressed in a community based residential facility. She also needs to learn a skill set where she can cook for herself, make her bed, do her laundry, just the essential tasks so that she can live independently [S]he needs that skill set to be developed and she needs to be in a setting where she's safe.

The court entered an order for guardian of the person and estate, and an order for protective placement.

DISCUSSION

¶12 On appeal, Alicia only contests the order for protective placement. She argues the County failed to offer sufficient evidence to meet its burden of proving she needed to be protectively placed. Before an individual may be

protectively placed, the County must prove, by clear and convincing evidence, all of the following:

- (a) The individual has a primary need for residential care and custody.
- (b) The individual ... is an adult who has been determined to be incompetent by a circuit court.
- (c) As a result of developmental disability, degenerative brain disorder, serious and persistent mental illness, or other like incapacities, the individual is so totally incapable of providing for his or her own care or custody as to create a substantial risk of serious harm to himself or herself or others. Serious harm may be evidenced by overt acts or acts of omission.
- (d) The individual has a disability that is permanent or likely to be permanent.

See WIS. STAT. §§ 55.08(1)(a)-(d), 55.10(4)(d).

¶13 When we review a protective placement order, the circuit court's factual findings will not be overturned unless clearly erroneous. *See* WIS. STAT. § 805.17(2). However, whether the evidence supports protective placement is a question of law that we review independently. *See K.N.K. v. Buhler*, 139 Wis. 2d 190, 198, 407 N.W.2d 281 (Ct. App. 1987).

¶14 Alicia concedes the County proved she has a primary need for residential care and custody, she is incompetent, and she has a developmental disability that is permanent or is likely to be permanent. She asserts, however, the County failed to prove she poses a substantial risk of serious harm to herself or others. Specifically, Alicia argues nothing in the record rises to the level of a substantial risk of serious harm.

¶15 We disagree. First, Couch testified Alicia would not be able to safely live alone. Couch also stated that Alicia has the judgment and reasoning skills of a ten-year-old and that ninety-nine percent of her peers have better adaptive functioning skills. Rasmussen testified Alicia lacks the ability to perform activities of daily living, such as cooking and cleaning, needs prompting to bathe and engage in personal hygiene, and needs assistance with her psychotropic medication administration. Alicia also “hangs out” at the Transit Center, which is an unsafe environment, and she reported to Rasmussen that she was sexually assaulted. Further, there are substantiated allegations that Alicia has been subjected to abuse while in the family home, and she was even removed on one occasion. In short, the evidence of abuse combined with Alicia’s cognitive limitations and her inability to perform activities of daily living shows Alicia is so totally incapable of providing for her own care or custody as to create a substantial risk of serious harm to herself.

By the Court.—Order affirmed.

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

