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DISTRICT II

January 28, 2026

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You are hereby notified that the Court has entered the following opinion and order:

2024AP2077

Racine County HSD v. K.M. (L.C. #2022GN91)

Before Neubauer, P.J., Gundrum, and Lazar, JJ.

Summary disposition orders may not be cited in any court of this state as precedent or authority, except for the limited purposes specified in WIS. STAT. RULE 809.23(3).

K.M., hereafter referred to under the pseudonym “Kerry,” appeals the continuation of his guardianship and protective placement. Based upon our review of the briefs and record, we conclude at conference that this case is appropriate for summary disposition. *See* WIS. STAT. RULE 809.21 (2023-24).¹ We summarily affirm.

At the outset, we note that Kerry claims to be challenging the guardianship he has been subject to since 2022. On October 16, 2023, the County petitioned for the first annual review of

¹ All references to the Wisconsin Statutes are to the 2023-24 version.

Kerry's protective placement order. Ten days later, using form GN-4110, "Report and Recommendation of Guardian ad Litem (Annual Review of Protective Placement)," Kerry's guardian ad litem filed a report and recommendation as required by WIS. STAT. § 55.18, the statute governing protective placement. In paragraph 4E of the protective placement report, the guardian ad litem indicates: "The ward wishes to contest his placement and the need for guardianship." However, at no point did Kerry file a petition for review or termination of guardianship—via state form GN-3670, which concerns review of an adult guardianship, or via any other type of filing. At the protective placement hearing that followed, the circuit court referenced the fact that Kerry wanted his protective placement and guardianship reviewed and orally ruled that the guardianship and protective placement should both continue. Following the hearing, however, the circuit court issued a written order pertaining solely to Kerry's protective placement. No written order regarding the guardianship was entered.

Given that no petition to review the adult guardianship was filed, and given that the only final order in the record pertains solely to the protective placement, we will limit our review to Kerry's protective placement order, which we consider under a mixed standard of review. We uphold the circuit court's findings of fact unless they are clearly erroneous. *See Coston v. Joseph P.*, 222 Wis. 2d 1, 22, 586 N.W.2d 52 (Ct. App. 1998). Whether the evidence supports protective placement is a question of law we review de novo. *See id.* at 23.

Protective placement orders are subject to annual review pursuant to WIS. STAT. § 55.18. *See State ex rel. Watts v. Combined Cnty. Servs. Bd.*, 122 Wis. 2d 65, 84, 362 N.W.2d 104 (1985). When a ward contests the continuation of the protective placement order, a full due process hearing before a circuit court judge is required. WIS. STAT. § 55.18(3)(d); *see also Watts*, 122 Wis. 2d at 85.

To order the continuation of the protective placement order, the circuit court must find that there is clear and convincing evidence that the ward continues to meet the standards for protective placement under Wis. STAT. § 55.08(1). Section 55.08(1) requires the circuit court to find that the proposed ward meets all of the following standards:

- (a) The individual has a primary need for residential care and custody.
- (b) The individual is a minor who is not alleged to have a developmental disability and on whose behalf a petition for guardianship has been submitted, or 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.

Sec. 55.08(1).

In addition, the court must also find that the protective placement is the least restrictive under the circumstances. Wis. STAT. § 55.18(3)(e)1.-2.

On appeal, Kerry challenges the sufficiency of the evidence supporting the continuation of his protective placement. *See Walworth County v. Therese B.*, 2003 WI App 223, ¶21, 267 Wis. 2d 310, 671 N.W.2d 377 (whether evidence sufficiently supports protective placement is a question of law subject to de novo review). Specifically, he argues that the evidence was insufficient to show that: (1) he had a primary need for residential care and custody; (2) he was incompetent; (3) he suffered from a mental illness to such a degree that he presented a substantial risk of serious harm to himself or others; (4) his disability was permanent or likely to become

permanent; and (5) his present placement was the least restrictive option under the circumstances.

Turning to the record before us, we conclude there was clear and convincing evidence sufficient to show that Kerry had a primary need for residential care and custody. *See id.*; *see also* WIS. STAT. § 55.08(1)(a). Licensed psychologist Dr. Tammy Zimmel testified at Kerry's protective placement hearing that Kerry continues to require placement in a licensed, certified, or registered setting and has a primary need for residential care and custody. Dr. Zimmel stated that Kerry has these placement needs because he requires help cooking for himself, needs reminders to take his medication, and also requires housekeeping and laundry support. Dr. Zimmel further testified that Kerry needs assistance dressing himself due to the weakness in his left hand following a stroke, and requires "cues and prompts to complete basic grooming and hygiene needs." Dr. Zimmel also testified that Kerry lacks insight into medical and mental health conditions, including: not understanding the circumstances regarding his initial protective placement order, identifying only two of approximately eight medical conditions he struggles with, and identifying only "three of eighteen of scheduled medications that he is prescribed." While Kerry testified that he can shower, brush his teeth, cook, do laundry, and manage his finances independently, Dr. Zimmel's testimony contradicts Kerry's testimony.

Likewise, we agree that clear and convincing evidence sufficiently supports the conclusion that Kerry remains incompetent. *See* WIS. STAT. § 55.08(1)(b). An incompetent person is one who has been "'adjudged by a court of record to be substantially incapable of managing his or her property or caring for himself or herself by reason of infirmities of aging, developmental disabilities, or other like capacities.'" *Joseph P.*, 222 Wis. 2d at 23 (citation omitted). Dr. Zimmel testified that in her professional opinion, Kerry was incapable of caring

for himself due to his physical and mental health challenges. Contrary to what Kerry argues, it was not simply that Kerry disagreed with his diagnoses that Dr. Zimmel found him incompetent. Dr. Zimmel testified that Kerry suffered from a serious and persistent mental illness, a major neurocognitive disorder, and vascular concerns. Dr. Zimmel also opined that Kerry lacked insight as to the severity of his diagnoses, and further, when she asked him how he planned to personally gauge the effectiveness of his medications, Kerry's responses were "tangential" and "unable to answer that question." Moreover, Dr. Zimmel not only indicated Kerry does not understand or appreciate the nature and consequences of his impairments, but she also testified that Kerry is unable to protect himself from abuse, exploitation, neglect, or meet the essential requirements for his own health and safety.

Similarly, we conclude because of Kerry's physical and mental health challenges, he "is so totally incapable of providing for his ... own care or custody as to create a substantial risk of serious harm to himself or ... others." *See* WIS. STAT. § 55.08(1)(c). In addition to the numerous factors noted by Dr. Zimmel above, we agree with the circuit court that Kerry put himself at serious personal risk by failing to take his blood pressure medication and by refusing to follow the facility's rules prohibiting smoking in his room, which was cluttered with boxes and totes and created a fire hazard.

We also conclude that Kerry's disabilities are permanent or likely to be permanent. *See* WIS. STAT. § 55.08(1)(d). Dr. Zimmel opined as much after interviewing Kerry, the administrator of the residential facility, and Kerry's guardianship representative. Dr. Zimmel also reviewed the guardian ad litem report, the protective placement review, and Kerry's previous psychology report, as well as Kerry's current resident information sheet, current care plan, medication and problem lists.

Finally, we conclude that Kerry's protective placement is the least restrictive under the circumstances. *See* WIS. STAT. § 55.18(3)(e)1. Dr. Zimmel testified that Kerry required placement in a community-based residential facility or adult home. She further opined that Kerry required 24-hour supervision and monitoring of his egress. While Kerry argues he does not require this support and supervision, he presents no contrary evidence beyond his own opinion. In contrast, Dr. Zimmel reached her conclusions after conducting numerous interviews and reviewing several reports. Indeed, Dr. Zimmel noted that when she interviewed Kerry, he appeared disheveled—his clothing had cigarette burns and food stains and his nails were long and dirty—and that his room was extremely cluttered. She noticed that Kerry had difficulty walking and keeping his balance, and that his left hand, which had been injured in a stroke, was almost completely useless, making it difficult for Kerry to dress himself. Furthermore, Kerry did not seem to understand the extent of his health challenges; for example, he told Dr. Zimmel that he did not believe he had a stroke when his medical records indicated that he did in fact suffer one.

In sum, the evidence sufficiently supports the circuit court's decision to continue Kerry's protective placement under the standards required by WIS. STAT. § 55.08(1), *see Therese B.*, 267 Wis. 2d 310, ¶21, and it sufficiently shows that protective placement was the least restrictive placement under the circumstances, *see also* WIS. STAT. § 55.18(3)(e)1.-2.

Upon the foregoing reasons,

IT IS ORDERED that the order of the circuit court is summarily affirmed pursuant to WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that this summary disposition order will not be published.

*Samuel A. Christensen
Clerk of Court of Appeals*