COURT OF APPEALS
DECISION
DATED AND FILED

August 18, 2026

Samuel A. Christensen
Clerk of Court of Appeals

Appeal No. 2026AP83-FT **Cir. Ct. No. 2024GN12**

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

IN THE MATTER OF R. A. W.:

DOOR COUNTY,

PETITIONER-RESPONDENT,

V.

R. A. W.,

RESPONDENT-APPELLANT.

APPEAL from an order of the circuit court for Door County: DAVID L. WEBER, Judge. *Affirmed.*

¶1 STARK, P.J.[1] Rachel[2] appeals an order continuing her protective placement pursuant to WIS. STAT. ch. 55. Rachel argues that Door County failed

[1] This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(d) (2023-24). This is an expedited appeal under WIS. STAT. RULE 809.17 (2023-24). All references to the Wisconsin Statutes are to the 2023-24 version.

to present sufficient evidence that her current placement is the least restrictive environment consistent with her needs and the resources of the County, as required by WIS. STAT. § 55.12(3). For the reasons that follow, we disagree and affirm.

BACKGROUND

¶2 In May 2024, the County filed a petition for temporary and permanent guardianship of Rachel's person and estate due to incompetency and a petition for Rachel's protective placement. The County alleged that Rachel met the standards for protective placement as a result of a degenerative brain disorder that caused Rachel to be so totally incapable of providing for her own care or custody as to create a substantial risk of serious harm to herself or others.

¶3 After a probable cause hearing, a comprehensive evaluation, and a guardianship and protective placement hearing, the circuit court entered orders for a permanent guardian of the person, a permanent guardian of the estate, and for Rachel's protective placement. Rachel was placed at Cherry Cove Assisted Living and Memory Care in Door County, a 24-hour community based residential facility. This placement was determined to be the least restrictive placement available, as Rachel required a higher level of supervision and assistance than that available in less restrictive settings, particularly with respect to medication management and her lack of cooperation with her care.

[2] For ease of reading, we refer to the appellant in this confidential matter using a pseudonym, rather than her initials.

¶4 In May 2025, social worker Kim Kramer completed an annual protective placement review and report for the County. The report described Rachel's behaviors during her placement, which included her "obsessive" complaints of abuse by staff that were unsubstantiated. The report stated that Rachel continued to meet the standards for protective placement and that her current living arrangement was *not* the least restrictive environment for her needs, but the report did not recommend any changes to her current living arrangements or services.[3]

¶5 Rachel's guardian ad litem (GAL) also filed an annual report, opining that Rachel continued to meet the standards for protective placement, that her current living arrangement was the least restrictive environment consistent with her needs, and that her circumstances remained unchanged since the prior protective placement hearing. The GAL's report stated that Rachel requested modification or termination of the protective placement, an independent medical evaluation, and a full due process hearing.

¶6 At the 2025 full due process hearing, Kramer testified that Rachel continued to meet the requirements for protective placement and that Rachel's current placement was the least restrictive environment for Rachel's needs. Kramer stated that if the placement were not continued, Rachel would not be given her medication and her condition would not be monitored. Kramer explained that

[3] Despite Kramer's report stating that Rachel's present living arrangement was *not* the least restrictive environment consistent with her needs and Kramer testifying at the 2025 full due process hearing that the report accurately and truthfully reflected the basis for the County's position in this case, Kramer testified that Rachel's current placement was indeed the least restrictive environment consistent with her needs. This discrepancy was not addressed at the hearing, nor does Rachel raise any arguments regarding this discrepancy on appeal. We therefore do not address this issue further.

Rachel had several heart issues and that she was seen in the emergency room quite often for those complaints. Kramer also noted that no other facilities were willing to accept Rachel at that time.

¶7 Doctor Megan Thumann, a clinical psychologist, testified that she examined Rachel and diagnosed her with "major neurocognitive disorder due to multiple etiologies with behavioral disturbance." Thumann stated that Rachel "demonstrated moderate impairments in orientation," which "really impairs her day-to-day functioning." Thumann also explained that Rachel has moderate impairments in attention and concentration and severe impairments in memory and reasoning. Thumann opined that Rachel did not adequately understand and appreciate the nature and consequences of those impairments and that her incapacity is either permanent or likely to be permanent. She further testified that Rachel's incapacity interferes with her ability to effectively receive and evaluate information, make and communicate decisions, protect herself from exploitation and neglect, meet the essential requirements for her health and safety, manage her property or financial affairs, and provide for her own support. According to Thumann, Rachel's incapacity also renders her so incapable of providing for her own care and custody as to create a substantial risk of serious harm to herself.

¶8 Doctor Thumann prepared a report that was received into evidence without objection. Her report stated that Rachel had severe impairments in her memory, reasoning, emotional/behavioral functioning, and other executive functioning, as shown by misrepresentation of past events, inability to have a linear conversation regarding her needs, inability to carry out goal-directed abilities, and maladaptive interactions with most people. The report also stated that Rachel's incapacity is permanent and that less restrictive interventions are not

appropriate or sufficient for her needs. Regarding Rachel's placement needs, Thumann's report stated that

> [Rachel] requires assistance with medication management, especially for her diabetes as she insists that she does not have this diagnosis despite a letter from her doctor and frequent conversations regarding the diagnosis. [Rachel] also requires assistance with monitoring for her health and ensuring she is not harming herself or anyone else given her significant impairments in judgment.

Thumann further opined that protective services would be "grossly insufficient."

¶9 Rachel testified that the "whole thing [was] not correct" and that there were "so many errors in all of this." Rachel described the circumstances leading up to the protective placement and guardianship petitions being filed, and while she stated that she was "abused" and "harassed" every day at her current placement, she did not address why she objected to her continued protective placement or why she believed her current placement was not the least restrictive environment consistent with her needs.[4] Rachel's GAL opined that continuing Rachel's protective placement would be in her best interests.

¶10 The circuit court found that Rachel continued to meet the standards for protective placement and entered an order continuing her placement. Specifically, the court found that Rachel has a primary need for residential care and custody, that she is so totally incapable of providing for her own care and custody as to create a substantial risk of serious harm to herself or others as a result of a degenerative brain disorder, and that her current placement is the least

[4] Doctor Thumann testified that she did not notice anything that would indicate that Rachel was being abused or neglected by staff at her current placement and that the state ombudsman had been to the facility "a number of times" and did not substantiate any reports of abuse against Rachel.

restrictive environment consistent with her needs. Rachel now appeals. Additional facts will be provided below.

DISCUSSION

¶11 Rachel argues that the County failed to present sufficient evidence to prove that her current protective placement is the least restrictive environment consistent with her needs and the resources of the County. Therefore, she argues, we must reverse the order for her continued protective placement. Specifically, Rachel claims that medication management is the primary basis for her protective placement and that the County failed to offer clear and convincing evidence that her medication management could not be offered through protective services rather than her continued protective placement at Cherry Cove.

¶12 A challenge to the sufficiency of the evidence to support a protective placement presents a mixed question of law and fact. ***Walworth County v. Therese B.***, 2003 WI App 223, ¶21, 267 Wis. 2d 310, 671 N.W.2d 377. "The circuit court's factual findings will not be overturned unless clearly erroneous." ***Id.*** (citation omitted). Whether the evidence supports protective placement is a question of law we review de novo. ***Id.***

¶13 To order a continued protective placement in the facility in which the individual resides at the time of the hearing, the circuit court must find by clear and convincing evidence that the individual continues to meet the standards for protective placement provided in WIS. STAT. § 55.08(1) and that "the protective placement of the individual is in the least restrictive environment that is consistent

with the requirements of [WIS. STAT. §] 55.12(3), (4), and (5)." WIS. STAT. §§ 55.18(3)(e)1., 55.10(4)(d).[5]

¶14 Rachel does not dispute that she meets the standards for protective placement provided in WIS. STAT. § 55.08(1). She agrees that the evidence introduced at the due process hearing demonstrates that she suffers from a substantial impairment and that she requires protection and services. She also notes that she has a history of behavioral issues and that there is evidence that she disputes her need for insulin. She contends, however, that "the only evidence that no less restrictive means exist to provide for [her] care was Dr. Thumann's conclusory statements, both in her report and testimony, that protective services would be insufficient."[6]

¶15 When determining whether to order the continuation of a protective placement, the circuit court can rely upon the following:

> all reports and documents that have been admitted into evidence in the individual's prior protective placement

[5] Rachel does not raise any arguments specific to the factors in WIS. STAT. § 55.12(4) that the County must consider in determining whether Rachel's protective placement is in the least restrictive environment consistent with her needs and the resources of the County. Thus, we do not discuss those factors further.

[6] Rachel's GAL submitted an appellate brief wherein he argues that Rachel forfeited her argument by failing to argue in the circuit court that her current placement is not the least restrictive environment consistent with her needs. This argument is unpersuasive, as Rachel's protective placement was tried by the court without a jury and, as Rachel correctly notes, the County bears the burden of proving the standards for protective placement, including that a ward's current placement is the least restrictive environment consistent with the ward's needs. *See* WIS. STAT. § 805.17(4) ("In actions tried by the court without a jury, the question of the sufficiency of the evidence to support the findings may be raised on appeal whether or not the party raising the question has objected in the trial court to such findings or moved for new trial."); *see also* WIS. STAT. §§ 55.10(4)(d), 55.18(3)(e)1. (providing the pertinent burden of proof and the requirement that a continued protective placement be in the least restrictive environment consistent with the ward's needs). We therefore address the merits of Rachel's argument.

> proceedings … in addition to any witness testimony introduced during the individual's due process hearing. This reality is especially true for documentation submitted in conjunction with the petition under review—such as the required comprehensive evaluation from the initial placement and the required annual written review pursuant to WIS. STAT. §§ 55.11(1) and 55.18(1), respectively….
>
> To the extent the record shows relatively recent opinions from qualified medical professionals … and there is no evidence that the opinions therein are stale or that the placed individual's underlying conditions or needs have materially changed, the court can rely upon those opinions, subject to any contrary evidence that is submitted. If the placed individual wishes to challenge the continuing vitality of such opinions, he or she can request an independent evaluation under WIS. STAT. § 55.18(3)(b)3., as well as call his or her own witnesses under WIS. STAT. § 55.10(4)(c).

Douglas County v. J.M., No. 2022AP2035, unpublished slip op., ¶¶20-21 (WI App Nov. 28, 2023); *see also* ***Pierce County v. P.C.A.***, No. 2024AP1367, unpublished slip op., ¶31 & n.7 (WI App July 1, 2025), *review denied* (WI May 20, 2026) (permitting a court, in the context of a continued protective placement, to consider evidence from a prior protective placement hearing if that evidence "*has previously been adjudicated*").[7]

¶16 We conclude that the evidence in the record, including evidence from Rachel's earlier protective placement and guardianship hearings, was sufficient for the circuit court to find that Rachel's current placement is the least restrictive environment consistent with her needs.

¶17 Prior to the August 2024 guardianship and protective placement hearing, Rachel was examined by psychologist Dr. James Black, who prepared a

[7] Unpublished opinions authored by a single judge and issued on or after July 1, 2009, may be cited for their persuasive value. *See* WIS. STAT. RULE 809.23(3)(b).

report in advance of that hearing. At the hearing, Rachel stipulated to the receipt of Black's report into evidence without testimony. In his report, Black noted that Rachel had been diagnosed with unspecified neurocognitive disorder, unspecified psychotic disorder, unspecified mood disorder, major depressive disorder, and generalized anxiety disorder. Black's report provided that Rachel had mild impairments in orientation, attention/concentration, and language/communication; moderate impairments in memory and reasoning; and moderate to severe impairments in emotional/behavioral functioning and other executive functioning. The report stated that Rachel had an incapacity due to her impairments, that her incapacity was permanent, and that her conditions "substantially impair [her] from adequately providing for … her own care or custody and constitute a substantial handicap to [her]." Further, Black wrote, "There are concerns about her lack of insight, impaired judgment, and inability to make rational decisions, and this puts her at significant risk."

¶18 Doctor Black's report noted that Rachel was able to handle activities of daily living by herself, but that she was not able to manage any instrumental activities of daily living. Black also assessed whether other less restrictive interventions would eliminate Rachel's need for guardianship—including training or education, support services, assistive devices, advanced planning, a supported decision-making agreement, and a representative payee—but concluded that less restrictive measures were not appropriate because Rachel required a "higher level of supervision and assistance." Black explained that Rachel suffers from "underlying cognitive deficits, anxiety, mood disturbance, and what seems to be paranoia at times" and that she requires "care and supervision in a structured setting" because "she would not be able to meet her needs living independently." Black also noted that Rachel's condition was not likely to improve.

¶19 After considering "all of the relevant documents," including Dr. Black's report, and testimony from both Rachel and her social worker, the circuit court found Rachel incompetent and further found that she met the standards for guardianship and protective placement. The court found that the facility where Rachel was temporarily residing, Cherry Cove, was the least restrictive environment consistent with her needs.

¶20 In January 2025, Rachel sent the circuit court a letter that the court construed as a request for the termination of her guardianship and protective placement. The court appointed Rachel an attorney, appointed psychologist Dr. L.W. Cole to complete an independent medical evaluation, and scheduled a hearing in April 2025 on the matter. Cole testified at the hearing about Rachel's impairments, including that she suffered from moderate impairments in memory function as evidenced by, among other issues, Rachel's belief that she does not have diabetes "despite information to the contrary that … has been discussed intensively" and "put in writing for her."

¶21 Doctor Cole also stated that Rachel suffers from moderate to severe impairment in her emotional and behavioral functioning, as evidenced by her being frequently rude and disrespectful toward others, physically aggressive, and her requiring "nearly continual structuring to keep her on topic due to her pressured and tangential speech." Cole opined that Rachel continued to require protective placement and that her current placement was the least restrictive placement consistent with her needs. Cole's report was received into evidence without objection.

¶22 Doctor Cole's report provided that Rachel had no impairment in orientation; mild impairment in sensory/motor functioning; moderate impairment

in attention/concentration, language/communication, memory, reasoning, and other executive functioning; and moderate to severe impairment in emotional/behavioral functioning. The report stated that Rachel had a need for residential care and custody, that her incapacities render her so incapable of providing for her own care as to create a substantial risk for herself or others, and that her incapacity is permanent or likely to be permanent. The report stated that Rachel required 24-hour supervision and that her current assisted living placement was appropriate for her care needs. Cole explained that Rachel did not have "an adequate understanding of her impairments, nor an appreciation of the likely consequences of them."

¶23 The circuit court found that Rachel had failed to show that her competency had been restored. The court stated that it was incorporating by reference in its order Dr. Cole's testimony and report as to why Rachel continued to be incompetent.

¶24 This brings us to the May 2025 full due process hearing. *See supra* ¶¶6-10. We conclude that the evidence from Rachel's prior hearings in 2024 and 2025, in conjunction with Kramer's report and Dr. Thumann's testimony and report—evidencing that Rachel continues to have cognitive, emotional, and behavioral impairments; that she has a permanent incapacity due to those impairments; and that less restrictive interventions were not appropriate or sufficient due to Rachel's "significant impairments"—prove by clear and convincing evidence that Rachel's current protective placement is the least restrictive placement consistent with her needs.

¶25 Rachel cites ***Clark County Community Services v. R.F.***, No. 2022AP481, unpublished slip op., ¶¶17-20 (WI App Sep. 1, 2022), in support

of her argument that the County failed to prove her current placement was the least restrictive necessary to meet her needs. However, Rachel's reliance on ***R.F.*** is misplaced. In that case, the petitioner did not engage with R.F.'s argument that the petitioner had failed to prove that R.F.'s needs could be met with some combination of restrictions or protections that did not include protective placement. ***Id.***, ¶20. Instead, the petitioner improperly tried to require R.F. to "show to the circuit court how the evidence supports the conclusion that continued protective placement would *not* provide the least restrictive environment for R.F.'s needs." ***Id.***, ¶¶17-20. Further, in searching the entire record, the appellate court found no evidence regarding whether R.F.'s needs could be met by less restrictive means. ***Id.***, ¶24. Here, however, the County does not seek to "flip the burden of proof." *See* ***id.***, ¶18. Doctors Black and Thumann explicitly concluded that less restrictive interventions—including protective services—would be insufficient due to Rachel's significant impairments and inability to meet her own needs.

¶26 Rachel argues that the evidence from the prior guardianship and protective placement hearings is insufficient to show that she is *currently* placed in the least restrictive environment consistent with her needs. We are not persuaded. There is nothing in the record to suggest that the opinions providing the basis for the circuit court's prior guardianship and protective placement orders are stale or that Rachel's condition and needs have materially changed since those orders were entered. Indeed, Dr. Thumann's testimony and report show that Rachel's impairments have worsened since she was examined by Drs. Black and Cole and that a less restrictive placement is not currently appropriate or sufficient to meet Rachel's needs due to her "significant impairments." Accordingly, we conclude that the record contains sufficient evidence to prove that Rachel's current placement is the least restrictive environment consistent with her needs.

By the Court.—Order affirmed.

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