

**COURT OF APPEALS
DECISION
DATED AND FILED**

September 17, 2026

Samuel A. Christensen
Clerk of Court of Appeals

NOTICE

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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. 2026AP906

Cir. Ct. No. 2024GN5

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

**IN THE MATTER OF THE GUARDIANSHIP AND PROTECTIVE PLACEMENT OF
L.A.E.:**

DANE COUNTY,

PETITIONER-RESPONDENT,

V.

L.A.E.,

RESPONDENT-APPELLANT.

APPEAL from an order of the circuit court for Dane County:
JACOB B. FROST, Judge. *Affirmed.*

¶1 KLOPPENBURG, J.¹ L.A.E. appeals an order continuing his protective placement under WIS. STAT. ch. 55. He argues that Dane County did not present evidence sufficient to prove two necessary elements for a protective placement: that L.A.E. continues to have a primary need for residential care and custody, and that L.A.E. is so totally incapable of providing for his own care as to create a substantial risk of serious harm to himself or others. I conclude that the County met its burden as to both elements and affirm.

BACKGROUND

¶2 At the time of the 2025 hearing on whether to continue L.A.E.'s protective placement, L.A.E. was 82 years old. L.A.E. has a brain injury resulting from a surgery that removed a growth inside his skull. He had been protectively placed two years earlier after a lengthy hospital stay occasioned by a series of falls. At L.A.E.'s initial placement hearing, a County employee testified to concerns about further falls and other potential mishaps related to problems with L.A.E.'s memory.

¶3 By the 2025 hearing, L.A.E. was living in a community based residential facility (CBRF). The CBRF has 24-hour care, with some staff awake at all times. The facility is not locked, but egress is monitored.

¶4 The County called two witnesses at the hearing. The first, a psychologist, had reviewed records pertaining to L.A.E. and met with him in person. The psychologist testified that the removal of the growth from L.A.E.'s

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

skull had resulted in a major neurocognitive disorder. She opined that this disorder was permanent, and testified that L.A.E.'s presentation had not changed since the surgery eleven years earlier. The psychologist testified that during her interview with L.A.E., L.A.E. demonstrated impairments in executive functioning, memory, and emotional/behavioral functioning.

¶5 Regarding executive functioning, the psychologist testified as follows. L.A.E. does not understand that some of his behavior could be viewed as inappropriate or offensive toward others. L.A.E. sometimes appeared in common areas of his shared residence in undergarments rather than fully clothed. During the psychologist's interview with L.A.E., L.A.E. lowered his shorts to put salve on his hip and also lifted up a leg of the shorts to display a birthmark on his inner thigh which, he claimed, his ex-wife had thought was a "hickey" received from another woman. L.A.E.'s executive functioning was marked by a lack of inhibition and that he spoke at length about matters not related to the subject of the interview.

¶6 The psychologist also testified that L.A.E.'s plans for his own life, if not protectively placed, did not appear to be realistic. L.A.E. told the psychologist that he has \$100,000 in an out-of-state storage unit or bank, which he intends to collect. L.A.E. then plans to purchase a luxury car, tour the United States, and move to Greece. The psychologist did not believe that the \$100,000 exists. In addition, given his condition, L.A.E.'s driving would present a serious risk.

¶7 The psychologist testified that L.A.E. needs residential care and custody in significant part because of the inappropriate and offensive behavior he displays. Specifically, she testified as follows. If L.A.E. were out in the community "and behaved in an inappropriate manner, such as he does at his

current placement, that could put him at risk of, for example, somebody choosing to be physically violent towards him after [a] sexually inappropriate overture towards somebody.” L.A.E. does not recognize that “eloping” from his placement puts him at risk. Other evidence showed that L.A.E. has twice left facilities where he lived, in each case generating a silver alert and police involvement. During the second of these incidents, L.A.E. roamed Madison with no money, no food or water, and no place to stay until he was found by the police wandering at a mall.

¶8 Regarding memory, the psychologist testified as follows. Tests of L.A.E. showed a moderate impairment, but there were no reports of L.A.E.’s behavior within the CBRF raising safety concerns related to memory, “for example [being] found in the dayroom, not knowing where he was, things like [that].” However, L.A.E. was in a living situation with staff who prompted him to manage his routine daily activities.

¶9 Regarding emotional or behavioral functioning, the psychologist referred to the incidents of L.A.E. displaying his upper and inner thigh to her during the interview and testified that he “has been kind of verbally offensive toward the staff” at the CBRF. The psychologist testified that the CBRF in which L.A.E. lived was the least restrictive environment appropriate for him.

¶10 The County next called a social worker who had also reviewed records and met with L.A.E. The social worker testified as follows. L.A.E. is very physically fit, and other than reminders to shower or bathe, L.A.E. does not need assistance to complete routine daily activities. L.A.E.’s “primary need for [residential] care” stems from deficits relating to his brain injury “around interacting with other people,” and L.A.E. needs “some general guidance from caregivers in order to have appropriate, safe interactions with the other residents

there and members of the community.” Specifically, L.A.E. has challenges with “his ability to perceive what is appropriate behavior, appropriate physical contact boundaries, appropriate things to say to people, just essentially difficulty with impulse control and inhibition.”

¶11 The social worker’s testimony continued as follows. During his interview with L.A.E., L.A.E. challenged him to “feats of strength” including competitions involving push-ups, squats, and who could run faster. L.A.E. also insisted on shaking the social worker’s hand even after the social worker declined to do so; when the social worker relented, L.A.E. “grabbed my hand and squeezed it very tight and did not let it go for several seconds.” L.A.E. told the social worker he was demonstrating that he was not disabled. Later, the social worker questioned him about the incident and about reports that L.A.E. had “crushed” other people’s hands, and asked L.A.E. whether he understood why that was inappropriate; L.A.E. explained that it was not a problem because he crushes the hands only of men, not the hands of women.

¶12 The social worker testified that he is trained in and accustomed to working with people with brain injuries but that he was concerned that strangers L.A.E. might encounter in the community could react differently to L.A.E.’s behavior, particularly given that L.A.E. denies having any disability. In the social worker’s opinion, if L.A.E. were living on his own or receiving services in the community, the issue is “that there’s really no way to schedule for when a problem may occur and ensure that staff is there when that person needs them and is not there when they don’t.” The social worker testified that L.A.E. could have a “negative interaction” with a neighbor and be unable to defuse any conflict that might result, potentially resulting in a physical altercation or in the police being

called. Like the psychologist, the social worker testified that L.A.E.'s current placement was the least restrictive environment consistent with his needs.

¶13 L.A.E. called the adult protective service worker assigned to his case and also testified himself.

¶14 The circuit court continued the protective placement and found that the CBRF was the least restrictive environment consistent with L.A.E.'s needs. L.A.E. appeals.

DISCUSSION

¶15 A court may enter or continue a protective placement order under WIS. STAT. ch. 55 only if four statutory elements are proven. As relevant here, these are:

- (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.

WIS. STAT. § 55.08(1)(a)–(d).

¶16 L.A.E. concedes that the elements in WIS. STAT. § 55.08(1)(b) and (d) were proven here. He contends, though, that the County adduced insufficient

evidence to prove the elements in (a) and (c). Whether sufficient evidence supports protective placement is a question of law that this court reviews de novo. **Walworth County v. Therese B.**, 2003 WI App 223, ¶21, 267 Wis. 2d 310, 671 N.W.2d 377.

¶17 L.A.E.’s argument regarding the (a) element also raises a question of statutory construction. Courts interpret a statute by examining its language in light of the statute’s scope, history, context and purpose, and seek to construe its language “reasonably, to avoid absurd or unreasonable results.” **State ex rel. Kalal v. Circuit Ct. for Dane Cnty.**, 2004 WI 58, ¶46, 271 Wis. 2d 633, 681 N.W.2d 110.

- I. There was sufficient evidence that L.A.E. has a primary need for residential care and custody, satisfying WIS. STAT. § 55.08(1)(a).

¶18 WISCONSIN STAT. ch. 55 provides no definition of the statutory phrase “primary need for residential care and custody.” However, L.A.E. points to **Jackson County DHHS v. Susan H.**, 2010 WI App 82, 326 Wis. 2d 246, 785 N.W.2d 677, in which this court construed the phrase. L.A.E. argues that under **Susan H.**, a person does not have a primary need for residential care and custody if the person does not need protection from every one of four specific harms: “abuse, financial exploitation, neglect, and self-neglect.” That is, he argues that evidence that a person needs protection from only one, two, or three of these harms is insufficient to show that the person has a primary need for residential care and custody. L.A.E. contends that, in this case, there was insufficient evidence that he is at risk of every one of these four harms. He argues that the circuit court relied on “vague and insufficient” reasoning regarding financial exploitation and abuse, and did not address at all whether L.A.E. was at risk of neglect or self-neglect. L.A.E.’s argument fails for the following reasons.

¶19 To address L.A.E.’s argument, some discussion of **Susan H.** is necessary. In that case, Jackson County sought to terminate Susan H.’s protective placement, which had been in effect for many years. *Id.*, ¶¶5-6. The county noted that Susan H. and her appointed guardian were voluntarily choosing to have Susan H. live in a group home (where she had lived for many years under the protective placement order). *Id.*, ¶¶4, 8. Focusing on the word “custody” in the statutory phrase “primary need for residential care and custody,” the county argued that a person cannot have a need for “custody” if the person is voluntarily residing in an appropriate setting—that is, that the word “custody,” as used in WIS. STAT. § 55.08(1)(a), incorporates an element of involuntariness. **Susan H.**, 326 Wis. 2d 246, ¶8. The county argued that because Susan H. and her guardian chose to have Susan H. live in the group home, a protective placement in the same facility was not lawful, as Susan H. had no need to be held in “custody.” *Id.* Susan H. and the guardian ad litem both advocated for the protective placement to continue. *Id.*, ¶9.

¶20 The circuit court rejected the county’s argument and continued Susan H.’s protective placement. *Id.*, ¶¶1, 7. This court affirmed, also rejecting the county’s contention that a finding of a “primary need for residential care and custody” requires a finding of involuntariness. *Id.*, ¶¶18-22. In the course of reaching this conclusion, this court observed that statutory construction involves consideration of the “purpose” of a statute. *Id.*, ¶10 (citing **Kalal**, 271 Wis. 2d 633, ¶45). The court then looked to the first provision of WIS. STAT. ch. 55, which is titled “Declaration of policy.” WIS. STAT. § 55.001. Citing that statute’s language, the court noted that the “purpose of protective placements ... is to protect persons with developmental disabilities and ‘other like incapacities’ from ‘abuse, financial exploitation, neglect, and self-neglect’ in a manner that is consistent with due process and that ‘place[s] the least possible restriction on

personal liberty and exercise of constitutional rights....” **Susan H.**, 326 Wis. 2d 246, ¶12 (quoting § 55.001). Taking into account ch. 55’s overarching statutory purpose “of protecting ‘from abuse, financial exploitation, neglect, and self-neglect,’” the court concluded that “the meaning of ‘custody’ in [WIS. STAT.] § 55.08(1)(a) means control and supervision in order to provide this protection.” **Susan H.**, 326 Wis. 2d 246, ¶14.

¶21 Summing up its conclusion, this court stated that WIS. STAT. § 55.08(1)(a) requires that a person have a primary need “to have someone else exercising control and supervision in [a] residential setting for the purpose of protecting the person from abuse, financial exploitation, neglect, and self-neglect.” **Susan H.**, 326 Wis. 2d 246, ¶16.

¶22 L.A.E. argues that, read literally, **Susan H.**’s synopsis that, under WIS. STAT. § 55.08(1)(a), a primary need for “custody” means a primary need for protection from “abuse, financial exploitation, neglect, and self-neglect,” established that a person may not be protectively placed unless the person needs protection from all four of the listed threats.

¶23 It is generally true that the rules of statutory construction (and common English usage) provide that when “and” is used to connect a list—as in “abuse, financial exploitation, neglect, and self-neglect,”—the items on that list are read in the conjunctive, rather than the disjunctive. **State v. Freer**, 2010 WI App 9, ¶8, 323 Wis. 2d 29, 779 N.W.2d 12. But, as L.A.E. acknowledges, this is not always true. As this court noted in **Freer**, “[A]nd’ in statutes is not always interpreted as a conjunctive term.” **Id.**, ¶13. **Freer** explained that modern authorities warn against construing “and” to mean “or” when construing “and” to mean “and” ““does not render the sense of the statute confusing and there is no

clear legislative intent to have the words not mean what they strictly should.” *Id.*, ¶14 (quoted source omitted). But, it added that, “[n]onetheless, it remains true that the legislature has a history of using ‘and’ when the context shows it means ‘or.’” *Id.*

¶24 Here, the only reasonable interpretation of the policy declaration’s reference to “protection from abuse, financial exploitation, neglect, and self-neglect” in WIS. STAT. § 55.001—as context for this court’s interpretation of the placement element “primary need for residential care and custody” in WIS. STAT. § 55.08(1)(a)—is that protection from any one of the listed threats may suffice to establish the need for protective placement. It would not make sense for a court to be unable to order protective placement of a person who needs protection from abuse, neglect, and self-neglect, for example, but not from financial exploitation. Such an interpretation, which is urged by L.A.E., would thwart, rather than advance, the purpose of the statute by disallowing protective placement for a person who needs protection from three or fewer of the four listed threats. To deny a person whose circumstances posed no particular threat of financial exploitation the protection provided by the statute—even if the same person faced severe danger of abuse, neglect, and self-neglect—would directly contradict the declaration of policy in § 55.001, which directs that people whose incapacities place them in such danger should be protected. A sounder reading of *Susan H.* is that it simply establishes that a party seeking protective placement must prove that the person primarily needs residential care and custody to protect the person from one or more of the threats with which the statute is concerned.

¶25 L.A.E. suggests that his reading advances a different statutory policy of WIS. STAT. § 55.001: that of placing “the least possible restriction on personal liberty and exercise of constitutional rights consistent with due process” and with

the person’s protection. L.A.E. argues that requiring that a person needs to be protected from all four threats safeguards against unnecessary placements that could needlessly restrict a person’s liberty and constitutional rights. However, the policy of § 55.001 is to place the least restriction on a person’s liberty “consistent with ... protection” of that person. It cannot be consistent with protection of L.A.E. not to protect him from the threats he does face, even if he does not face all four of the enumerated statutory threats.

¶26 In sum on this issue, I reject L.A.E.’s reading of *Susan H.* and conclude that there was sufficient evidence, comprising the psychologist’s and the social worker’s testimony—which the circuit court expressly credited—that L.A.E. has a primary need for residential care and custody to protect him from financial exploitation and abuse.

- II. There was sufficient evidence that L.A.E.’s incapacity to care for himself creates a substantial risk of serious harm, satisfying WIS. STAT. § 55.08(1)(c).

¶27 L.A.E. also challenges the sufficiency of the evidence as to the element in WIS. STAT. § 55.08(1)(c). He does not dispute that the brain injury resulting from his surgery constitutes an “other like incapacit[y]” under the statute. However, he argues that the evidence was insufficient to show that this incapacity renders him “so totally incapable of providing for his ... own care or custody as to create a substantial risk of serious harm to himself ... or others.” § 55.08(1)(c). This argument fails as unsupported by the law on which L.A.E. relies and by the record.

¶28 L.A.E. relies on *Zander v. County of Eau Claire*, 87 Wis. 2d 503, 514-15, 275 N.W.2d 143 (Ct. App. 1979). In *Zander*, the county filed a petition to

protectively place Shaw, who suffered from alcoholism. *Id.* at 506-07. On the question of whether Shaw posed a substantial risk of serious harm to himself or others, a social worker testified that when Shaw was drinking, he became belligerent, and that this “could lead to bar fights in which someone could get injured.” *Id.* at 507. Shaw’s probation officer also testified that Shaw “had been beaten up on two occasions.” *Id.* The circuit court found a substantial risk because Shaw “got belted by somebody” and had also set fire to a pillow; the court ordered Shaw protectively placed. *Id.* at 516.

¶29 This court reversed and remanded for additional findings by the circuit court and, if necessary, for additional evidence to be taken. *Id.* at 519. This result was necessary, this court said, because it could not conclude that any of the elements of protective placement were met due to “ambiguities in the testimony [and the] questionable foundation for some of the statements made” along with the circuit court’s inadequate factual findings. *Id.* at 518-19. This court also stated that to meet the statutory requirements, the potential harm to the person to be placed “must be substantial,” the risk of that harm “must be serious,” and the existence of this risk cannot be grounded in “[m]ere speculation.” *Id.* at 514-15.

¶30 Here, L.A.E. contends that the County failed to demonstrate that his condition creates risks sufficient to clear the bar set in *Zander*. In particular, L.A.E. compares the testimony that he behaves in ways that could instigate violence to the testimony that Shaw became belligerent while drinking and had been in bar fights.

¶31 L.A.E.’s contention does not demonstrate insufficient evidence of a substantial risk of serious harm for two reasons. First, *Zander* did not hold that a

person's behavior's tendency to provoke violent conflict could never constitute a substantial risk of serious harm; instead, the **Zander** court said that in that case the testimony was insufficient because of its "ambiguities" and lack of foundation. **Id.** at 518-19. L.A.E. does not point to any such ambiguities or lack of foundation in the testimony credited by the circuit court here.

¶32 Second, potential physical altercations were not the only risk demonstrated by the evidence in this case. The circuit court heard testimony that L.A.E. resisted seeking medical treatment after falls that, ultimately, placed him in the hospital for many months. It also heard that L.A.E. had left a previous placement with no money, food, water, or viable plan to obtain a place to live, and was ultimately located by the police wandering a mall in Madison. While L.A.E. contends that this shows only that he "would benefit from some degree of support," he does not explain what type of support, other than care in a custodial setting, could protect against the risk inherent in being unable to get up after a fall and unwilling to seek assistance, or the risk inherent in leaving his residence with no resources and no means or plan to support himself. I conclude that the County presented sufficient evidence that L.A.E.'s condition creates a substantial risk of serious harm to L.A.E. under WIS. STAT. § 55.08(1)(c).

CONCLUSION

¶33 Because the County presented sufficient evidence as to each statutory element, I affirm the order continuing L.A.E.'s protective placement.

By the Court.—Order affirmed.

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

