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DISTRICT II

September 30, 2026

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

2025AP1506

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

Before Lazar, P.J., Gundrum, and Grogan, 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).

Kerry¹ appeals an order continuing his protective placement under WIS. STAT. ch. 55 (2023-24).² He also objects to the continuation of his guardianship. 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. For the following reasons, we affirm.

¹ This court refers to the subject individual by a pseudonym consistent with WIS. STAT. RULE 809.19(1)(g), to protect confidentiality.

² All references to the Wisconsin Statutes are to the 2023-24 version.

Kerry has been the subject of guardianship and protective placement orders since November 2022. On September 12, 2024, Racine County filed its petition for annual review of Kerry's protective placement, along with its annual protective placement review report. Kerry's guardian ad litem ("GAL") filed her report requesting adversary counsel for Kerry and a full due process hearing. In advance of the due process hearing, Dr. Brooke E. Lundbohm, Psy.D., interviewed Kerry and filed an examining psychologist's report.

A due process hearing was held on January 16, 2025. Kerry appeared in person with his adversary counsel. Lundbohm testified at the hearing and her report was admitted into evidence. Specifically, Lundbohm testified Kerry demonstrated impairments on neurocognitive screenings. She elaborated:

There's clear data that [Kerry] does possess rather significant and permanent impairments that essentially interrupt his capacity to consistently engage in effective problem solving, decision making related to health, safety, other areas brought -- essentially to take care of himself.

Lundbohm testified Kerry is able to complete simple tasks of daily living independently, albeit with cues; however, "[h]e is fully dependent or reliant on others for the more advanced functional tasks. ... such as transportation, finances, problem solving related to health, safety, taking care of medications, appointments, those kind[s] of things." Kerry's "thoughts were laced with different paranoid themes and the severity of that paranoia essentially was quite prevalent and interfered with his ability to consistently engage in reality-based discussion." Lundbohm opined Kerry's insight "was remarkably poor" and he "essentially denied having any medical or mental health issues for which he might require any kind of assistance which is in direct contrast to the totality of information gathered through the collateral resources."

Lundbohm believed Kerry was incapacitated due to his impairments, that it was a permanent condition, and that he was diagnosed with a serious and persistent mental illness—specifically, an unspecified neurocognitive disorder, with an indication of a major depressive disorder and an unspecified personality disorder with paranoid features. Lundbohm explained Kerry’s incapacities interfered with his abilities to protect himself from exploitation and neglect and to meet essential requirements for his health and safety. She opined that Kerry has a primary need for residential care and custody and 24-hour supervision. Kerry’s current placement offered 24-hour supervision with nutritional and medication management. Lundbohm acknowledged that Kerry wanted to live independently; however, she explained Kerry

is a person who, again, shows a very poor understanding of his various deficits and the limitations that come along with that. He is dependent on staff currently at his residence for the more complicated or complex tasks of daily living such as planning meals, making meals, transportation, taking medications. In the absence of that 24-hour support, I believe that he would be at risk of harm to himself or others.

Kerry testified that he was aware of his limitations and believed he could live independently. He testified he receives social security disability income and would use that for monthly expenses. He would use his scooter for transportation, and he could cook for himself, shower, dress, and groom himself independently and appropriately. Kerry did not believe he suffered from paranoid thinking and instead explained that his sister had misallocated his father’s estate funds.

The circuit court concluded the County established that Kerry continued to meet the standards for protective placement and that his placement was the least restrictive consistent with his needs. Kerry appeals.

On appeal, Kerry first asserts that the evidence introduced at the protective placement hearing was insufficient to support the continuation of his guardianship. Kerry's guardianship, however, is not presently before this court. Unlike protective placements, which are reviewed annually, WIS. STAT. § 55.18, a guardianship of an individual found to be incompetent generally "continue[s] during the life of the ward, until terminated by the [circuit] court[.]" WIS. STAT. § 54.64(1). A ward may petition the court for review of incompetency or to have the guardianship modified. Sec. 54.64(2). If the ward petitions to have the guardianship reviewed and/or modified, the court appoints a GAL, provides the ward with adversary counsel, and holds an evidentiary hearing, including a jury trial, if requested. *Id.*

Here, the circuit court placed Kerry under a guardianship in 2022. In the context of the County's petition to review Kerry's protective placement, Kerry did not separately petition the court to review and/or modify his guardianship under WIS. STAT. § 54.64. As such, the only order the court entered related to Kerry's continued protective placement. Because no petition to review or modify the guardianship was filed, because guardianships continue for the life of the ward under § 54.64, and because the final order that is under appeal relates only to Kerry's protective placement, Kerry's current arguments regarding the sufficiency of the evidence supporting his guardianship are outside the scope of our review. We do not consider them.

Kerry next argues the evidence introduced at the protective placement hearing was insufficient to support his continued protective placement. As stated above, protective placements are subject to annual review pursuant to WIS. STAT. § 55.18. If an individual, such as Kerry, contests the protective placement, a full due process hearing is required. Sec. 55.18(3)(d). At an evidentiary hearing, in order to continue a protective placement, a circuit court must conclude, based on clear and convincing evidence, that the individual continues to meet the

standards under WIS. STAT. § 55.08(1). WIS. STAT. §§ 55.18(3)(e), 55.10(4)(d). Section 55.08(1), in turn, provides that an individual may be protectively placed if:

- (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.

Id. The court must also determine whether the protective placement is the least restrictive under the circumstances. Sec. 55.18(3)(e).

“Appellate review of the sufficiency of the evidence to support a protective placement order presents a mixed question of fact and law.” ***Racine County v. R.P.L.***, 2026 WI 26, ¶15, 421 Wis. 2d 224, 37 N.W.3d 545. We “uphold a circuit court’s factual findings unless they are clearly erroneous, and we review de novo the sufficiency of the evidence to meet the requirements for continued protective placement.” ***Id.***

The Record reflects that Lundbohm testified Kerry suffered from “significant and permanent impairments” as well as diagnoses of an unspecified neurocognitive disorder, an indication of a major depressive disorder, and an unspecified personality disorder with paranoid features. He also exhibited signs of impairment on neurocognitive screenings. Kerry’s condition was permanent and Lundbohm believed Kerry’s incapacities interfered with his abilities to protect himself from exploitation and neglect and to meet essential requirements for his health

and safety. Kerry lacked insight into his current limitations and denied having any medical or mental health issues. Although Lundbohm conceded that, with cues, Kerry was able to complete simple tasks of daily living independently, “[h]e is fully dependent or reliant on others for the more advanced functional tasks. ... such as transportation, finances, problem solving related to health, safety, taking care of medications, appointments, those kind[s] of things.”

The Record also reflects that Kerry currently lives in a facility that provides 24-hour supervision with both nutritional and medication management. Lundbohm believed that without 24-hour supervision, Kerry “would be at risk of harm to himself or others.” She elaborated that “[g]iven the level of his different deficits, [and] his poor understanding of those[,]” 24-hour supervision would keep him “safe and make sure that his various day-to-day needs are met.” Based on Lundbohm’s expert testimony and her examining report, we conclude the Record sufficiently establishes by clear and convincing evidence that Kerry continues to satisfy the requirements of WIS. STAT. § 55.08(1) and his current placement is the least restrictive.

Therefore,

IT IS ORDERED that the order of the circuit court is summarily affirmed. *See* 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