

**COURT OF APPEALS
DECISION
DATED AND FILED**

October 7, 2026

Samuel A. Christensen
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. 2026AP1076
STATE OF WISCONSIN

Cir. Ct. No. 2025GN4

**IN COURT OF APPEALS
DISTRICT II**

IN THE MATTER OF THE GUARDIANSHIP OF S.A.:

CALUMET COUNTY,

PETITIONER-RESPONDENT,

V.

S.A.,

RESPONDENT-APPELLANT.

APPEAL from an order of the circuit court for Calumet County:
JEFFREY S. FROEHLICH, Judge. *Reversed.*

¶1 LOCOCO, J.¹ Until this case, 65-year-old S.A. lived voluntarily at the Gardens of Fountain Way, an assisted living facility in Menasha. Then a

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.

circuit court committed her there involuntarily—and indefinitely—for her own safety. “Protective placement” is the official term. *See* WIS. STAT. § 55.01(6).

¶2 Petitioner Calumet County sought this relief to address S.A.’s habit of leaving the Gardens without telling anyone. While S.A. technically had the right to do this, her trips have not gone well. Twice police located S.A. at the airport, where she had failed to make it onto a plane; a third time, following a Silver Alert, she turned up stranded at a casino in Green Bay. S.A. suffers from diabetes and high blood pressure and has a history of stroke. Yet in none of these cases did S.A. have a plan for taking all her medications while away.

¶3 There were other worrying signs back at the facility. Bills went unpaid. S.A. sometimes refused to leave her room, which overflowed with boxes. Instead, she sat in the dark, refusing help.

¶4 The circuit court has now effectively ordered that help. S.A. accepts the order appointing a guardian over her but asks this court to reverse the order protectively placing her at the Gardens. She says insufficient evidence supports its necessity. *See Racine County v. R.P.L.*, 2026 WI 26, ¶¶14-15, 421 Wis. 2d 224, 37 N.W.3d 545.

¶5 The stakes are high in a case like this one. Calumet believes S.A. is in grave danger. But S.A. wants her freedom, and, testifying at length before the circuit court, she offered explanations for her choices. An unchecked state power to confine law-abiding citizens poses dangers of its own.

¶6 The Legislature wove several checks into Wisconsin’s protective placement scheme. In particular, the circuit court had to find by clear and convincing evidence that S.A. needs placement because she meets all of several

listed “standards.” *See* WIS. STAT. § 55.10(4)(d). The dispositive standard on this appeal reads: “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.” WIS. STAT. § 55.08(1)(c).

¶7 This court can assume for present purposes that S.A. cannot care for herself and that her welfare is in jeopardy. The Legislature did not stop there; the circuit court had to satisfy itself that S.A.’s incapacity results from one of the four causes enumerated above, each of which the Legislature took the time to define. *See* WIS. STAT. § 55.01(1v), (2), (5), (6v).

¶8 At the urging of Calumet, the circuit court checked the box on S.A.’s placement order indicating S.A.’s difficulties result from a “developmental disability.” This is “a disability attributable to intellectual disability [the term that replaced “mental retardation” in 2012, *see* 2011 Wis. Act 126], cerebral palsy, epilepsy, autism or another neurological condition closely related to an intellectual disability or requiring treatment similar to that required for individuals with an intellectual disability[.]” WIS. STAT. § 55.01(2). (The definition goes on to list certain necessary features of the disability, but this excerpt suffices.)

¶9 Problem: no one testified at the protective placement hearing below that any condition like those listed produces S.A.’s behavior. To the contrary, the medical doctor Calumet assigned to evaluate S.A. declined to diagnose S.A. beyond noting a level of “cognitive impairment” in areas like memory, reasoning, and judgment. He acknowledged that cognitive impairment could have many sources, from a brain tumor to a medication side effect. But he would not take his

analysis further, adding that he was “asked to ... complete this four-page form, so this was not an evaluation for an underlying root cause as to why [S.A.] has cognitive impairment.”

¶10 When pressed on why, then, the doctor had checked the box on the standard form indicating S.A. has a developmental disability, he deferred to the nurse manager at the Gardens. The nurse manager provided no clarity on this point. The circuit court’s oral decision did not address the question directly either. Yet the box on the placement order assigning a developmental disability to S.A. remains checked. Cognitive impairment or not, a court cannot simply assume the existence of a causative condition like intellectual disability.

¶11 Calumet suggests upholding the order on a different statutory ground, namely that S.A. has “other like incapacities.” Even were this court inclined to consider an alternate avenue, the same barrier presents itself. This category targets “those conditions incurred at any age which are the result of accident, organic brain damage, mental or physical disability or continued consumption or absorption of substances, producing a condition which substantially impairs an individual from adequately providing for his or her care or custody.” WIS. STAT. § 55.01(5). Calumet does not identify which of the listed causes produces S.A.’s cognitive impairment. Nor does it attempt to explain why her impairment must derive from at least one of them. This court cannot construct an argument for Calumet and sees no clear evidentiary basis for one anyway.

¶12 Because insufficient evidence supports a conclusion that S.A. has a developmental disability, she does not satisfy WIS. STAT. § 55.08(1)(c) and protective placement was improper.

By the Court.—Order reversed.

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

