

**COURT OF APPEALS
DECISION
DATED AND FILED**

October 13, 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. 2026AP545
STATE OF WISCONSIN**

Cir. Ct. No. 2025GN31

**IN COURT OF APPEALS
DISTRICT III**

IN THE MATTER OF THE GUARDIANSHIP OF N. M. E.:

CHIPPEWA COUNTY,

PETITIONER-RESPONDENT,

V.

N. M. E.,

RESPONDENT-APPELLANT.

APPEAL from an order of the circuit court for Chippewa County:
STEVEN H. GIBBS, Judge. *Reversed.*

¶1 GILL, J.¹ Nora² appeals an order for her protective placement under WIS. STAT. ch. 55, contending that she does not require protective

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.

placement. Nora argues that Chippewa County failed to present sufficient evidence both that she is so totally incapable of providing for her own care or custody as to create a substantial risk of serious harm to herself or others, as required by WIS. STAT. § 55.08(1)(c), and that her protective placement is in the least restrictive environment consistent with her needs and with the resources of the County, as required by WIS. STAT. § 55.12(3), because she only needs protective services. We agree with Nora in both regards. Accordingly, we reverse the protective placement order.

BACKGROUND

¶2 In May 2025, the County filed a petition for temporary and permanent guardianship of Nora’s person and estate due to incompetency after Nora’s then-current power of attorney for healthcare, her daughter, resigned and the County was unable to locate the second listed agent.³ After a hearing, a court commissioner ordered Nora’s temporary guardianship. The circuit court later ordered that Nora be evaluated by physician Michael Lace.

¶3 Shortly after Dr. Lace filed his examination report, the County filed a petition for Nora’s protective placement, alleging that Nora’s degenerative brain

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

³ The petition for temporary and permanent guardianship states that the “current guardian has provided a resignation and the standby guardian is unable to be located.” However, the petition earlier states that Nora’s “activated power of attorney for healthcare” submitted a resignation and that the “second listed agent” was unable to be located. Had Nora previously been under a guardianship and her guardian resigned, the circuit court would have sought to appoint a successor guardian, rather than a new petition for temporary and permanent guardianship being filed. See WIS. STAT. § 54.54(1). Thus, it appears that the reference to a “current guardian” and “standby guardian” in the petition was in error.

disorder rendered her “totally incapable of caring for herself in any manner” and that she “require[d] assistance with the majority of her activities of daily living.” The petition noted that Nora was originally placed at Meadowbrook, a facility, for short-term rehabilitation and that, after her rehabilitation period, Nora’s temporary guardian told her that she would be moving to Dove-Rutledge, a community based residential facility. Nora reluctantly agreed to go to Dove-Rutledge, but she maintained that she wanted to return home, which the petition stated was “not an option.”

¶4 A final hearing on the County’s guardianship and protective placement petitions was held in July 2025.⁴ Doctor Lace testified that Nora suffered from age-related cognitive decline, which caused her to have “significant attentional issues,” as demonstrated by difficulties remaining focused and her tending to “give up on difficult tasks”; “some sensory and motor functioning impairments” based upon her need for a wheelchair or cane and hearing difficulties; “significant” memory concerns, as shown by her inability to recall items after a short period of time and difficulty recalling details of important life events; “limited” “general fundamental knowledge,” such as the inability to complete simple math problems; and severe impairments in executive functioning, as evidenced by her lack of insight into her condition and her current level of care.

¶5 Doctor Lace stated that, as a result of her impairments, Nora suffers from an incapacity that is likely to be permanent and renders her incapable of providing for her own care. Lace opined that Nora is a proper subject for

⁴ Nora did not contest her need for a guardianship at the hearing, nor does she contest the guardianship on appeal.

protective placement due to the difficulties she would have “surviving safely in a home setting or living on her own,” remembering to take her medications and attend her appointments, and in making financial decisions. Regarding whether Nora would be a danger to herself, Lace opined that “she’s not suicidal. She does have a history of some mental health issues, but that’d be more indirect by neglect and not going to appointments or forgetting important things.”

¶6 Doctor Lace opined that Nora’s current placement at Dove-Rutledge was appropriate. When asked why protective placement was more appropriate for Nora than protective services, Lace explained that it was due to “her need for constant medication management, that may be difficult to do depending on the medication schedule. And then also just having assistance if she needed that, to prevent falls, that there would be somebody immediately available, at least the vast majority of the time.”

¶7 Doctor Lace’s report was received into evidence without objection. In his report, Lace noted that Nora’s medical conditions include “metabolic encephalopathy, oral dysphagia, generalized muscle weakness, fibromyalgia, chronic kidney disease with heart failure, type–2 diabetes mellitus, obstructive sleep apnea, hypersomnia, moderate persistent asthma, cardiomyopathy, and gastroesophageal reflux disease, among other conditions.” Lace opined in his report that he would not recommend protective services in lieu of protective placement, though the report did not explain why.

¶8 The circuit court found that Nora was in need of protective placement “to make sure that she is healthy and taking her medications.” The court further explained that it “believe[d] that the ward does need protective

placement because of her degenerative disorder that is coming along.” Nora now appeals.

DISCUSSION

¶9 Nora argues that the County failed to present sufficient evidence that she is so totally incapable of providing for her own care or custody as to create a substantial risk of serious harm to herself or others, as required by WIS. STAT. § 55.08(1)(c), and that her protective placement is in the least restrictive environment consistent with her needs, as required by WIS. STAT. § 55.12(3).

¶10 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 that we review de novo. *Id.*

¶11 To order the protective placement of an individual, a circuit court or jury must find, by clear and convincing evidence that the individual meets all of the standards under WIS. STAT. § 55.08(1). WIS. STAT. § 55.10(4)(d). Those standards are as follows:

- (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.

Sec. 55.08(1). “The risk of harm [under § 55.08(1)(c)] must be substantial. Mere speculation as to difficulties [a ward] may encounter is not sufficient. Specific harm must be foreseeable to fulfill this requirement. Furthermore, the foreseeable harm must be serious.” *Zander v. County of Eau Claire*, 87 Wis. 2d 503, 514-15, 275 N.W.2d 143 (Ct. App. 1979).

¶12 In addition to the standards in WIS. STAT. § 55.08(1), “[p]rotective placement ... provided by a county department ... shall be provided in the least restrictive environment and in the least restrictive manner consistent with the needs of the individual to be protected and with the resources of the county department.” WIS. STAT. § 55.12(3). It is the petitioner’s burden to prove that protective placement is in the least restrictive environment consistent with a ward’s needs. See *Clark Cnty. Cmty. Servs. v. R.F.*, No. 2022AP481, unpublished slip op., ¶¶17-18 (WI App Sep. 1, 2022).⁵

¶13 Nora argues that the County failed to prove that she is so totally incapable of providing for her own care as to create a substantial risk of serious harm to herself. Specifically, Nora contends that Dr. Lace was chiefly concerned with others taking advantage of her financially and with requiring assistance, if needed, to prevent falls. Nora asserts that these concerns do not constitute serious

⁵ 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).

harm and that they relate more to Nora’s guardianship than to her need for protective placement.

¶14 In support of this argument, Nora cites *Outagamie County DHHS v. L.C.E.*, No. 2023AP929, unpublished slip op., ¶¶15-20 (WI App June 4, 2024), in which this court concluded that evidence that the ward “would be ‘vulnerable to the abuse of other people,’ might stop taking her medication, and might not be able to perform all the activities of daily living” was “speculative and vague” and did not satisfy the requirement of serious harm.

¶15 The County attempts to distinguish *L.C.E.* by noting that *L.C.E.* “revolved around testimony that the [ward] ‘might stop taking her medication, and might not be able to perform all the activities of daily living,’” *id.*, ¶15, whereas Dr. Lace testified that Nora does not understand which medical conditions she has or what medications she takes for them. Thus, the County contends that “[t]he medication issue and medical condition issue in this case is not vague.”

¶16 In reply, Nora notes that Dr. Lace testified that he did not go through Nora’s medication list with her and, further, that Nora was aware she was taking medications and that those medications are required. Thus, Nora asserts that the County presented “no indication” of what specific and substantial risk of serious harm she would suffer if she were not protectively placed.

¶17 We agree with Nora that the County presented insufficient evidence to conclude that she is so totally incapable of providing for her own care or custody as to create a substantial risk of serious harm to herself. Doctor Lace’s primary concerns for Nora were her failing to remember to take her medications,

remember to go to appointments, and ambulating safely.⁶ However, like the “speculative and vague” testimony in *L.C.E.*, there was no evidence as to what symptoms would appear if Nora did not take her medications, what activities of daily living Nora might not be able to perform on her own due to her ambulatory limitations, or how these factors would affect Nora’s ability to care for herself. *See id.* Further, Lace stated that Nora suggested she would take her medications on her own and that there were services that could assist Nora with getting her medications sorted for the week. Lace also testified that he did not discuss with Nora possible assistive devices that could help her with ambulating at home. Thus, Lace’s vague and speculative concerns, alone, do not amount to a substantial risk of serious and foreseeable harm to Nora.

¶18 We also agree with Nora that the County failed to sufficiently prove that her current protective placement is appropriate, as it is not the least restrictive environment and in the least restrictive manner consistent with her needs and the County’s resources. Doctor Lace testified that services exist to help Nora with medication management and that assistive devices are available to help Nora with ambulating at home. The only evidence indicating that protective services may not be consistent with Nora’s needs is Lace’s testimony that medication management “may be difficult to do depending on the medication schedule” and that Nora would benefit from having someone available in case she falls. This testimony fails to meet the standard of clear and convincing evidence that Nora’s

⁶ Doctor Lace was also concerned about Nora’s ability to make major financial decisions. We note, however, that regardless of her protective placement, Nora will be subject to a guardianship of her person and a guardianship of her estate. *See Outagamie Cnty. DHHS v. L.C.E.*, No. 2023AP929, unpublished slip op., ¶16 (WI App June 4, 2024) (concluding that, due to the subject individual’s guardianships, the record did not support finding that the individual’s inability to manage her financial affairs provided a basis for her protective placement).

current protective placement is in the least restrictive environment and in the least restrictive manner consistent with her needs and the County's resources. This is especially so given Nora's lack of a history of falling or failing to take her medication and the absence of any evidence that Nora's medication schedule would be difficult for the County to manage through services.

By the Court.—Order reversed.

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

