COURT OF APPEALS
DECISION
DATED AND FILED

November 11, 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. 2026AP928 **Cir. Ct. No. 2020GN25**

STATE OF WISCONSIN **IN COURT OF APPEALS**

IN THE MATTER OF THE PROTECTIVE PLACEMENT OF J.J.W.:

OZAUKEE COUNTY,

PETITIONER-RESPONDENT,

V.

J.J.W.,

RESPONDENT-APPELLANT.

APPEAL from an order of the circuit court for Ozaukee County: SANDY A. WILLIAMS, Judge. *Affirmed.*

¶1 GROGAN, J.[1] J.J.W. appeals from a WIS. STAT. ch. 55 order continuing his protective placement. J.J.W. contends Ozaukee County did not

[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.

present sufficient evidence to support the order for continued protective placement because it failed to call a medical or psychological expert to testify at the January 5, 2026 hearing. Because the evidence is sufficient to uphold the circuit court's order, this court affirms.

BACKGROUND

¶2 In May 2020, following WIS. STAT. ch. 51 commitments, the County filed petitions requesting that J.J.W. be placed under permanent guardianship and protective placement. Dr. Michael Kula, a psychologist, evaluated J.J.W. and submitted a report to the circuit court recommending it grant both petitions. J.J.W.'s court-appointed guardian ad litem (GAL) also filed a report indicating that J.J.W. needed the guardianship and protective placement. J.J.W. then asked the court to order an independent medical examination (IME), which it granted. Dr. Michelle Andrade conducted the IME and submitted a report to the court recommending protective placement. The Ozaukee County Department of Human Services (DHS) filed a report with the court recommending that it appoint a guardian for J.J.W. and order protective placement. After a July 2020 hearing on the petitions, the court granted both, finding that J.J.W. needed a guardian and protective placement. He has continued under the guardianship and protective placements with annual reviews.

¶3 In August 2025, the County filed its annual petition for review of J.J.W.'s protective placement. The Ozaukee County DHS also filed its annual report with the circuit court, indicating J.J.W.'s continued need for protective placement. The report identifies his diagnosis as schizoaffective disorder, bipolar type, as well as other conditions not relevant here. It stated: J.J.W. "reports hearing voices constantly and experiencing delusions[,]" and recommended that

J.J.W.'s protective placement be continued. J.J.W.'s GAL filed a report indicating that he continues to meet the standards for protective placement and recommended that protective placement be continued. However, the GAL advised that J.J.W. objected to continuing the protective placement and requested adversary counsel.

¶4 Once adversary counsel was appointed, J.J.W. requested an IME, which the circuit court ordered. Dr. Jeffrey Marcus conducted the IME, after which, J.J.W.'s counsel informed the court that Dr. Marcus's report would not be filed with the court, and Dr. Marcus would not be called to testify at J.J.W.'s due process hearing. The court held a due process hearing for continued protective placement on January 5, 2026, at which two witnesses testified: the program administrator at J.J.W.'s living facility and an adult protective services investigator with the County.

¶5 The program administrator testified first. She testified J.J.W. needed cues when doing certain activities, such as taking showers, washing his hands before prepping food, forgetting and leaving the stove or oven on when cooking food, and doing laundry. She also testified that she had safety concerns with J.J.W. not using the exhaust fan, not watching the road when crossing, and picking used cigarettes out of ashtrays to reuse them or putting the half-lit cigarettes into containers creating a fire risk. She testified J.J.W. took medication to treat schizophrenia to combat "[h]is voices[,]" and even with his medications, that "he still ha[d] voices so it's hard to say if his voices [are] more under control [and] how much he could take care of himself or not." She agreed that J.J.W. "acknowledges that he has schizophrenia[.]" She concluded her testimony by stating she believed J.J.W. would benefit from going to "a smaller facility with more oversight because with only having one staff on, I don't believe we can always meet his needs."

¶6 Next, the County's adult protective services investigator testified. She testified to working with J.J.W. for three years, indicating she was familiar with his case history. She agreed that J.J.W. generally "doesn't really recognize the dangers around him or gets too distracted to address those dangers." In response to being asked whether she believed J.J.W. "has improved to the point that he could go and live on his own again[,]" she said "I do not." Agreeing with the general sentiment of the program administrator's testimony regarding J.J.W.'s ability to stay focused and pay attention, she stated:

> [H]e can't stay focused to complete many of [the] tasks which would lead for concern about his independence in the community. And even when I have gone to meet with him in the home, in our discussions, I've noted that preoccupation in his ability to respond appropriately to questions, questions that I've asked he doesn't respond to at all and I have to ask again because he does not appear to be hearing what I'm saying.

¶7 The circuit court found that J.J.W. had "a persistent mental illness and in part because of that he's unable to recognize the danger he puts himself or others in, or the fact that he creates a dangerous situation." The court found J.J.W. "pose[d] a danger to himself or others … beyond a reasonable doubt," and evidenced this finding through the testimony:

- about the infections he gets from his improper hygiene, which could kill him;
- that he gets distracted either by the voices in his head or when baking, which could cause a fire;
- that he could set the fire alarm off by turning off the exhaust fan, which could endanger people or allow others to get hurt; and
- that he does not watch for oncoming traffic before crossing the street.

The court concluded by stating, "he may be capable of completing a task, but the problem is his mental illness," and that it "would be doing a disservice if [the court] terminated the protective placement and allowed [instead only] protective services because that's not enough to make sure that [J.J.W.] would be safe." The court found that the County had satisfied its burden for continued protective placement for J.J.W.

¶8 The circuit court then entered a written order finding that "[a]fter consideration of the reports and other documents on file, all factors required by the statutes, and such additional information presented[,]" J.J.W. had a serious and persistent mental illness and other like incapacities that made him "so totally incapable of providing for the ward's own care or custody as to create a substantial risk of serious harm to the ward or others." J.J.W. appeals this order.

DISCUSSION

¶9 "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. "Appellate courts 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.***

¶10 This case involves the extension of a protective placement order. "'[C]ivil commitment for any purpose constitutes a significant deprivation of liberty that requires due process protection.'" ***Langlade County v. D.J.W.***, 2020 WI 41, ¶42, 391 Wis. 2d 231, 942 N.W.2d 277 (quoting ***Addington v. Texas***, 441 U.S. 418, 425 (1979)). "Freedom from physical restraint is a fundamental right that 'has always been at the core of the liberty protected by the Due Process

Clause from arbitrary governmental action.'" ***State v. Post***, 197 Wis. 2d 279, 302, 541 N.W.2d 115 (1995) (quoting ***Foucha v. Louisiana***, 504 U.S. 71, 80 (1992)). Accordingly, J.J.W. "has a huge liberty interest at stake because '[p]rotective placements ... are the only involuntary commitments under Wisconsin law that are indefinite in duration and thereby are tantamount to a life sentence to a nursing home or other custodial setting.'" ***Walworth County v. Therese B.***, 2003 WI App 223, ¶12, 267 Wis. 2d 310, 671 N.W.2d 377 (alteration in original; citation omitted).

¶11 The legislature expressed the importance of protecting one's liberty and due process when it enacted the protective placement statute. *See* WIS. STAT. § 55.001 ("This chapter is designed … to place the least possible restriction on personal liberty and exercise of constitutional rights consistent with due process[.]"). A circuit court may order an individual into protective placement only when the following standards are met:

> (a) The individual has a primary need for residential care and custody.
>
> (b) The individual is a minor who is not alleged to have a developmental disability and on whose behalf a petition for guardianship has been submitted, or 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). The court must find the County proved each of these standards "by clear and convincing evidence[.]" WIS. STAT. § 55.10(4)(d). If all four standards are met, then the protective placement "shall be provided in the least restrictive environment and in the least restrictive manner consistent with the needs of the individual to be protected[.]" WIS. STAT. § 55.12(3).

¶12 The sole issue presented here is whether the protective placement order was supported by sufficient evidence. J.J.W. does not contest WIS. STAT. § 55.08(1)(a) or (b), and, therefore, this court need not analyze whether sufficient evidence supports those factors. Rather, J.J.W. contends the County failed to establish that § 55.08(1)(c) and (d) were proven because the County did not present the opinion of a medical doctor or psychologist. J.J.W. says ***Therese B.*** requires such testimony in order to satisfy the requisites for protective placement. The County responds that it was not required to present "expert medical testimony" in an annual protective placement review. It says ***Therese B.*** requires expert testimony only "for the appointment of a guardian" and that "no such corresponding requirement" is needed for "a continued protective placement order." It says that the evidence presented at the hearing, together with the prior reports in the Record, "was sufficient to continue the protective placement." This court agrees with the County.

¶13 ***Therese B.*** does not stand for the unequivocal proposition that medical expert testimony is required to satisfy the requisites of continuing a protective placement during an annual review. Although J.J.W. is correct that ***Therese B.***, 267 Wis. 2d 310, ¶13, held that "the government must present a witness who is qualified by experience, training and independent knowledge of [the protectee's] mental health to give a medical or psychological opinion on each of these elements," ***Therese B.*** did not involve a continuing protective placement

during an annual review. Rather, it dealt with both an initial protective placement and a guardianship proceeding. ***Id.***, ¶¶2-3. Here, J.J.W.'s guardianship has been in place since 2020, and he has undergone annual protective placement reviews ever since. This appeal involves only the review of a protective placement order. He does not challenge his guardianship.

¶14 The court of appeals has repeatedly rejected J.J.W.'s argument that ***Therese B.*** requires medical expert testimony for ch. 55 continuing protective placement orders. *See* ***Douglas County v. J.M.***, No. 2022AP2035, unpublished slip op., ¶23 (WI App Nov. 28, 2023) ("A medical opinion *is* required for the appointment of a guardian, but there is no such corresponding requirement for a continued protective placement order." (alteration in original)); *see also* ***Douglas County v. M.L.***, No. 2022AP141, unpublished slip op., ¶16 n.5 (WI App Dec. 28, 2023) ("***Therese B.*** is distinguishable because it concerned a guardianship proceeding in tandem with an initial protective placement[.]"); *see also* ***Price County v. C.W.***, No. 2023AP18-FT, unpublished slip. op., ¶20 (WI App Sept. 6, 2023) ("[A] medical opinion is required for the appointment of a guardian, *see* WIS. STAT. § 54.10(2)(b)2., but there is no such corresponding statutory requirement for a protective placement order."). J.J.W. has failed to present this court with any reason to rule differently than the aforementioned cases.

¶15 Having concluded that ***Therese B.*** does not control, however, does not resolve the issue presented in this appeal. This court still needs to analyze whether the County presented sufficient evidence for the circuit court to continue J.J.W.'s protective placement order. As noted, the County presented two witnesses to testify at J.J.W.'s due process hearing—the program administrator and the County's adult protective services investigator. The County contended that through these witnesses, the statutory requirements to continue protective

placement were satisfied. It pointed out that the circuit court found the County had shown "close to beyond a reasonable doubt" that J.J.W. posed a "danger to himself or others[.]" The court's finding was based on the testimony from the hearing, reasoning that infections from his "improper hygiene" could kill him; how he gets distracted, either from the voices or when using the oven or stove, and how this could lead to a fire; how the "chaos [that] can occur" from alarms going off could endanger others and cause damage; and how he does not watch for oncoming traffic when crossing the street. In its written order—which notes that in addition to the testimony from the hearing, the court considered "the reports and other documents on file"—it found that J.J.W. continued to meet the standards for protective placement because he: (1) had "a primary need for residential care and custody"; (2) had a "serious and persistent mental illness" and "other like incapacities"; (3) was "so totally incapable of providing for the ward's own care or custody as to create a substantial risk of serious harm to the ward or others"; and (4) the "disability [was] permanent or likely to be permanent."

¶16 After reviewing the Record, this court concludes the evidence was sufficient to satisfy WIS. STAT. § 55.08(1)(c) and (d).[2] The program administrator testified that J.J.W. took medication to treat schizophrenia to combat "[h]is voices." She also testified that J.J.W. "acknowledges that he has schizophrenia[.]" The administrator testified J.J.W. needed cues when doing certain activities, such as properly taking showers to prevent infection, washing his hands before preparing food, forgetting and leaving the stove or oven on when cooking food, not leaving the building when smoke alarms go off, causing the fire alarm to go

[2] Again, J.J.W. does not challenge WIS. STAT. § 55.08(1)(a) or (b), likely because the Record conclusively shows these elements are satisfied as well.

off, and putting half-lit cigarettes into the cigarette butt bin. The circuit court found that this led to fire hazards, risk of death, and risk of harm to others.

¶17 The circuit court also heard testimony from the County adult protective services investigator who testified that J.J.W. "doesn't really recognize the dangers around him or gets too distracted to address those dangers." In addition, the court indicated it reviewed all the reports and documents in the Record. Although the court did not identify a specific report, the Record contains many—including the physician and psychologists reports from 2020, and the County's and GAL's annual reports which contain a multitude of facts to satisfy the requisites of WIS. STAT. § 55.08(1)(c) and (d). Thus, there is more than sufficient evidence to support the court's determinations that, as a result of his serious and persistent mental illness, J.J.W. is so incapable of providing for his own care that it creates a substantial risk of serious harm not only to himself, but to those around him.

¶18 There is also sufficient evidence and reports in the Record to establish J.J.W.'s condition, schizophrenia, was "likely to be permanent." There is certainly nothing in the Record to demonstrate that J.J.W.'s schizophrenia is no longer present or that the diagnosis and opinions from the earlier reports are no longer accurate. J.J.W. himself acknowledged having schizophrenia. J.J.W. takes medication to treat that condition, and despite the treatment, he is still hearing voices and having delusions.

¶19 Accordingly, J.J.W. has failed to convince this court that the circuit court erred.

By the Court.—Order affirmed.

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