COURT OF APPEALS
DECISION
DATED AND FILED

April 12, 2016

Diane M. Fremgen
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 Nos. 2012AP2464
2013AP2681

Cir. Ct. No. 2010GN53A

STATE OF WISCONSIN

IN COURT OF APPEALS
DISTRICT III

NO. 2012AP2464

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

M. L.,

APPELLANT,

R. L.,

CO-APPELLANT,

V.

OUTAGAMIE COUNTY DEPARTMENT OF HEALTH AND HUMAN SERVICES,

RESPONDENT.

NO. 2013AP2681

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

M. L. AND R. L.,

APPELLANTS,

V.

OUTAGAMIE COUNTY DEPARTMENT OF HEALTH AND HUMAN SERVICES,

RESPONDENT.

APPEALS from orders of the circuit court for Outagamie County: GREGORY B. GILL, JR., Judge. *Affirmed*.

Before Stark, P.J., Hruz and Seidl, JJ.

¶1 PER CURIAM. In these consolidated appeals, M. L. and R. L., both pro se, appeal an order placing their mother, E. L., under guardianship, and an order denying their WIS. STAT. § 806.07 motions for relief from the guardianship order.[1] We reject their myriad arguments and affirm.

BACKGROUND

¶2 This is the second time M. L. and R. L. have appealed an order placing E. L. under guardianship. In our previous opinion, we set forth the following background facts, which are also relevant to this appeal:

> [E. L.] has had progressive dementia since at least 2006. In January 2009, [R. L.] transferred $28,000 from one of [E. L.'s] accounts to his account. In February 2009, [R. L.] and [M. L.] took [E. L.] to an attorney, and [E. L.] executed a durable power of attorney that named [R. L.] and another son, [D. L.], as her agents. [E. L.] also executed a health

[1] All references to the Wisconsin Statutes are to the 2013-14 version unless otherwise noted.

> care power of attorney that named [R. L.] as her agent, and [one of her other daughters, M. L.(2).,] as an alternate agent.

[M. L.] v. Outagamie Cty. Dep't of Health & Human Servs., No. 2011AP152, unpublished slip op. ¶3 (WI App June 5, 2012).

¶3 On June 24, 2010, the Outagamie County Department of Health and Human Services (the Department) petitioned for temporary and permanent guardianship of E. L.'s person and estate. ***Id.***, ¶4. Between August 10 and October 21, 2010, the circuit court held five hearings on the Department's petition. ***Id.***, ¶¶6-7. The court ultimately granted the Department's petition and appointed M. L.(2) as guardian of E. L.'s person and one of E. L.'s granddaughters, L. B., as guardian of her estate. ***Id.***, ¶8. The court also invalidated the 2009 powers of attorney, after finding E. L. was not competent to execute them and R. L., her agent and son, had been financially abusing her. ***Id.***

¶4 M. L. and R. L. then appealed from the guardianship order, and from a related order for protective placement. ***Id.***, ¶1. We reversed, concluding the circuit court lost competency by failing to complete the hearing on the guardianship petition within the ninety-day period mandated by WIS. STAT. § 54.44(1). ***[M. L.]***, No. 2011AP152, ¶¶10, 16. We did not address M. L. and R. L.'s other arguments regarding the guardianship and protective placement

orders.[2] ***Id.***, ¶17. One of the effects of our reversal was to reinstate the February 2009 powers of attorney. ***Id.***, ¶16 n.2.

¶5 On June 12, 2012, seven days after we issued our decision in the previous appeal, the Department filed another petition for temporary and permanent guardianship of E. L., along with a petition for protective placement. On the same day, following a hearing, a court commissioner granted temporary guardianships over E. L.'s person and estate and temporarily invalidated the February 2009 powers of attorney. R. L. and M. L., who were identified as interested persons in the guardianship petition, attended the hearing and opposed the Department's request for a guardianship. *See* WIS. STAT. § 54.01(17)(a)2. (for purposes of guardianship petition, adult child of the proposed ward is an interested person). R. L. and M. L. subsequently moved for rehearing, for judicial review of the court commissioner's decision, and for a de novo hearing in the circuit court.

¶6 A de novo hearing was held before the circuit court on June 20, 2012.[3] On June 22, the court issued an oral decision granting the Department's

[2] In their appellate briefs, M. L. and R. L. assert our decision in the prior appeal addressed the merits of the 2010 guardianship petition. That is incorrect. We expressly limited our decision in the prior appeal to the issue of whether the circuit court lost competency by failing to complete the guardianship hearing within the statutorily mandated ninety-day period. *See* ***[M. L.] v. Outagamie Cty. Dep't of Health & Human Servs.***, No. 2011AP152, unpublished slip op. ¶¶2, 17 (WI App June 5, 2012). We specifically stated we did not need to address M. L. and R. L.'s remaining arguments. ***Id.***, ¶17.

[3] The cover of the transcript identifies the June 20, 2012 hearing as a "rehearing." During the hearing, the parties disputed whether the hearing was a rehearing or a de novo hearing, and whether those terms actually referred to different hearing types, under the circumstances.

The circuit court suggested it did not believe those terms referred to distinct procedures. However, the court also stated, "[W]e're a clean slate at this point in time, and so, … what [the court commissioner] did doesn't, to a large degree, matter to me, because I'm looking at it through my eyes." The Department then presented the testimony of two witnesses in support of its request for a temporary guardianship. Under these circumstances, we construe the June 20, 2012 hearing as a de novo hearing.

petition for temporary guardianship and temporarily invalidating the 2009 powers of attorney.

¶7 The final hearing on the Department's petitions for permanent guardianship and protective placement took place on August 7, 8, and 28, 2012. On September 18, 2012, the circuit court entered a written order granting permanent guardianships over E. L.'s person and estate, invalidating the 2009 powers of attorney, and ordering R. L. to return $17,000 to E. L. As in the 2010 proceedings, E. L.'s granddaughter L. B. was named guardian of her estate, and E. L.'s daughter M. L.(2) was named guardian of her person. A second order was entered denying the Department's petition for protective placement. M. L. and R. L. timely filed notices of appeal from the permanent guardianship order.

¶8 Meanwhile, M. L. and R. L. moved for relief from the permanent guardianship order, pursuant to WIS. STAT. § 806.07(1)(a), (b), (c), and (h). The Department later moved for sanctions, under WIS. STAT. § 802.05(3), asserting M. L. and R. L.'s § 806.07 motions were filed for the improper purpose of causing unnecessary delay, were not warranted by existing law, and lacked evidentiary support.

¶9 A hearing was held on October 2, 2013, to address the various motions before the circuit court. On October 28, the court entered a written order denying M. L. and R. L.'s motions for relief from the guardianship order. The order further stated, "As to the Motion for Sanctions filed by [the Department] … the Court will not specifically address that Motion and, therefore, the Motion is denied."

¶10 M. L. and R. L. timely filed a notice of appeal from the court's October 28 order. On July 9, 2014, we consolidated that appeal with their appeal

from the permanent guardianship order. E. L. died in July 2015, after briefing in these appeals was completed.

DISCUSSION

¶11 M. L. and R. L. raise numerous issues in these appeals. The vast majority of these issues pertain to the validity of the guardianships over E. L.'s person and estate. That is, M. L. and R. L. argue the circuit court committed various legal and procedural errors during the guardianship proceedings, and the permanent guardianship order was therefore invalid.

¶12 The legal and procedural issues M. L. and R. L. raise regarding the guardianship proceedings would normally be moot because the guardianships over E. L.'s person and estate terminated with her death. *See* ***State ex rel. Milwaukee Cty. Pers. Rev. Bd. v. Clarke***, 2006 WI App 186, ¶28, 296 Wis. 2d 210, 723 N.W.2d 141 (quoting ***State ex rel. Olson v. Litscher***, 2000 WI App 61, ¶3, 233 Wis. 2d 685, 608 N.W.2d 425) ("An issue is moot when its resolution will have no practical effect on the underlying controversy."). However, R. L. and M. L. raise three issues that are not mooted by E. L.'s death: (1) R. L.'s contention that the circuit court erred by ordering him to return $17,000 to E. L.; (2) M. L.'s contention that the court erred by ordering payment of guardian ad litem fees from E. L.'s guardianship estate; and (3) M. L. and R. L.'s argument that the court erred with respect to its handling of the Department's motion for sanctions. If the permanent guardianship order was invalid due to any of the legal or procedural errors alleged by M. L. and R. L., the circuit court could not have entered enforceable orders requiring R. L. to return $17,000 to E. L. and requiring E. L.'s guardianship estate to pay the guardian ad litem fees. Consequently, despite E. L.'s death, the alleged procedural and legal errors regarding the guardianship

proceedings are not moot. We therefore turn to the merits of M. L.'s and R. L.'s arguments.[4]

I. Circuit court's competency

¶13 M. L. and R. L. claim the circuit court lacked competency to consider the guardianship petition filed on June 12, 2012, because that petition did not institute a new guardianship proceeding. Instead, they claim the 2012 petition merely "reopened" the guardianship proceeding that was previously commenced in 2010. M. L. and R. L. argue reopening the old case was impermissible because the guardianship order entered in that case was reversed on appeal.

¶14 M. L. and R. L.'s competency argument rests on a faulty premise. Contrary to their assertion, the 2012 guardianship petition did not reopen the 2010 case. The 2012 proceedings were not instituted by a motion to reopen. Rather, the Department filed a new guardianship petition, which was supported by a new medical evaluation dated June 8, 2012. Although the 2012 petition and medical evaluation referred to some facts that were present in 2010, they also included new information that did not exist at the time the previous petition was filed.

¶15 M. L. and R. L. assert the 2012 petition was assigned the same case number as the 2010 petition. However, that is incorrect. The 2010 proceedings were designated Outagamie County case No. 2010GN53, while the 2012 petition was given Outagamie County case No. 2010GN53A. Sue Lutz, from Outagamie

[4] We have attempted to identify and address the numerous arguments raised in M. L.'s and R. L.'s briefs. To the extent either M. L. or R. L. has raised an argument not identified in this opinion, we deem it undeveloped and decline to address it. *See* ***State v. Flynn***, 190 Wis. 2d 31, 39 n.2, 527 N.W.2d 343 (Ct. App. 1994) (we need not address undeveloped arguments).

County's probate office, explained that it was standard practice for her office to "keep all matters for the same individual in the same file." Although Lutz initially stated the instant proceedings were "considered to be reopened," she then clarified that her office appended the letter "A" to the case number from the 2010 case to indicate that the instant proceedings were "a new action[.]" Lutz confirmed this practice is used "for continuity sake[,]" "[s]o we don't have 10 files for one person that all pertain to the same subject."

¶16 M. L. and R. L. observe that some of the documents filed in the instant case used the old case number, without the added "A." However, we agree with the Department that this is a mere technical or scrivener's error. "The court shall, in every stage of an action, disregard any error or defect in the pleadings or proceedings which shall not affect the substantial rights of the adverse party." WIS. STAT. § 805.18(1). Here, the omission of the letter "A" from certain filings did not affect M. L. or R. L.'s substantial rights. Despite the erroneous case number, M. L. and R. L. had actual notice of the 2012 guardianship petition and contested the petition during all stages of the proceedings. There is no evidence the use of an incorrect case number on some filings prejudiced M. L. or R. L.

¶17 Finally, M. L. and R. L. suggest the circuit court was barred from considering the 2012 petition by either claim or issue preclusion. Under claim preclusion, "a final judgment is conclusive in all subsequent actions between the same parties as to all matters which were litigated or which might have been litigated in the former proceedings." ***Lindas v. Cady***, 183 Wis. 2d 547, 558, 515 N.W.2d 458 (1994) (quoting ***DePratt v. West Bend Mut. Ins. Co.***, 113 Wis. 2d 306, 310, 334 N.W.2d 883 (1983)). "Issue preclusion refers to the effect of a judgment in foreclosing relitigation in a subsequent action of an issue of law or fact that has been actually litigated and decided in a prior action." ***Northern***

States Power Co. v. Bugher, 189 Wis. 2d 541, 550, 525 N.W.2d 723 (1995). Neither doctrine applies in the instant case because whether E. L. was a proper subject for guardianship under the circumstances that existed in June 2012 was not, and could not have been, litigated in the 2010 guardianship proceedings.

¶18 Moreover, as the Department observes, accepting M. L. and R. L.'s argument that the present guardianship proceedings are barred by claim or issue preclusion would lead to absurd results. If M. L. and R. L.'s argument were correct, the reversal of the final order in the 2010 guardianship proceedings would have forever prevented the filing of new guardianship actions with respect to E. L., regardless of any changes in her condition. This result is untenable and is not supported by existing law.

II. Issues regarding the temporary guardianship proceedings

¶19 M. L. and R. L. also raise various claims of error regarding the proceedings on the Department's temporary guardianship petition. They contend the circuit court and court commissioner erred by: (1) suspending the 2009 powers of attorney without findings of good cause and incompetency; (2) failing to appoint E. L.'s nominees as temporary guardians; and (3) applying the incorrect legal standard for the appointment of temporary guardians. They also argue reversal is warranted because E. L.'s first guardian ad litem (GAL), attorney Gary Schmidt, was unqualified to serve as GAL during proceedings on the temporary guardianship petition, and E. L. therefore lacked both a qualified GAL and

adversary counsel during those proceedings.[5] In addition, they argue the circuit court erred by: (1) conducting a de novo hearing on the temporary guardianship petition, rather than reviewing the court commissioner's findings; (2) "silencing" R. L. during the de novo hearing and preventing R. L. and M. L. from meaningfully participating; (3) failing to reinstate the 2009 powers of attorney at the de novo hearing; and (4) acting as an "advocate" for the Department by "attempt[ing] to account for" the absence of a qualified GAL and the lack of adversary counsel for E. L. at the June 12, 2012 hearing before the court commissioner.[6]

¶20 Although not mooted by E. L.'s death, these issues regarding the temporary guardianship proceedings are moot for another reason. Regardless of whether the circuit court granted the Department's temporary guardianship petition, it would have still held a hearing on the permanent guardianship petition. M. L. and R. L. fail to explain how any errors regarding the temporary guardianship proceedings made any difference with respect to the court's ultimate decision to grant the Department's permanent guardianship petition. Our resolution of their arguments regarding the temporary guardianship proceedings

[5] An order appointing attorney Sara Micheletti as E. L.'s GAL was filed on June 15, 2012, prior to the hearing on the Department's permanent guardianship petition. Attorney Ronald Colwell was appointed by the Office of the State Public Defender to represent E. L. as adversary counsel on June 20, 2012.

[6] At several points in their appellate briefs, M. L. and R. L. assert the circuit court was biased against them. However, they neither recite the legal standard for demonstrating judicial bias nor apply that standard to the facts at hand. Further, our review of the record shows that, far from being biased against M. L. and R. L., the circuit court showed extraordinary patience with them. We therefore reject any judicial bias argument M. L. and R. L. may intend to make as both undeveloped and unsupported by the record. *See* ***Flynn***, 190 Wis. 2d at 39 n.2.

would therefore have no practical effect on the underlying controversy. *See* ***Milwaukee Cty. Pers. Rev. Bd.***, 296 Wis. 2d 210, ¶28.

¶21 We generally refuse to consider moot issues. ***Id.***, ¶31. We may consider a moot issue if one of the following conditions is met: (1) the issue has great public importance; (2) a statute's constitutionality is involved; (3) a decision is needed to guide the circuit courts; or (4) the situation is likely to be repeated but evades review. ***Id.*** None of these conditions are present in the instant case. Accordingly, we decline to address M. L. and R. L.'s arguments regarding errors alleged to have occurred during the proceedings on the Department's temporary guardianship petition.

III. Issues regarding E. L.'s adversary counsel

¶22 R. L. raises several issues regarding E. L.'s adversary counsel, attorney Ronald Colwell. First, R. L. argues the circuit court erred by allowing Colwell to withdraw following entry of the permanent guardianship order. However, R. L.'s argument on this point is undeveloped. The only authority R. L. cites in support of his argument is WIS. STAT. RULE 809.85, which states, "An attorney appointed by a lower court in a case or proceeding appealed to the court [of appeals] shall continue to act in the same capacity in the court [of appeals] until the court [of appeals] relieves the attorney."[7] Our supreme court has clarified that RULE 809.85 prevents a circuit court from allowing court-appointed counsel to withdraw *after* a notice of appeal has been filed. *See* ***Roberta Jo W. v. Leroy W.***, 218 Wis. 2d 225, 240, 578 N.W.2d 185 (1998). Here, no notice of

[7] "The court" in WIS. STAT. RULE 809.85 refers to the court of appeals. ***Roberta Jo W. v. Leroy W.***, 218 Wis. 2d 225, 240, 578 N.W.2d 185 (1998).

appeal was filed until November 1, 2012, about two weeks after the circuit court granted Colwell's motion to withdraw. Accordingly, the circuit court did not violate RULE 809.85 by granting the motion. R. L. does not develop any argument that the order granting Colwell's withdrawal motion was erroneous for any other reason, and we will not abandon our neutrality to develop an argument for him. *See* ***Industrial Risk Insurers v. American Eng'g Testing, Inc.***, 2009 WI App 62, ¶25, 318 Wis. 2d 148, 769 N.W.2d 82.

¶23 R. L. next argues the circuit court erred by "fail[ing] to allow [E. L.] an [a]ttorney of her choice at all of the proceedings." He cites WIS. STAT. § 55.105(3) for the proposition that an individual who is subject to a petition for protective placement is entitled to counsel of his or her choosing. However, R. L. cites only a portion of the statute. He neglects to cite § 55.105(1), which states, "In any situation under this chapter in which an adult individual has a right to be represented by legal counsel, the individual shall be referred as soon as practicable to the state public defender, who shall appoint counsel for the individual under s. 977.08 without a determination of indigency." Section 55.105(3), in turn, states that, notwithstanding subsec. (1), "an individual subject to proceedings under this chapter is entitled to retain counsel of his or her own choosing at his or her own expense."

¶24 Here, E. L.'s second GAL, attorney Sara Micheletti, referred E. L.'s case to the Office of the State Public Defender on June 19, 2012, in compliance with WIS. STAT. § 55.105(1). Colwell was appointed to represent E. L. the following day. There is nothing in the record to suggest that E. L. herself, as opposed to R. L. or M. L., wanted to hire counsel of her own choosing in place of Colwell. Moreover, if R. L. and M. L. so desired, they were free to hire another attorney on E. L.'s behalf. R. L. does not cite any portion of the record in which

the circuit court ruled, or even suggested, that E. L. was not entitled to retain counsel of her own choosing at her own expense. Thus, contrary to R. L.'s assertion, the court did not prevent E. L. from being "represented by counsel of her own choosing."

¶25 M. L. and R. L. also argue Colwell rendered ineffective assistance in his representation of E. L. The Department argues, however, that M. L. and R. L. do not have standing to raise this issue. "'Standing' is a concept that restricts access to judicial remedy to those who have suffered some injury because of something that someone else has either done or not done." ***Three T's Trucking v. Kost***, 2007 WI App 158, ¶16, 303 Wis. 2d 681, 736 N.W.2d 239. "The essence of the standing inquiry is whether the party seeking review has alleged a personal stake in the outcome of the controversy." ***Kiser v. Jungbacker***, 2008 WI App 88, ¶12, 312 Wis. 2d 621, 754 N.W.2d 180. We agree with the Department that M. L. and R. L., who are nonparties, have no standing to claim the attorney representing E. L. was ineffective. Moreover, M. L. and R. L. failed to respond to the Department's standing argument in their reply briefs, and we therefore deem the argument conceded. *See* ***Charolais Breeding Ranches, Ltd. v. FPC Sec. Corp.***, 90 Wis. 2d 97, 109, 279 N.W.2d 493 (Ct. App. 1979).[8]

[8] R. L.'s arguments that Schmidt and Micheletti were ineffective fail for the same reason. Namely, R. L. has not responded to the Department's argument that he does not have standing to assert ineffective assistance claims with respect to Schmidt and Micheletti. *See* ***Charolais Breeding Ranches, Ltd. v. FPC Sec. Corp.***, 90 Wis. 2d 97, 109, 279 N.W.2d 493 (Ct. App. 1979) (unrefuted arguments deemed conceded).

IV. Judicial notice

¶26 R. L. next argues the circuit court erred by taking judicial notice, pursuant to WIS. STAT. § 902.01, of: (1) "previous doctor's reports submitted ex parte"; (2) the circuit court's decision in the 2010 guardianship proceedings; and (3) transcripts of witness testimony from the 2010 proceedings.

¶27 R. L.'s argument regarding judicial notice of "previous doctor's reports" fails because he does not identify the reports to which he is referring, nor does he provide any record citation in support of his contention that the circuit court took judicial notice of any doctors' reports. The argument is therefore undeveloped, and we need not address it. *See* ***State v. Flynn***, 190 Wis. 2d 31, 39 n.2, 527 N.W.2d 343 (Ct. App. 1994).

¶28 Further, R. L. does not develop any argument the circuit court violated WIS. STAT. § 902.01 by taking judicial notice of witness testimony or the court's decision from the 2010 proceedings. In particular, with respect to the witness testimony, we observe the court conditioned its decision to take judicial notice on: (1) the same witnesses testifying under oath at the final hearing that their 2010 testimony was true and accurate; and (2) their being subject to cross-examination regarding their prior testimony. R. L. does not explain why this procedure was improper.

¶29 Instead, R. L. argues the Department submitted "tainted" transcripts of the 2010 proceedings for the circuit court's review. His only support for that assertion, however, is the fact that the transcript of the circuit court's decision in the 2010 proceedings that was submitted to the court commissioner at the June 12, 2012 hearing contained some yellow highlighting. The Department submitted the highlighted transcript in support of an argument it was making to the court

commissioner. We agree with the Department that, in that context, submitting a highlighted transcript was not improper. Moreover, R. L. does not cite any evidence showing that the highlighted transcript submitted to the court commissioner was the same transcript of the 2010 decision considered by the circuit court.

¶30 Because the transcript of the 2010 decision contained highlighting, R. L. contends the "only reasonable inference" is that the transcripts of the witnesses' testimony submitted to the circuit court by the Department also "contained inconsistent markings." We do not agree that is a reasonable inference from the evidence, let alone the only reasonable inference. There is no evidence the transcripts of witness testimony that the circuit court used were altered in any way. The 2010 transcripts contained in the record are not highlighted and do not appear to have been altered. Furthermore, during its oral decision on the permanent guardianship petition, the circuit court noted the 2010 file had been returned from the court of appeals "yesterday or perhaps the day before." It is therefore possible the court reviewed the original transcripts of the 2010 proceedings contained in the court of appeals record before announcing its decision on September 6. Alternatively, the court may have used the original transcripts to verify the validity of the transcripts previously received from the Department. On this record, we cannot accept R. L.'s bald assertion that the transcripts considered by the circuit court were altered or tainted.

¶31 M. L. and R. L. assert some of the transcripts or other documents of which the court took judicial notice were ex parte communications, in that they were never provided to M. L. or R. L. However, M. L. and R. L. were not parties to the guardianship proceedings; they were interested persons and, as such, were allowed to participate in a limited capacity at the circuit court's discretion. *See*

WIS. STAT. §§ 54.01(17), 54.44(5m). They cite no legal authority for the proposition that the circuit court was required to provide them with copies of transcripts and other documents under these circumstances. Moreover, M. L. and R. L. do not cite any portion of the record showing that they ever requested copies of these documents and cite no evidence to corroborate their assertion that these documents were not provided to them. Again, we need not address undeveloped arguments. *See* ***Flynn***, 190 Wis. 2d at 39 n.2.

¶32 Finally, R. L. contends either claim or issue preclusion prevented the court from taking judicial notice of transcripts or other documents from the 2010 proceedings. However, he does not explain why he believes either claim or issue preclusion applies under the circumstances, and he provides virtually no legal analysis supporting his argument. He simply notes that the circuit court's decision in the 2010 proceedings was reversed on appeal. He ignores the fact that we did not address the merits when reversing the 2010 guardianship order. That reversal did not prevent the circuit court in the instant case from considering testimony or documents produced in the earlier proceedings.

V. Failure to appoint the nominees listed in E. L.'s 2009 powers of attorney as permanent guardians of her person and estate

¶33 R. L. next argues the circuit court erred by failing to appoint as permanent guardians the nominees listed in E. L.'s 2009 powers of attorney. The durable power of attorney states, "In the event it is ever necessary that a guardian be appointed for either my person or my estate, I hereby nominate my agent(s) in the successive order in which my agent(s) is or are listed to act as said guardian." The durable power of attorney names R. L. and another of E. L.'s sons, D. L., as E. L.'s agents. The health care power of attorney does not address guardianship, but it names R. L. as E. L.'s agent and M. L.(2) as alternate agent.

¶34 R. L. argues the circuit court was required to name the nominees listed in E. L.'s powers of attorney as her guardians, absent a showing of good cause not to do so. However, R. L. misstates the applicable standard. WISCONSIN STAT. § 54.15(2) states the court shall appoint an agent under a proposed ward's durable power of attorney as guardian of the estate "unless the court finds that the appointment of an agent is not in the best interests of the proposed ward." Section 54.15(3) similarly states the court shall appoint an agent under a proposed ward's health care power of attorney as guardian of the person unless the court finds doing so is not in the proposed ward's best interests.

¶35 Here, D. L., one of the two agents named in E. L.'s durable power of attorney, indicated he would prefer that the court appoint E. L.'s granddaughter L. B. as guardian of her estate, rather than fulfilling that role himself or acting as E. L.'s agent under the durable power of attorney.[9] With respect to the health care power of attorney, the court named M. L.(2), the alternate agent, as guardian of E. L.'s person. Thus, the only issue is whether the court erred by failing to name R. L., who was named as agent under both powers of attorney, as guardian of E. L.'s person and estate. We conclude there was ample evidence from which the court could determine naming R. L. guardian would not be in E. L.'s best interests.

¶36 For instance, Donna Rasmussen, the adult protective services social worker assigned to E. L.'s case, testified R. L. was not in a position to make "good

[9] R. L. takes issue with the statement in the circuit court's order that D. L. "decline[d] to act" as agent under the durable power of attorney. However, D. L. clearly testified he would prefer not to act as E. L.'s agent under the durable power of attorney and would rather the circuit court appointed L. B. as guardian of E. L.'s estate. D. L. indicated the only circumstance in which he would "consider" acting as agent was "if it came down to [L. B.] losing it and [R. L.] getting it." On this record, the circuit court's finding that D. L. declined to act as agent is not clearly erroneous. *See* WIS. STAT. § 805.17(2).

decisions for his mother as far as her medical care because he [was] in conflict with the majority of his family." Rasmussen also noted R. L. was "not communicating with" most of the family. She further testified R. L. and M. L. did not get along with M. L.(2), and after the 2010 guardianship order was reversed

> they showed up at the house with papers that they wanted [M. L.(2)] to sign. She ended up having to call the police, and it was pretty chaotic. That's definitely not good for [E. L.]. I'm not sure that [M. L.(2)] would be able to remain there and take care of [E. L.] under those conditions.

Rasmussen opined that naming R. L. guardian would exacerbate conflict within the family.

¶37 Rasmussen further testified R. L. had misappropriated "thousands of dollars" of E. L.'s money and had never made any attempt to repay E. L. Specifically, she testified R. L. had transferred approximately $30,000 of E. L.'s money to himself, which he then used to pay his own credit card bills and back property taxes. R. L. had also used a credit card that was billed to E. L. to pay expenses that were not for her benefit. For these reasons, Rasmussen testified she felt "pretty strongly" that R. L. should not be permitted to serve in a capacity that would allow him to have control of E. L.'s money.

¶38 E. L.'s granddaughter L. B. confirmed that R. L. transferred $27,954.96 from E. L.'s account to his own account in January 2009, and shortly thereafter paid off over $10,000 he owed in back taxes. L. B. also confirmed R. L. had used E. L.'s credit card to pay for things that did not benefit E. L., such as "tires" and "sushi dinners." A summary L. B. had compiled during the 2010 proceedings pertaining to R. L.'s use of E. L.'s money was also introduced into evidence. That document stated R. L. owed E. L. $47,571.61, plus interest.

¶39 R. L. admitted withdrawing approximately $28,000 from E. L.'s account. When asked where he was keeping funds owed to his mother, R. L. testified to having several bank accounts, but he also stated he was keeping $15,000 in cash in a safe inside a storage unit. R. L. admitted using a credit card that was ultimately billed to E. L. He further acknowledged late fees were routinely charged to E. L.'s credit card during a time period in which he was helping to manage her financial affairs.

¶40 This is only part of the evidence presented at the final hearing on the Department's permanent guardianship petition. On the whole, the evidence raised significant concerns about whether R. L. could be trusted to manage E. L.'s finances. The evidence also suggested appointing R. L. guardian of E. L.'s person or estate would increase discord within the family. On this record, the circuit court could reasonably conclude appointing R. L. guardian would not be in E. L.'s best interests.

¶41 In a related argument, R. L. cites WIS. STAT. § 54.46(2), which states in relevant part:

> (b) *Power of attorney for health care.* If the ward executed a power of attorney for health care under ch. 155 before a finding of incompetency and appointment of a guardian is made for the ward under this chapter, the power of attorney for health care remains in effect, except that the court may, only for good cause shown, revoke the power of attorney for health care or limit the authority of the agent under the terms of the power of attorney for health care instrument. …
>
> (c) *Durable power of attorney.* If the ward has executed a durable power of attorney before a finding of incompetency and appointment of a guardian is made for the ward under this chapter, the durable power of attorney remains in effect, except that the court may, only for good cause shown, revoke the durable power of attorney or limit the

> authority of the agent under the terms of the durable power of attorney. …

Again, the evidence summarized above, along with other evidence introduced at the final hearing, amply supported the circuit court's decision to revoke both of E. L.'s powers of attorney. Based on the evidence before it, the court could easily conclude there was good cause to revoke the 2009 powers of attorney because R. L. was not a suitable candidate to serve as E. L.'s agent.

¶42 R. L. also argues his suitability to act as agent under the durable power of attorney was "never properly at issue or even before the Court." Specifically, he argues the court could not revoke the durable power of attorney unless a petition to do so was filed under WIS. STAT. § 244.16, which authorizes certain persons to petition a court to "construe a power of attorney or review the agent's conduct, and grant appropriate relief." However, R. L. provides no authority for the proposition that a petition under § 244.16 is required to terminate a durable power of attorney in a case in which the principal is the subject of a guardianship petition under WIS. STAT. ch. 54. Moreover, WIS. STAT. § 54.46(2)(c) specifically allows a court in a guardianship action to revoke a durable power of attorney upon a finding of good cause. R. L.'s argument that a separate petition was needed under § 244.16 to revoke the durable power of attorney therefore lacks merit.

¶43 R. L. further argues the existence of E. L.'s durable power of attorney "avoided the need for guardianship." In some cases, a durable power of attorney may obviate the need for a guardianship. Here, however, there was ample evidence on which the circuit court could conclude there was good cause to revoke the durable power of attorney, as discussed above. Under these circumstances, the

court did not err by granting the Department's guardianship petition, despite the existence of E. L.'s durable power of attorney.

VI. Failure to provide M. L. and R. L. with certain documents

¶44 R. L. next argues the circuit court erred by failing to provide him and M. L. with "the same documents and reports that were provided to other parties in the litigation." First, we observe R. L. and M. L. were not parties to the guardianship proceedings. Again, as interested persons, they were permitted to participate in a limited capacity at the circuit court's discretion. WIS. STAT. §§ 54.01(17), 54.44(5m). Second, R. L. does not identify the documents or reports to which he believes he and M. L. were entitled. WISCONSIN STAT. § 54.75 provides that "[a]ll court records pertinent to the finding of incompetency are closed but subject to access as provided in s. 51.30 or 55.22 or under an order of a court under this chapter." Without knowing which documents or reports R. L. claims he and M. L. did not receive, we cannot determine whether the circuit court erred by failing to provide them.

¶45 The Department suggests R. L. may be referring to an evaluation conducted by Dr. Jagdish Dave and a protective placement study prepared by Rasmussen, the social worker assigned to E. L.'s case. With respect to the protective placement study, WIS. STAT. § 55.22(1) provides that protective placement evaluations, reviews, and recommendations may be disclosed only to certain persons listed in the statute. R. L. does not fall within any of the statutory categories. *See* § 55.22(1)(a)-(c). In addition, the Department sets forth a developed argument that disclosure of Dave's evaluation to R. L. would not have been permitted by WIS. STAT. § 51.30. We agree with the Department's analysis. Moreover, R. L. does not respond to the Department's arguments regarding

§ 55.22(1) and § 51.30, and we therefore deem them conceded. *See* ***Charolais Breeding Ranches***, 90 Wis. 2d at 109.

¶46 M. L. and R. L. contend the court erred by failing to provide them with a copy of Micheletti's report when it was filed on August 6, 2012. Although stamped with that date by the clerk, the record reflects that Micheletti's report was not filed until day three of the final hearing, August 28, 2012. Moreover, although M. L. and R. L. argue they should have been given the opportunity to dispute and rebut Micheletti's report, there is no statutory or case law supporting the proposition that an interested person in a guardianship case has a right to dispute or rebut a GAL's report.

¶47 ***Dees v. Dees***, 41 Wis. 2d 435, 164 N.W.2d 282 (1969), which is cited by R. L., is inapposite. ***Dees*** involved a child custody dispute. The circuit court considered a report from the Walworth County Department of Social Services, which was not provided to the parties. ***Id.*** at 445. On appeal, our supreme court stated reports of social service agencies may be considered by courts in divorce and custody hearings, but "[i]f the reports are considered by the trial court, it should appear in the record that each party had an opportunity to examine the report and challenge its content and the scope and nature of the investigation leading to the report." ***Id.*** at 445-46 (quoting ***Larson v. Larson***, 30 Wis. 2d 291, 302, 140 N.W.2d 230 (1966)). That parties in divorce proceedings are entitled to challenge reports by social service agencies does not mean an

interested person in a guardianship proceeding is entitled to dispute and rebut a GAL's report.[10]

¶48 M. L. and R. L. also argue the circuit court violated WIS. STAT. § 54.10(2)(b) by failing to consider a supplemental letter filed by Micheletti. In support of this assertion, they cite comments made by the court during a motion hearing following entry of the permanent guardianship order. During that hearing, the court agreed with M. L.'s statements that the court "did not consider" the supplemental letter, and that the supplemental letter "had no impact" on the court's decision. When read in context, it is clear these comments were intended to indicate that, while the court read the supplemental letter, it did not affect or influence the court's decision. We therefore reject M. L. and R. L.'s argument that the court violated § 54.10(2)(b).

VII. Return of funds

¶49 R. L. next argues the circuit court erred by "ma[king] a financial judgment against [him] without benefit of [a] Summons and Complaint." R. L. appears to be referring to that portion of the guardianship order that required him to return $17,000 to E. L. It is undisputed that, in January 2009, R. L. transferred approximately $28,000 from one of E. L.'s bank accounts into his own account. During the permanent guardianship hearing on August 28, 2012, R. L. testified he still had $17,000 or $18,000 of that money.

[10] ***Allen v. Allen***, 78 Wis. 2d 263, 254 N.W.2d 244 (1977), another divorce case cited by M. L. and R. L., is inapt for similar reasons.

¶50 Although R. L. does not expressly frame his argument in these terms, he appears to be asserting the circuit court lacked personal jurisdiction over him due to the lack of a summons and complaint, and, consequently, it could not order him to return funds to E. L. However, the fact that an individual was not served with a summons and complaint does not necessarily deprive a court of personal jurisdiction over that individual. Instead, a court with subject matter jurisdiction may, despite the lack of a summons, exercise personal jurisdiction over any person who: (1) appears in the action; and (2) waives the defense of lack of personal jurisdiction as provided in WIS. STAT. § 802.06(8). *See* WIS. STAT. § 801.06.

¶51 R. L. indisputably appeared in the guardianship proceedings. "The term 'appearance' is generally used to signify an overt act by which one against whom a suit has been commenced submits himself to the court's jurisdiction." ***Artis-Wergin v. Artis-Wergin***, 151 Wis. 2d 445, 452, 444 N.W.2d 750 (Ct. App. 1989). The Department filed its petition for temporary and permanent guardianship on June 12, 2012, and a temporary guardianship hearing was scheduled for the same day before a court commissioner. By letter dated June 12, R. L. requested permission to speak at the hearing. R. L. then attended and participated in the June 12 hearing. He later sought rehearing, review of the court commissioner's decision, a de novo hearing, and relief from the temporary guardianship order under WIS. STAT. § 806.07. He then participated in the de novo hearing before the circuit court and in the subsequent hearing on the Department's permanent guardianship petition. These acts were more than sufficient to constitute an appearance for purposes of WIS. STAT. § 801.06. *C.f.* ***Artis-Wergin***, 151 Wis. 2d at 453 (defendant appeared in a lawsuit when his representative wrote the circuit court seeking a stay of the proceedings).

¶52 We further conclude R. L. waived the defense of lack of personal jurisdiction, as provided in WIS. STAT. § 802.06(8). Section 802.06(8) states, in relevant part:

> (a) A defense of lack of jurisdiction over the person … is waived only if any of the following conditions is met:
>
> 1. The defense is omitted from a motion in the circumstances described in sub. (7).[11]
>
> 2. The defense is neither made by motion under this section nor included in a responsive pleading.

R. L. did not file any motion or responsive pleading asserting lack of personal jurisdiction as a defense. He did not assert in his June 12, 2012 letter that the court lacked personal jurisdiction over him. He did make a vague objection based on personal jurisdiction during the June 12 hearing. However, after making that objection, R. L. continued to participate in the guardianship proceedings on the merits, without filing any motion based on the court's purported lack of personal jurisdiction. Importantly, he affirmatively sought relief from the circuit court, including review and rehearing of the court commissioner's decision on the temporary guardianship petition and a request the circuit court deny the permanent guardianship petition on the merits. "[A] party cannot enter an appearance, request affirmative relief from the court, and then later argue that the court was without personal jurisdiction." ***Artis-Wergin***, 151 Wis. 2d at 453.

¶53 In a single-sentence argument, R. L. asserts the order requiring him to return funds to E. L. violated his right to due process. However, this argument is wholly undeveloped, and we therefore need not address it. *See* ***Flynn***, 190

[11] That is, a motion consolidating defenses. *See* WIS. STAT. § 802.06(7).

Wis. 2d at 39 n.2. Nevertheless, we observe that R. L. acknowledged during the guardianship proceedings that he had $17,000 in his possession that belonged to E. L. As we have already determined, the circuit court had personal jurisdiction over R. L. He was removed as power of attorney for E. L., yet continued to possess her money. Contrary to R. L.'s assertion, the court did not enter a financial judgment against him; it merely ordered him to return the money to E. L. This was a proper exercise of the court's authority in the context of the guardianship proceedings. Under these circumstances, and without the benefit of a developed argument from R. L., we cannot conclude the court's order requiring R. L. to return the funds violated his right to due process.

VIII. Lack of counsel during an interview with Micheletti and an examination by Dave; Micheletti's failure to sign a consent to serve form before meeting with E. L.

¶54 R. L. further argues E. L.'s right to due process was violated because E. L. did not have an attorney present during her initial interview with Micheletti or her examination by Dave. He also argues Micheletti could not act as GAL because she failed to sign the consent to serve portion of the order appointing her before her initial meeting with E. L. However, R. L. has no standing to raise these issues because he was not personally aggrieved by the alleged errors. *See* ***Kiser***, 312 Wis. 2d 621, ¶12 ("The essence of the standing inquiry is whether the party seeking review has alleged a personal stake in the outcome of the controversy."). We therefore decline to address them.

IX. GAL fees and "bad faith actions" of the Department

¶55 M. L. argues the circuit court erred by ordering E. L. to pay Micheletti's fees. She also argues the Department acted in bad faith by pursuing guardianship of E. L. Again, however, M. L. does not have standing to raise these

arguments. The only person aggrieved by the court's order requiring E. L. to pay Micheletti's fees was E. L., or, now, her estate. Similarly, only E. L. could raise a claim that the Department acted in bad faith by initiating and pursuing the guardianship proceedings. Accordingly, we will not consider M. L.'s arguments regarding Micheletti's fees and any alleged bad faith by the Department.

X. Discrimination against M. L. on the basis of her religion

¶56 M. L. next argues the circuit court discriminated against her on the basis of her religion when it declined to appoint her as E. L.'s guardian. M. L. notes that, when discussing her suitability as a potential guardian, the court stated, "First of all, the court would note that there are different religious views between [M. L.] and her mother. And while the court takes no opinion as to the appropriateness of one's choice of religion, in this case Mormonism or Catholicism, the fact is that it could pose an issue." M. L. asserts her religion was not a valid basis for the court's decision not to appoint her as guardian because she was raised in the Catholic faith and is "well aware of the Catholic teachings regarding [E. L.'s] health and well-being."

¶57 M. L.'s discrimination argument is undeveloped and unsupported by legal authority. Moreover, the record shows that the court's comments regarding M. L.'s religion were only a minor factor in its decision not to appoint her as E. L.'s guardian. Of greater importance to the court were M. L.'s "partiality" to R. L. and her inability to stand up to him.[12] The court also observed that, during a

[12] M. L. challenges the circuit court's finding in this regard, asserting there "is no evidence of inappropriate behavior by [R. L.] that would preclude [M. L.] as being a viable and suitable guardian." We disagree, for the reasons set forth above. *See supra*, ¶¶37-40.

time period in which M. L. claimed to be "on top of assisting with care for [E. L.]," things "seemed to be in disarray." The court specifically noted M. L.'s efforts to assist E. L. with an issue involving mold had been "lackadaisical." On this record, it is apparent the court would have declined to appoint M. L. as guardian, even absent any consideration of her religion.

XI. The Department's motion for sanctions

¶58 M. L. and R. L. contend the circuit court erred in its handling of the Department's motion for sanctions. They assert the court granted the Department's motion and, as a sanction, summarily dismissed their WIS. STAT. § 806.07 motions. They contend this was erroneous because: (1) they were entitled to a hearing on the motion for sanctions; (2) they were entitled to protection under the safe harbor provision of WIS. STAT. § 802.05; and (3) a sanctions motion cannot be used as a vehicle for summary dismissal of other motions.

¶59 These arguments fail because the record conclusively shows the circuit court did not grant the Department's motion for sanctions. During the October 2, 2013 hearing, the court first considered M. L. and R. L.'s WIS. STAT. § 806.07 motions and denied them on the merits. Thereafter, M. L. continued to argue the court had erred. In response, the court stated:

> Notwithstanding the fact that I'm not certain that there are any additional matters that need to be brought before this court, to the extent that they are brought before this court, there needs to be statutory authority for each and every basis argued with specificity. Moreover, they need to go specifically to any fault associated with my decision and be items that can only be raised at this point in time. So I'm not going to relitigate items that have already been heard. If I hear any items that have already been relitigated more than once, then I will grant a motion for costs provided that it is appropriate. *I'm not going to award costs at this point*

> *in time*, but I don't want to see anymore [sic] motions that are simply venting or frustrations.

(Emphasis added.) This reference to costs is the closest the court came to addressing the Department's motion for sanctions during the October 2 hearing. The court subsequently entered a written order on October 28, 2013, which clarified, "As to the Motion for Sanctions filed by [the Department] … the Court will not specifically address that Motion and, therefore, the Motion is denied."

¶60 On this record, it is clear that the circuit court did not deny M. L. and R. L.'s WIS. STAT. § 806.07 motions as a sanction; rather, it denied them on the merits. It is also clear that the court declined to address, and therefore denied, the Department's motion for sanctions. Under these circumstances, any errors M. L. and R. L. claim the court may have made with respect to its handling of the motion for sanctions are irrelevant. A person is not entitled to appeal a court's ruling unless he or she is aggrieved by it. *See* ***Ford Motor Credit Co. v. Mills***, 142 Wis. 2d 215, 217, 418 N.W.2d 14 (Ct. App. 1987). M. L. and R. L. were indisputably not aggrieved by the circuit court's denial of the Department's motion for sanctions, and we therefore decline to consider their arguments regarding that motion.

XII. Denial of M. L. and R. L.'s WIS. STAT. § 806.07 motions

¶61 M. L. and R. L. filed three motions for relief from the permanent guardianship order, pursuant to WIS. STAT. § 806.07(1)(a), (b), (c), and (h). On appeal, M. L. and R. L. argue: (1) the circuit court erred by denying their § 806.07(1)(b) motion based on purported newly discovered evidence; and (2) the court erred by denying their § 806.07(1)(h) motion because there were extraordinary circumstances justifying relief. We confine our analysis to these

two arguments and deem the other grounds for relief raised in the § 806.07 motions abandoned. *See* ***A.O. Smith Corp. v. Allstate Ins. Cos.***, 222 Wis. 2d 475, 491, 588 N.W.2d 285 (Ct. App. 1998) ("[A]n issue raised in the trial court, but not raised on appeal, is deemed abandoned.").

¶62 A circuit court has discretion to grant or deny a motion for relief from judgment under WIS. STAT. § 806.07. *See* ***Harbor Credit Union v. Samp***, 2011 WI App 40, ¶¶37-38, 332 Wis. 2d 214, 796 N.W.2d 813. We will affirm the court's decision if it examined the relevant facts, applied a proper standard of law, and, using a demonstrated rational process, reached a conclusion a reasonable judge could reach. ***Id.***, ¶38. "[B]ecause the exercise of discretion is so essential to the trial court's functioning, we generally look for reasons to sustain discretionary determinations." ***Sukala v. Heritage Mut. Ins. Co.***, 2005 WI 83, ¶8, 282 Wis. 2d 46, 698 N.W.2d 610 (quoting ***Allstate Ins. Co. v. Konicki***, 186 Wis. 2d 140, 149, 519 N.W.2d 723 (Ct. App. 1994)). In particular, when a circuit court fails to explain its reasoning for a discretionary decision, we will independently review the record to determine whether it supports the court's exercise of discretion. *See* ***Long v. Long***, 196 Wis. 2d 691, 698, 539 N.W.2d 462 (Ct. App. 1995).

¶63 M. L. and R. L. argue they were entitled to relief under WIS. STAT. § 806.07(1)(b), which allows a court to grant relief from an order based on "[n]ewly-discovered evidence which entitles a party to a new trial under s. 805.15(3)." Under WIS. STAT. § 805.15(3), newly discovered evidence can only constitute grounds for a new trial if it meets four requirements: (1) the evidence came to the moving party's notice after trial; (2) the moving party's failure to discover the evidence earlier did not arise from lack of diligence in seeking to discover it; (3) the new evidence is material and not cumulative; and (4) the new evidence would probably change the result.

¶64 Here, assuming without deciding that the first three requirements are satisfied, M. L. and R. L. cannot show that their proffered evidence would probably change the result of the guardianship proceedings. In their WIS. STAT. § 806.07(1)(b) motion, M. L. and R. L. identified the following items of "newly-discovered" evidence:

- Court ordered examining physician's report, Jagdish Dave, MD.
- Court report of social worker, Donna Rasmussen.
- Notice of Rights relating to Temporary Guardianship.
- Transcript—Judge Metropulos Decision of October 21, 2010.
- Invoice for Professional Services—Sitzmann Law Firm.
- Other documents subject to inspection of the Record.

The reports by Rasmussen and Dave were indisputably before the court when it ruled on the permanent guardianship petition, as was the transcript of the court's decision in the 2010 case. Thus, their introduction at a new trial would not change the result of the proceedings. As for the notice of rights, the invoice for professional services, and "[o]ther documents subject to inspection of the [r]ecord," M. L. and R. L. completely fail to explain why these documents are relevant to the ultimate issues in the guardianship proceedings and how they would have affected the court's decision. Accordingly, we conclude the circuit court properly denied M. L. and R. L.'s § 806.07(1)(b) motion.

¶65 The court also properly denied M. L. and R. L.'s WIS. STAT. § 806.07(1)(h) motion. Under § 806.07(1)(h), a court may grant relief for "[a]ny other reasons" justifying relief from the operation of a judgment or order. The party seeking relief under § 806.07(1)(h) bears the burden to prove that

extraordinary circumstances exist. ***Miller v. Hanover Ins. Co.***, 2010 WI 75, ¶34, 326 Wis. 2d 640, 785 N.W.2d 493. Extraordinary circumstances are those where "the sanctity of the final judgment is outweighed by the incessant command of the court's conscience that justice be done in light of all the facts." ***Id.***, ¶35 (quoting ***Sukala***, 282 Wis. 2d 46, ¶12).

¶66 In their appellate brief, M. L. and R. L. argue extraordinary circumstances exist because they were not provided with Rasmussen's and Dave's reports, and because they did not receive Micheletti's report until August 28, 2013, the third day of the final hearing. However, as discussed above, M. L. and R. L. were not entitled to Rasmussen's and Dave's reports. *See supra*, ¶45. In addition, the evidence shows they received Micheletti's report when it was submitted to the circuit court on August 28; it was not, as they assert, filed on August 6. *See supra*, ¶46. Furthermore, as pointed out above, there is no statutory authority or case law supporting the proposition that an interested person in a guardianship case has a right to dispute or rebut a GAL's report. Consequently, the circumstances surrounding the reports authored by Rasmussen, Dave, and Micheletti do not constitute the type of extraordinary circumstances warranting relief under WIS. STAT. § 806.07(1)(h).

¶67 M. L. and R. L. also argue the circuit court used an incorrect legal standard when denying their WIS. STAT. § 806.07(1)(h) motion. In support of this argument, they cite the following passage from ***Miller***:

> "To determine whether a party is entitled to review under Wis. Stat. § 806.07(1)(h), the circuit court should examine the allegations accompanying the motion with the assumption that all assertions contained therein are true." If the facts alleged constitute extraordinary circumstances such that relief may be warranted under para. (1)(h), a hearing must be held on the truth of the allegations. After determining the truth of the allegations and considering any

> other factors bearing on the equities of the case, the circuit court exercises its discretion to decide whether to grant relief from the judgment, order or stipulation.

Miller, 326 Wis. 2d 640, ¶34 (citations omitted). Based on this passage, M. L. and R. L. argue the circuit court erred by failing to accept as true the allegations in their § 806.07(1)(h) motion. Presumably, they believe a hearing should have been held "on the truth of the allegations." *See* ***Miller***, 326 Wis. 2d 640, ¶34. However, after reviewing the record, we conclude M. L. and R. L. were afforded ample opportunity to present relevant information regarding their arguments to the court during the October 2, 2013 hearing. The court correctly concluded the vast majority of the arguments in M. L. and R. L.'s WIS. STAT. § 806.07 motions had been addressed and rejected on previous occasions. The court reasonably concluded the remaining arguments were either unsupported by the record or without merit. M. L. and R. L. therefore failed to meet their burden of showing extraordinary circumstances justifying relief from the guardianship order. On this record, we cannot conclude the court erroneously exercised its discretion by denying M. L. and R. L. relief under § 806.07(1)(h).

By the Court.—Orders affirmed.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)5.