



OFFICE OF THE CLERK
WISCONSIN COURT OF APPEALS

110 EAST MAIN STREET, SUITE 215
P.O. BOX 1688
MADISON, WISCONSIN 53701-1688
Telephone (608) 266-1880
TTY: (800) 947-3529
Facsimile (608) 267-0640
Web Site: www.wicourts.gov

DISTRICT III

March 26, 2024

To:

Hon. Elizabeth L. Rohl
Circuit Court Judge
Electronic Notice

Megan Erwin
Register in Probate
Pierce County Courthouse
Electronic Notice

Tristan Breedlove
Electronic Notice

Jason M. Fey
Electronic Notice

P. C. A.
c/o Peace Family Home
3409 Logan Drive, Apt. 2
Oshkosh, WI 54901

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

2023AP1696-NM Pierce County v. P. C. A. (L. C. No. 2021GN14)

Before Stark, P.J.¹

Summary disposition orders may not be cited in any court of this state as precedent or authority, except for the limited purposes specified in WIS. STAT. RULE 809.23(3).

Counsel for P.C.A. has filed a no-merit report concluding that no grounds exist to challenge an order continuing P.C.A.'s protective placement. P.C.A. was informed of her right to file a response to the no-merit report, and she has not responded. Upon an independent review of the record as mandated by *Anders v. California*, 386 U.S. 738 (1967), this court concludes

¹ This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2) (2021-22). All references to the Wisconsin Statutes are to the 2021-22 version unless otherwise noted.

there is no arguable merit to any issue that could be raised on appeal. Therefore, we summarily affirm the order. *See* WIS. STAT. RULE 809.21.

P.C.A. has been under a protective placement order since December 1, 2021. The present matter involves the first annual review of P.C.A.'s protective placement. A court-appointed guardian ad litem filed a report recommending continued protective placement and requesting both adversary counsel and a full due process hearing on P.C.A.'s behalf. The State Public Defender appointed counsel for P.C.A., and the circuit court appointed a doctor to conduct a comprehensive review of whether P.C.A. continued to need protective placement. The evaluating psychologist, Dr. Kevin Miller, filed a report opining that P.C.A. was in need of continued protective placement. After a due process hearing, the court entered an order continuing P.C.A.'s protective placement. This appeal follows.

The circuit court may order protective placement for an individual when the court or a jury finds, by clear and convincing evidence, that the individual to be protectively placed meets the following criteria:

- (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) (emphasis added); 55.10(4)(d).

Relevant to the present appeal, the protective placement order shall be reviewed annually, and the circuit court shall order the continuation of the protective placement in the facility in which the individual resides “[i]f the court finds that the individual continues to meet the standards [for protective placement] under [WIS. STAT. §] 55.08(1) and the protective placement of the individual is in the least restrictive environment that is consistent with the requirements of [WIS. STAT. §] 55.12(3), (4), and (5).” WIS. STAT. § 55.18(3)(e)1.

At the due process hearing, Dr. Miller testified consistent with his report, opining that P.C.A. suffers from an “other like incapacity” under WIS. STAT. § 55.08(1)(c)—specifically, a major neurocognitive disorder of alcohol-induced dementia. Miller noted that when P.C.A. was not under protective placement, her condition resulted in self-neglect. Miller further testified that without constant supervision, P.C.A. would likely return to the pattern of consuming excessive amounts of alcohol. Miller added that even without consuming alcohol, P.C.A. remained a risk to herself because her memory impairment could result in her wandering outside in winter, getting lost, and/or mistakenly thinking that she can drive safely. Miller ultimately opined to a reasonable degree of psychological certainty that P.C.A.’s level of impairment rendered her incompetent to make decisions in her interest regarding health and safety and that her condition is permanent or likely to be permanent.

Following the hearing, the circuit court determined that P.C.A. continued to meet the criteria for protective placement. The court found that P.C.A. has a primary need for residential care and custody, that she remains incompetent as a result of “other like incapacities” that render

her incapable of providing for her own care and otherwise create a substantial risk of serious harm to herself or others, and that her incapacity is permanent or likely to be permanent.

The no-merit report addresses whether the evidence was sufficient to support the circuit court's decision to continue P.C.A.'s protective placement. Upon reviewing the record, we agree with counsel's description, analysis, and conclusion that any challenge to the court's decision would lack arguable merit. The no-merit report sets forth an adequate discussion of this potential issue to support the no-merit conclusion, and we need not address it further.

Although the no-merit report does not address it, we also conclude there is no arguable merit to any claim that P.C.A.'s annual review was untimely. Pierce County filed its petition for annual review of protective placement and its "report of the review" on September 30, 2022, which was "[n]ot later than the first day of the 11th month after the initial order" for protective placement. *See* WIS. STAT. § 55.18(1)(a). This court's independent review of the record discloses no other potential issue for appeal.

Therefore,

IT IS ORDERED that the order is summarily affirmed. WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that Attorney Tristan S. Breedlove is relieved of the obligation to further represent P.C.A. in this matter. *See* WIS. STAT. RULE 809.32(3).

IT IS FURTHER ORDERED that this summary disposition order will not be published.

Samuel A. Christensen
Clerk of Court of Appeals