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DISTRICT IV

July 25, 2017

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

2016AP894-NM

In the matter of the guardianship and protective placement of
A.M.W.: Wood County v. A.M.W. (L.C. #2013GN97)

Before Sherman, 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).

A.M.W. appeals orders extending her protective placement and authorizing the involuntary administration of psychotropic medication and treatment. Her appellate counsel has

¹ This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(d).

filed a no-merit report pursuant to WIS. STAT. RULE 809.32 (2015-16),² and *Anders v. California*, 386 U.S. 738 (1967). The no-merit report addresses the sufficiency of the evidence to support the orders. A.M.W. was sent a copy of the report and has not filed a response. Upon independent review of the record, this court agrees with counsel that no issue of arguable merit appears.

A.M.W. was placed in protective placement in 2014 upon findings that she had been adjudicated incompetent and met the standards for protective placement as a result of serious and persistent mental illness. WISCONSIN STAT. § 55.18 requires annual review of an order for protective placement. Here, the county filed its annual placement review within twelve months of the previous order. The county also filed a petition for involuntary administration of psychotropic medication. The circuit court held evidentiary hearings as to both the placement review and the petition for involuntary medication. A.M.W. appeared by means of video communication at both hearings. A.M.W.'s counsel and A.M.W.'s guardian ad litem appeared in person at the hearings.

At the hearing regarding continued placement, A.M.W. stipulated through her counsel to the admission of written reports prepared by examining psychologist David Winemiller and independent evaluator Terri Sersch. The circuit court found, following a full due process hearing, that A.M.W. has a primary need for residential care and custody because she is not competent to care for herself as a result of mental illness that creates a substantial risk of serious harm to herself or others, and that the disability is likely to be permanent. *See County of Dunn*

² All references to the Wisconsin Statutes are to the 2015-16 version unless otherwise noted.

v. Goldie H., 2001 WI 102, ¶23, 245 Wis. 2d 538, 629 N.W.2d 189. Those findings are supported by Winemiller's report, which states that A.M.W. has been diagnosed with schizophrenia/schizoaffective disorder, nonorganic psychosis, anxiety disorder with a history of post-traumatic stress, and personality disorder. Winemiller concludes in his report that that A.M.W. continues to remain incompetent due to her serious mental illness and that the infirmity is likely to remain permanent. Winemiller further concludes that A.M.W. needs placement in a licensed, certified, or registered setting with 24-hour supervision, monitored egress, and onsite skilled nursing care. The circuit court's findings are further supported by the independent evaluation report by Terri Sersch. Sersch recommends that A.M.W. remain protectively placed in a psychiatric treatment center due to her mental instability, which is worsened by her refusal to take her recommended dose of medication because of delusions of being pregnant.

A.M.W. testified on her own behalf at the placement review hearing, and admitted to having schizoaffective disorder. A.M.W. further testified that she believed she had the skills, knowledge, and understanding to be placed in the community. As the arbiter of the witnesses' credibility, and the weight to be accorded their testimony, the circuit court could reasonably reject A.M.W.'s lay testimony in favor of the expert testimony offered by the county regarding A.M.W.'s diagnosis and prognosis. See *Walworth Co. v. Therese B.*, 2003 WI App 223, ¶26, 267 Wis. 2d 310, 671 N.W.2d 377. Upon independent review of the record, this court agrees with counsel that there would be no arguable merit to challenging the circuit court's order for continued protective placement.

Likewise, there would be no arguable merit to challenging the order for involuntary medication on appeal. In order to meet its burden as to the involuntary administration of psychotropic medication, the county needed to prove, by clear and convincing evidence, that a

physician had prescribed psychotropic medication for A.M.W., that A.M.W. was not competent to refuse psychotropic medication, and that A.M.W. refused to take psychotropic medication voluntarily. *See* WIS. STAT. § 55.14(3)(a)-(c). The county also needed to prove that A.M.W.'s condition was likely to be improved by administration of psychotropic medication, that A.M.W. was likely to respond positively to psychotropic medication and that, unless psychotropic medication was administered involuntarily, A.M.W. would incur a substantial probability of physical harm, impairment, injury, or debilitation to herself or others. *See* sec. 55.14(3)(d)-(e). A substantial probability of physical harm, impairment, injury, or debilitation is evidenced by a history of at least two episodes, one of which has occurred within the previous 24 months, that indicate a pattern of overt activity, attempts, threats to act, or omissions that resulted from the person's failure to participate in treatment, including psychotropic medication, and that resulted in a finding of probable cause for commitment under WIS. STAT. ch. 51. *See* sec. 55.14(3)(e).

The county elicited testimony from Dr. Celestino Balinghasay, a psychiatrist who had met with A.M.W. and reviewed her records. According to Balinghasay's testimony, A.M.W. suffers from delusional thinking and takes antipsychotic medication. A.M.W. had been prescribed a higher dosage of the medication, but refused to take it because she believed she was pregnant, despite the absence of any positive pregnancy test. Balinghasay testified that he met with A.M.W. in July 2015 after she was subject to an emergency detention under WIS. STAT. ch. 51. The emergency detention occurred after A.M.W. barricaded herself in her room at the mental health treatment center where she had been living, had made threats to staff, and had refused to let anyone in or talk to a doctor. Balinghasay testified that A.M.W.'s records showed that she had been emergently detained at the same mental health center eleven times. Balinghasay opined that A.M.W. was likely to respond positively to the increased amount of

medication that had been proposed. Balinghasay further opined that, without the medication, he believed that A.M.W. would continue to act on her delusional thoughts because her psychosis would be uncontrolled.

The county also presented testimony from social worker Ashley Volovsek, who had worked with A.M.W. and had reviewed her inpatient psychiatric records. Volovsek testified that, out of A.M.W.'s eleven emergency detentions, one or more of those detentions were based upon A.M.W.'s failure to take psychotropic medications and the resulting danger caused by that failure. Based upon all of the above, and upon independent review of the record, this court agrees with counsel's conclusion that the county presented sufficient evidence to meet its burden of proof under WIS. STAT. § 55.14, such that there would be no arguable merit to challenging the order for involuntary medication.

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 John Bachman is relieved of his obligation to further represent A.M.W. in this matter. WIS. STAT. RULE 809.32(3).

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

Diane M. Fremgen
Clerk of Court of Appeals