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DISTRICT IV

December 12, 2024

To:

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Circuit Court Judge
Electronic Notice

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Register in Probate
La Crosse County Courthouse
Electronic Notice

Gregory Bates
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Stephen D. Woodward
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Scott Johnston
451 Kimberly Street
Onalaska, WI 54650

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

2024AP1590

In the matter of the guardianship of S. G. J.:
La Crosse County v. S. G. J. (L.C. # 2022GN79)

Before Kloppenburg, 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).

S.G.J. appeals an order continuing his protective placement. S.G.J. argues that the circuit court erred in issuing the order following a summary hearing and asks that this court reverse and remand for a full due process hearing. On this court's own motion, this appeal is disposed of summarily pursuant to WIS. STAT. RULE 809.21(1) ("[U]pon its own motion or upon

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

the motion of a party,” this court “may dispose of an appeal summarily.”). As explained below, this appeal is dismissed as moot.

La Crosse County petitioned for an initial order for protective placement of S.G.J. in October 2022, and the circuit court issued the order in November 2022. In May 2023, the Guardian ad Litem (GAL) filed a letter informing the court that S.G.J. wished to challenge whether his placement was the least restrictive consistent with his needs, and asking that the court reappoint the GAL and appoint adversary counsel. The court appointed adversary counsel, ordered two evaluations, and set a full due process hearing for August 2023. At the hearing, the parties informed the court that they had reached an agreement to proceeding with only a summary hearing and to the entry of an order continuing the protective placement. In its oral ruling at the conclusion of the hearing, the court stated that, based on the parties’ agreement as presented to the court, the record established that the current placement was acceptable and that efforts would be made to find a less restrictive placement consistent with the parties’ remarks at the hearing. The court entered an order consistent with its oral ruling on August 8, 2023.

At the August hearing, S.G.J.’s counsel informed the circuit court that S.G.J. knew that the next hearing to review his protective placement would be “in a year.”

The circuit court scheduled a “summary hearing” to review S.G.J.’s protective placement three months later, in November 2023, under *State ex rel. Watts v. Combined Community Services Board of Milwaukee County*, 122 Wis. 2d 65, 84-85, 362 N.W.2d 104 (1985) (ruling that due process requires that an annual review be held of a protective placement); *see also* WIS. STAT. § 55.18(3)(d) (providing that, as part of the annual review of a protective placement order, the court shall order either a summary hearing or a full due process hearing depending on the

positions taken by the county and the individual). The GAL submitted a report recommending continued protective placement. The court held the summary hearing on November 13, 2023.

At the hearing, the court stated:

[S.G.J.] is requesting a due process hearing as well as appointment of a Public Defender. So this will be ... referred to the Public Defender's Office as well as Adult ... Protective Services.

In the meantime, I've reviewed the report of the guardian ad litem as well as the rest of the file, would make a finding that the protective placement continues to appear to be appropriate; that the current placement is the least restrictive placement presently appropriate and I'll sign the order extending the protective placement.

The court issued a summary order of continued protective placement on November 13, 2023. Counsel for S.G.J. was appointed on November 21, 2023. Counsel did not request a full due process hearing. *See Watts*, 122 Wis. 2d at 85 (providing that the annual review shall be via a full due process hearing if requested by the individual subject to the protective placement order); § 55.18(3)(d) (providing that a court must hold an evidentiary hearing if, among other things, the individual so requests or objects to the current protective placement).

In August 2024, after this court extended the time for S.G.J. to file a notice of intent to pursue postdisposition relief, S.G.J., by newly appointed counsel, appealed the November 13, 2023 order continuing his protective placement. In his appellate briefing, S.G.J. argued that he was entitled to a full due process hearing, not a summary hearing, in November 2023, based on the record before the circuit court at that time, including evidence that a less restrictive placement was appropriate for him. *See WIS. STAT. § 55.18(3)(e)* (After the annual review hearing, a circuit court “shall do one of the following:” (1) “order the continuation of the protective placement in the facility in which the individual resides at the time of the hearing”; (2) “order transfer of the individual to a protective placement that is in the least restrictive

environment”; or (3) “terminate the protective placement.”). S.G.J. asked that this court remand the matter for a full due process hearing.

In his reply brief, which was timely filed on November 6, 2024, S.G.J. also raised the issue of mootness. Specifically, S.G.J. noted that an annual review, which S.G.J. asserted could result in a new order that would “supersede the prior orders,” was scheduled for November 11, 2024. Pursuant to an order by this court, the parties filed simultaneous letter briefs on the issue of mootness.²

“An issue is moot when its resolution will have no practical effect on the underlying controversy.” *Portage County v. J.W.K.*, 2019 WI 54, ¶1, 386 Wis. 2d 672, 927 N.W.2d 509; *see also Fort Howard Paper Co. v. Fort Howard Corp.*, 273 Wis. 356, 360, 77 N.W.2d 733 (1956) (holding that a case may be moot if the case seeks “a judgment upon some matter which when rendered for any cause cannot have any practical legal effect upon the existing controversy” (quoted source omitted)). “Appellate courts generally decline to reach the merits of an issue that has become moot.” *PRN Assocs. LLC v. State Dep’t of Admin.*, 2009 WI 53, ¶29, 317 Wis. 2d 656, 766 N.W.2d 559. However, there are several established exceptions under which this court may elect to address moot issues:

(1) “the issues are of great public importance;” (2) “the constitutionality of a statute is involved;” (3) the situation arises so often “a definitive decision is essential to guide the [circuit] courts;” (4) “the issue is likely to arise again and should be resolved by the court to avoid uncertainty;” or (5) the issue is “capable and likely of repetition and yet evades review.”

² This court acknowledges the parties’ timely, informative, and helpful presentation in their letter briefs of their positions on mootness.

J.W.K., 386 Wis. 2d 672, ¶12 (quoted source omitted).

In their letter briefs, the parties informed this court that on November 11, 2024, the circuit court held a summary hearing and entered an order in which the court: (1) continued S.G.J.’s protective placement; and (2) determined that adversary counsel should be appointed and could schedule a full due process hearing with the assigned judge. The parties also informed this court that adversary counsel was appointed and did file a letter indicating both that S.G.J. requests a full due process hearing and that counsel will be scheduling that hearing with the assigned judge.

In its letter brief, the County argues that this appeal is moot because the circuit court has indicated that a full due process hearing will be scheduled upon S.G.J.’s request and S.G.J. has requested a full due process hearing that is in the process of being scheduled. Thus, the County concludes, the relief that S.G.J. seeks on appeal “is already in the process of happening in the circuit court.”

In his letter brief, S.G.J. agrees that this appeal is moot, citing *J.W.K.*, 386 Wis. 2d 672, ¶1 (ruling that an appeal of a 2016 Chapter 51 recommitment order was moot when the circuit court had extended J.W.K.’s commitment under a separate order in 2017, because reversing the expired 2016 order “would have no effect on subsequent recommitment orders because later orders stand on their own under the language of the statute”).

In sum, the parties agree that the existence of the November 2024 protective placement order precludes the “practical effect” of any decision by this court regarding the November 2023 protective placement order. *See id.*, ¶1. The parties also agree that a process is underway for the

circuit court to hold a full due process hearing on S.G.J.’s continued protective placement. Finally, the parties agree that, for these reasons, this appeal of the November 2023 order is moot.

However, S.G.J. argues that we should overlook mootness because this appeal presents an issue pertaining to him that will continue but evade review given the “timelines” that apply to appellate review. This conclusory reference to appellate review “timelines” fails to show the existence of the “exceptional or compelling circumstances” that warrant addressing moot issues. *See id.*, ¶12 (quoted source omitted).

For the reasons stated, this appeal is dismissed as moot.

IT IS ORDERED that this appeal is dismissed.

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

Samuel A. Christensen
Clerk of Court of Appeals