

FILED**APR 10 2020****CLERK OF SUPREME COURT
OF WISCONSIN**

STATE OF WISCONSIN
IN SUPREME COURT

IN THE MATTER OF: R.L.B.

**EMERGENCY REQUEST FOR
MODIFICATION/EXCEPTION TO SUPREME
COURT ORDER: IN RE THE MATTER OF JURY
TRIALS DURING THE COVID-19 PANDEMIC AND
20-02, IN THE MATTER OF AN INTERIM RULE RE
SUSPENSION OF DEADLINES FOR NON-
CRIMINAL JURY TRIALS DUE TO THE COVID-19
PANDEMIC: PUBLIC HEARING NOTICE FOR
TAYLOR COUNTY CASE 2020GN00003**

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PROCEDURAL HISTORY

On February 3, 2020, R.L.B., was emergently detained under Wis. Stat. § 51.15 in Rock County Wisconsin. (Attachment A, Statement of Emergency Detention.) A commitment action was commenced by petition in Rock County Case 2020ME000021, with a Probable Cause Hearing being held on February 6, 2020. (Attachment B, Taylor County 20GN03 E-File, Document 1). At this hearing, the Court ordered that the matter was the proper subject for conversion to a Guardianship/Protective Placement Matter and venue is proper in Taylor County – the proposed ward’s county of residence (Id.) Petitions for protective placement and guardianship were filed on February 17, 2020. (Attachment C, Taylor County case 20GN03 E-File, Document 21 and 22.)

Undersigned counsel accepted appointment on this matter on February 24, 2020 and was appointed by the State Public Defender on February 25, 2020. (Attachment D, Taylor County 20GN03 E-File, Document 33). Immediately, R.L.B., through counsel, demanded a jury trial and consented to an adjournment of the matter, which was previously scheduled for February 28, 2020, in accordance with Wis. Stat. § 55.10(1). The temporary guardianship and protective placement were extended until April 28, 2020, the date and time set for a Jury Trial in this matter. (Attachment E, Taylor County case 20GN03 E-File, Document 44.) At this hearing, the Court ordered the Jury Trial must be heard within 90 days, not later than May 6, 2020, due to requirements set forth in Wis. Stat. § 55.135(5), which prohibits a temporary protective placement from being extended for more than ninety days. (Attachment F, Minutes proceedings for February 28, 2020 in Taylor County case 20GN03.)

On March 22, 2020, the Supreme Court of Wisconsin issued an Order titled: IN RE THE MATTER OF JURY TRIALS DURING THE COVID-19 PANDEMIC. In this order, the Court ordered that all Jury Trials “scheduled to begin before May 22, 2020, are continued

and will be rescheduled by the presiding judge to a date after May 22, 2020.” Furthermore, the Court directed that any party seeking an exception should motion the Supreme Court, and “[a]ny such motion should be identified as an EMERGENCY motion on its face, and shall be filed as soon as possible.” On March 23, 2020, R.L.B. objected by letter to the trial court to an adjournment based on this order as it would require the trial to be held outside statutory time limits set forth in Wis. Stat. § 55.10(1). (Attachment G, Letter Objecting to Adjournment, Document 46.) On March 30, 2020 the trial court held a hearing regarding this letter and indicated the relief being sought must be directed to the Supreme Court of Wisconsin consistent with its order. (Attachment F Minutes of March 30, 2020 proceedings in Taylor County case 20GN03.)

Compliance with the March 22, 2020 Supreme Court of Wisconsin order IN RE THE MATTER OF JURY TRIALS DURING THE COVID-19 PANDEMIC requires this matter to be held outside statutory timelines if the County is to maintain temporary protective placement.

The Supreme Court of Wisconsin issued guidance for “Procedure for Requests for Modifications relating to the COVID-19 Pandemic.” (<https://www.wicourts.gov/news/docs/proceduremods.pdf>, last accessed: March 31, 2020.) In this guidance, the Court requires a petitioner to evaluate whether a request is in the court’s authority and requires the following questions addressed:

- 1) A statement of the problem and the relief requested.
- 2) A statement of the court’s authority to act on the request.
- 3) A memorandum containing an explanation of the reason the change is requested; information about other rules or statutes that may be implicated; an analysis of the legality of the

proposed solution; and a discussion of the impact of the proposed change on the rights of litigants, other parties, the courts, and the public.

4) Identify whether this an existing or anticipated problem? This will help us triage the petitions.

5) The proposed solution must include draft language that could be inserted into an order.

6) Examples from other states are helpful but other states may have very different laws governing their court authority.

7) If the request is an emergency, it should be clearly stated, both on the filing and in the subject line of the email. If there is a time frame by which relief is needed, it should also be clearly stated. Again, this will help us triage the large number of requests we are receiving.

8) Contact Person's Information: Name, Address, Telephone, and E-mail.

On March 31, 2020, the Supreme Court of Wisconsin issued a second order, 20-02, *In the matter of an Interim Rule Re Suspension of Deadlines for Non-Criminal Jury Trials Due to the COVID-19 Pandemic: Public Hearing Notice*. This order was followed by two concurring opinions and one dissenting opinion. The first concurrence, authored by Chief Justice Roggensack and joined by Justice Ziegler, highlighted the gravity of the crisis and the reasonableness of the solution. (Id., ¶¶ 1-9.) The second concurrence, authored by Justice Hagedorn and joined by Justice Bradley and Justice Dallet, concurs with the result; however “would maintain that exception for any cases where the courts are able to operate safely.” (Id., ¶ 13.) A dissenting opinion, authored by Justice Bradley and joined by Justice Kelly, argued that Wis. Stat. § 751.12 authority was exceeded by the indefinite suspension of constitutional and statutory time mandates. (Id., ¶ 39.)

REQUIRED ANALYSIS

1) A statement of the problem and the relief requested.

On February 3, 2020, after a matter proceeding under Chapter 51 was converted to a matter under Chapter 54/55 of the Wisconsin Statutes, R.L.B. was placed under a temporary guardianship and protective placement. This occurred in Rock County case 2020ME000021.

To maintain temporary protective placement, a final hearing must be held within ninety days of the commencement of temporary protective placement. Wis. Stat. § 55.135(5). To maintain protective placement, a final hearing would have to be heard before May 6, 2020. Furthermore, a final hearing for protective placement must be heard within sixty-days unless an extension of time is requested by a party. Wis. Stat. § 55.10(1). An extension shall not exceed forty-five days. *Id.* The petition on this case was filed on February 17, 2020, which would require the matter to be heard by April 17, 2020. With the consented forty-five day extension, a final hearing could be held after May 22, 2020 date set in this Court's order; however, temporary protective placement could not be maintained.

Accordingly, unless the County is willing to release R.L.B. from Temporary Protective Placement and Guardianship, the matter must be heard by statute before May 5, 2020.

2) A statement of the court's authority to act on the request.

This request originates due to Wisconsin Statutory time requirements and is in response to the Supreme Court of Wisconsin's March 22, 2020 order. Namely, that order requires direct requests for exceptions to the order be made to this Court. This order was made through the Court's constitutional authority over the courts:

(1) The supreme court shall have superintending and administrative authority over all courts.

Wis. Const. art. VII, § 3.

No opinion filed with Wisconsin Supreme Court order 20-02, *In the matter of an Interim Rule Re Suspension of Deadlines for Non-Criminal Jury Trials Due to the COVID-19 Pandemic: Public Hearing Notice*, received majority support from the members of this Honorable Court. The concurrence of Justice Hagedorn received the support of three justices and is thus the plurality opinion of the Court, which, while it concurred with the order, explicitly recognized exceptions can be sought – consistent with the Court’s previous order issued on March 22, 2020. “When a fragmented [Supreme] Court decides a case and no single rationale explaining the result enjoys the assent of five Justices, the holding of the Court may be viewed as that position taken by those Members who concurred in the judgments on the narrowest grounds.” *State v. Griep*, 2015 WI 40, 361 Wis.2d 657, 863 N.W.2d 567 quoting *Marks v. United States*, 430 U.S. 188, 193, 97 S.Ct. 990, 51 L.Ed.2d 260 (1977). (internal quotations and citations omitted). The narrowest application of Order 20-02 is one which grants exceptions and is consistent with this Court’s previous order of March 22, 2020.

Furthermore, this issue was raised at the trial court level, who directed the moving party to petition the Supreme Court of Wisconsin for relief.

3) A memorandum containing an explanation of the reason the change is requested; information about other rules or statutes that may be implicated; an analysis of the legality of the proposed solution; and a discussion of the impact of the proposed change on the rights of litigants, other parties, the courts, and the public.

A. Separation of Powers

In 2006, the Legislature passed 2005 Wisconsin Act 264 (2005 Assembly Bill 785), revising the laws on protective services and placement. This bill was signed by the Governor and contained the provisions contained in Wis. Stats. §§ 55.10(1), 55.135(5), which set strict time limits for final hearings and duration of temporary protective placements. These time limits are unambiguous. Statutory interpretation begins with the language of the statute. *State ex rel. Kalal v. Circuit Court for Dane Cty.*, 2004 WI 58, ¶ 45, 271 Wis. 2d 633, 663, 681 N.W.2d 110, 124. If the meaning of the statute is plain, the inquiry ordinarily ends. *Id.* Courts will inquire if there is technical or specially-defined words or phrases or the context is important to the meaning. *Id.* at ¶ 45-46. However, Wisconsin courts do not consult extrinsic sources of statutory interpretation unless the language of the statute is ambiguous. *Id.* at 50.

Settled notions of separation of powers require judicial deference to the language of the statute: “[w]e have stated time and again that courts must presume that a legislature says in a statute what it means and means in a statute what it says there.” *Connecticut Nat’l Bank v. Germain*, 503 U.S. 249, 253–54, 112 S.Ct. 1146, 117 L.Ed.2d 391 (1992); *see also Hartford Underwriters Ins. v. Union Planters Bank*, 530 U.S. 1, 6, 120 S.Ct. 1942, 147 L.Ed.2d 1 (2000). “[O]ne of the fundamental principles of the American constitutional system is that governmental powers are divided among the three departments of government[.]” *League of Women Voters of Wisconsin v. Evers*, 2019 WI 75, ¶ 30, 387 Wis.2d 511, 929 Wis.2d 209 quoting *Goodland v. Zimmerman*, 243 Wis. 459, 466, 10 N.W.2d 180 (1943). “Like its federal counterpart, ‘[o]ur state constitution ... created three branches of government, each with distinct functions and powers,’ and ‘[t]he separation of powers doctrine is implicit in this tripartite division.’” *Id.* quoting *Gabler v. Crime Victims Rights Bd.*, 2017 WI 67, ¶11, 376 Wis. 2d 147, 897 N.W.2d 384 (quoted source omitted; alterations and ellipsis by *Gabler*). Vesting powers exclusively within a co-equal branch is an important protection of liberty and is vital in

avoiding tyranny. *Id.* at ¶ 31. As Madison explained when advocating for the Constitution's adoption, neither the legislature nor the executive nor the judiciary 'ought to possess, directly or indirectly, an overruling influence over the others in the administration of their respective powers.'" *Id. quoting Gabler*, ¶ 4 and Federalist No. 48, at 305 (James Madison) (Clinton Rossiter ed., 1961)). In keeping with this, this Court has proclaimed "[t]he people bestowed much power on the legislature, comprised of their representatives whom the people elect to make the laws." *Gabler*, 376 Wis. 2d 147, ¶60, 897 N.W.2d 384. "[T]his court will not, under separation of powers concepts and affording the comity and respect due a co-equal branch of state government, interfere with the conduct of legislative affairs." *State ex rel. La Follette v. Stitt*, 114 Wis. 2d 358, 368, 338 N.W.2d 684 (1983).

Here, by issuing a Court order directing all Jury Trials be suspended until May 22, 2020, the Wisconsin Supreme Court issued an order that is facially inconsistent with a Constitutionally enacted statute as trial courts cannot comply with statutory time limits contained in Wis. Stats. §§ 55.10(1), 55.135(5).

B. Due Process

In enacting the current statutory scheme, Procedural Due Process for the proposed ward was paramount. Indeed, when a proposed ward is placed under temporary guardianship they are removed from their home and family and placed in a locked secure facility. This is precisely why a proposed ward is entitled to:

1. Appointment of counsel. Wis. Stats. § 55.105.
2. A Comprehensive Evaluation. Wis. Stats. § 55.11
3. An annual review of protective placement. Wis. Stats. § 55.18 and
4. A hearing within strict time limits before continuing a temporary protective placement or guardianship. Wis. Stats. §§ 55.10(1), 55.135(5)

This Court examined the Due Process implications, which were codified in Chapter 55, in *State ex rel. Watts v.*

Combined Community Services Board of Milwaukee County, 122 Wis.2d 65, 362 N.W.2d 104 (1985). While *Watts* deals primarily with annual reviews to comport with Due Process, its teachings are even more instructive here, where the proposed ward has never had a right to a trial, nor has had his protective placement reviewed:

Protectively placed individuals would greatly benefit from an impartial judicial review of their records. In many situations, the department of health & social services or the responsible protective services agency may be influenced in its decision making by the economics of the placement. If the person remains in the nursing home, this is cost free to the county. If the person is in a county operated nursing home, there may be pressure not to remove a person due to possible loss of revenue for the facility. If the person is sent from a nursing home, there may be a necessity for the state and county to purchase community services.

Id. at 78. This includes such a review occurring in a timely manner as directed by the legislature – indeed, *Watts* reasoned the need for adherence to time structures by comparing the schemes of Chapter 51 and 55. *Id.* at 74-75.

This is especially applicable in this case, which originated as a Chapter 51, underwent a change in venue, and is now being delayed past deadlines consistent with this Court's March 22, 2020 order. R.L.B. has been detained and deprived of liberty without a full initial final hearing since February 3, 2020. If relief is not granted, he will not have this important right until on or after May 22, 2020.

Further, R.L.B. is in a tenuous situation, given this pandemic. He is in a high-risk environment, a nursing home, as a high-risk advanced age individual. He has been removed by from his home and his family by temporary order based solely on a probable cause hearing. Wis. Stat. § 55.23 dictates "patient rights" and cites Wis. Stat. § 51.61. Of these rights, the patient shall be able to see "visitors each day." Wis. Stat. § 51.61(t). Current operating procedure under this crisis make this unfeasible and as such nursing homes are limiting visitors -- making the situation worse for R.L.B., who is effectively alone in a foreign setting with curtailed support.

4) Identify whether this an existing or anticipated problem?

This is an existing problem, which has been raised at the trial court.

5) The proposed solution must include draft language that could be inserted into an order.

R.L.B. requests relief by this Court granting an exception to its March 22, 2020 order, requiring a trial be had consistent with Chapter 55, Wisconsin Statutes before May 6, 2020.

The following proposed language is proposed:

A jury trial, as requested by the proposed ward in Taylor County Case 2020GN00003, shall be held before May 6, 2020. An exception to this Court's order issued on March 22, 2020, IN RE THE MATTER OF JURY TRIALS DURING THE COVID-19 PANDEMIC and its order of March 31, 2020, 20-02, *In the matter of an Interim Rule Re Suspension of Deadlines for Non-Criminal Jury Trials Due to the COVID-19 Pandemic: Public Hearing Notice*, is HEREBY GRANTED.

6) Examples from other states are helpful but other states may have very different laws governing their court authority.

A review of other State's Adult Protective Service's statutory schemes proved to be unhelpful in addressing the relief requested in this case. Namely, Counsel reviewed 320 Illinois Compiled Statute 20, Adult Protective Services Act, which contained a time requirement more restrictive than Wisconsin. 320 ILCS 20/9. Further, a review of Minnesota's Vulnerable Adults Act, Minn. Stat. § 626.557, seems to give more latitude to local agencies in lieu of a statewide scheme.

This does not address the novel issue presented by this request, which is the whether statutory time requirements, absent action from the legislature, must be followed despite an ongoing public health pandemic.

7) If the request is an emergency, it should be clearly stated, both on the filing and in the subject line of the email.

This request is an EMERGENCY. There is currently scheduled a status conference regarding this request scheduled at the trial court on April 7, 2020 at 9:00 AM.

8) Contact Person's Information: Name, Address, Telephone, and E-mail

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CONCLUSION

For the forgoing reasons, R.L.B. respectfully requests this Court grant relief from its March 22, 2020 order and require a jury trial be held in Taylor County Matter 2020GN00003 no later than May 6, 2020. In the alternative, R.L.B. should be released immediately from his guardianship and protective placement.

Dated: April 2, 2020

Nich Smith

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CERTIFICATION AS TO FORM AND LENGTH

I hereby certify that this brief conforms to the rules contained in Wis. Stat. § 809.19(8)(b) and (c) for a brief and appendix produced with a proportional serif font. The length of the brief is 3,478 words.

Dated: April 1, 2020



Nicholas Grant Smith
Assistant State Public Defender
State Bar No. 1089586

FEB/21/2020/FRI 03:57 PM

FAX No.

P. 002/006

STATE OF WISCONSIN, CIRCUIT COURT, Rock COUNTY

SCANNED

IN THE MATTER OF THE CONDITION OF

Statement of

Emergency Detention by Law Enforcement Officer

STOUGHTON HOSPITAL n Butler, Robert

Name of Subject

ROBERT L. BUTLER

238616935 GPY 4/18/1949 (70 yrs) M
Connell, Amy *

05-A 2/3/2020 2133 209705

4/18/49

Court Case No.

Law Enforcement Agency No. SV2006045

Date of Birth

- File this statement with the court immediately and with the detention facility upon admission. A probable cause hearing must be held within 72 hours after the subject is taken into custody. (In Milwaukee County, file this statement with detention facility only.)
- Please print or type all information below. All blanks must be filled in.

I am a law enforcement officer and have cause to believe that:

- The subject is mentally ill, drug dependent, or developmentally disabled.
- The subject evidences behavior which constitutes a substantial probability of physical harm to self or to others, or as otherwise set forth in §51.15(1), Wisconsin Statutes.
- Taking the subject into custody is the least restrictive alternative appropriate to the subject's needs.

My belief is based on specific and recent dangerous acts, attempts, threats, omissions, and/or statements made by the subject as observed by me or reliably reported to me as stated below:

Dangerous Behavior

When: 2-3-20

Where: 4013 WINDMILL LN JANEVILLE, WI

Describe Behavior: Robert was called in as a Silver Alert from Taylor County after he left Sunday 2/22/20 around 8:30am without telling his wife Beverly where he was going and not taking his cell phone. Robert stated he left his cell phone behind so he couldn't be tracked by people following him. Robert told C/O Gunnink he believes

See attached page

Witnesses to the dangerous behavior: (including officers who observed behavior)

| Name of Witness | Telephone | Mailing Address | Relationship |
|-----------------|--------------------------------------|--------------------------------|-----------------|
| ERIN ERIKSON | 608-261-9608 262-902-9608 | 4013 WINDMILL LN JANEVILLE, WI | Daughter-in-law |
| | | | |
| | | | |

[Name] Wiktoria Gunnink of the Rock County department of community programs (§51.42(3), Wis. Stats.) board approves the need for this detention.

The subject was taken into custody for the purposes of this emergency detention on [Date] 2-3-20 at [Time] 7:10 am. pm.

The potential detention facility is Stoughton Geriatric

| | | | | | |
|--|-------------------------|-------------------------|--------------------|--------------------------|--------------|
| Subject's Street Address <u>62521 Rustic Rd 1</u> | City <u>Rib Lake</u> | County <u>Taylor</u> | State <u>WI</u> | Zip Code <u>54470</u> | Phone Number |
|--|-------------------------|-------------------------|--------------------|--------------------------|--------------|

DISTRIBUTION:

1. Court
2. §51.15(2) Detention Facility
3. Subject with Notice of Rights

| | |
|---|-----------------------------------|
| Signature of Officer <u>[Signature]</u> #2310 | Department <u>JANEVILLE PD</u> |
| Name Printed or Typed <u>ERIN BRIGGS</u> #2310 | Telephone <u>755-3100</u> |

FEB/21/2020/FRI 03:58 PM

FAX No.

P. 003/006

a support group that his wife belongs to is following ~~her~~ ^{her} to help his wife get him under commitment again. Robert was under commitment in 2015 through Taylor County. Robert arrived on this date to his daughter-in-law Erin's work unannounced. He was angry at the time he was talking with her, yelling in her face, and scaring her. Erin brought Robert back home and he insisted in parking his car in the garage due to being followed. He was told he could not stay at the residence and he had plans to go to Madison to staying in a hotel and find a lawyer to sue Taylor county. Robert admitted not knowing Madison or having a map to help him navigate around. Beverly told CIW Gunnink that Robert has been showing increased verbal aggression over the last couple of months, with the last month scaring her that he might harm her. Due to Robert's erratic behaviors and increased aggression he is a danger to himself and others.

COANNED

FEB/21/2020/FRI 03:58 PM

FAX No.

P. 004/006

Episode 1: Crisis Services ✓ 2/03/2020 - Active
Client: Robert Butler (000125174)
Submitted 02/03/2020 at 08:09 PM by WISTERIA GUNNINK MSW

SCANNED

Rock County Progress Note

Draft/Final: Final

Progress Note For: New Service

Note Type: Crisis Services Progress Note

Crisis Service Type: Mobile Crisis Service, Voluntary or Involuntary Hospital Care, Crisis JPD Embedded, Assessment

Notes Field:

Context:

CIW was contacted by JPD officers to assist with Robert after he went to his daughter-in-law Erin's work unexpectedly after being called in as a Silver Alert on 2/2/2020 from Rib Lake. Robert was verbally hostile towards Erin initially, talking about his wife trying to commit him and take all of his money away. Erin told police and CIW that Robert had been detained and committed in 2015 after increasing behaviors that lead to him making suicidal statements towards responding officers. Robert was inpatient for a period of time and did better when he was taking his medication. The commitment was allowed to expire and family has seen an escalation again over the past couple of months that were similar to that time. Robert talked with CIW about leaving his home without his phone so that he could not be tracked by his wife. He also believes her support group she goes to due to his dementia diagnoses follows him at her request. Robert feels his wife Beverly nags at him constantly to stop working and to give her all of his money. He also feels she is trying to go after another man due to her babysitting for one of his family member's children. Robert talked about their being cycles in behaviors and that his wife was repeating a cycle of another person's behaviors. She also was trying to take control over him due to her being raped as a child. Robert talked about women being in control of everything due to them placing him before inpatient. Erin reported that Robert dislikes women and social workers. Beverly was contacted by CIW and stated that Robert has been struggling for months and his adult sons that live by them have had to kick him out of their businesses due to his behaviors. Robert has been yelling at her more, getting into her face, and scaring her. CIW talked with Taylor County HHSD APS/CIW Jan Meyer. She gave history of treatment of Robert since 2015. He had been detained at that time and under commitment he went from inpatient at Sacred Heart to Aurora GH. He was tested for memory concerns in Oct 2015 and found to have frontal lobe dementia. He also was diagnosed with Dependent Personality Disorder, dysthymia disorder, and anxiety disorder. APS had been contacted last week by Beverly due to Robert's increased behaviors and him reporting he had stopped taking his medications. Taylor County had made several attempts to make contact with him and had arranged for a meeting on this date prior to finding out he had left the day before. CIW consulted with PM Bette Trimble and it was agreed that

FEB/21/2020/FRI 03:58 PM

FAX No.

P. 005/006

Episode 1: Crisis Services 02/03/2020 - Active**Client: Robert Butler (000125174)****Submitted 02/03/2020 at 08:09 PM by WISTERIA GUNNINK MSW****SCANNED**

a 51.15 would be pursued. CIW worked with JPD officers to write the 51.15. St Mary's ER did the medical clearance. Stoughton Geriatric was contacted for placement and accepted. JPD transported due to Robert escalation to hostility at times.

Risk Factors/Warning Signs:

Robert left his home without telling family and without his phone so they could not track where he went. He stated he drove as far as he could on 2/2/20 and stayed at Steven's Point, which is only about an hour or so away from his home. Robert tracked down his daughter-in-law Erin's place of work and was verbally aggressive when talking about his reasoning for leaving home. This frightened her due to his level of hostility. Robert talked about his thoughts of others following him and being tracked by his wife. He believes she is trying to take all of his money. He also believes she is trying to cheat on him. Taylor County had been told of him believing his wife was trying to poison his food. He refused to meet with them. Family reports increased hostility and inappropriate behaviors that have caused him to be asked not to be at his sons's businesses. His wife reported increased hostility towards her. Family fears he has been physical towards her. Robert seemed to have difficulties remembering events over the past 5 years.

Consultation:

CIW consulted with PM Bette Trimble about criteria for the 51.15. CIW worked with JPD officers Briggs, Blank, Hollingshed, and Fox for the emergency detention. St Mary's ER did the medical clearance and SW Amanda helped with the admission. Stoughton Geriatric was contacted for placement and accepted. Daughter-in-law Erin 262-903-9808 is a witness on the 51.15. Clayton is Robert's step-son (608-219-1342). Beverly is Robert's wife (715-427-3896). Jen Meyer is Taylor County HHS APD/CIW (715-748-3332).

Assessment:

Robert was dressed appropriately with moderate hygiene. He answered no to CSSRS questions, but referenced at one point the time period before his last detention when he was depressed and how he felt he was going down that path again. Robert had memory delays concerning time periods over the last 5 years. He was hostile at times talking about previous treatment and about his wife. He seemed to believe he was being tracked and his wife was out to harm him.

Plan:

Robert was placed under a 51.15 with placement to Stoughton Geriatric Hospital. JPD transported due to Robert's periods of agitation. CSO and IL will follow up further with this case. Erin was updated on placement hospital, but Robert refused all intake paperwork so there are no ROIs for family or service providers.

Practitioner: GUNNINK,WISTERIA (000097)

FEB/21/2020/FRI 03:59 PM

FAX No.

P. 006/006

Episode 1: Crisis Services 02/03/2020 - Active
Client: Robert Butler (000125174)
Submitted 02/03/2020 at 08:09 PM by WISTERIA GUNNINK MSW

SCANNED

Date Of Service: 02/03/2020

Service Charge Code: Crisis Services (700)

Service Program: Crisis Services Billing (205)

Location: Health Care Center

Service Duration: 325

Service Start Time: 02:15 PM

Document Routing

Status: Final

Approvers:

STATE OF WISCONSIN 2020GN000003 Document 1 CIRCUIT COURT 2-06-2020 Page 1 of 1

ROCK COUNTY

| | |
|----------------------------------|-----------------------|
| Caption | Minutes |
| In the Matter of Robert L Butler | 2020ME000021 |
| Clerk | Date |
| Crystal Gudenschwager | 02-06-2020 |
| | Court Official |
| | Jodi Timmerman |

Events

| Date | Court Record Entries | Amount | C.O. Court Reporter Tape/Counter Location |
|-------------|---|---------------|--|
| 02-06-2020 | <p>Probable cause hearing</p> <p>Case called at 1:15 PM. Person in Need Robert L Butler in court with attorney Michelle M Brandemuehl. Social Worker Linda Scott-Hoag in court. Attorney Bridget Laurent in court for Petitioner Corporation Counsel. Sworn telephone testimony from Dr. Amy Connell. Parties stipulate to Doctor credentials. Direct by Atty Laurent. Dr. Connell testifies to Robert's 2015-16 diagnosis of frontotemporal dementia. Dr. Connell details recent behaviors reported and incident that led to detention. Dr. Connell testifies to advantages, disadvantages, and alternatives to medications discussed with Robert. Dr. Connell recommends inpatient care. Cross by Atty Brandemuehl. Dr. Connell testifies to information gathered for records. Dr. Connell provides additional testimony to medication. Dr. Connell feels that Robert is a proper subject for a ch. 51/54 conversion. Atty Laurent requests a conversion order. Atty Brandemuehl objects to conversion and medication request. Court finds Robert is a proper subject for conversion order and medication order pursuant to 51.67. Court appoints wife, Beverly Butler, as temporary guardian of person. Court orders change of venue to Taylor County.</p> | | Jodi Timmerman REBECCA FARRIS |

Dispositions/Judgments

| Filing Date/C.O. | Disposition Date/C.O. |
|------------------------------------|------------------------------|
| 02-04-2020 Jeffrey S. Kuglitsch | |

FILED
02-17-2020
Probate
Taylor County, Wis.
2020GN000003

STATE OF WISCONSIN, CIRCUIT COURT, TAYLOR COUNTY

IN THE MATTER OF

Amended

Robert Butler

Petition for
 Temporary
 Permanent

Guardianship Due to Incompetency

Name

04/18/1949

Case No. 20-GN-03

Date of Birth

UNDER OATH, I STATE:

1. I am interested as

- a relative. I am related to the individual as _____.
- a public official. My authority to act as petitioner is _____.
- Other: Adult Protective Services

2. This Petition is filed in the county in which the individual

- resides.
- is physically present.
- Wisconsin is not the individual's home state but the court has jurisdiction because: _____.
- Other: _____.

3. The individual lives in Taylor County, State of WI, [Phone Number] 715-427-3896
and the individual's mailing address is [Street, City, State, Zip] W2521 Rustic Road 1, Rib Lake, WI 54470

4. The name and mailing address of the person or institution, if any, that has care and custody of the individual or the facility, if any, that is providing care to the individual is:

Name Stoughton Hospital Phone Number (608)873-6611
Mailing Address [Street] 900 Ridge Street
[City, State, Zip] Stoughton, WI 53589

This Petition for Guardianship is filed with a Petition for Protective Placement prior to transfer of the individual directly from a hospital to a nursing facility or community-based residential facility under §50.06, Wis. Stats.

5. The names and mailing addresses of all interested parties (including the petitioner and Corporation Counsel) and all others entitled to notice are as follows: See attached

| Name | Relationship | Mailing Address [Street, City, State, Zip] |
|------------------------------|---------------------|--|
| Paul Erikson | Step-Son | 206 South 4th Avenue, Abbotsford, WI 54405 |
| Shawn Erikson | Step-Son | 101075 Draper Road, Dorchester, WI 54425 |
| Clayton Erikson | Step-Son | 4013 Windmill Lane, Jamesville, WI 53546 |
| Brandon Butler | Son | W11400 Butternut Hill Road, Medford, 54451 |
| Tyson Butler | Son | N6638 HWY 13, Medford, WI 54451 |
| Beverly Butler | Wife | W2521 Rustic Road 1, Rib Lake, 54470 |
| Ruthann Koch | Corporation Counsel | 632 S 8th St, Medford, WI 54451 |
| Bryce Schoenborn | Guardian ad litem | 215 North Lake Ave, PO BOX 7, Phillips, WI 54555 |
| State Public Defender | Adversary Counsel | 902 East 1st Street, Merrill, WI 54452 |
| Taylor County Human Services | County Agency | 540 East College Street, Medford, WI 54451 |

6. The individual is married and has children who are not children of the current spouse.

7. The individual

does does not have a current, valid Financial Durable Power of Attorney activated.
Financial Agent Name Beverly Butler Phone Number 715-427-3896

Mailing Address [Street] W2521 Rustic Road 1
 [City, State, Zip] Rib Lake, WI 54470

See attached

does does not have a current, valid Power of Attorney for Health Care activated.

Health Care Agent Name Beverly Butler Phone Number 715-427-3896

Mailing Address [Street] W2521 Rustic Road 1
 [City, State, Zip] Rib Lake, WI 54470

See attached

does does not have other advance planning to avoid guardianship.

If the above-named power of attorney or advanced planning exist, guardianship is still necessary because Mr. Butler appears to have a primary need for residential care and custody and is opposed to placement at the time of this petition. See attached

8. I am not aware of a guardianship or other related proceeding or ordered proceeding involving the individual in another state or county.

aware of a guardianship or other related proceeding or ordered proceeding involving the individual in another state or county. The details of the guardianship, or other related proceedings of which I am aware are as follows: See attached

guardian(s) appointed in Wisconsin: (Name and county where appointed) _____

guardian(s) appointed out-of-state: (Name and state where appointed) _____

9. I nominate the following: See attached

| Type of Guardian | Name | Mailing Address [Street, City, State, Zip] | Telephone Number |
|----------------------------------|--------------------------|--|------------------|
| Guardian of the Person | Chippewa Family Services | 821 N Bridge St, Chippewa Falls, WI 54729 | (715) 723-7566 |
| Guardian of the Estate | Chippewa Family Services | 821 N Bridge St, Chippewa Falls, WI 54729 | (715) 723-7566 |
| Temporary Guardian of the Person | | | |
| Temporary Guardian of the Estate | | | |
| Standby Guardian of the Person | | | |
| Standby Guardian of the Estate | | | |

10. A sworn and notarized Statement of Acts by Proposed Guardian and Consent to Serve

- accompanies this Petition.
- will be filed at least 96 hours before the hearing.
- will be provided, if required by the Court for temporary guardianship.

11. A. The approximate value of the individual's property is: See attached

| General Description | Amounts | General Description | Amounts |
|---------------------|---------------|-----------------------|------------|
| Cash/Bank Accounts: | \$ 300.00 | Other Liquid Assets: | \$ |
| Real Estate: | \$ 160,000.00 | Other Assets: Vehicle | \$8,000.00 |

B. The assets of individual previously derived from or benefits of individual now due and payable from U.S. Department of Veterans Affairs are

none _____ See attached

C. The individual receives public benefits, including medical assistance, SSI, SSDI or long term community options program benefits. No Yes, type and amount: Food Share \$16/month.

D. Any other claim, income, compensation, pension, insurance or allowance to which the individual may be entitled is none. as follows: See attached

| General Description | Amounts (Monthly) | General Description | Amounts (Monthly) |
|---------------------|-------------------|------------------------|-------------------|
| Social Security | \$1262.00 | Investment Income | \$ |
| Pension | \$ | Other: Rental Property | \$350.00 |
| Disability | \$ | Other: | \$ |

FOR PERMANENT GUARDIANSHIP

12. A. A Report of Examination by a Physician or Psychologist
 is filed with this Petition.

- will be filed with the court and provided by the petitioner to the guardian ad litem and the attorney for the individual at least 96 hours before the time of the hearing.
- B. A Certificate of Administrator (or representative) of U.S. Department of Veterans Affairs is filed with this Petition.

13. I allege that the individual is incompetent and a guardian should be appointed because:

- A. the individual will be at least 17 years and 9 months of age as of the date of the hearing.
- B. the individual has the following impairment:
 - a developmental disability.
 - degenerative brain disorder.
 - serious and persistent mental illness.
 - other like incapacities.
- C. The individual's need for assistance in decision-making or communication is unable to be met effectively and less restrictively through appropriate and reasonably available training, education, support services, health care, assistive devices, or other means that the individual will accept.
- D. (For appointment of guardian of the person.) The individual, because of impairment, is unable effectively to receive and evaluate information or to make or communicate decisions to such extent that the individual is unable to meet the essential requirements for the individual's physical health and safety.
- E. (For appointment of guardian of the estate.) The individual, because of an impairment, is unable effectively to receive and evaluate information or to make or communicate decisions related to management of the individual's property or financial affairs, to the extent that at least one of the following applies:
 - (1) The individual has property that will be dissipated in whole or in part; or
 - (2) The individual is unable to provide for the individual's support; or
 - (3) The individual is unable to prevent financial exploitation.

14. The specific nature of the individual's alleged incapacity is as follows: See attached Mr. Butler is diagnosed with frontotemporal dementia, a likely permanent degenerative brain disorder, that impairs his ability to effectively evaluate information and make informed decisions. He often experiences paranoid delusions which affect his judgement and cause him to engage in behaviors that are compulsive and erratic.

15. **GUARDIAN OF THE PERSON**

I request the appointment of a guardian of the person. If granted, I understand that this may result in a prohibition of the individual's ability to possess firearms pursuant to §54.10(3)(f), Wis. Stats.

A. Rights to be removed in full. If removed, these rights may not be exercised by any person.

I request that the court declare the individual has incapacity to exercise the right to

- (1) execute a will.
- (2) serve on a jury.
- (3) register to vote or to vote in an election.

B. Rights to be removed in full or exercised only with consent of guardian of person.

The individual has incapacity or limited capacity to exercise the following rights:

| (If any box is <u>not</u> checked, the individual <u>retains</u> that right in full.) | Individual may not exercise this right. Remove right in full. | Individual may exercise only with the consent of the guardian of the person. |
|---|---|--|
| (1) consent to marriage. | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| (2) apply for an operator's/driver's license. | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| (3) apply for a fishing license. | <input type="checkbox"/> | <input type="checkbox"/> |
| (4) apply for a license under Ch. 29, Wis. Stats., other than fishing. | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| (5) apply for any other license or credential under §54.25(2)(c)1.d., Wis. Stats. Specifically: _____ | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| (6) consent to sterilization. | <input type="checkbox"/> | <input checked="" type="checkbox"/> |

| | | |
|--|--------------------------|-------------------------------------|
| (7) consent to organ, tissue, or bone marrow donation. | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
|--|--------------------------|-------------------------------------|

C. Powers to be transferred to guardian of the person in full or in part.

I request the court transfer to the guardian of the person to exercise the power in full or in part to:

- 1.A. give informed consent to the voluntary receipt by the individual of a medical examination, medication, including any appropriate psychotropic medication, and medical treatment that is in the individual's best interest, if the guardian has first made a good-faith attempt to discuss with the individual the voluntary receipt of the examination, medication, or treatment and if the individual does not protest.
 - Full Transfer. Partial Transfer. The individual retains the power to: _____
- 1.B. give informed consent, if in the individual's best interests, to the involuntary administration of a medical examination, medication other than psychotropic medication, and medical treatment that is in the individual's best interests.
 - Full Transfer. Partial Transfer. The individual retains the power to: _____
- 2. authorize individual's participation in an accredited or certified research project if the research project might help the individual, or others if minimal risk of harm.
 - Full Transfer. Partial Transfer. The individual retains the power to: _____
- 3. authorize individual's participation in research that might not help the individual but might help others if greater than minimal risk of harm to the individual but evidence indicates individual would have elected to participate.
 - Full Transfer. Partial Transfer. The individual retains the power to: _____
- 4. consent to experimental treatment in the individual's best interests.
 - Full Transfer. Partial Transfer. The individual retains the power to: _____
- 5. give informed consent to receipt by individual of social and supported living services.
 - Full Transfer. Partial Transfer. The individual retains the power to: _____
- 6. give informed consent to release of confidential records other than court, treatment, and patient health care records and redisclosure as appropriate.
 - Full Transfer. Partial Transfer. The individual retains the power to: _____
- 7. make decisions related to mobility and travel.
 - Full Transfer. Partial Transfer. The individual retains the power to: _____
- 8. choose providers of medical, social, and supported living services.
 - Full Transfer. Partial Transfer. The individual retains the power to: _____
- 9. make decisions regarding educational and vocational placement and support services or employment.
 - Full Transfer. Partial Transfer. The individual retains the power to: _____
- 10. make decisions regarding initiating a petition for termination of marriage.
 - Full Transfer. Partial Transfer. The individual retains the power to: _____
- 11. receive all notices on behalf of individual.
 - Full Transfer. Partial Transfer. The individual retains the power to: _____
- 12. act in all proceedings as an advocate of the individual, except the power to enter into a contract that binds the individual or the individual's property or to represent the individual in any legal proceedings pertaining to the property, unless the guardian of the person is also the guardian of the estate.
 - Full Transfer. Partial Transfer. The individual retains the power to: _____
- 13. apply for protective placement or for commitment on behalf of the individual which does not require court approval.
 - Full Transfer. Partial Transfer. The individual retains the power to: _____
- 14. have custody of the individual.
 - Full Transfer. Partial Transfer. The individual retains the power to: _____
- 15. Other: _____

See attached

16. **GUARDIAN OF THE ESTATE**

I request the court

- A. appoint a guardian of the estate to perform duties under §54.19, Wis. Stats., and exercise the powers that do not require court approval under §54.20(3), Wis. Stats., except as follows: (Choose one)

- (1) The individual retains all powers, except for the following powers to be transferred to the guardian: _____
- (2) All powers to be transferred to the guardian, except for the following powers: _____

- (3) All powers to be transferred to guardian.
- B. authorize the guardian of the estate to perform the following additional powers (other than to make gifts) that require court approval under §54.20(2), Wis. Stats.: _____ See attached
- C. direct the guardian of the estate to deposit the individual's funds of \$100,000 or less in an insured account of a bank, credit union, savings bank or savings and loan association in the name of the guardian and the individual, payable only upon further order of the court, and waive bond for the guardian of the estate.
- D. make a finding the individual may not make contracts, except for necessities at reasonable prices, and all gifts, sales, and transfers of property made by the individual after the filing of a certified copy of the order are void, unless notified by the guardian of the estate in writing.

17. ALTERNATIVE TO GUARDIANSHIP OF ESTATE FOR SMALL ESTATES

I request the court dispense with the appointment of a guardian of the estate and transfer the individual's funds of \$50,000 or less according to one of the alternatives for small estates under §54.12(1), Wis. Stats., as follows: _____ See attached

FOR TEMPORARY GUARDIANSHIPS

- 18. A report or testimony from a physician or psychologist indicates there is a reasonable likelihood the individual is incompetent will be provided at the hearing.
- 19. There was no temporary guardianship of the individual in effect within the last 90 days.
- 20. The individual's particular situation, including the needs of the individual's dependents, if any, requires immediate appointment of a temporary guardian for the following specific reasons: _____ See attached
- 21. I petition the court for the appointment of a temporary guardian with authority limited to those acts that are reasonably related to the reasons for appointment.
 - A. The authority requested for the temporary guardian of the person (if requested) is as follows: See attached
 - B. The authority requested for the temporary guardian of the estate (if requested) is as follows: See attached
- 22. A Petition for Appointment of a Permanent Guardian of the Person or Estate is
 - being filed with this Petition.
 - not being filed with this Petition for the following reasons: _____ See attached

- 23. Additional requests: (Including expedited hearings) _____ See attached

I REQUEST THE COURT:

- 1. Order a hearing on this Petition.
- 2. Make appropriate findings and appointments as requested above.
- 3. Award appropriate fees and costs.
- 4. Other: _____

Case 2020GN000003 Document 22 Filed 02-17-2020 Page 6 of 6

State of Wisconsin
 County of Douglas
 Subscribed and sworn to before me on 2-14-2020
Gwendolyn Thomas
 Notary Public/Court Official
Gwendolyn Thomas
 Name Printed or Typed
 My commission/term expires: 10-12-2027

Taylor Reinhardt
 Petitioner
Taylor Reinhardt
 Name-Printed or Typed
540 East College Street, Medford, WI 54451
 Address
02/14/2020
 Date

GN-3100, 05/19 Petition for Temporary Guardianship and/or Permanent Guardianship Due to Incompetency
 §§50.06, 53.23, 54.01(17)(a), 54.10(3), 54.34, 54.44(1), 54.47, 54.50, 54.852(7), and Ch. 54, Wisconsin Statutes
 This form shall not be modified. It may be supplemented with additional material.
 Page 6 of 6

FILED
02-17-2020
Probate
Taylor County, Wis.
2020GN000003

STATE OF WISCONSIN, CIRCUIT COURT, TAYLOR COUNTY

IN THE MATTER OF

Amended

Robert Butler
Name

Petition for
 Protective Placement
 Protective Services

04/18/1949
Date of Birth

Case No. 20-GN-03

UNDER OATH, I STATE:

- I am interested as
 - Wisconsin Department of Health Services.
 - the county department or an agency with which the county department contracts.
 - a guardian.
 - an interested person. [Indicate relationship to individual] _____
 - Other: [Indicate relationship to individual] _____
- This Petition is filed in the county in which the individual
 - resides.
 - is physically present due to extraordinary circumstances.
 - Other: _____
- The individual resides in Taylor County, State of WI, and the individual's mailing address is (Street, City, State, Zip) W2521 Rustic Road 1, Rib Lake, WI 54470.
- The names and mailing addresses of all interested parties (including the petitioner) and all others entitled to notice are as follows: See attached

| NAME | RELATIONSHIP | MAILING ADDRESS [Street, City, State and Zip] |
|------------------------------|---------------------|--|
| Paul Erikson | Step-Son | 206 South 4th Avenue, Abbotsford, WI 54405 |
| Shawn Erikson | Step-Son | 101075 Draper Road, Dorchester, WI 54425 |
| Clayton Erikson | Step-Son | 4013 Windmill Lane, Jamesville, WI 53546 |
| Brandon Butler | Son | W11400 Butternut Hill Road, Medford, 54451 |
| Tyson Butler | Son | N6638 HWY 13, Medford, WI 54451 |
| Beverly Butler | Wife | W2521 Rustic Road 1, Rib Lake, 54470 |
| Ruthann Koch | Corporation Counsel | 632 S 8th St, Medford, WI 54451 |
| Bryce Schoenborn | Guardian ad litem | 215 North Lake Ave, PO BOX 7, Phillips, WI 54555 |
| State Public Defender | Adversary Counsel | 902 East 1 st Street, Merrill, WI 54452 |
| Taylor County Human Services | County Agency | 540 East College Street, Medford, WI 54451 |

- The individual, if married, does does not have children who are not of the current marriage.
- The individual
 - does does not have a current, valid Financial Durable Power of Attorney activated.
Financial Agent Name Beverly Butler Phone Number 715-427-3896
Mailing Address (Street) W2521 Rustic Road 1
(City, State, Zip) Rib Lake, WI 54470
 - does does not have a current, valid Power of Attorney for Health Care activated.
Health Care Agent Name Beverly Butler Phone Number 715-427-3896
Mailing Address (Street) W2521 Rustic Road 1
(City, State, Zip) Rib Lake, WI 54470
 - does does not have other advance planning to avoid protective placement.
If the above-named power of attorney or advanced planning exist, protective placement is still necessary because: Mr. Butler appears to have a primary need for residential care and custody and is opposed to placement at

the time of this petition.

See attached

- 7. A. A Petition for Permanent Guardianship is filed with this Petition.
- B. A guardian was appointed in
 - this county.
 - another county in this state. [Name of guardian and county where appointed] _____
 - another state. [Name of guardian and state where appointed] _____

8. The name and mailing address of the person(s) or institution, if any, that has care and custody of the individual or the facility, if any, that is providing care to the individual is:

Name Stoughton Hospital Phone Number (608)873-6611
 Mailing Address 900 Ridge Street, Stoughton, WI 53589

Type of facility: community based residential facility
 Is this facility licensed for 16 or more beds? Yes No
 intermediate facility center for developmentally disabled nursing facility
 Other: Hospital-Geriatric Psychiatry Inpatient Program

9. I am requesting protective placement and/or protective services for the individual, based upon personal knowledge of the individual, and I state

- A. the individual is eligible for protective placement because the individual
 - has attained the age of 18.
 - is alleged to have a developmental disability and has attained the age of 14.
- B. a Petition for adult Protective Placement is initiated not more than 6 months prior to the individual's birthday at which the individual first becomes eligible for placement.
- C. the individual was adjudicated incompetent in Wisconsin more than 12 months before the filing of this Petition for Protective Placement and/or Protective Services and a court review is required of the finding of incompetency.
- D. the non-resident individual has a need for protective placement and/or protective services and a separate Petition to Transfer a Foreign Guardianship was filed whether the individual is present in the state.
- E. a comprehensive evaluation and community plan (if required) and recommendation for placement by the appropriate board or designated agency is filed. will be filed.

A copy of the comprehensive evaluation and any independent comprehensive evaluation will be provided to the individual's guardian, agent under any activated health care power of attorney, guardian ad litem, the individual and the individual's attorney at least 96 hours in advance of the hearing to determine protective placement or protective services.

FOR PROTECTIVE PLACEMENT

10. A. The individual needs protective placement and meets the standards for protective placement specified in §55.08 (1), Wis. Stats., as follows:

- (1) the individual has a primary need for residential care and custody.
- (2) except in the case of a minor that is age 14 or older, who is alleged to have a developmental disability, the individual has either been adjudicated to be incompetent by a circuit court or a petition for guardianship was submitted on the minor's behalf;
- (3) as a result of a
 - developmental disability
 - degenerative brain disorder
 - serious and persistent mental illness
 - 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.

(4) the individual has a disability that is permanent or likely to be permanent.

B. The specific facts and details of how the individual meets the standards for protective placement and needs protective placement are as follows: See attached

Mr. Butler is diagnosed with frontotemporal dementia, a likely permanent degenerative brain disorder, that impairs his ability to effectively evaluate information and make informed decisions. He often experiences paranoid delusions which cause him to engage in behaviors that are compulsive and erratic. Mr. Butler is quick to respond to external stimuli with anger and refuses to take psychiatric medications to help stabilize his condition. His behaviors can no longer be appropriately managed at home requiring residential placement.

- C. The individual is alleged to have a developmental disability.
- D. The petitioner requests protective placement of the individual in the following facility:
Secure Community Based Residential Facility,
_____ or a like facility.
- E. A locked unit is necessary because: _____
- F. This Petition for Protective Placement is filed prior to transfer of the individual directly from a hospital to a nursing home or community-based residential facility and the individual
 does does not verbally object to or otherwise actively protest the admission.

FOR PROTECTIVE SERVICES

- 11. A. The individual **meets all of the standards** as follows for protective services specified in §55.08(2), Wis. Stats.
 - (1) The individual was determined incompetent by a circuit court or is a minor who is alleged to have a developmental disability and on whose behalf a Petition for Guardianship was submitted, **and**
 - (2) As a result of a developmental disability, degenerative brain disorder, serious and persistent mental illness, or other like incapacities, the individual will incur a substantial risk of physical harm or deterioration or will present a substantial risk of physical harm to others if protective services are not provided.
- B. The specific facts and details explaining how the individual **meets the standards** for protective services and needs protective services are as follows: See attached

I REQUEST THE COURT:

- 1. Order a hearing on this Petition.
- 2. Make appropriate findings and order
 protective placement of the individual.
 protective services for the individual.
- 3. Award appropriate fees and costs.
- 4. Other: _____

State of Wisconsin
 County of Taylor
 Subscribed and sworn to before me on 2.14.2020
Gwen D Thomas
 Notary Public/Court Official
Gwen D Thomas
 Name Printed or Typed
 My commission/term expires: 10.12.2022

Taylor Reinhardt
 Petitioner
Taylor Reinhardt
 Name Printed or Typed
540 East College Street
 Street Address
Medford, WI 54451
 City, State, Zip
02/14/2020
 Date

- DISTRIBUTION:**
- 1. Court
 - 2. Petitioner/Individual/Ward
 - 3. Individual/Ward's Guardian
 - 4. Individual/Ward's Legal Counsel
 - 5. Guardian ad litem
 - 6. Individual/Ward's agent under Power of Attorney for Health Care

-
7. Presumptive Adult Heirs
 8. Facility in which the Individual/Ward resides/Physical Custodian
 9. County Department of Individual/Ward's county of residence under §55.18(1)(a)
 10. County Department of Individual/Ward's placement under §55.18(1m)
 11. Other: _____

12.

Case 2020GN000003 Document 33 Filed 02-25-2020 Page 1 of 1
STATE OF WISCONSIN CIRCUIT COURT BRANCH COUNTY

For Official Use
FILED
02-25-2020
Probate
Taylor County, Wis.
2020GN000003

Circuit Court Taylor

STATE OF WISCONSIN

Plaintiff,

v.

Robert L. Butler

Defendant.

Case No. 20GN03

STATE PUBLIC DEFENDER - ORDER APPOINTING COUNSEL

Name: Robert L. Butler SPD Case No: 20S-60-G-H00034

DOC #: Incarcerated:

Date of Birth: 4/18/1949

Nature of Case: Description:

55.06 Protective Placement 1 Cnts:
Charge Modifier

Next Court Appearance:

Judge: Ann Knox-Bauer

| Hearing Date | Hearing Time | Hearing Info | Comments |
|--------------|--------------|--------------|----------|
| 02/28/2020 | 11:00 am | Hearing | |

Facility:

Prior Attorney:

In accordance with Chapter 977 of the Wisconsin statutes, I hereby appoint the following attorney to represent the above named individual in relation to the above entitled proceedings:

Attorney Name: Nicholas Smith

State Bar No: 1089586

Address: 100 S. Mill ST-STE 104
Merrill, WI 54452 2736

Attorney Telephone: (715) 536 9105

Attorney Fax Number:

Date Appointed: 2/25/2020

Attorney Email Address: smithn@opd.wi.gov

Supervisor ID: 1070889

Appointed By: Jessica Fehrenbach

SPD Office Handling: Merrill

SPD Office Phone: (715) 536 9105

Dated: 2/25/2020

SPD Office Address: 100 S. Mill Street, Suite 104
Merrill, WI 54452 2508

Date OAC Printed: 2/25/2020

FILED
03-02-2020
Probate
Taylor County, Wis.
2020GN000003

DATE SIGNED: March 2, 2020

Electronically signed by Ann N. Knox-Bauer
Circuit Court Judge

STATE OF WISCONSIN - CIRCUIT COURT - TAYLOR COUNTY

IN THE MATTER OF:

ROBERT L. BUTLER

DOB: 04/18/1949

Case No. 2020-GN-03

EXTENSION ORDER

Petitions for Permanent Guardianship and Permanent Protective Placement having been filed by Taylor County Human Services Department and the ward having filed a jury demand, a hearing was held on February 28, 2020. The ward, Robert L. Butler, appeared in person with Adversary Counsel Nicholas Smith. The guardian ad litem, Attorney Bryce Schoenborn also appeared. Attorney Ruthann Koch and Taylor Reinhardt appeared on behalf of Petitioner Taylor County Human Services Department. Based on the stipulation of the parties and pursuant to Wis. Stat. s. 55.10(1), the court hereby orders the extension of the applicable deadlines and temporary orders previously entered in this matter as follows:

IT IS HEREBY ORDERED that the deadline to hold a final hearing on the petition for protective placement is extended to April 28, 2020.

IT IS FURTHER ORDERED that the temporary protective placement order and the temporary guardianship order entered in this matter on February 6, 2020, in Rock County Circuit Court, are extended to April 28, 2020,

IT IS FURTHER ORDERED that the ward shall be temporarily protectively placed at Tender Reflections Assisted Living in Weston, Wisconsin, or other similar facility.

Drafted by:
Attorney Ruthann Koch
SBN: 1094396
632 S. 8th St., PO Box 512
Medford, WI 54451
(715) 748-9888

FILED
03-02-2020
Probate
Taylor County, Wis.
2020GN000003

DATE SIGNED: March 2, 2020

Electronically signed by Ann N. Knox-Bauer
Circuit Court Judge

STATE OF WISCONSIN - CIRCUIT COURT - TAYLOR COUNTY

IN THE MATTER OF:

ROBERT L. BUTLER

DOB: 04/18/1949

Case No. 2020-GN-03

EXTENSION ORDER

Petitions for Permanent Guardianship and Permanent Protective Placement having been filed by Taylor County Human Services Department and the ward having filed a jury demand, a hearing was held on February 28, 2020. The ward, Robert L. Butler, appeared in person with Adversary Counsel Nicholas Smith. The guardian ad litem, Attorney Bryce Schoenborn also appeared. Attorney Ruthann Koch and Taylor Reinhardt appeared on behalf of Petitioner Taylor County Human Services Department. Based on the stipulation of the parties and pursuant to Wis. Stat. s. 55.10(1), the court hereby orders the extension of the applicable deadlines and temporary orders previously entered in this matter as follows:

IT IS HEREBY ORDERED that the deadline to hold a final hearing on the petition for protective placement is extended to April 28, 2020.

IT IS FURTHER ORDERED that the temporary protective placement order and the temporary guardianship order entered in this matter on February 6, 2020, in Rock County Circuit Court, are extended to April 28, 2020,

IT IS FURTHER ORDERED that the ward shall be temporarily protectively placed at Tender Reflections Assisted Living in Weston, Wisconsin, or other similar facility.

Drafted by:
Attorney Ruthann Koch
SBN: 1094396
632 S. 8th St., PO Box 512
Medford, WI 54451
(715) 748-9888

4/2/2020

2020GN000003 Case Details in Taylor County

Taylor County Case Number 2020GN000003 In the Matter of Robert L Butler

Case summary

| | | |
|---|--|--|
| Filing date 02-07-2020 | Case type Guardianships | Case status Open - Electronic filing |
| Class code description Temporary Guardianship | Responsible official Knox-Bauer, Ann | Branch ID 1 |

Party summary

| Party type | Party name | Party status |
|--------------------|--------------------------|--------------|
| Ward | Butler, Robert L | |
| Temporary Guardian | Butler, Beverly | |
| Petitioner | Taylor Co Human Services | |

Parties

Ward: Butler, Robert L

| | | |
|---------------------------------|--------------------|-------------|
| Date of birth 04-1949 | Sex Male | Race |
|---------------------------------|--------------------|-------------|

Address (last updated 02-04-2020)
W2521 Rustic Road Number 1, Rib Lake, WI 54470-9439

Attorneys

| Attorney name | Guardian ad litem | Entered | Withdrawn |
|-------------------------|-------------------|------------|------------|
| Brandemuehl, Michelle M | No | 02-04-2020 | 03-20-2020 |
| Schoenborn, Bryce Alan | Yes | 02-13-2020 | |
| Smith, Nicholas Grant | No | 02-25-2020 | |

Temporary Guardian: Butler, Beverly

| | | |
|----------------------|------------|-------------|
| Date of birth | Sex | Race |
|----------------------|------------|-------------|

Address (last updated 02-06-2020)
W2521 Rustic Rd 1, Rib Lake, WI 54470

4/2/2020

2020GN000003 Case Details in Taylor County

Petitioner: Taylor Co Human Services

| Date of birth | Sex | Race |
|---------------|-----|------|
|---------------|-----|------|

Address (last updated 02-07-2020)
540 E College, Medford, WI 54451

Attorneys

| Attorney name | Guardian ad litem | Entered |
|---------------|-------------------|------------|
| Koch, Ruthann | No | 02-07-2020 |

Court activities

| Date | Time | Location | Description | Type | Court official |
|------------|----------|--|-------------|-------|-----------------|
| 04-07-2020 | 09:00 am | Taylor County Courthouse, Second Floor | Hearing | Court | Knox-Bauer, Ann |

Court record

| Date | Event | Court official | Court reporter | Amount |
|------------|---------------------------------------|-----------------|-----------------|--------|
| 03-31-2020 | Affidavit of mailing | | | |
| 03-31-2020 | Order and notice for hearing | Knox-Bauer, Ann | | |
| 03-30-2020 | Proposed order and notice for hearing | | | |
| 03-30-2020 | Other papers | | | |
| 03-30-2020 | Hearing | Knox-Bauer, Ann | Anderson, Paula | |

Additional text:

01:33 PM Temporary Guardian Beverly Butler appeared by phone means. Ward Robert L Butler appears via telephone. Attorney Ruthann Koch not in court. Guardianship Agency Taylor Reinhardt not in court. Attorney Bryce Alan Schoenborn not in court. Attorney Nicholas Grant Smith not in court. Erin Williams of Tender Reflections appears via telephone. Court addresses whether we can hold a jury trial at this time due to Supreme Court ruling that no jury trial can be have until May 22, 2020, due to the Covid 19 pandemic. Court schedules a hearing for Tuesday April 7, 2020 at 9:00 a.m. Attorney Koch has no objection at this time to releasing Robert Butler's file. Attorney Koch would like a new order drafted to only be asking for treatment records. Attorney Smith is not in agreement. Court directs to Attorney Smith to draft a new order. Court adjourned 1:50 p.m. Inc

03-26-2020 Stmt acts by propsd guard/consnt serve as guard

Additional text:

Bev Butler

| | | |
|------------|---------------------------------------|-----------------|
| 03-23-2020 | Order and notice for hearing | Knox-Bauer, Ann |
| 03-23-2020 | Proposed order and notice for hearing | |
| 03-23-2020 | Letters/correspondence | |
| 03-09-2020 | Other papers | |
| 03-02-2020 | Order | Knox-Bauer, Ann |

Attachment F

4/2/2020

2020GN000003 Case Details in Taylor County

| Date | Event | Court official | Court reporter | Amount |
|------------|---|-----------------|-----------------|--------|
| 03-02-2020 | Letters of temporary guardianship - estate | Knox-Bauer, Ann | | |
| 03-02-2020 | Letters of temporary guardianship - person | | | |
| 02-28-2020 | Letters/correspondence | | | |
| 02-28-2020 | Proposed Order | | | |
| 02-28-2020 | Proposed letters of guardianship-estate | | | |
| 02-28-2020 | Proposed letters of guardianship-person | | | |
| 02-28-2020 | Proposed Order | | | |
| 02-28-2020 | Guardianship/prot place/conservator hearing | Knox-Bauer, Ann | Anderson, Paula | |

Additional text:

11:16 AM Attorney Nicholas Grant Smith in court for Ward Robert L Butler. Attorney Bryce Alan Schoenborn in court for Ward Robert L Butler. Attorney Ruthann Koch in court for Petitioner Taylor Co Human Services. Ward Robert L Butler in court. Temporary Guardian Beverly Butler in court. Tyson Butler, son, in court. Transport officer in court. Attorney Smith states that Robert Butler requested a jury trial in this matter as he is contesting guardianship and protective placement. Attorney Smith states he is being moved to Tender Reflections. The jury trial would need to be heard within 90 days not later than May 6. Court sets 6 person jury for April 28th at 8:30 a.m. Court extends temporary guardianship and temporary protective placement. Court extends resolution of protective placement. Court waives jury fee for Robert Butler. Attorney Koch will draft order regarding deadlines. Attorney Smith and Attorney Schoenborn are requesting Chapter 51 case records. Attorney Smith will draft in order. Court grants request. Court adjourned 11:21 a.m. Inc

| | | | | |
|------------|---|-----------------|--|--|
| 02-27-2020 | Report of GAL | | | |
| 02-26-2020 | Jury demand | | | |
| 02-26-2020 | Order | Knox-Bauer, Ann | | |
| 02-25-2020 | Public defender order appointing counsel | | | |
| 02-25-2020 | Electronic Notice Update | | | |
| 02-24-2020 | Affidavit of mailing | | | |
| 02-21-2020 | Comprehensive evaluation | | | |
| 02-21-2020 | Stmt acts by propsd guard/consnt serve as guard | | | |
| 02-20-2020 | Proposed Order | | | |
| | Additional text: | | | |
| | Order to Transport | | | |
| 02-20-2020 | Other papers | | | |
| | Additional text: | | | |
| | Request to Transport | | | |
| 02-20-2020 | Affidavit of mailing | | | |
| 02-19-2020 | Affidavit of service | | | |
| 02-19-2020 | Examining physician's report | | | |
| 02-19-2020 | Affidavit of mailing | | | |
| 02-17-2020 | Petition for guardianship | | | |
| 02-17-2020 | Petition for protective placement | | | |
| 02-14-2020 | Order for examination or assessment | Knox-Bauer, Ann | | |
| 02-14-2020 | Proposed Order | | | |

4/2/2020

2020GN000003 Case Details in Taylor County

| Date | Event | Court official | Court reporter | Amount |
|------------|--|-----------------|----------------|--------|
| 02-14-2020 | Order and notice for hearing | Knox-Bauer, Ann | | |
| 02-14-2020 | Order appointing GAL | Knox-Bauer, Ann | | |
| 02-14-2020 | Order for examination or assessment | Knox-Bauer, Ann | | |
| 02-13-2020 | Letters/correspondence | | | |
| 02-13-2020 | Proposed order and notice for hearing | | | |
| 02-13-2020 | Prop. order appointing GAL | | | |
| 02-13-2020 | Proposed Order for Examination or Assessment | | | |
| 02-07-2020 | Electronic Notice Update | | | |

Additional text:

Change of Venue - case originated in Rock County. Received event ENU from Rock County for case #2020GN000012 Document(s) associated with source event: Electronic Notice Status Change.

02-06-2020 Certificate of transmittal

Additional text:

Change of Venue - case originated in Rock County. Received event COTE from Rock County for case #2020GN000012 Document(s) associated with source event: Certificate of Transmittal. Case file received from Rock County for case #2020GN000012 containing records dating from 02-06-2020 through 02-07-2020.

02-06-2020 Other papers

Additional text:

Change of Venue - case originated in Rock County. Rock County Probate Court Record docket Received event OP from Rock County for case #2020GN000012 Document(s) associated with source event: Rock Co. Probate Court Record Docket.

02-06-2020 Order

Timmerman,
Jodi**Additional text:**

Change of Venue - case originated in Rock County. Taylor County Event type was converted from OCV to OR. Received event OR from Rock County for case #2020GN000012 Document(s) associated with source event: Order on Transfer of Venue.

02-06-2020 Letters of temporary guardianship - person

Additional text:

Change of Venue - case originated in Rock County. ch. 51; expires 3/7/2020 Received event LTGP from Rock County for case #2020GN000012 Document(s) associated with source event: Ch. 51 Temporary Letters of Guardian of the Person.

02-06-2020 Proposed letters of temp guardianship-person

Additional text:

Change of Venue - case originated in Rock County. Ch. 51 Received event PLTGP from Rock County for case #2020GN000012 Document(s) associated with source event: Proposed - Ch. 51 Temporary Letters of Guardian of the Person.

4/2/2020

2020GN000003 Case Details in Taylor County

| Date | Event | Court official | Court reporter | Amount |
|------------|---|--------------------|----------------|--------|
| 02-06-2020 | Prop. order for change of venue Additional text: Change of Venue - case originated in Rock County. Received event POCV from Rock County for case #2020GN000012 Document(s) associated with source event: Proposed - Order on Transfer of Venue. | | | |
| 02-06-2020 | Electronic Filing Notice Additional text: Change of Venue - case originated in Rock County. Received event EFN from Rock County for case #2020GN000012 Document(s) associated with source event: Electronic Filing Notice, Electronic Filing Notice. | | | |
| 02-06-2020 | Case Converted to Electronic Filing Additional text: Change of Venue - case originated in Rock County. Received event CCEF from Rock County for case #2020GN000012 | | | |
| 02-06-2020 | Order Additional text: Change of Venue - case originated in Rock County. Order of Conversion to Guardianship and Protective Placement or Services Received event OR from Rock County for case #2020GN000012 Document(s) associated with source event: Order on Conversion. | Timmerman, Jodi | | |
| 02-06-2020 | Hearing Additional text: Change of Venue - case originated in Rock County. Received event HE from Rock County for case #2020GN000012 Document(s) associated with source event: Probable cause hearing. | Timmerman, Jodi | | |

FILED

03-23-2020
For Official Use

Probate

Taylor County, Wis.

2020GN000003

**Wisconsin State Public Defender**

100 S. Mill St., Suite 104

Merrill, WI 54452-2736

Office Number: 715-536-9105

Fax Number: 715-539-3323

www.wisspd.org**Kelli S. Thompson**
State Public Defender**Jennifer Bias**
Trial Division Director**Jessica Fehrenbach**
Office Supervisor

March 22, 2020

Honorable Judge Ann Knox-Bauer
Taylor County Circuit Court
224 South Second Street
Medford, WI 54451RE: In the Matter of Robert Butler
Postponement of Jury Trial

Dear Judge Knox-Bauer:

I was informed tonight of the enclosed Supreme Court order regarding the requirement to postpone all jury trials until after May 22, 2020. Mr. Butler, through counsel, objects to a postponement as it would require the hearing to be held outside of statutory time limits.

I find Justice Bradley's (joined by Justice Kelly) to be particularly persuasive and applicable. While it focuses on the tension between the order and the constitution, I believe it to be equally applicable to violations of statutory requirements. Further, there are constitutional implications at stake – Mr. Butler has been deprived of liberty and due process is required. While the Supreme Court is certainly well-intentioned, the order is inconsistent with well settled notions of separation of powers and due process of law. The legislature and the executive has enacted strict timelines to hear matters like Mr. Butler's and a Court, by judicial fiat, has no authority to issue an order circumventing these laws – regardless of the severity of the crisis. Accordingly, we ask the jury trial remain on the schedule.

Very Respectfully,

Electronically Signed by Nicholas Grant Smith

Nick Smith

Assistant State Public Defender

SBID: 1089586

Copy: Corporation Counsel (by efilng)

GAL (by efilng)

SUPREME COURT OF WISCONSIN

IN RE THE MATTER
OF JURY TRIALS DURING
THE COVID-19 PANDEMIC

FILED**MAR 22, 2020**

Sheila T. Reiff
Clerk of Supreme Court
Madison, WI

WHEREAS Governor Evers has declared a public health emergency for the State of Wisconsin in connection with the COVID-19 pandemic; and

The United States Centers for Disease Control and Prevention has issued guidance related to the COVID-19 pandemic recommending, inter alia, that organizations develop and implement flexible attendance policies that allow employees to stay home when sick, to remain home to care for sick household members, and to work from home when possible; and

The Wisconsin Department of Health Services has issued a series of Emergency Orders that prohibit public or private gatherings of 10 or more people in a single room or confined space. Although the Emergency Orders have contained an exemption for the Wisconsin court system, the orders nonetheless urge all residents of the state to avoid such gatherings and to practice social distancing (maintaining six feet between individuals and avoiding all direct physical contact). The President has issued similar guidelines encouraging all citizens to work from home and to avoid gatherings of 10 or more people. The reason for these orders and guidelines is to avoid or decrease the transmission of COVID-19 from one person to another, as the disease may cause serious health consequences for the individual and may place undue strain on the health systems of this state and the country. In addition, there is a consensus among health providers and government health officials that certain categories of people are most at risk of suffering severe health consequences, including a higher risk of mortality, from COVID-19. Those higher-risk categories include older individuals and persons with pre-existing health conditions; and

The Supreme Court has administrative and superintending authority over the courts and judicial system of this state and a duty to promote the efficient and effective operation of the state's judicial system, Wis. Const. Art. VII, § 3; In re Kading, 79 Wis. 2d 508, 519-20; 235 N.W.2d 409 (1976); and

In light of the existing public health emergency, the Supreme Court makes the following findings:

1. Maintaining current court operations in the courts of this state, especially jury trials, presents substantial health risks to the public, to jurors, to witnesses, to law enforcement personnel, to litigants, to lawyers, and to court employees;

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March 22, 2020

In re the Matter of Jury Trials during the COVID-19 Pandemic

2. To protect the health of the public and the individuals who work for the courts of this state, it is necessary to limit temporarily the number of individuals who are physically present within the courts of this state and to temporarily modify certain procedures to ensure that the essential operations of the courts continue in an appropriate manner during the present public health emergency;
3. Continuing to have jury trials would put members of the public, jurors, witnesses, law enforcement personnel, lawyers, judges, and court employees at an unacceptable level of risk to their health and for some at an unacceptable level of risk for the loss of their lives;
4. Given the need to excuse jurors who are in high risk categories in order to protect them from exposure to this potentially deadly pandemic, the effect of such wide-ranging excusal from jury service could potentially raise challenges to the validity of a jury's verdict or result in a miscarriage of justice. The increasing potential for a juror to become ill with COVID-19 during a trial, which would require isolation of all other remaining jurors and other participants in the trial, also creates an unacceptable potential for mistrials;
5. Those individuals who are healthy enough to serve on a jury would likely be distracted by, and anxious about, the physical environment of the trial and their deliberations. There is a substantial risk that jurors compelled to report for jury duty would not be able to "examine the evidence with care and caution," and to "[a]ct with judgment, reason, and prudence," as instructed by Wis. JI-Crim 140, or to "be very careful and deliberate in weighing the evidence," as instructed by Wis. JI-Crim 460. In addition, jurors may be so affected by their anxiety from being in contact with other jurors and court staff that they cut short their deliberations so that they can be dismissed and leave the courthouse;
6. While this court cannot make findings as to particular cases (regarding whether their nature and complexity make it unreasonable to expect adequate preparation within the time periods established by Wis. Stat. sec. 971.10), the court finds that the nature of individual cases is a factor that is of greatly less significance than the global factors it has identified and found in this order;
7. Victims will also be subject to increased risk of contracting COVID-19 if they attend a jury trial during the public health emergency and they may be unable to attend a jury trial during the COVID-19 public health emergency because they are in a high-risk health category, which outweighs the impact on victims of the temporary delay in jury trials as a result of this order;
8. The risks identified above may be significantly mitigated by temporarily modifying court operations, including a temporary suspension of jury trials. Indeed, failing to temporarily suspend jury trials in the courts of this state would create an unacceptable risk of a miscarriage of justice;
9. The health risks from the COVID-19 pandemic constitute good cause to implement temporary changes to court procedures, including the temporary suspension of jury trials;
10. The delay in conducting a jury trial that results from the temporary suspension of jury trials provided in this order is not due to the actions of the government, but is due to factors beyond the government's control;

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In re the Matter of Jury Trials during the COVID-19 Pandemic

11. Consequently, the ends of justice served by temporarily suspending jury trials in the courts of this state outweigh the interest of the public and the defendant in a speedy trial under Wis. Stat. sec. 971.10(3)(a);

NOW THEREFORE, IT IS HEREBY ORDERED that although the courts of the State of Wisconsin remain open, effective immediately through and including May 22, 2020, all civil and criminal jury trials scheduled to begin before May 22, 2020, are continued and will be rescheduled by the presiding judge to a date after May 22, 2020; and

IT IS FURTHER ORDERED that circuit courts or parties may file a motion with this court seeking an exception to this order. Any such motion should be identified as an "EMERGENCY" motion on its face, and shall be filed as soon as possible.

The provisions of this order shall be subject to further modification or extension by future orders of this court.

The State Bar of Wisconsin shall take all reasonable steps to notify its members of the contents of this order.

¶1 REBECCA GRASSL BRADLEY, J. (*dissenting*). The Wisconsin Supreme Court suspends the constitutional rights of Wisconsin citizens, citing the exigency of a public health emergency. The Constitution does not countenance such an infringement. "Emergency does not create power. Emergency does not increase granted power or remove or diminish the restrictions imposed upon power granted or reserved. The Constitution was adopted in a period of grave emergency. Its grants of power to the federal government and its limitations of the power of the States were determined in the light of emergency, and they are not altered by emergency." Home Bldg. & Loan Ass'n v. Blaisdell, 290 U.S. 398, 425 (1934) (emphasis added).

¶2 The Sixth Amendment to the United States Constitution commands: "In all criminal prosecutions, the accused shall enjoy the right to a speedy trial[.]" U.S. Const. amend. VI. Wisconsin's highest court says a public health emergency justifies a blanket 60-day suspension of a constitutional right. If that is true, then the following constitutionally enumerated rights of the people (among others) are also subject to suspension by judicial decree:

- The free exercise of religion

Page 4

March 22, 2020

In re the Matter of Jury Trials during the COVID-19 Pandemic

- The freedom of speech
- The freedom of the press
- The right of the people to peaceably assemble
- The right of the people to petition the Government for a redress of grievances
- The right of the people to keep and bear Arms
- The right of the people to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures.

¶3 Informed by the lessons of history, the Constitution was established to safeguard the rights of the people even under the most exigent circumstances. The framers "foresaw that troubulous times would arise, when rulers and people would become restive under restraint, and seek by sharp and decisive measures to accomplish ends deemed just and proper; and that the principles of constitutional liberty would be in peril, unless established by irrepalable law. The history of the world had taught them that what was done in the past might be attempted in the future. The Constitution of the United States is a law for rulers and people, equally in war and in peace, and covers with the shield of its protection all classes of men, at all times, and under all circumstances. No doctrine, involving more pernicious consequences, was ever invented by the wit of man than that any of its provisions can be suspended during any of the great exigencies of government. Such a doctrine leads directly to anarchy or despotism, but the theory of necessity on which it is based is false; for the government, within the Constitution, has all the powers granted to it, which are necessary to preserve its existence; as has been happily proved by the result of the great effort to throw off its just authority. Ex parte Milligan, 71 U.S. 2, 120-21 (1866) (emphasis added).

¶4 The Sixth Amendment's Speedy Trial Clause enshrines an ancient liberty. The Assize of Clarendon, an English code of legal procedure established in 1166, mandated speedy trials for the accused, "without delay." In 1215, following the English barons' revolt against tyrannical rule, the Magna Carta promised "[t]o no one will we sell, to no one deny or delay the

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In re the Matter of Jury Trials during the COVID-19 Pandemic

right or justice." See Patrick Ellard, Learning From Katrina: Emphasizing the Right to a Speedy Trial to Protect Constitutional Guarantees in Disasters, 44 Am. Crim. L. Rev. 1207, 1209-10 (2007) (quoted source omitted).

¶5 The right to a "trial by jury" is "a valuable safeguard to liberty" and "the very palladium of free government." The Federalist No. 83, at 499 (Alexander Hamilton) (Clinton Rossiter ed., 1961). "[T]he Speedy Trial Clause's core concern is impairment of liberty." Doggett v. United States, 505 U.S. 647, 660 (1992) (Thomas, J., dissenting) (quoting United States v. Loud Hawk, 474 U.S. 302, 312 (1986)). "The public interest in a broad sense, as well as the constitutional guarantee, commands prompt disposition of criminal charges." Strunk v. United States, 412 U.S. 434, 439 n.2 (1973). With respect to the rights guaranteed by the Sixth Amendment, "so strong was the sense of the country of their importance, and so jealous were the people that these rights, highly prized, might be denied them by implication, that when the original Constitution was proposed for adoption it encountered severe opposition; and, but for the belief that it would be so amended as to embrace them, it would never have been ratified." Ex parte Milligan, 71 U.S. at 120. "Time has proven the discernment of our ancestors; for even these provisions, expressed in such plain English words that it would seem the ingenuity of man could not evade them, are now . . . sought to be avoided." Id. (emphasis added; emphasis omitted).

¶6 Nothing in the Constitution permits the judiciary to limit the fundamental rights secured under the Sixth Amendment. "[T]here is only one instance in the Constitution where the government is expressly permitted to suspend a fundamental right[.]" Mitchell F. Crusto, State of Emergency: An Emergency Constitution Revisited, 61 Loy. L. Rev. 471, 504 & n.189 (2015); see U.S. Const. art I., § 9, cl. 2. Article I. § 9, cl. 2 provides: "The Privilege of the Writ of Habeas Corpus shall not be suspended, unless when in Cases of Rebellion or Invasion the public Safety may require it." If the framers had contemplated suspension of Sixth Amendment rights or any other liberties, they would have said so in the text.

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In re the Matter of Jury Trials during the COVID-19 Pandemic

¶7 The court's order not only overrides the United States Constitution, it flouts the Wisconsin Constitution, which mandates: "In all criminal prosecutions, the accused shall enjoy the right . . . to a speedy public trial[.]" Wis. Const. Art. I, § 7. While utterly ignoring the supreme law of the land, the court expressly refuses to follow statutory law. The court says "the ends of justice served by temporarily suspending jury trials in the courts of this state outweigh the interest of the public and the defendant in a speedy trial under Wis. Stat. sec. 971.10(3)(a)." Under that statute, criminal trials in Wisconsin "shall commence" within specified periods of time, depending on the nature of the charges. See Wis. Stat. § 971.10(1)-(2). Continuances are statutorily permissible, provided a circuit court considers multiple case-specific factors. See Wis. Stat. § 971.10(3). The broad sweep of the court's order precludes every circuit court in the state from exercising its discretionary power to weigh various statutory factors—including the interests of the victim—before granting a continuance. See Wis. Stat. § 971.10(3)(b)(3).

¶8 The all-encompassing nature of the court's order postponing every criminal jury trial in the state of Wisconsin for a minimum of two months cannot comport with the Sixth Amendment's speedy trial mandate, which, although not strictly construed so as to forbid any delay whatsoever, "necessarily compels courts to approach speedy trial cases on an ad hoc basis. We can do little more than identify some of the factors which courts should assess in determining whether a particular defendant has been deprived of his right. Though some might express them in different ways, we identify four such factors: Length of delay, the reason for the delay, the defendant's assertion of his right, and prejudice to the defendant." Barker v. Wingo, 407 U.S. 514, 530 (1972) (emphasis added; footnote omitted). The court's blanket order dispenses with both constitutional and statutory requirements to consider, on a case by case basis, the rights of the accused, the interests of victims, and the best interests of the public. Under Wisconsin law, "[e]very defendant not tried in accordance with this section shall be discharged from custody." Wis. Stat. § 971.10(4). Violations of the Constitution's Speedy Trial Clause require dismissal of the charges against the accused: "In light of the policies which underlie the right to a speedy trial,

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March 22, 2020

In re the Matter of Jury Trials during the COVID-19 Pandemic

dismissal must remain, as Barker noted, 'the only possible remedy.'" Strunk, 412 U.S. at 440 (citing Barker, 407 U.S. at 522).

¶9 "History teaches that grave threats to liberty often come in times of urgency, when constitutional rights seem too extravagant to endure . . . when we allow fundamental freedoms to be sacrificed in the name of real or perceived exigency, we invariably come to regret it." Skinner v. Railway Labor Executives' Ass'n, 489 U.S. 602, 635 (1989) (Marshall, J., dissenting). Justifying the suspension of the people's constitutionally guaranteed rights based on a public health emergency nullifies our Constitution. Justice Antonin Scalia once explained that "every tinpot dictator has a Bill of Rights which he casually ignores. What was debated in 1787 and what insures our freedom is our structure of government which holds each branch (and in turn by its people) to account." If the people's constitutional rights may be suspended by the judicial branch in the name of a public health emergency, our freedom is in peril; our republic is lost. More than one million Americans have died defending our liberty from external threats. The liberty for which so many have laid down their lives should not be cast aside even in "troubulous times." If the government will not protect constitutional rights designed to preserve our freedom, it is up to the people to reclaim them.

¶10 I am authorized to state that Justice Daniel Kelly joins this dissent.