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April 10, 2020

Office of the Clerk
Supreme Court of Wisconsin
110 E. Main Street, Suite 215
P.O. Box 1688
Madison, WI 53701-1688

RECEIVED

APR 14 2020

CLERK OF SUPREME COURT
OF WISCONSIN

Re: R.L.B. v. Taylor County Human Services
No. 2020XX461

Dear Madam Clerk:

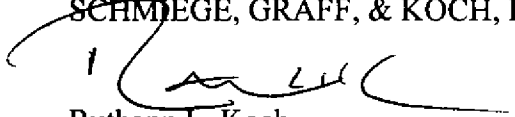
Enclosed please find the original and one copy of Respondent Taylor County Human Services' Response in the above-entitled matter. The enclosed document was previously filed via email on April 10, 2020.

The parties listed below are receiving a copy of this correspondence and have received electronic copies of the enclosed documents via email.

Please feel free to contact me should you have any questions.

Thank you for your consideration in this matter.

Sincerely,
SCHMIEGE, GRAFF, & KOCH, LTD


Ruthann L. Koch
Attorney for Respondent

Enclosures

Cc: Taylor County Circuit Court (*via e-filing*)
Attorney Nicholas Smith (*via e-filing*)
Attorney Bryce Schoenborn (*via e-filing*)

This document was previously filed via email.

FILED

APR 14 2020

**CLERK OF SUPREME COURT
OF WISCONSIN**

**STATE OF WISCONSIN
IN SUPREME COURT**

IN THE MATTER OF R.L.B.

**RESPONDENT TAYLOR COUNTY HUMAN
SERVICES' RESPONSE TO PETITIONER R.L.B.'S
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**

Ruthann Lorraine Koch
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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.....9

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STATEMENT ON ORAL ARGUMENT AND PUBLICATION

Respondent contends that oral argument and publication are not necessary in this case.

PROCEDURAL HISTORY

Respondent Taylor County Human Services does not dispute the Procedural History as recited in R.L.B.'s Emergency Request filed with this Court on April 2, 2020. However, Respondent would make the following point of clarification.

A Final Hearing had been scheduled to be heard in Taylor County Circuit Court on February 28, 2020. This would have been only twenty-five days after R.L.B. was emergently detained in Rock County, Wisconsin (See Attachment A of R.L.B.'s Emergency Request, Statement of Emergency Detention). However, because R.L.B. demanded a jury trial, which was filed on February 26, 2020, the parties, including R.L.B. through his attorney, stipulated to an adjournment of the Final Hearing scheduled on February 28, 2020, and an extension of the temporary guardianship and protective placement orders (See Attachment E of R.L.B.'s Emergency Request, Extension Order entered in Taylor County Case No. 2020GN03). Thus, R.L.B.'s contention that he has been deprived of due process since the initial February 3, 2020, Probable Cause Hearing in Rock County is not accurate. R.L.B. has been represented by an attorney throughout these proceedings, and he waived his opportunity to have a Final Hearing in circuit court on February 28, 2020.

REQUIRED ANALYSIS

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

Respondent Taylor County Human Services would agree with R.L.B. that, in general, the 90-day deadline in Wis. Stat. § 55.135(5) would require the matter to be heard by May 6, 2020. However, Respondent contends that the Supreme Court of Wisconsin's March 22, 2020 order In Re the Matter of Jury Trials During the Covid-19 Pandemic and the subsequent

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, which temporarily suspended the deadlines for conducting a jury trial in proceedings under Wis. Stat. § 55.10(1) & (4)(c), consequently suspended applicable deadlines in matters attendant to said proceedings. This would include the 90-day deadline for temporary protective placements found in Wis. Stat. § 55.135(5). Therefore, Respondent objects to the relief requested by R.L.B.

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

Respondent Taylor County Human Services concurs with R.L.B.'s statement in this section of his Emergency 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.

In his Emergency Request filed with this Court, R.L.B. focuses on the Separation of Powers and his Due Process Rights. Respondent agrees that those issues are weighty and significant. But for the purposes of this Emergency Request, the analysis does not stop there. In its guidance to parties as to the procedure for filing requests for modifications relating to the COVID-19 Pandemic, the Wisconsin Supreme Court required the petitioner to, inter alia, discuss the impact the proposed change would have on the rights of the litigants, other parties, the courts, and the public. R.L.B.'s Emergency Request is entirely silent on those important factors.

A. Authority of Supreme Court

Implicit in R.L.B.'s Separation of Powers argument is that the Wisconsin Supreme Court lacks the authority to issue orders that would suspend statutory time limits. However, in reaching that erroneous conclusion, R.L.B.'s argument ignores the

constitutional authority granted to the Wisconsin Supreme Court in Article VII, Section 3 of the Wisconsin Constitution, and the authority of this Court recognized by the state legislature in Wis. Stats. §§ 757.12 and 751.12(3).

Article VII, Section 3 of the Wisconsin Constitution grants to this Court superintending and administrative authority over all courts in this state. Wis. Stat. § 757.12 provides that this Court “may appoint any other time for holding court” in the event it is “deemed unsafe or inexpedient, by reason of war, pestilence or other public calamity, to hold any court at the time and place appointed therefor.” Wis. Stat. §751.12(2) outlines the authority of Court to issue rules that modify or suspend statutory rules governing pleading, practice, and procedure. When read together, these provisions allow the Wisconsin Supreme Court to issue orders suspending rules and procedures related to the administration of the courts in this state, which would include the authority to issue rules suspending time limits for court proceedings. Justice Hagedorn, in his Concurring Opinion and joined by Justice Bradley and Justice Dallet, held similarly. 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, ¶ 13 (S. Ct. Order issued March 31, 2020).

B. Impact on the rights of litigants, other parties, the courts, and the public

Respondent acknowledges and appreciates the impact protective placement proceedings have on the rights of those individuals who are the subject of said proceedings. The temporary suspension of R.L.B’s right to a jury trial is not something the Respondent takes lightly. However, Respondent agrees with the Findings outlined in this Court’s March 22 order. To wit, “that the nature of individual cases is a factor that is of greatly less significance than the global factors [this Court] has identified and found in this order”, “that the health risks from COVID-19 pandemic constitute good cause to implement temporary changes to court proceedings, including the temporary suspension of jury trials”, and that “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...” In Re the Matter of Jury Trials During the Covid-19

Pandemic (S. Ct. Order issued March 22, 2020). Rooted in its authority derived from the aforementioned constitutional provisions and statutes, this Court determined that in light of the severity of the COVID-19 pandemic, justice is best served by temporarily suspending jury trials. Respondent agrees with that conclusion.

Justice Hagedorn, in his Concurring Opinion and joined by Justice Bradley and Justice Dallet, opines that “exceptions to the general postponement” should be allowed “for any cases where courts are able to operate safely.” 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, ¶ 13 (S. Ct. Order issued March 31, 2020). Here, while R.L.B. has requested an exception to the postponement, his Emergency Request fails to address the issue of whether the court would be able to safely conduct the jury trial. Moreover, R.L.B. has failed to address the impact having a jury trial during the COVID-19 Pandemic could have on the parties, the court, the jurors, the witnesses, and members of the public.

Respondent would echo the concerns raised by Chief Justice Roggensack in her concurring opinion and joined by Justice Kingsland, wherein Chief Justice Roggensack highlights the significant risk posed by COVID-19 to jurors, jurors’ family members, court house staff, judges, litigants, and witnesses. *Id.* at ¶¶ 2-4. Here, several of the Respondent’s intended witnesses reside in Rock County, Wisconsin and would be traveling nearly 200 miles to Taylor County for the jury trial (Attachment A, Taylor County Human Services’ Response to Discovery Demand). R.L.B. by his own admission is a high-risk advanced age individual, living at an assisted living in Marathon County, Wisconsin (See page 13 of R.L.B.’s Emergency Request filed with this Court on April 2, 2020). Respondent would be very concerned about the potential for the transmission of the COVID-19 virus between the various persons coming from other locations outside the county, including R.L.B, who up to this point has been shielded from the virus while residing at the assisted living facility. These grave concerns must be taken into account when making the determination as to whether to grant R.L.B.’s Emergency Request.

4) Identify whether this is an existing or anticipated problem?

Respondent concurs with R.L.B.'s statement in this section.

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

Because Respondent Taylor County Human Services objects to the relief being requested by R.L.B., Respondent also objects to the draft language proposed by R.L.B. in his Emergency Request.

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

Respondent concurs with R.L.B.'s statement in this section.

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

R.L.B.'s request is an Emergency. There is a status conference regarding this request scheduled in the trial court on April 17, 2020, at 9:30 am. The jury trial in this matter is currently scheduled on April 28, 2020.

8) Contact person's information: Name, Address, telephone, and E-mail

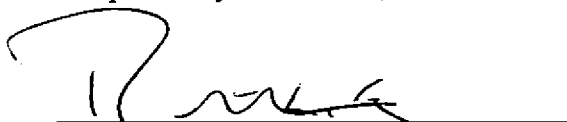
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Attorney for Respondent Taylor County Human
Services

CONCLUSION

For the foregoing reasons, Respondent respectfully requests that the court deny the Petitioner R.L.B.'s Emergency Request.

Dated this 10th day of April, 2020.

Respectfully submitted,



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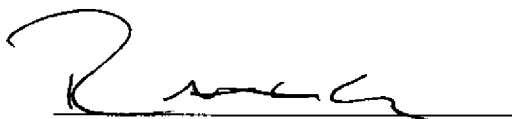
Attorney for Respondent

CERTIFICATION AS TO FORM AND LENGTH

I hereby certify that this brief conforms to the rule contained in Wis. Stat. § 809.18(b) and (c) for a brief and appendix produced with a proportional serif font. The length of the brief is 2,104 words.

Dated this 10th day of April, 2020.

Signed:



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Attorney for Respondent

**CERTIFICATION AS TO COMPLIANCE WITH WIS. STAT. §
809.19(12)**

I hereby certify that:


I have submitted an electronic copy of this brief, excluding the appendix, if any, which complies with the requirements of § 809.19(12). I further certify that:

This electronic brief is identical in content and format to the printed form of the brief filed on or after this date.

A copy of this certificate has been served with the paper copies of this brief filed with the court and served on all opposing parties.

Dated this 10th day of April, 2020.

Signed:



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FILED
04-09-2020
Probate
Taylor County, Wis.
2020GN000003

STATE OF WISCONSIN CIRCUIT COURT TAYLOR COUNTY

IN THE MATTER OF:

DOB: 04/18/1949

Case No. 2020GN03

PETITIONER'S RESPONSE TO DISCOVERY DEMAND

Taylor County Human Services Department, Petitioner, by and through its attorney Ruthann L. Koch, responds to the demand for discovery dated March 9, 2020, as follows:

1. See attached copies of records from Stoughton Hospital, the VA Hospital in Madison, progress notes and records from Human Services, and law enforcement records that Petitioner may introduce or rely on at trial.
2. See attached copies of [redacted] file from Taylor County Human Services related to a previous mental health commitment.
3. a) Taylor Reinhardt, case manager, Taylor County Human Services.
Address: 540 E. College Street, Medford, WI 54451.

b) Dr. Amy Connell, Stoughton Hospital.
Address: 900 Ridge Street, Stoughton, WI 53589.

c) Erin Erikson
Address: 4013 Windmill Lane, Janesville, WI 53546

d) Jacob Dunn, Social Worker, Stoughton Hospital
Address: 900 Ridge Street, Stoughton, WI 53589

e) Beverly Butler
Address: W2521 Rustic Road 1, Rib Lake, WI 54470

f) Deputy David Kahan, Taylor County Sheriff's Department
Address: 224 S. Second St., Medford, WI 54451

g) Deputy Karie Thums, Taylor County Sheriff's Department
Address: 224 S. Second St., Medford, WI 54451
4. Any written statements of a County witness would be contained in the records referred to in paragraphs 1 and 2 above.

5. Expert testimony: a) Dr. Amy Connell. The subject matter of the witness's testimony would be related to her examination of [redacted] as part of this proceeding and her interactions with and observations of [redacted] while he was inpatient at Stoughton Hospital. The witness's findings can be found in her written Examining Physician's Report filed with the court on February 19, 2020. The County intends to introduce said Report at trial.

b) Taylor Reinhardt. The subject matter of the witness's testimony would be related to Human Services' involvement in responding to APS referrals and offering and facilitating services to [redacted] as well as the witness's recommendation for the individual's placement. The witness's recommendation for placement can be found in his Comprehensive Evaluation filed with the court on February 21, 2020. The County intends to introduce said Comprehensive Evaluation at trial.

Dated this 9th day of April, 2020.

Respectfully submitted,

SCHMIEGE, GRAFF, & KOCH LTD
Attorneys for Petitioner

Electronically signed by: Ruthann L. Koch

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Cc: Attorney Bryce Schoenborn, GAL