COURT OF APPEALS
DECISION
DATED AND RELEASED

May 16, 1997

NOTICE

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. *See* § 808.10 and RULE 809.62, STATS.

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No. 97-0626

STATE OF WISCONSIN **IN COURT OF APPEALS**
DISTRICT IV

IN RE THE TERMINATION OF PARENTAL RIGHTS OF ANDREW V.G., A PERSON UNDER THE AGE OF 18:

STATE OF WISCONSIN,

PETITIONER-RESPONDENT,

V.

DORIS G.,

RESPONDENT-APPELLANT.

APPEAL from an order of the circuit court for La Crosse County: JOHN J. PERLICH, Judge. *Affirmed.*

VERGERONT, J.[1] Doris G. appeals from the order terminating her parental rights to her son Andrew G., date of birth July 2, 1987. Doris G. contends

[1] This appeal is decided by one judge pursuant to § 752.31(2)(e), STATS. This appeal has been expedited. RULE 809.107(6)(e), STATS.

on appeal that the trial court erred in denying her motion to exclude privileged communications and confidential records held by alcohol and drug assessment (AODA) treatment providers and that this violated state law privilege, federal regulations and her right to due process. We conclude that the trial court correctly found that the communications were not privileged under state law, properly applied the federal regulations, and that there was no due process violation. We therefore affirm.

BACKGROUND

La Crosse County Human Services Department (the department) filed a petition for determination of status on December 22, 1993, pursuant to § 48.13(10), STATS, alleging Doris G.'s neglect of Andrew G.[2] The petition alleged that Doris G. had been frequently leaving Andrew G. home alone with his fifteen-year-old brother, overnight and longer, that there was no food in the house, and the fifteen-year old had left Andrew G. home alone at least once. Andrew G. was placed in foster care on December 13, 1993. A dispositional order was entered on January 31, 1994, finding Andrew G. in need of protection or services and placing him outside his mother's home. In the initial dispositional order there were fifteen conditions imposed for Andrew G.'s return to Doris G.'s home, including:

> (1) Refrain from alcohol use and use of illegal drugs by remaining totally abstinent;

[2] Section 48.13(10), STATS., provides:

> Whose parent, guardian or legal custodian neglects, refuses or is unable for reasons other than poverty to provide necessary care, food, clothing, medical or dental care or shelter so as to seriously endanger the physical health of the child;

> ….
>
> (4) Comply with all recommendations of the present alcohol assessment and any subsequent and forthcoming recommendations as deemed necessary and appropriate regarding alcohol abuse treatment.

The initial order was extended on February 9, 1995, until January 31, 1996; and extended again, on February 12, 1996, for a period of one year. At each extension, the court ordered that Andrew G. remain in foster care. The 1995 order continued in large part the conditions originally imposed and added these:

> (1) Completely abstain from consuming or possessing any mood altering chemicals including alcohol and controlled substances for which she does not possess a valid doctor's prescription issued to her.
>
> (2) Follow through with all of the recommendations in the current drug and alcohol assessment completed at Lutheran Hospital. Should Ms. G. feel these recommendations are no longer applicable, she shall set up and follow through with completing a new drug and alcohol assessment. She shall follow all recommendations that come forth from that assessment.
>
> (3) Attend all meetings and appointments as scheduled with the liaison worker from Coulee Council on Alcoholism as contracted through La Crosse County Human Services Department. Additionally, follow all recommendations of that worker and continue to meet with that worker throughout and until expiration of this court order.
>
> (4) Complete a psychological/psychiatric evaluation and follow through with all treatment recommendations.
>
> (5) If reasonable and affordable, attend weekly individual therapy appointments with a therapist approved by the Department and follow through with all recommendations of that therapist.
>
> ….

> (7) Demonstrate internalization of issues addressed and resolved in drug and alcohol, individual and family therapy/counseling as documented by the therapist.

These conditions were continued in the third order of February 12, 1996. All three of the orders required that Doris G. "sign all release of information forms necessary to determine compliance with the court order in progress in all treatment areas."

On September 13, 1996, the department filed a petition to terminate Doris G.'s parental rights to Andrew G. The petition alleged that Doris G. had failed to demonstrate substantial progress toward meeting the conditions established for the return of Andrew G. to her home, including failure to: follow through with the recommendations of the drug and alcohol assessment conducted by Allen Wagner, La Crosse County Clinical Services; attend all meetings and appointments as scheduled with the liaison worker with the Coulee Council of Alcoholism as contracted through the department; follow through with treatment recommendations based on the psychological evaluation by Dr. Maxwell Cubbage; attend weekly individual therapy appointments with a therapist approved by the department; and follow through with recommendations of the therapist.

A trial was set for November 12 and 13, 1996. Just prior to jury selection, Doris G. orally moved the court to revoke the authorizations for release of information she had given for Dr. Maxwell Cubbage and Teri New, the liaison worker with the Coulee Council who was to assist Doris G. in following through with her alcohol treatment plan, and to prohibit their testimony or the revelation of any privileged information at trial. The guardian ad litem for Andrew G. then informed the court that she was preparing a motion for a court order allowing Teri

New and other treatment providers to produce records and testify in the absence of Doris G.'s consent. The court decided to defer ruling on Doris G.'s motion until the next day when the guardian ad litem was to file her motion.

The court heard both Doris G.'s motion and the guardian ad litem's motion the next day. The guardian ad litem's motion requested an order that persons who had provided alcohol treatment to Doris G. be permitted to testify and provide records. Those individuals were Allen Wagner, Teri New and Robbie Mack, coordinator of a transitional facility for alcoholics, which was part of Doris G.'s treatment plan.[3] This motion was based on 42 C.F.R. pt. 2 which governs the release of AODA records by alcohol and drug abuse programs that are federally assisted. *See* 42 C.F.R. § 2.12.[4]

During the hearing on the motion, the attorneys advised the court that the records of Dr. Cubbage and Teri New--the records that Doris G.'s counsel sought to prevent from being disclosed at trial--had already been released to the attorney for the State, the guardian ad litem and Doris G.'s counsel. The court concluded that those records and communications were not privileged because they had been obtained pursuant to court order and therefore were not confidential communications. The court also agreed with the arguments of the State's attorney that the information was not privileged because it came within the exception for information obtained by intake workers or dispostional staff providing services

[3] The guardian ad litem's motion referenced a fourth individual, Barb Resheske, who did not testify. No party has brought to our attention to any records prepared by her and presented at trial.

[4] It appears the parties all agree that these regulations are applicable to the Coulee Council on Alcoholism and to the transitional housing, Alpha House, operated by Coulee Youth Center, Inc.

under ch. 48, STATS. Finally, the court reasoned that the information had already been released to the attorneys pursuant to the consent and had lost any privilege of confidentiality it might have had before that time. Doris G.'s counsel added Mack as a provider whose records and testimony Doris G. sought to prevent from being presented at trial. The trial court denied Doris G.'s motion with respect to all three individuals—Dr. Cubbage, New and Mack.

Regarding the guardian ad litem's motion, the trial court concluded that there was no other way to get the information the guardian ad litem sought to present at trial (the records and testimony of Wagner, New and Mack) and that the public interest in disclosure outweighed the potential injury to Doris G. The court also stated that this information was not confidential because of the court order. The court therefore granted the guardian ad litem's motion.

On appeal, Doris G. concedes that Dr. Cubbage's evaluation was not privileged because it was performed pursuant to a court order. *See* § 905.04(4)(b), STATS.[5] However, she contends that the testimony of Robbie Mack and Teri New was privileged under state law, that admission of their testimony and her records at

[5] We do not understand Doris G. to argue that the federal regulations apply to Dr. Cubbage.

trial was not permitted under federal law, and that this violated Doris G.'s right to due process.[6]

We first consider whether the trial court properly determined that Doris G.'s communications to New and Mack were not privileged under state law, and we conclude that the trial court was correct. The state law privilege Doris G. relies on extends to "confidential communications made or information obtained or disseminated for purposes of diagnosis or treatment of the patient's physical, mental or emotional condition, among the patient, … the patient's social worker [and] the patient's professional counselor …." Section 905.04(2), STATS. A communication is confidential "if not intended to be disclosed to 3rd persons other than those present to further the interest of the patient in the consultation, examination, or interview, or persons reasonably necessary for the transmission of the communication or information or persons who are participating in the diagnosis or treatment under the direction of the [treatment provider]." Section 905.04(1)(b). Doris G. became involved with New and Mack because the conditions of the dispositional orders required that she do so. Those orders also

[6] We do not understand Doris G. to be making these objections with respect to the testimony and records of Allen Wagner. Doris G. did not include Allen Wagner in her initial motion nor add his name when she orally added Mack's name. She does not make any reference to Wagner by name in either of her briefs, referring only to the testimony of Mack and New. The State's brief says that no objection was made by Doris G. with respect to Wagner's testimony or records. However, the guardian ad litem's brief does refer to Wagner's testimony and records as well as those of Mack and New. In the event Doris G. did intend to prevent disclosure of her communications to Wagner, our reasons for concluding that communications to Mack and New are not privileged under state law also apply to Wagner. In addition, we agree with the guardian ad litem that the exception in § 905.04(4)(b), STATS., for communications made and treatment records reviewed in the course of a court-ordered examination of the physical, mental or emotional condition of the patient applies to Wagner. Wagner conducted the second AODA assessment of Doris G. pursuant to this term of the dispositional order of 1995 and 1996: "Should Ms. G feel [the recommendations of the then current AODA assessment] are no longer applicable, she shall set up and follow through with completing a new drug and alcohol assessment."

required Doris G. to sign the releases necessary so that compliance with the order could be determined. Although she revoked consent just before trial, she had by then already made the communications to them and received services or treatment. At the time she was receiving treatment or services from New and Mack, she knew that she was ordered to sign releases--and had done so--in order that employees of the department could obtain information from Mack and New about her progress in her treatment for alcohol abuse and other problems. She knew the releases were to be used to determine whether she was making substantial progress toward meeting the conditions imposed on her by the court. Under these circumstances, we conclude that any communications she made to Mack and New do not meet the definition of "confidential" in § 905.04(1)(b).[7]

Doris G. argues that if communications to treatment providers are not privileged solely because a court orders a parent to participate in assessment, counseling or treatment in dispositional orders under ch. 48, STATS., then the purpose of the privilege--to foster confidence in the patient so that those services are effective--is defeated. However, the court, by imposing assessment, treatment and counseling conditions in the dispositional orders and the requirement that Doris G. sign the releases, has already made the determination that disclosure to determine Doris G.'s progress is important enough to overcome the therapeutic benefit to Doris G. that might flow from the knowledge that her communications would not be related to anyone else.

[7] We note that much of the testimony of Mack and New related to Doris G.'s failure to keep appointments, follow rules and take certain recommended steps. Doris G. nowhere specifies which communications by her were privileged, and which portions of the records or testimony were objectionable on that basis. It may be, as the guardian ad litem contends, that many of the communications by Doris G. contained in the testimony and records of Mack and New were not "made … for purposes of diagnosis or treatment…," *see* § 905.04(2), STATS., and are not privileged for that reason as well. However, we do not decide this issue.

Doris G. does not argue that the court did not have authority under state law to order her to participate in assessment, treatment and counseling and to sign releases to determine compliance with those orders. Indeed, we note another exception to the patient privilege relates specifically to "information obtained by … dispositional staff ... in the provision of services under § 48.069, STATS. Section 905.04(4)(g), STATS. Services under § 48.069(1) provide in part:

> (b) Offer individual and family counseling.
>
> (c) Make an affirmative effort to obtain necessary or desired services for the child and the child's family and investigate and develop resources toward that end.
>
> (d) Prepare reports for the court recommending a plan of rehabilitation, treatment and care.
>
> ….
>
> (e) Perform any other functions consistent with this chapter which are ordered by the court.

The information from New and Mack was obtained by Laurie Matti-Jore, the dispositional worker employed by the department who was assigned to Andrew G.'s case. Section 905.04(4)(g), STATS., also provides that the dispositional worker may disclose information obtained while providing services under § 48.069, STATS., only as provided in § 938.78, STATS. Section 938.78(2) permits disclosure of such information by order of the court. We conclude that under state law the court had the authority to impose the assessment, treatment and counseling conditions and the requirement that Doris G. sign releases to permit a determination of compliance with those conditions. We also conclude that communications to Mack and New in that context were not confidential, and that, under state law, the court could properly order their disclosure for purposes of this proceeding on the TPR petition.

We now consider whether the trial court properly determined that disclosure of Mack's and New's[8] records at trial was permissible under 42 C.F.R. § 2.64. That regulation describes the procedures and conditions under which a court may authorize disclosure of AODA records for noncriminal purposes.[9]

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[8] Our conclusions with respect to the testimony and records of Mack and New under the federal regulations also apply to Wagner, if Doris G. intended to object to the use of his records at trial, *see* footnote 6. We observe that it is not apparent from the record that he is employed by a federally assisted program.

[9] 42 C.F.R. § 2.64 provides in full:

> Procedures and Criteria for Orders Authorizing Disclosures for Noncriminal Purposes. (a) Application. An order authorizing the disclosure of patient records for purposes other than criminal investigation or prosecution may be applied for by any person having a legally recognized interest in the disclosure which is sought….
>
> (b) Notice. The patient and the person holding the records from disclosure is sought must be given:
>
> (1) Adequate notice in a manner which will disclose patient identifying information to other persons: and
>
> (2) An opportunity to file a written response to the application, or to appear in person, for the limited purpose of providing evidence on the statutory and regulatory criteria for the issuance of the court order.
>
> (c) Review of evidence: Conduct of hearing. Any oral argument, review of evidence, or hearing on the application must be held in the judge's chambers or in some manner which ensures that patient identifying information is not disclosed to anyone other than a party to the proceeding, the patient, or the person holding the record, unless the patient requests an open hearing in a manner which meets the written consent requirements of these regulations. The proceeding may include an examination by the judge of the patient records referred to in the application.
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> (d) Criteria for entry of order. An order under this section may be entered only if the court determines that good cause exists. To make this determination the court must find that:

(continued)

Doris G. first argues that she did not have adequate notice that disclosure was being sought as required by 42 C.F.R. § 2.64(b). We reject this argument. At the same court appearance that Doris G.'s counsel informed the court and other counsel that she had revoked her consent and now sought to prevent disclosure from certain treatment providers, the guardian ad litem informed the court and other counsel that she intended to file a motion later that day for release under the federal regulation. Doris G.'s counsel responded: "That's fine, Your Honor, we can take that up tomorrow," and the court stated: "All right. We'll discuss it tomorrow …." The guardian ad litem's motion was heard the next day and Doris G.'s counsel did not object during that hearing that

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> (1) Other ways of obtaining the information are not available or would not be effective; and
>
> (2) the public interest and need for the disclosure outweigh the potential injury to the patient, the physician-patient relationship and the treatment services.
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> (e) Content of order. An order authorizing a disclosure must:
>
> (1) Limit disclosure to those parts of the patient's record which are essential to fulfill the objection of the order.
>
> (2) Limit disclosure to those persons whose need for information is the basis for the order; and
>
> (3) Include such other measures as are necessary to limit disclosure for the protection of the patient, the physician-patient relationship and treatment services; for example, sealing from public scrutiny the record of any proceeding for which disclosure of a patient's record has been ordered.

Doris G. concedes that under state law, such records may be released without informed written consent pursuant to a lawful order of a court of record. Section 51.30(4)(b)4, STATS. Because 42 C.F.R. § 2.64 is more restrictive than state law with respect to the release of these records, we must apply § 2.64. The federal regulations prevent disclosures even if authorized or compelled by state law, but do not authorize disclosure if it is prohibited under state law. 42 C.F.R. § 2.20.

notice was inadequate. Under these circumstances, Doris G. has waived the right to raise any objection based on inadequacy of notice.

Doris G. also contends that the court did not conduct an *in camera* review of the records. However, it was not required to do so. Rather the "proceeding *may* include an examination by the judge of the patient records referred to in the application." 42 C.F.R. § 2.64(c). (Emphasis added.)

Doris G. next argues that, although the court came to the conclusion that there was good cause to authorize disclosure, its method of analysis and the record were insufficient to support the conclusion. In order to determine that there is good cause, the trial court must find that other ways of obtaining the information are unavailable and ineffective and that the public interest and need for disclosure outweigh potential injury to the patient, the patient/physician relationship, and treatment services. 42 C.F.R. § 2.64(d). Because this determination involves weighing competing interests to decide whether records should be admitted in evidence in a particular proceeding, it is a determination that calls for the exercise of the trial court's discretion. In reviewing a trial court's discretionary determination, we affirm if the trial court considered the facts of the case and reasoned its way to a conclusion that is one a reasonable judge could reach and is consistent with applicable law. ***Burkes v. Hales,*** 165 Wis.2d 585, 590, 478 N.W.2d 37, 39 (Ct. App. 1991). When a trial court does not articulate its reasoning, we may independently examine the record to determine if it provides a basis for the trial court's exercise of discretion. ***State v. Pharr,*** 115 Wis.2d 334, 343, 340 N.W.2d 498, 502 (1983).

We agree with Doris G. that the trial court did not explain its reasoning in arriving at the conclusion that there was no other way to obtain the

information and that public interest in disclosure outweighed the potential injury to the patient, patient/provider relationship and treatment services. However, we conclude the record provides a basis for the court's exercise of its discretion.

The affidavit of the guardian ad litem averred that Mack, Wagner and New had information and records relating to Doris G.'s AODA problem and treatment which were needed to allow a full and complete review of her history and to determine whether parental rights to Andrew G. should be terminated, that there was no other way to obtain this information without the consent of Doris G., and she refused to consent. The court had that information before it as well as this additional information provided by counsel at the hearing: the information and records the guardian ad litem sought to present at trial were needed to determine whether Doris G. had complied with the dispositional order; Doris G. was ordered to participate in the assessment, treatment and follow-up, which involved these witnesses; Doris G. had signed the pertinent releases but had just revoked them; and the records had already been released to the guardian and litem and to the State before the revocation.

Doris G.'s counsel did not dispute any of the above assertions. The sole basis for her opposition to the guardian ad litem's motion was the same as the basis for her own motion--state law privilege. The court did discuss its reasoning for rejecting the privileged nature of the information--in particular, that Doris G. had signed releases and that the assessment, treatment and counseling were court ordered. This reasoning is also pertinent to a good cause finding. The fact that Doris G. knew when she was counseled and assessed by the providers that they could release her communications and their observations and conclusions to the department for purposes of determining compliance with the dispositional order means that disclosure in the TPR proceeding is not a breach of a confidence that

she thought applied to those relationships. Any "injury" to the treatment relationship or the treatment process due to lack of confidentiality had already occurred. The public interest and need for disclosure are supported by the undisputed fact that the assessment and treatment had been ordered by the court as necessary conditions before Andrew G. could be safely returned to his mother's care. In addition, the averments that disclosure was necessary to determine compliance with those conditions and that there was no alternative means to obtain the information--which Doris G. did not dispute--support the trial court's conclusion that other ways of obtaining the information was not available.

On appeal, Doris G. also argues that another federal regulation, 42 C.F.R. § 2.63, prevents disclosure at trial. That regulation provides in pertinent part:

> Confidential Communications. (a) A court order under these regulations may authorize disclosure of confidential communications made by a patient to a program in the course of diagnosis, treatment, or referral for treatment only if:
>
> (1) A disclosure is necessary to protect against an existing threat to life or of serious bodily injury, including circumstances which constitute suspected child abuse and neglect and verbal threats against third parties;
>
> (2) The disclosure is necessary in connection with investigation or prosecution of an extremely serious crime …; or
>
> (3) The disclosure is in connection with litigation or an administrative proceeding in which the patient offers testimony or other evidence pertaining to the content of the confidential communications.

We understand Doris G. to contend that 42 C.F.R. § 2.63 imposes restrictions on what the trial court may authorize even if the conditions of 42

C.F.R. § 2.64 are satisfied.[10] Her position is that the first exception in 42 C.F.R. § 2.63--the only one possibly applicable--does not apply because Andrew G. was removed from Doris G.'s home in 1993 and is not now under an existing threat of serious bodily injury due to her neglect. Doris G. did not present an argument under § 2.63 to the trial court. However, since neither the State nor the guardian ad litem object to our consideration of this issue on appeal, and since all parties discuss this regulation in their briefs on appeal, we choose to address it. *See* ***County of Columbia v. Bylewski***, 94 Wis.2d 153, 171-72, 288 N.W.2d 129, 138-39 (1980). We conclude that 42 C.F.R. § 2.63 does not apply to communications that Doris G. made to Mack and New because they are not confidential, for reasons similar to those we have discussed in resolving the issue of state law privilege.

42 C.F.R. pt. 2 does not contain a definition of "confidential communication" and the parties do not address the meaning of this word except insofar as they discuss its definition under § 905.04(1)(b), STATS. We find the comments accompanying promulgation of the current version of 42 C.F.R. § 2.63 to be helpful, because they explain the history of the regulation. 42 C.F.R. § 2.63, like all of 42 C.F.R. pt. 2, was originally promulgated in 1975. 42 F.R. 27802. The first version of § 2.63 provided:

> (a) *Limitation to objective data.* Except as provided in paragraph (b) of this section, the scope of an order issued pursuant to this subpart may not extend to communications by a patient to personnel of the program, but shall be limited to the facts or dates of enrollment, discharge,

[10] Doris G. first argues that, since our state law on privilege prevents disclosure of Doris G.'s communications to the treatment providers, we need not consider 42 C.F.R. § 2.63 because it is less restrictive. *See* 42 C.F.R. § 2.20. However, she argues in the alternative that if § 2.63 applies, it does not permit disclosure. Since we have concluded that the communications are not privileged under state law, we address Doris G.'s argument under § 2.63.

> attendance, medication, and similar objective data, and my include only such objective data as is necessary to fulfill the purposes for which the order is issued.
>
> (b) *Exception.* When a patient in litigation offers testimony or other evidence pertaining to the content of his communications with a program, an order under this subpart may authorize the submission of testimony or other evidence by the program or its personnel.

40 F.R. 27819.

In 1983, the federal Department of Health and Human Services (DHSS) proposed to amend the rule to remove the prohibition on the entry of a court order authorizing disclosure of communications by a patient to personnel of the program. 48 F.R. 38758, 38762. According to the comments to this proposed amendment, DHSS saw no reason to give greater protection to communications and other subjective information obtained in the course of treatment than to objective data, and disclosure in any case was protected by the "good cause" requirement (contained in the authorizing statutes, 42 U.S.C. 290ddd-3(b)(2)(C) and 290eee-3(b)(2)(C) and expressed by rule in 42 C.F.R. § 2.64 (d)). 42 F.R. 38762. However, because of negative comments to this proposal, DHSS did not finally promulgate the proposed amendment to 42 C.F.R. § 2.63 but instead decided on the current version. DHSS explained in the commentary accompanying publication of the current version of § 2.63 that it decided to drop the distinction between "objective data" and "communications by a patient to personnel of the program" and instead protect only "confidential communications" under § 2.63. However, it also added two additional situations in which disclosure of confidential communications could be authorized, those now contained in § 2.63(a)(1) and (2). Although DHSS did not define "confidential communications," it stated:

> "Confidential communications" are the essence of those matters to be afforded protection and are as readily identified as "objective" data. Furthermore, protection of "confidential communications" is more relevant to maintaining patient trust in a program than is protection of "communications by a patient to personnel of the program," a term which does not distinguish between the innocuous and the highly sensitive communication.
>
> Most comments in opposition to relaxing the court order limitations on confidential communications said that the potential for court-ordered disclosure of confidential communications will comprise the therapeutic environment, may deter some alcohol and drug abusers from entering treatment, and will yield information which may be readily misinterpreted or abused.
>
> While freedom to be absolutely candid in communicating with an alcohol or drug abuse program may have therapeutic benefits and may be an incentive to treatment, it is the position of the Department that those therapeutic benefits cannot take precedence over two circumstances which merit court-ordered disclosure of confidential communications.

52 F.R. 21801.

We conclude from this commentary that 42 C.F.R. § 2.63 is, as Doris G. contends, a limitation on disclosure of confidential communications by the patient that must be met in addition to 42 C.F.R. § 2.64, if the records contain such communications. However, we also conclude that DHSS intended that confidential communications be limited to those communications that the patient intended would not be disclosed to third parties except as necessary to further treatment. It is evident from the commentary that DHSS intended that "confidential communications" were more limited than "communications by a patient to personnel of the program." Preventing disclosure of communications that the patient does not intend to be disclosed to third parties, except as necessary for treatment, serves DHSS's stated purpose of maintaining patient trust in

treatment programs. However that purpose is irrelevant if the patient makes a communication knowing that it will be, or will likely be, conveyed to a third party for purposes other than treatment. Since any communication Doris G. made to New or Mack were made with the knowledge that it could be disclosed in order to determine compliance with the dispositional orders, we conclude such communications were not confidential within the meaning of § 2.63.

Doris G.'s position that her due process rights were violated appears to rest solely on her arguments that the court erroneously allowed the use at trial of information privileged under state law and prohibited from disclosure under federal law. She does not present an independent basis for the constitutional claim. Since we have decided that the court did not err in either respect, we conclude that her right to due process was not violated

By the Court.—Order affirmed.

This opinion will not be published. *See* RULE 809.23(1)(b)4, STATS.