

**COURT OF APPEALS
DECISION
DATED AND FILED**

September 22, 2005

Cornelia G. Clark
Clerk of Court of Appeals

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

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

Appeal No. 2005AP1319-FT

Cir. Ct. No. 2003GN146

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

IN THE MATTER OF THE PROTECTIVE PLACEMENT OF MARGARET D.:

DANE COUNTY DEPARTMENT OF HUMAN SERVICES,

PETITIONER-RESPONDENT,

v.

MARGARET D.,

RESPONDENT-APPELLANT.

APPEAL from an order of the circuit court for Dane County:
ANGELA B. BARTELL, Judge. *Affirmed.*

Before Lundsten, P.J., Deininger and Higginbotham, JJ.

¶1 PER CURIAM. Margaret D. appeals from an order continuing a guardianship under WIS. STAT. ch. 880 (2003-04)¹ and a protective placement under WIS. STAT. ch. 55. We affirm.

¶2 Margaret first argues that the court erred by finding her incompetent, which is a necessary finding to continue both the guardianship and the protective placement. WIS. STAT. §§ 55.06(2)(b) and 880.33(4). The definition of “incompetent,” for purposes of this case, is a person adjudged substantially incapable of managing her property or caring for herself by reason of infirmities of aging, developmental disabilities, or other like incapacities. WIS. STAT. § 880.01(4). The phrase “other like incapacities” means “those conditions incurred at any age which are the result of accident, organic brain damage, mental or physical disability, [or] continued consumption or absorption of substances, producing a condition which substantially impairs an individual from providing for the individual’s own care or custody.” § 880.01(8). In the present case, the circuit court concluded that Margaret was incompetent due to an “other like incapacity” in the form of a combination of mental and physical disabilities.

¶3 The evidence was sufficient to support this conclusion. There is no dispute about Margaret’s physical maladies, including degenerative joint disease, which has led to wheelchair use, fibromyalgia, and a heart condition. One expert, Dr. Sheila Thakor, reported that Margaret has a personality disorder that impairs her ability to care for herself appropriately and significantly impairs her ability to accept the help she needs for physical conditions. A care provider at the assisted

¹ All references to the Wisconsin Statutes are to the 2003-04 version unless otherwise noted.

living facility where Margaret is placed gave testimony about various incidents and behaviors, including her potentially unhealthy hoarding behavior. There was also testimony about her difficulties in managing money and medications. This was a sufficient basis to conclude that Margaret is incompetent.

¶4 Margaret also argues that the court should not have continued the protective placement under WIS. STAT. ch. 55 because the evidence did not show that Margaret's disability is permanent or likely to become permanent, as required by WIS. STAT. § 55.06(2)(d). Thakor reported that Margaret's personality disorder is "a life-long condition." In its decision, the court stated that Margaret has treatment needs that "the County needs to address, including psychotherapy." Margaret argues that this shows her mental condition is treatable, and therefore is not permanent or likely to be permanent. We disagree. To say that Margaret can benefit from treatment is not to say that treatment is likely to reduce the effects of the disability to a point that protective placement is no longer appropriate. It is possible for her to benefit from treatment, but still not be sufficiently free from the effects of the disability.

By the Court.—Order affirmed.

This opinion will not be published. See WIS. STAT. RULE 809.23(1)(b)5.

