COURT OF APPEALS
DECISION
DATED AND FILED

September 15, 2009

David R. Schanker
Clerk of Court of Appeals

Appeal No. 2008AP2653 **Cir. Ct. No. 2006GN501**

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

IN THE MATTER OF THE GUARDIANSHIP AND PROTECTIVE PLACEMENT OF AARON B.:

MARGARET B.,

APPELLANT,

V.

MILWAUKEE COUNTY,

RESPONDENT.

APPEAL from orders of the circuit court for Milwaukee County: MEL FLANAGAN, Judge. *Affirmed*.

¶1 KESSLER, J.[1] Margaret B., the mother and guardian of Aaron B., appeals, *pro se*, from numerous trial court orders[2] concerning the protective placement of Aaron. She seeks reversal of numerous aspects of these orders, identifying thirteen issues for our consideration.[3] We reject her arguments and affirm the orders.[4]

BACKGROUND

¶2 It is undisputed that Aaron suffers from a significant disability as a result of an inoperable brain tumor and is dangerous to himself and others. No party to these proceedings disagrees that Aaron is an adult incompetent who needs twenty-four-hour personal supervision. Aaron is subject to unpredictable seizures, unpredictable running away (including into traffic), fits of rage and violent

[1] This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2) (2007-08). All references to the Wisconsin Statutes are to the 2007-08 version unless otherwise noted.

[2] Specifically, Margaret challenges the trial court orders entered on August 5, 2008; September 24, 2008; November 11, 2008; and February 9, 2009. The latter two orders, both issued by the Hon. Mel Flanagan, are considered final orders for purposes of appeal. The first order was issued by the Hon. Michael J. Dwyer, who handled the case through August 2008, until it was transferred due to judicial rotation.

We are aware that there have been subsequent motions and hearings at the trial court concerning this guardianship. Those proceedings are not before this court at this time.

[3] Margaret raises additional issues in her reply brief, noting that she was unable to raise all the issues in her fifty-nine-page opening brief. We decline her invitation to consider issues raised for the first time in her reply brief. *See* ***Bilda v. County of Milwaukee***, 2006 WI App 57, ¶20 n.7, 292 Wis. 2d 212, 713 N.W.2d 661 ("It is a well-established rule that we do not consider arguments raised for the first time in a reply brief.").

[4] Neither the guardian ad litem nor Aaron's adversary counsel are participating in the appeal. However, we have received an amicus curiae brief submitted by Disability Rights Wisconsin, which we appreciate.

outbursts which destroy property and endanger and injure Aaron and others, including Margaret and Aaron's other caregivers.

¶3 The issues in this case relate to Margaret's efforts to find a home for her son as he transitions to adulthood. Aaron lived at a facility called Chileda located in LaCrosse, Wisconsin, from age eleven to eighteen, but he was no longer able to remain at that facility after becoming an adult.[5] Thus, when Aaron turned eighteen in 2006, guardianship proceedings were begun.[6] Ultimately, in May 2007, Margaret was appointed Aaron's permanent guardian. The trial court found that the least restrictive placement for Aaron was an intermediate care facility (ICF).

¶4 In August 2007, Margaret filed a motion to modify the protective placement order, arguing that an ICF was not the least restrictive placement for Aaron. Following a September 2007 hearing, the trial court modified the order to provide that the least restrictive placement was an adult family home or community-based residential facility (CBRF). After an unsuccessful one-month placement in an adult family home in Milwaukee County, Aaron began living with his mother in November 2007. Arrangements were made with Milwaukee County (hereafter, "the County") to pay aides to come into the home, and Margaret was also paid for eight hours a day for care that she provided. According to Margaret, the arrangements were less than satisfactory because the County would not

[5] After turning eighteen, Aaron was able to live at Chileda's CBRF for one year while a permanent placement was arranged.

[6] Aaron was placed at Chileda under a CHIPS order while he was a minor.

provide as much coverage as she desired and it would not pay the rate she believed necessary to attract and retain the people she wanted to provide the care.

¶5 Proceedings for an annual review of the protective placement began in May 2008. That same month, Margaret filed a *pro se*[7] petition entitled "Petition for Modification of Protective Placement Order, Request for an Injunction to Enforce the Protective Placement Order, and Request of Damages Against Milwaukee County for Misleading the Court and Negligent Infliction of Emotional Distress on the Mother, Margaret [B.]." (Some capitalization omitted.) In that motion, Margaret sought a variety of things, including an order requiring the County to "adequately fund Aaron's care" as Margaret defined his needs, which would include providing Margaret compensation for her care-giving services, attorney fees, "health insurance for fiscal agents if needed" and "for snow shoveling, grass cutting."

¶6 A hearing on Margaret's motion was scheduled for June 12, 2008. Testimony was taken and, when the time available for the hearing expired, the matter was adjourned, with Margaret's consent, for two weeks. On June 25, the trial court addressed the parties. It restated its previous observation that it believed that Margaret's motion should be heard at the same time as the ***Watts***[8] review, so that Aaron could have his own counsel. Margaret told the trial court that she "welcome[d] counsel" for Aaron and when asked if she had any objections about

[7] For the May 2008 filing and subsequent filings, Margaret has represented herself.

[8] In ***State ex rel. Watts v. Combined Community Services Board***, 122 Wis. 2d 65, 362 N.W.2d 104 (1985), our supreme court held that a person subject to a protective placement order is entitled to have the status automatically and periodically reviewed. *See* ***id.*** at 84. An annual ***Watts*** review may consist of either a summary hearing or a full due process hearing. ***Id.*** at 85.

proceeding with the motion and the ***Watts*** review at a later date, she answered: "For the most part, no." She then expressed concern that the County had reduced the pay and payment arrangements for Aaron's aides to retaliate against Margaret. In response, the trial court ordered the County to provide written explanation for the reduction in the rate it was paying the aides and the payment terms. Margaret voiced no other objections to proceeding with the motion hearing and the ***Watts*** review at a later date.

¶7 The consolidated hearings were scheduled for July 22, 2008. However, Aaron's newly appointed counsel requested an independent comprehensive evaluation, so a full hearing was not held on July 22. The trial court did hear additional testimony and argument on numerous issues in Margaret's motion. At the conclusion of the testimony, the trial court dismissed Margaret's tort claims against the County, concluding they "are not properly brought within the context of a guardianship file." It also dismissed Margaret's claim that the County retaliated against her and denied her request for additional interim services pending resolution of the matter. Subsequently, Margaret filed a notice of intent to pursue postdisposition relief from the trial court's order.

¶8 Ultimately, the hearing on the remaining issues in Margaret's motion and the ***Watts*** hearing was held over the course of two days, on October 21 and October 28, 2008. During the hearing, Margaret testified about Aaron's need for care and her beliefs concerning the proper funding for that care. Testimony and documentation from Margaret contained detailed examples of Aaron's violent rages:

- Aaron refused to go up some stairs in a group home. When a staff member went to physically move him, Aaron hit the staff member in the face.

- When a shirt had not been washed as promised, Aaron said he was angry; the staff member walked away. In response, Aaron threw a television set and had to be restrained.

- While living in Margaret's home, Aaron attempted to use a knife on himself, turned over a bookcase, and ran into the street. He was taken to the Milwaukee County Mental Health Complex.

- While living in Margaret's home, Aaron broke furniture and dishes, attacked Margaret, ran into the street and fell, hurting himself.

- At times, Aaron is incontinent. At night it takes forty-five minutes to an hour and a half to get him up, take him to the bathroom and change the linen.

- Aaron once tackled Margaret outside on the sidewalk. He pulled out a chunk of her hair. He bit her arm twice and drew blood. Neighbors rescued her. Aaron was taken to the Mental Health Complex.

- Aaron got angry one night. Margaret woke up at 11:30 and he was standing over her bed holding scissors. He said he was thinking about stabbing her because she used a mean voice when she tucked him in.

- A caregiver blocked Aaron from trying to throw himself down some stairs. In response, Aaron bit him.

¶9 Margaret testified that based on her concerns for Aaron's safety, she believed that there needed to be *two* people to supervise Aaron at all times, paid at a rate she considered necessary to obtain appropriate caregivers, and that the County should pay her for her caregiving services as the needed second person. She also insisted that she be the one to hire the caregivers, that they not live in her home but rotate in shifts to provide uninterrupted coverage, and that the County pay all costs of caregivers. The rate Margaret wanted paid for caregivers was "$15-17 an hour." However, evidence was presented that the County had

available to it federal funding of $214 per day to spend on Aaron, although it had also spent additional County funds to supplement Aaron's care.

¶10 The Administrator of the Disability Services Division responsible for coordinating the delivery of services to people with developmental and physical disabilities testified that its policy is that:

> if we have a guardian where the individual is living with them in the home, we always look to someone else that they would pay to provide the service, so that there is a separation between the individual who is making the decisions as the guardian and the individual providing the service [in order to avoid a conflict of interest].

¶11 After hearing the testimony and arguments, the trial court found that "the level of security issue[s] in [Margaret's] home, the dangerousness, is, frankly, tremendous." Elaborating, the trial court noted:

> I am very frightened that your son is gonna hurt someone very seriously; if not you, then somebody who is a caregiver, a student, a teacher, a bus driver, somebody walking down the street when he runs off.
>
> And he's gonna end up in an institution for the rest of his life, and it's not gonna be least restrictive, it's not gonna have outings, it's not gonna have family Christmas, it's not gonna have anything.

To avoid that outcome, the trial court urged Margaret to accept the County's offer of providing twenty-four-hour paid care for Aaron in Margaret's home, allowing the County to control the payments to caregivers.

¶12 The trial court balanced the need for both care and safety, not only Aaron's safety, but also the safety of the people around him. The trial court also considered Aaron's need for consistency and how a live-in caregiver would provide that and would make it possible for Aaron to stay in Margaret's home and

continue to attend the same school. The trial court urged Margaret to accept a live-in caregiver, although its order allowed the County in its discretion to provide aides who did not live in the home. The trial court further found that as an alternative to living in Margaret's home that the least restrictive setting would be a smaller setting with three-to-five people and a good staff ratio, ideally in the same school district. The trial court ordered that if Aaron is "placed in a group home or some out-of-the-home facility, [Margaret] may not withdraw him from a home without Court approval" because returning Aaron to Margaret's home without aides would be too dangerous.

¶13 The trial court's written order from the October hearing, signed November 11, 2008, provided:

> The least-restrictive environment and most-integrated setting consistent with the ward's needs is an unlocked unit in: (1) the guardian's home, with 24-hour supervision provided for the ward at the discretion of Milwaukee County; or (2) a group home that can provide 24-hour supervision for the ward.…. If Milwaukee County cannot provide 24-hour supervision for the ward in the guardian's home, the least-restrictive environment and most-integrated setting is a group home.
>
> If the guardian chooses to place the ward in her home, the guardian shall not dismiss any caregivers without first providing [two weeks'] notice to Milwaukee County.
>
> Due to the potential for dangerousness, if the ward is placed in a group home, the guardian shall not remove the ward without court approval.

¶14 Margaret immediately filed a notice of intent to pursue postdisposition relief. While the appeal of the trial court's November 2008 order was pending, Margaret moved to enforce the order. In her motion, she asserted that the County "refuses to provide 24-hour care *as required*." (Emphasis supplied). She asked the trial court to "force Milwaukee County … to pay for 24-

hour care for [Aaron] in his home *with the current level of qualified staff making $15-$17 per hour.*" (Emphasis supplied.) Attached to Margaret's motion was a police report describing Aaron's additional violent outburst in her home, precipitated by his shirt not matching his pants. The reports explained that in December 2008 Aaron threw a computer monitor at Margaret, flipped over his bedroom furniture, threw a dresser on its side and created a room that, according to the police, "looked like it had been tossed up in the air." The police report attached to Margaret's motion describes Margaret as saying Aaron's size frightens her, he has become too strong for her to handle by herself, and she feared for her safety. According to the report, Margaret "kept repeating that she and Aaron need more help and that no one was listening to her."

¶15 The hearing on Margaret's January 2009 motion to enforce the physical placement order was attended by Margaret, Aaron's adversary counsel, the guardian ad litem (who Margaret had previously unsuccessfully moved to have replaced) and the County. In response to questions by the trial court, Margaret acknowledged that she was dissatisfied with the hourly rate the County was willing to pay, that she believed the amount for a caregiver should be $17 per hour and that the County's proposals for Aaron's care would mean Margaret would be paid nothing. Margaret argued that the County's proposals "were proven infeasible."

¶16 The County advised the trial court that Margaret had refused the full-time live-in care they proposed. The County explained that Margaret also rejected the live-in option because the County refused to pay Margaret as a caregiver. The County said that it had pursued group home placement, but was thwarted by Margaret, who sent the potential care providers police reports, 911 reports and

email expressing her opinion of Aaron's needs. The result, the County explained, was that none of the appropriate group homes was willing to take Aaron.

¶17 In a final effort to avoid institutional placement, the County offered to pay for shift workers coming into Margaret's home, although this was more expensive than the live-in support previously proposed. The workers were to be coordinated, supervised, hired and trained by an outside agency. They would be paid up to $15 an hour. Based on its policy, the County continued to refuse to pay Margaret as a caregiver because, as Aaron's guardian, that created a conflict of interest. When asked by the trial court if she would agree to that offer, Margaret's response was: "No, absolutely not."

¶18 The trial court explained to Margaret that if she refused in-home caregivers, Aaron would have to be moved to an institution since "it's so critical to move your son; because he's a danger to you, he's a danger to the community, and that cannot continue."[9] Still, Margaret refused to accept the County's offer of twenty-four-hour care provided by shift workers. The trial court informed Margaret that it would not "wait until you're dead or somebody on the street is dead or a teacher is dead, and your son ends up in an institution of a criminal nature for the rest of his life.… You've asked me to enforce my order, and I'm doing so." The trial court entered the following order enforcing its November order for Continued Protective Placement:

[9] Neither the guardian ad litem nor Aaron's trial counsel voiced any objection to the trial court's findings and order. Indeed, the guardian ad litem told the trial court that she had had a "very frank discussion" with Margaret that "mirrors the conversation" that the trial court was having with Margaret in court, and she opined that the only alternative if the CBRF and home options failed was institution.

> If the guardian, Margaret B[.], refuses to have the ward placed in her home with 24-hour supervision provided at the discretion of Milwaukee County, Milwaukee County is authorized to transfer the ward into a more-restrictive placement in an Intermediate Care Facility for the Mentally Retarded (ICF-MR) over the objection of the guardian.

¶19 Margaret filed a notice of intent to pursue postdispostion relief from the trial court's order. Appeals of the November 2008 and February 2009 orders followed. Of note, neither Aaron's counsel nor guardian ad litem has joined in or submitted a brief on appeal.

DISCUSSION

¶20 Margaret identifies thirteen specific issues in her opening brief, which she presents as three main arguments. In her first argument, she presents a challenge to the ***Watts*** hearing procedures, arguing that a "new trial" on the protective placement is required because of numerous errors, including: (1) not granting Margaret's motion for a jury trial; (2) not allowing "relevant facts" into evidence; (3) allowing Margaret to call only three witnesses; (4) limiting Margaret's cross-examination of witnesses; and (5) having a trial that was delayed and then rushed. Second, Margaret appears to challenge the substance of the trial court's findings, arguing that: (1) the County was required "to provide the matching funds required to keep Aaron B. safe in the least restrictive environment"; (2) Aaron's home is the least restrictive environment; (3) the guardian's rights were transferred "indiscriminately"; (4) "Wisconsin's Patient 'Bill of Rights' should provide Aaron B. prompt and adequate treatment and services for his condition."; and (5) Aaron's needs were not incorporated into the trial court's order. Finally, Margaret argues that she should have been allowed to pursue her tort claims within the guardianship action.

¶21 At the outset, we note that we have carefully reviewed the record and we are unconvinced that Margaret has raised any issue on appeal that entitles her to relief from the trial court's final and non-final orders.[10] In this decision, we will attempt to address Margaret's concerns. However, we decline to explicitly address the myriad issues and subissues she raises, many of which are inadequately briefed. *See* ***State v. Waste Mgmt. of Wis., Inc.***, 81 Wis. 2d 555, 564, 261 N.W.2d 147 (1978) ("An appellate court is not a performing bear, required to dance to each and every tune played on an appeal."); ***State v. Pettit***, 171 Wis. 2d 627, 646, 492 N.W.2d 633 (Ct. App. 1992) (appellate court may "decline to review issues inadequately briefed.").

I. Standards of review.

¶22 Protective placement orders issued pursuant to WIS. STAT. § 55.12 require numerous discretionary decisions. Whether a trial court properly exercised its discretion presents a question of law. ***Luciani v. Montemurro-Luciani***, 199 Wis. 2d 280, 294, 544 N.W.2d 561 (1996). "'An appellate court will sustain a discretionary act if it finds that the trial court (1) examined the relevant facts, (2) applied a proper standard of law, and (3) using a demonstrated rational process, reached a conclusion that a reasonable judge could reach.'" ***Id.*** (citation omitted). We likewise use the erroneous exercise of discretion standard to review a trial court's decision to admit or exclude evidence. ***State v. Walters***,

[10] We would like to commend the trial court for its attempts to explore Margaret's concerns and find the best and least restrictive placement for Aaron. Although Margaret asserts she was treated unfairly, the hundreds of pages of transcript reveal a trial court struggling to accommodate Margaret's desire to represent herself and to raise myriad issues concerning the guardianship case. We note that the guardian ad litem and Aaron's advocacy counsel asked limited questions and did not voice any objection to the trial court's ultimate findings and orders, or to the trial court's consideration of the issues.

2004 WI 18, ¶13, 269 Wis. 2d 142, 675 N.W.2d 778. However, we address questions of law, including statutory interpretation, *de novo*. ***State v. Volk***, 2002 WI App 274, ¶34, 258 Wis. 2d 584, 654 N.W.2d 24.

II. Procedural challenges to the *Watts* hearing and the hearing on Margaret's June 2008 motion.

¶23 Margaret complains about the way the hearing was run on October 21 and 28, 2008. First, Margaret asserts that she was denied a jury trial for the ***Watts*** hearing which she attempted to request on Aaron's behalf. The right to request a jury for that hearing was limited by WIS. STAT. § 55.10(4)(c)[11] to "the individual sought to be protected or his or her attorney or guardian ad litem." Margaret is Aaron's guardian, not his attorney. The trial court properly denied Margaret's unauthorized jury demand. We also note that Aaron's counsel wrote the trial court a letter indicating that he was not requesting a jury trial for the hearing and that he did not believe that Margaret had a right, as guardian, to demand a jury trial.

¶24 Next, Margaret complains that she wasn't allowed to fully present her case because the trial court limited her presentation to three witnesses, did not admit "relevant facts" into evidence and limited Margaret's cross-examination.

[11] WISCONSIN STAT. § 55.10(4)(c) provides:

> *Trial by jury; right to cross examine witnesses*. The individual sought to be protected has the right to a trial by a jury if demanded by the individual sought to be protected or his or her attorney or guardian ad litem. The number of jurors shall be determined under s. 756.06 (2)(b). The individual sought to be protected, and the individual's attorney and guardian ad litem have the right to present and cross-examine witnesses, including any person making an evaluation or review under s. 55.11.

"'A [trial] court has broad discretion in determining the relevance and admissibility of proffered evidence.'" ***State v. Oberlander***, 149 Wis. 2d 132, 140, 438 N.W.2d 580 (1989) (citation omitted). We discern no erroneous exercise of discretion in this case.

¶25 WISCONSIN STAT. § 55.10(4)(c) authorizes "[t]he individual sought to be protected, and the individual's attorney and guardian ad litem" to present and cross-examine witnesses. Margaret has no right under this statute to call or cross-examine any witnesses. Nonetheless, the trial court allowed Margaret to do both. Not only was Margaret permitted to cross-examine each of the witnesses called by a party, but she was also permitted to call the same total number of witnesses called by all the parties. Her examinations consumed over 125 pages of transcript. Margaret's complaint seems to be that the trial court limited the scope of her questioning to events that occurred after the prior year's annual due process review. The trial court's decision on relevance was correct. There is no showing that the trial court erroneously exercised its discretion in allowing, but limiting, Margaret's participation in these proceedings.

¶26 Margaret complains that she was not allowed to call all the witnesses she wanted to call, including some of Aaron's health care providers. A trial court has the authority to impose reasonable limits on evidence that may be presented, *see* WIS. STAT. § 904.03, and to determine the relevance and admissibility of the evidence to the issues to be decided, *see* WIS. STAT. §§ 901.04 and 904.02. There was no dispute that Aaron's physical limitations and violent rages required continued protective placement. Neither on the record at the trial level, nor in this court, has Margaret made any showing of specific relevant medical evidence that the trial court excluded.

¶27 Finally, Margaret contends that WIS. STAT. § 55.16(3)(a) required the trial court to decide Margaret's original motion to modify placement within twenty-one days of filing. However, the statute permits a court to extend the time on request by various people, including the guardian. *See* § 55.16(3)(b). The record demonstrates, as noted in the background section above, that Margaret specifically agreed to consolidate the motion hearing with the ***Watts*** review, having been informed that that would require adjourning the proceeding. She cannot now complain after agreeing to extend the time to decide the motion.

III. Substantive challenges to the *Watts* hearing and the hearing on Margaret's June 2008 motion.

¶28 First, Margaret argues that the County was required to provide specific funds to pay for Aaron's full-time care in Margaret's home. We are not convinced by Margaret's suggestion that the County is required to fund Aaron's in-home care without regard to cost. Indeed, the trial court considered the County's evidence of the cost of Aaron's service needs, the large number of people on a waiting list for protective placement services, the funding sources for Aaron's care the County had explored and the County's willingness to pay more for the care of Aaron than it ordinarily would allocate. We reject Margaret's suggestion that the County is required to fund the in-home care in precisely the way she desires, including at a specific hourly rate Margaret has set. The trial court did not erroneously exercise its discretion when it approved the County's plan to provide twenty-four-hour in-home care in a manner within the County's discretion.

¶29 Yet Margaret complains that because of Aaron's extreme aggression the trial court should have ordered the County to provide additional funds to place Aaron in her home. However, counties are not required to ignore fiscal

limitations. *See* ***Dunn County v. Judy K.***, 2002 WI 87, ¶28, 254 Wis. 2d 383, 647 N.W.2d 799. Rather, they must make a good faith effort to find appropriate placement and fund that placement. ***Id.*** ("[C]ounties must make an affirmative showing of a good faith, reasonable effort to find an appropriate placement and to secure funding to pay for an appropriate placement.") Here, there is no dispute that the least restrictive placement preferred by Margaret and Aaron was in Margaret's home with twenty-four-hour supervision. That is what the trial court ordered and what the County agreed to provide. Indeed, although the trial court gave the County the discretion to decide if the provider had to live in the home, the County offered to fund shift employees, which was Margaret's stated preference. We reject Margaret's argument because the County has shown that it found an appropriate method to allow Aaron to stay in Margaret's home and to fund the requisite twenty-four-hour supervision.

¶30 Next, Margaret argues that her rights were transferred "indiscriminately." In various arguments, Margaret claims that her power under WIS. STAT. § 55.15(3) [12] as guardian of Aaron allows her to refuse to consent to a

[12] WISCONSIN STAT. § 55.15 provides in relevant part:

> **Transfer of an individual under a protective placement order. (1)** TRANSFERS AUTHORIZED. An individual under a protective placement order may be transferred between protective placement units, between protective placement facilities, or from a protective placement unit to a medical facility. The individual may not be transferred, under the protective placement order, to any facility for which commitment procedures are required under ch. 51.

(continued)

protective placement ordered by the trial court, and to veto the County's exercise of its discretion if she disagrees with it. Margaret inflates the actual power of a guardian. Were her view correct, there would be no need for a court to exercise the discretion involved in the complex standards of a protective placement decision, because a guardian could ignore the order with impunity. Were her view correct, a county would be compelled to fund the desires of any guardian, no matter how expensive or unreasonable the placement request. We decline to seriously consider Margaret's interpretation of an isolated section of one part of the complex protective placement system adopted by the legislature which would create these absurd results. *See* ***State ex rel. Kalal v. Circuit Court for Dane County***, 2004 WI 58, ¶46, 271 Wis. 2d 633, 681 N.W.2d 110 (We interpret statutory language "reasonably, to avoid absurd or unreasonable results.").

¶31 Margaret argues that "Wisconsin's Patient 'Bill of Rights' should provide Aaron B. prompt and adequate treatment and services for his condition" and that Aaron's care has been inadequate. The trial court's orders are designed to provide just that: safe care for Aaron. The trial court concluded that Aaron would benefit from the consistency of remaining in Margaret's home and continuing in

---

> **(2)** WHO MAY TRANSFER. A guardian, a county department or agency with which it contracts under s. 55.02(2) that provided protective placement to the individual pursuant to the order of the court, the department, or a protective placement facility may transfer an individual under a protective placement order under the requirements of this section, notwithstanding the fact that a court order has named a specific facility for the protective placement of the individual.
>
> **(3)** CONSENT OF GUARDIAN REQUIRED. No individual may be transferred under this section without the written consent of the individual's guardian, except in the case of an emergency transfer under sub. (5)(b).

his current school. However, the trial court found that it was unsafe for Aaron, for Margaret and for third parties for Aaron to remain in Margaret's home unless there was a full-time, twenty-four-hour caregiver in addition to Margaret. That finding is supported by overwhelming evidence, most of which was provided by Margaret. Margaret's apparent objection is to allowing the County to select and supervise the care providers. For reasons discussed above, we reject that argument.

¶32 Finally, Margaret argues that "Aaron's needs were not incorporated into the trial court's order." We disagree. The trial court made numerous findings concerning Aaron's extensive needs. No one disputes that he needs constant care. The fact that the trial court ordered that the County would have discretion to decide the specifics of the least restrictive placements offered to Margaret does not invalidate the trial court's order. Margaret's suggestion that the trial court itself needs to examine every potential staffing option and sleeping arrangement is without merit.

IV. Margaret's desire to pursue a tort claim in the guardianship action.

¶33 Margaret complains that her damage claims against the County were dismissed. A guardian's tort claims are not authorized as part of a motion to modify protective placement pursuant to WIS. STAT. § 55.16. Further, tort damages are not an element of a ***Watts*** review, which is concerned only with whether the existing protective placement is appropriate. *See* ***County of Dunn v. Goldie H.***, 2001 WI 102, ¶¶ 22-35, 245 Wis. 2d 538, 629 N.W.2d 189 (reaffirming ***Watts*** hearing procedures). The trial court properly dismissed Margaret's tort claims, including her request for punitive damages which she included in her first motion to modify Aaron's protective placement order.

By the Court.—Orders affirmed.

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