

**COURT OF APPEALS
DECISION
DATED AND FILED**

June 18, 2003

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. 03-0723-FT
STATE OF WISCONSIN**

Cir. Ct. No. 92GN000054A

**IN COURT OF APPEALS
DISTRICT II**

**IN THE MATTER OF THE PROTECTIVE PLACEMENT OF
MARY JANE S.:**

RACINE COUNTY,

PETITIONER-RESPONDENT,

v.

MARY JANE S.,

RESPONDENT-APPELLANT.

APPEAL from an order of the circuit court for Racine County:
FAYE M. FLANCHER, Judge. *Affirmed.*

¶1 ANDERSON, J.¹ Although the circuit court improperly relied upon hearsay evidence of Mary Jane S.'s reluctance to take her medications, we affirm its order for her continued protective placement in a residential care facility. We conclude that there is sufficient competent evidence in the record which supports the circuit court's order for Mary Jane's continued protective placement.

¶2 Mary Jane challenges the sufficiency of the evidence to support the circuit court's conclusion that her protective placement in a residential care facility should be continued for one year. Before ordering a continuation of Mary Jane's protective placement, the circuit court must find that she:

(a) Has a primary need for residential care and custody;

(b) Except in the case of a minor who is alleged to be developmentally disabled, has either been determined to be incompetent by a circuit court or has had submitted on the minor's behalf a petition for guardianship;

(c) As a result of developmental disabilities, infirmities of aging, chronic mental illness or other like incapacities, is so totally incapable of providing for his or her own care or custody as to create a substantial risk of serious harm to oneself or others. Serious harm may be occasioned by overt acts or acts of omission; and

(d) Has a disability which is permanent or likely to be permanent.

County of Dunn v. Goldie H., 2001 WI 102, ¶23, 245 Wis. 2d 538, 629 N.W.2d 189.

¶3 Mary Jane is only contesting the first factor, the court's determination that she requires residential care and custody. In particular, she

¹ This is a one-judge appeal pursuant to WIS. STAT. § 752.31(2)(d) (2001-02). All references to the Wisconsin Statutes are to the 2001-02 version unless otherwise noted.

argues that there is “no evidence absent intervention of Eagle House staff, Mary Jane will create substantial risk of serious harm to herself because she will fail to take her medications.” In *K.N.K. v. Buhler*, 139 Wis. 2d 190, 198, 407 N.W.2d 281 (Ct. App. 1987), we discussed our standard of review when there is a challenge to the sufficiency of the evidence in a protective placement proceeding:

We view the elements of protective placement set out in sec. 55.06(2), Stats., as questions of fact. *See* sec. 55.06(7) (trier of fact “must find by clear and convincing evidence” the elements of sec. 55.06(2)); sec. 880.33, Stats. (referring to “findings” of incompetency). We will not overturn the circuit court’s findings of fact unless clearly erroneous. Sec. 805.17(2), Stats.

¶4 Mary Jane takes issue with the circuit court’s conclusion that residential care was required because she would not voluntarily take her medications. Mary Jane asserts that there was no evidence in the record to support that conclusion. She acknowledges that the examining psychologist testified that records from the residential treatment center reflected that the staff crushed her medications and did a mouth check because Mary Jane would not voluntarily take her medications. However, she points out that no staff member testified about her refusal to take medications and argues, citing *State v. Weber*, 174 Wis. 2d 98, 107, 496 N.W.2d 762 (Ct. App. 1993), that the psychologist’s reliance upon hearsay evidence in her medical records does not convert that hearsay into admissible and competent evidence.

¶5 We agree with Mary Jane that while the psychologist could rely upon hearsay evidence in her medical records in reaching his professional opinion, his reliance upon that hearsay does not make the hearsay admissible and usable to support the truth of the matter asserted. *See id.* We also agree with her that the

circuit court should not have considered this hearsay evidence in finding that the evidence was sufficient to order her continued protective placement.

¶6 Despite our agreement with Mary Jane, we affirm because we conclude that there is ample evidence in the record to support the circuit court's conclusion that Mary Jane requires residential care and custody. *Kolpin v. Pioneer Power & Light Co.*, 162 Wis. 2d 1, 30, 469 N.W.2d 595 (1991) (appellate court will uphold discretionary ruling on a reason not advanced by trial court when "there are facts of record which could support" the appellate court's rationale). We conclude that, excluding the hearsay evidence concerning the means used to medicate Mary Jane, there is sufficient competent evidence that Mary Jane suffers from a significant paranoid delusional system which renders her incompetent, and this illness is permanent. Her chronic mental illness requires residential care and treatment because she is so totally incapable of providing for her own care and custody that she creates a substantial risk of harm to others or herself.

¶7 Mary Jane was originally protectively placed on August 11, 1993, and had her annual *Watts*² review scheduled for July 2, 2002. She requested a full due process hearing to review her placement at Eagle House, a residential treatment facility. The only witness at the hearing was Dr. Don McLean, a licensed psychologist. Dr. McLean informed the court that Mary Jane refused to talk with him when he conducted the *Watts* review, and he had to resort to a review of her medical records and his recollection of the four or five previous *Watts* reviews he had conducted with her.

² *State ex rel. Watts v. Combined Cmty. Servs. Bd.*, 122 Wis. 2d 65, 362 N.W.2d 104 (1985).

¶8 Dr. McLean opined that Mary Jane suffers from schizophrenia paranoid type, she has a strong delusional system, she is incompetent, and she is so incapable of providing for her own care that there is a substantial risk of harm to herself. He elaborated on the risk of harm:

I would think in her case [the risk of harm arises] mostly from acts of omission. What I said before, the great risk of harm to herself would come from what she doesn't do; for instance, there's nothing wrong with me mentally, I don't need medication.... That by far is the greatest. How she would respond on the outside if she were more her own to other people around her; she can be all kinds of different people into that paranoid delusional system and that could cause her great harm. Whether she would strike out or not is always a very difficult thing to predict, but that would happen also. But she would regress into a terrible state of psychosis.

¶9 Dr. McLean's conclusion that Mary Jane would not take her medications is not solely based upon her records at Eagle House, as she argues. He has conducted four or five previous *Watts* examinations of Mary Jane and during this hearing he testified that "in the past she's told me that she does not need the medication because there is nothing wrong with me." He also offered the opinion that Mary Jane could be dangerous to others because in her delusional belief system she believed that people who are of color are after her body organs and practice voodoo and these beliefs could cause her to harm someone else.

¶10 In a statement to the court, Mary Jane confirmed Dr. McLean's testimony. Mary Jane said:

Well, all I wanted to say is to see is if I can move out of where I'm living. There's too many people. Yeah, there is voodoo, but they won't have the problem—they told me to shut my mouth though for what they would do something or not concerning that homosexual, because they keep following me.

In response to a question from the court about who was following her, Mary Jane stated, “A black tail following me, you know, like a tail, blacks, do you know what I mean?”

¶11 Mary Jane’s strong desire for “a chance just to make it out there” does not overcome the clear and convincing evidence in the record that all four factors needed to continue a protective placement are present. *See Goldie H.*, 245 Wis. 2d 538, ¶23. While the circuit court’s reliance upon inadmissible hearsay evidence was error, there are other facts of record which support the continued protective placement of Mary Jane.

By the Court.—Order affirmed.

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

