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**DISTRICT III**

September 26, 2023

To:

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You are hereby notified that the Court has entered the following opinion and order:

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2023AP439-NM

Douglas County Department of Health & Human Services v. K. D.  
(L. C. No. 2022GN42)

Before Stark, P.J., Hruz and Gill, JJ.

**Summary disposition orders may not be cited in any court of this state as precedent or authority, except for the limited purposes specified in WIS. STAT. RULE 809.23(3).**

K.D. appeals orders for permanent guardianship of both his person and his estate and for his protective placement. His appellate counsel, Jeremy Newman, has filed a no-merit report pursuant to *Anders v. California*, 386 U.S. 738 (1967), and WIS. STAT. RULE 809.32 (2021-22).<sup>1</sup> K.D. did not file a response to the report. Based on an independent review of the record and the no-merit report, this court concludes that there are no arguable appellate issues. Therefore, the orders are summarily affirmed. *See* WIS. STAT. RULE 809.21(1).

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<sup>1</sup> All references to the Wisconsin Statutes are to the 2021-22 version unless otherwise noted.

After K.D. was the subject of an emergency detention in March 2022, on September 15, 2022, Douglas County filed petitions seeking permanent guardianship of K.D.'s person and his estate, as well as for his protective placement. A hearing on the petitions was held on October 26, 2022, during which testimony from the psychologist who examined K.D., Dr. Brian Stress, was heard. Stress explained that K.D. was living in a camper in the country and he said that he had heard "a little girl screaming" from his neighbors' property. K.D. called 911 and armed himself with a gun for protection. When deputies from the Douglas County Sheriff's Department arrived, K.D. told them he could still hear the girl screaming, but the deputies heard nothing.

A detective who investigated the incident, Matthew Izzard, also testified at the hearing. Izzard explained that deputies investigated the neighbors' property from where K.D. said the screams were coming and they determined the claim was unfounded. Izzard testified that K.D. was armed when the deputies initially made contact with him, and they subsequently discovered that K.D. had several firearms "staged" throughout his property. Izzard also stated that the condition of the camper in which K.D. lived was "poor," and had a log wedged between the floor and the ceiling to hold up the roof, no running water, and an "overwhelming, bad" smell inside.

Doctor Stress's evaluation and neuropsychological testing of K.D. took place at the Trempealeau County Health Care Center (TCHCC). Stress testified that K.D. denied having a history of mental health issues. However, K.D.'s records revealed that he had previously been diagnosed with "unspecified schizophrenia spectrum disorder, schizophrenia[-]paranoid subtype,

PTSD secondary to military experience, and alcohol and polysubstance use disorder.”<sup>2</sup> K.D. continued to hear auditory hallucinations—a little girl screaming—while he was at TCHCC.

Doctor Stress further noted that K.D. suffered a stroke in 2004 and he had a history of drug and alcohol abuse that likely “compounded” the injury to his brain from the stroke. Stress explained that the testing performed on K.D. showed severe impairment to K.D.’s reasoning, indicating a degenerative brain disorder. Stress diagnosed K.D. with “major neurocognitive disorder,” which, according to Stress, together with K.D.’s “serious and persistent mental illness,” puts K.D. at risk of “forgetting to complete activities of daily living” such as taking his medication, managing his finances, and contracting for utilities and other necessary services. Stress testified that the combination of K.D.’s degenerative brain disorder and mental illness make it difficult for him to live independently and also make him vulnerable to exploitation. Furthermore, Stress noted that K.D.’s overall condition “interfere[s] with his insight, judgment, and subsequent behavioral choices” to the extent that “he could become a danger to himself or others.” Yet, Stress stated that K.D. was “quite adamant” that there was “nothing wrong with him.”

Doctor Stress opined that K.D.’s impairments were likely permanent and he recommended protective placement. The circuit court agreed, finding that the County had met its burden of proof, by clear and convincing evidence, for the appointment of a guardian of the person and the estate for K.D. and for his protective placement. The court therefore granted the County’s petitions. This no-merit appeal follows.

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<sup>2</sup> Although K.D.’s evaluation states that he had been sober from alcohol since 2006, he tested positive for THC during a urinalysis drug screen at the time of his placement at TCHCC.

We agree with appellate counsel’s thorough analysis that there are no issues of arguable merit to challenge the circuit court’s orders in this matter. The no-merit report first discusses whether there was sufficient evidence for the court to order a guardianship for K.D. In reviewing the court’s orders, its factual findings will not be disturbed unless they are clearly erroneous, but whether the evidence satisfies the applicable legal standards is a question of law that this court reviews de novo. *See Walworth County v. Therese B.*, 2003 WI App 223, ¶21, 267 Wis. 2d 310, 671 N.W.2d 377.

In order to prove that K.D. was in need of a guardianship of his person and his estate, the County was required to prove by clear and convincing evidence that K.D. was incompetent. *See* WIS. STAT. § 54.10(3)(a); *Robin K. v. Lamanda M.*, 2006 WI 68, ¶17, 291 Wis. 2d 333, 718 N.W.2d 38. To establish incompetence, it was first necessary to present evidence that K.D. was at least seventeen years and nine months old. *See* § 54.10(3)(a)1. It was undisputed that K.D. satisfied the age requirement at the time the petitions were filed.<sup>3</sup>

Additionally, before a guardian of the person could be appointed, the County had to prove that K.D. has an “impairment” and is “unable effectively to receive and evaluate information or to make or communicate decisions” such that he is “unable to meet the essential requirements for his ... physical health and safety.” *See* WIS. STAT. § 54.10(3)(a)2. Likewise, for the appointment of a guardian of the estate, the County had to demonstrate that an impairment renders K.D. unable to manage his property and finances to the extent that they “will

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<sup>3</sup> We note that the petition for guardianship reflects a different birth year for K.D. than the petition for protective placement. However, under either of these birth years, K.D. meets the age requirement.

be dissipated in whole or in part,” that he is unable to support himself, or that he is “unable to prevent financial exploitation.” *See* § 54.10(3)(a)3. The County also had to prove that K.D.’s needs could not be met with less restrictive services. *See* § 54.10(3)(a)4.

Doctor Stress testified that K.D.’s major neurocognitive disorder and “serious and persistent” mental illness have severely impaired his reasoning, which in turn has affected his ability to perform regular daily activities to care for himself, making it difficult for him to live independently. Stress also stated that K.D.’s condition impairs his ability to use judgment in making decisions, leaving him vulnerable to financial exploitation. This testimony supports the circuit court’s finding that the statutory requirements for appointing a guardian of K.D.’s person and estate were satisfied. We therefore conclude that there would be no arguable merit to challenge the sufficiency of the evidence supporting the court’s order to this effect.

Next, the no-merit report discusses whether there was sufficient evidence for the circuit court to order the protective placement of K.D. To obtain a protective placement order, the County had to demonstrate that K.D. has a “primary need for residential care and custody”; that he is an adult who has been determined to be incompetent by the court; that “[a]s a result of developmental disability, degenerative brain disorder, serious and persistent mental illness, or other like incapacities,” K.D. is “so totally incapable of providing for his ... own care or custody as to create a substantial risk of serious harm to himself ... or others,” which can be shown by “overt acts or acts of omission”; and that K.D.’s disability is “permanent or likely to be permanent.” *See* WIS. STAT. § 55.08(1).

Doctor Stress testified regarding K.D.’s degenerative brain disorder and serious mental illness, stating that their effects create a substantial risk that K.D. could cause harm to himself or

others. Furthermore, Detective Izzard's testimony regarding the circumstances surrounding K.D.'s emergency detention—in particular, that he had access to firearms on his property and he had armed himself during an auditory hallucination—also supports the circuit court's finding that K.D.'s "altered state of reality" does not allow for him to live in the community. We therefore conclude that there would be no arguable merit to challenge the sufficiency of the evidence supporting the court's order for the protective placement of K.D.

Additionally, we reviewed whether there would be any arguable merit to challenge the circuit court's orders based on procedural flaws. The record indicates that a guardian ad litem was appointed for K.D. on September 15, 2022, and that counsel was appointed on September 27, 2022.<sup>4</sup> *See* WIS. STAT. § 55.10(4). The hearing held on October 26, 2022, was within the statutory time frame, and K.D. was present at the hearing, as required. *See* § 55.10(1)-(2). We discern no issues of arguable merit with respect to the procedures used in this case.

Our review of the record discloses no other potential issues for appeal. Accordingly, this court accepts the no-merit report, affirms the order for permanent guardianship of K.D.'s person and estate and the order for protective placement, and discharges appellate counsel of the obligation to represent K.D. further in this appeal.

Upon the foregoing,

IT IS ORDERED that the orders are summarily affirmed. *See* WIS. STAT. RULE 809.21.

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<sup>4</sup> K.D.'s initial counsel withdrew at K.D.'s request. Successor counsel was appointed on October 7, 2022.

IT IS FURTHER ORDERED that Attorney Jeremy Newman is relieved of further representation of K.D. in this matter. *See* WIS. STAT. RULE 809.32(3).

IT IS FURTHER ORDERED that this summary disposition order will not be published.

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*Samuel A. Christensen*  
*Clerk of Court of Appeals*