

**COURT OF APPEALS
DECISION
DATED AND FILED**

May 16, 2012

Diane M. Fremgen
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. 2011AP2287-FT

Cir. Ct. No. 2006GN501

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT I**

IN THE MATTER OF THE GUARDIANSHIP OF AARON B.,

AARON B.,

APPELLANT,

V.

**COUNTY OF MILWAUKEE AND ELIZABETH RUTHMANSDORFER,
GUARDIAN AD LITEM,**

RESPONDENTS.

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

¶1 REILLY, J.¹ Aaron B. appeals from a circuit court order approving his protective placement into a community based residential facility. Aaron suffered a seizure one-half hour before his placement hearing and was thus unable to attend. Aaron's guardian ad litem (GAL) learned of the seizure prior to the commencement of the hearing and orally waived Aaron's appearance. The GAL followed up with a letter to the court reiterating that waiving Aaron's appearance was in Aaron's best interests.

¶2 Aaron argues that the circuit court lacked the authority to hold a hearing per WIS. STAT. § 55.10(2), as the GAL did not provide a written waiver to the circuit court prior to the hearing. We hold that as Aaron's attorney did not object to waiving Aaron's appearance, Aaron has not preserved his argument for appeal. The placement order of the circuit court is affirmed.

BACKGROUND

¶3 Aaron is a twenty-three year old with a degenerative brain disorder and developmental disabilities. In 2007, Aaron was protectively placed in his mother's home pursuant to WIS. STAT. ch. 55.

¶4 WISCONSIN STAT. § 55.18 provides that an individual in protective placement is entitled to an annual review. In January 2010, Milwaukee County filed a petition for annual review of Aaron's protective placement and Aaron's corporate guardian and GAL filed the requisite reports with the circuit court. Both

¹ This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(d) (2009-10). All references to the Wisconsin Statutes are to the 2009-10 version unless otherwise noted.

the corporate guardian and the GAL recommended that Aaron's continued placement in his mother's home was the least restrictive environment to meet Aaron's needs.

¶5 At the start of Aaron's due process hearing, Aaron's adversary counsel stated that he received a call shortly before the hearing began from Aaron's mother informing him that Aaron was "having an episode" and not able to appear. The GAL waived Aaron's appearance. The court concurred, noting that "[i]n general, I think that coming to court tends to get him very excited, and it doesn't look like a real good idea on most occasions, so if it starts this way, I wouldn't want to make it worse. So I will waive his appearance today." Aaron's GAL later filed a letter with the court waiving Aaron's appearance on the grounds that Aaron suffered a seizure thirty minutes before the hearing. The GAL wrote that Aaron would not have been able to meaningfully participate and that appearance would have been dangerous to Aaron's health and not in Aaron's best interests.

¶6 The hearing proceeded without Aaron. The court found that Aaron's mother's home was not a safe environment for him. The court ordered that Aaron be placed in a community based residential facility. Aaron appeals the circuit court's placement order, arguing that, as the GAL provided only a verbal waiver and not a written waiver at the September 10 hearing, the circuit court could not proceed without Aaron's presence.

DISCUSSION

¶7 WISCONSIN STAT. § 55.10(2) provides that a ward must attend a protective placement hearing unless "after a personal interview, the guardian ad litem waives the attendance and so certifies in writing to the court the specific

reasons why the individual is unable to attend.” The GAL “shall consider the ability of the individual to understand and meaningfully participate, the effect of the individual’s attendance on his or her physical or psychological health in relation to the importance of the proceeding, and the individual’s expressed desires.” *Id.* Aaron argues that this statute was violated because the circuit court conducted the hearing without a *written* waiver from his GAL.

¶8 Aaron’s adversary counsel did not object to the GAL’s waiver at the hearing. Aaron admits that any objection to proceeding without his presence was waived, but still asks that we consider the issue because of its importance. Although we have discretion to consider issues that were not raised at the circuit court, we generally do not do so, and given the facts presented, we decline to do so in this case. *See Brown v. State*, 230 Wis. 2d 355, 370, 602 N.W.2d 79 (Ct. App. 1999).

¶9 We note that the GAL verbally waived Aaron’s appearance after Aaron’s attorney said Aaron could not appear. Aaron’s health problems were well known to the parties and the circuit court. As an officer of the court, the GAL’s statements amounted to her certification that waiver was in the best interests of Aaron given his health issues. The GAL subsequently provided a written waiver to the court, writing that Aaron would have been unable to meaningfully participate in the hearing after his seizure and that his appearance would have been dangerous to his health. Aaron’s attorney, having just spoken with Aaron’s mother, did not object to either the GAL’s waiver of Aaron’s appearance nor the circuit court holding the hearing without Aaron.

¶10 The order of the circuit court placing Aaron into a community based residential facility is affirmed.

By the Court.—Order affirmed.

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

