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**DISTRICT IV**

July 25, 2024

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

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2023AP1974

In the matter of the guardianship and protective placement of  
H.K.B.: Monroe County v. H.K.B. (L.C. # 2016GN47)

Before Blanchard, J.<sup>1</sup>

**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).**

H.K.B. appeals an order continuing her protective placement under WIS. STAT. ch. 55. On this court's own motion, this appeal is disposed of summarily pursuant to WIS. STAT. RULE 809.21(1).<sup>2</sup> I dismiss H.K.B.'s appeal as moot.

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<sup>1</sup> This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(d) (2021-22). All references to the Wisconsin Statutes are to the 2021-22 version unless otherwise noted.

<sup>2</sup> WISCONSIN STAT. RULE 809.21(1) provides that, "upon its own motion or upon the motion of a party," this court "may dispose of an appeal summarily."

In October 2021, the County filed a petition for protective placement of H.K.B. pursuant to WIS. STAT. ch. 55. *See* § 55.08(1). The County alleged, among other things, that H.K.B. had a permanent developmental disability that rendered her incapable of sufficiently providing for her own care. In February 2022, the circuit court ordered H.K.B. to be protectively placed in an adult family home. In January 2023, the County petitioned for annual review. *See State ex rel. Watts v. Combined Cmty. Servs. Bd. of Milwaukee Cnty.*, 122 Wis. 2d 65, 84, 362 N.W.2d 104 (1985) (requiring “annual review of each protective placement by a judicial officer”). In April 2023, the court held a hearing and issued an order continuing H.K.B.’s protective placement. The April 2023 order is the subject of this appeal. In December 2023, the County again petitioned for review of H.K.B.’s protective placement, and in March 2024, the court issued a new order continuing H.K.B.’s protective placement. H.K.B. challenges the March 2024 order in a separate appeal.

H.K.B. argues that the April 2023 order should be reversed because the County failed to present sufficient evidence at the hearing, and also because the circuit court failed to make adequate factual findings in support of the order. I do not reach the merits of these arguments because I conclude that this appeal is moot and because I further conclude that there are not exceptional or compelling circumstances calling for review despite mootness.<sup>3</sup>

“An issue is moot when its resolution will have no practical effect on the underlying controversy.” *PRN Assocs. LLC v. DOA*, 2009 WI 53, ¶25, 317 Wis. 2d 656, 673, 766 N.W.2d 559. “Appellate courts generally decline to reach moot issues, and if all issues on appeal are

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<sup>3</sup> The parties did not address mootness in their initial briefing, but this court ordered supplemental briefing on that issue.

moot, the appeal should be dismissed.” *Portage County v. J.W.K.*, 2019 WI 54, ¶12, 386 Wis. 2d 672, 927 N.W.2d 509.

The County argues that this appeal is moot because reversal of the April 2023 order would have no practical effect on this controversy, noting that H.K.B. is now subject to the March 2024 order and is not subject to the April 2023 order. The County observes that, in the context of WIS. STAT. ch. 51 mental health commitments, reversal of one commitment order does not render a subsequent recommitment order invalid. *See id.*, ¶¶15, 21 (rejecting the individual’s argument that reversal of a ch. 51 recommitment order creates a “domino effect voiding subsequent recommitment orders” and determining that, in ch. 51 cases, reversal of a recommitment order “has no impact on any subsequent order”). The County contends that the same reasoning should apply here because WIS. STAT. ch. 55 protective placement cases, like ch. 51 cases, involve “consecutive orders [that] are not reliant on the preceding order[s].”

H.K.B. appears to disagree that *J.W.K.*’s reasoning applies to WIS. STAT. ch. 55 cases. Yet she does not identify any difference between ch. 55 cases and WIS. STAT. ch. 51 proceedings pertinent to the mootness issue. H.K.B. notes that ch. 51 commitment orders have set expiration dates, while the ch. 55 protective placement orders that apply to H.K.B. do not. But she fails to explain how the lack of expiration dates on these orders is meaningful in this context.

H.K.B. acknowledges that, in two recent unpublished opinions, this court determined that an appeal of an order continuing a protective placement was rendered moot when the circuit court entered a subsequent order continuing the protective placement. *See Portage County v. K.K.*, No. 2021AP1315, unpublished slip op. ¶8 (WI App Feb. 10, 2022); *Washington County v. T.R.Z.*, No. 2024AP21, unpublished slip op. ¶14 (WI App June 19, 2024). H.K.B. attempts to

distinguish these opinions by noting that, unlike H.K.B., the appellant individuals in those cases did not also appeal the subsequent orders that continued their protective placements; they appealed only the earlier orders. However, H.K.B. fails to explain how this difference is relevant to the issue here: whether reversal of the April 2023 order would have any practical effect.

H.K.B. also argues that she has a constitutional right to “timely, meaningful relief,” and that “[i]f the County cannot prove that H.K.B. meets the legal standards for protective placement, then H.K.B. should not be on a protective placement and this Court should vacate the order protectively placing her.” However, as noted, it is the March 2024 order—not the April 2023 order challenged in this appeal—that places H.K.B. under a protective placement, and H.K.B. has failed to explain why reversal of the earlier, challenged order would require reversal of the March 2024 order or for that matter any subsequent protective placement order. To the extent that she intends to make an argument based on a constitutional standard, I reject that argument as undeveloped. See *State v. Pettit*, 171 Wis. 2d 627, 646, 492 N.W.2d 633 (Ct. App. 1992).

Accordingly, H.K.B. has not developed a persuasive argument that reversal of the April 2023 order continuing her protective placement would require reversal of the subsequent March 2024 order to which she is now subject, nor has she identified any other way in which reversal of the earlier order would have any practical effect. For these reasons, I conclude that this appeal is moot.

H.K.B. argues in the alternative that, even if this appeal is moot, this court should nevertheless reach the merits. Appellate courts may “choose to address moot issues in ‘exceptional or compelling circumstances.’” *J.W.K.*, 386 Wis. 2d 672, ¶12 (quoting *City of Racine v. J-T Enters. of Am., Inc.*, 64 Wis. 2d 691, 702, 221 N.W.2d 869 (1974)). “There are

several established exceptions under which this court may elect to address moot issues: (1) ‘the issues are of great public importance;’ (2) ‘the constitutionality of a statute is involved;’ (3) the situation arises so often ‘a definitive decision is essential to guide the trial courts;’ (4) ‘the issue is likely to arise again and should be resolved by the court to avoid uncertainty;’ or (5) the issue is ‘capable and likely of repetition and yet evades review.’” *Id.* (quoting *G.S. v. State*, 118 Wis. 2d 803, 805, 348 N.W.2d 181 (1984)).

I now explain why H.K.B. does not persuade me that any mootness exception or combination of exceptions applies here. H.K.B. contends that the issue of sufficiency of the evidence in WIS. STAT. ch. 55 appeals arises frequently and that therefore a “definitive decision is essential to guide the trial courts.” Assuming without deciding that sufficiency is a common issue and also that there is potential guidance on the sufficiency topic would be helpful to circuit courts, she fails to explain how a decision in this *particular* appeal would contain nonobvious points amounting to meaningful guidance, essential or otherwise. The law is settled that there must be sufficient evidence, and this case does not present a promising scenario for illumination. In a related vein, H.K.B. contends that this appeal “could provide clarity” on certain legal issues, but the parties’ briefing does not reveal any nonobvious legal issues ripe for clarification.

H.K.B. makes an additional argument that rests on her ability to obtain appellate review of allegedly recurring issues. She contends that the completion of appellate litigation in a protective placement case within 12 months “is often very difficult” to achieve. And the result here, H.K.B. suggests, is that if her appeal from the March 2024 order is delayed until yet another protective placement order is sought and entered, then allegedly recurring issues in this case “will continue to evade review.”

I recognize that this could be a legitimate concern in a given protective placement case. Depending on multiple variables—including the timing of county petitions for annual reviews and the nature of the appellate issues that could be raised—the timing of litigation events at both the circuit court and appellate stages could create a repeated cycle of new petitions for review and new orders, each of which evades appellate review based on mootness, with the possible result that the person could be repeatedly subject to one or more unlawful conditions or treatments that are never addressed on appeal.

Turning to the facts here, this appeal was submitted on the briefs a full 13 months after entry of the challenged order, by which time the appeal was already moot, for reasons already explained.<sup>4</sup> But H.K.B. fails to persuade me that the issues which she raises in this appeal are likely to recur in her case if not addressed in this appeal.

For all of these reasons, I dismiss H.K.B.’s appeal as moot.<sup>5</sup>

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<sup>4</sup> I observe that this protracted timeline was primarily the result of requests, made by H.K.B. and granted by this court, for extensions for time to submit filings. More specifically, as a result of an extension request submitted by H.K.B.’s counsel to this court and granted by this court, H.K.B.’s notice of appeal was not filed until approximately six months after entry of the challenged order. Further, H.K.B.’s counsel requested and was granted multiple appellate briefing extensions by this court. But I have no reason to think that any of these extension requests was inappropriate when made; this court operates from the understanding that extension motions filed by counsel, across case types, are typically based on legitimate considerations under the circumstances. Further, it would not be fair to discredit H.K.B.’s recurring-issue argument based on extension requests made by her counsel. By all appearances, these were litigation events well beyond H.K.B.’s control.

<sup>5</sup> The County’s briefing does not comply with WIS. STAT. RULE 809.19(8)(bm), which addresses the pagination of appellate briefs. *See* RULE 809.19(8)(bm) (providing that, when paginating briefs, parties should use “Arabic numerals with sequential numbering starting at ‘1’ on the cover”). This rule was amended in 2021, *see* S. CT. ORDER 20-07, 2021 WI 37, 397 Wis. 2d xiii (eff. July 1, 2021), because briefs are now electronically filed in PDF format, and are electronically stamped with page numbers when they are accepted for e-filing. As our supreme court explained when it amended the rule, the new pagination requirement ensures that the numbers on each page of a brief “will match ... the page header  
(continued)

IT IS ORDERED that this appeal is dismissed as moot.

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*

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applied by the eFiling system, avoiding the confusion of having two different page numbers” on every page of a brief. S. CT. ORDER 20-07 cmt. at x1.