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DISTRICT II

March 11, 2015

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

2014AP1793

In the matter of the guardianship of Spencer B. H.: Sheboygan
County v. Spencer B. H. (L.C. #2013GN55)

Before Neubauer, P.J., Reilly and Gundrum, JJ.

Spencer B. H. appeals from an order granting a petition for guardianship of his person and his estate and from an order granting a petition for protective placement. On appeal, Spencer argues that the circuit court lost competency to adjudicate the WIS. STAT. ch. 55 (2013-14)¹ protective placement petition and Sheboygan County did not meet its burden of proof for the establishment of a WIS. STAT. ch. 54 guardianship of his person and estate. Sheboygan concedes that the circuit court lost competency and therefore the protective placement and the

¹ All references to the Wisconsin Statutes are to the 2013-14 version unless otherwise noted.

guardianship of the person should be vacated. However, Sheboygan argues that guardianship of the estate was properly granted. Based upon our review of the briefs and record, we conclude at conference that this case is appropriate for summary disposition. WIS. STAT. RULE 809.21. We reverse the protective placement order and the order granting a guardianship of the person. We affirm the order granting a guardianship of the estate.

We agree that the circuit court lost competency to address the WIS. STAT. ch. 55 protective placement petition. WISCONSIN STAT. § 55.10(1) requires the circuit court to hear the petition within sixty days of the date it is filed unless an extension of time is requested. Here, the petition was filed on December 27, 2013, the sixty-day deadline was February 25, 2014, and the circuit court heard the petition on February 27. On February 3, Spencer requested counsel, and the court rescheduled the petition hearing to February 27. No party sought an extension of time to hear the petition. At the February 27 hearing, Spencer objected because the sixty-day time limit had expired. The circuit court construed Spencer's request for counsel as the equivalent of consent to an extension of the sixty-day time limit. The court then heard the petition and granted the relief sought by Sheboygan.

A circuit court loses competency to act if the court does not act within statutorily mandated time limits. *Sheboygan Cnty. DSS v. Matthew S.*, 2005 WI 84, ¶37, 282 Wis. 2d 150, 698 N.W.2d 631. The circuit court did not address the need for an extension to act on the protective placement petition until February 27, which was after the sixty-day period to hear the protective placement expired. As a result of the expiration of the sixty-day period, the court lost competency, and the court did not have competency to construe Spencer's request for counsel as

the equivalent of consent to an extension.² *State v. April O.*, 2000 WI App 70, ¶10, 233 Wis. 2d 663, 607 N.W.2d 927. Because the court lacked competency to address the protective placement petition, we reverse the order granting that petition.

We turn to the guardianship of Spencer's person. Spencer argues that Sheboygan did not meet its burden to obtain a guardianship of his person. Sheboygan does not oppose Spencer's challenge to the guardianship of his person because Spencer will not be subject to a protective placement as a result of this appeal. Sheboygan filed the petition for a guardianship of the person, and we deem Sheboygan's position on appeal to be an abandonment of that petition. Therefore, we reverse the order granting the petition for a guardianship of Spencer's person.

The final issue on appeal is Spencer's challenge to the order granting a WIS. STAT. ch. 54 guardianship of his estate. WISCONSIN STAT. § 54.10(3)(a) authorizes the appointment of a guardian of the estate of an incompetent individual if the court finds by clear and convincing evidence that:

3. For purposes of appointment of a guardian of the estate, because of an impairment, the individual is unable effectively to receive and evaluate information or to make or communicate decisions related to management of his or her property or financial affairs, to the extent that any of the following applies:

- a. The individual has property that will be dissipated in whole or in part.
- b. The individual is unable to provide for his or her support.
- c. The individual is unable to prevent financial exploitation.

² Because the court lacked competency to address the need for an extension, we need not decide whether the circuit court erred when it construed Spencer's request for counsel as a WIS. STAT. § 55.10(1) extension request.

4. The individual's need for assistance in decision making or communication is unable to be met effectively and less restrictively through appropriate and reasonably available training, education, support services, health care, assistive devices, or other means that the individual will accept.

Id.

Sheboygan bore the burden of proof to show that Spencer was not competent and required a guardian of his estate. *R.S. v. Milwaukee Cnty.*, 162 Wis. 2d 197, 203, 470 N.W.2d 260 (1991). We will uphold the circuit court's findings of fact unless they are clearly erroneous. WIS. STAT. § 805.17(2). Whether the evidence met the legal standard for incompetency presents a question of law that we review independently. *Cheryl F. v. Sheboygan Cnty.*, 170 Wis. 2d 420, 425, 489 N.W.2d 636 (Ct. App. 1992).

Spencer focuses on WIS. STAT. § 54.10(3)(a)4. and argues that Sheboygan did not show that his need for assistance in decision making could not be met in a less restrictive manner. Spencer further argues that the record does not show what efforts Sheboygan made to provide him with counseling and other assistance in making financial decisions.

We conclude that the circuit court's findings regarding the need for a guardian of the estate are supported in the record. The circuit court found that Spencer has a degenerative brain disorder and he cannot manage his financial affairs as evidenced by his indebtedness to his residential care facility. Dr. Schroeder testified that he examined Spencer, and he and Spencer discussed that his assets were not being used to pay for his residential care facility such that Spencer had become indebted to the facility. Christine Freund, an adult protective services specialist, testified that Spencer had refused to cooperate with a conservator to liquidate his assets to pay for his residential care facility. Once the conservatorship ended, Spencer failed to

meet his financial obligations to the facility, and he did not understand that he had to take steps to meet those financial obligations.

Spencer's indebtedness to his residential care facility indicated that he was not able to make financial decisions for himself or provide for his support. WIS. STAT. § 54.10(3)(a)3.b. We conclude that Sheboygan met its burden to show that Spencer is not competent to manage his financial affairs such that a guardianship of his estate was necessary.

We reverse the order granting the protective placement petition. On remand, the circuit court shall vacate the protective placement order. We reverse the portion of the order granting guardianship of the person. On remand, the circuit court shall vacate the guardianship of the person. We affirm the order granting a guardianship of the estate.

Upon the foregoing reasons,

IT IS ORDERED that the orders of the circuit court are affirmed in part and reversed in part and the cause is remanded with directions. No costs to any party.

Diane M. Fremgen
Clerk of Court of Appeals