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DISTRICT III

March 24, 2015

To:

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

2014AP494-NM

Brown County v. Sandra B. (L. C. #2006GN46)

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

Counsel for Sandra B. has filed a no-merit report concluding there is no arguable basis for challenging an order for continuing protective placement. Sandra was advised of her right to respond and has not responded. Upon this court's review of the record, no arguable issue of merit appears and we summarily affirm.

On June 14, 2007, the Brown County Circuit Court ordered Sandra's protective placement in an unlocked nursing home, pursuant to WIS. STAT. §§ 55.08(1) and 55.12.¹ Sandra, through her guardian ad litem, contested the annual review at issue in the present case and requested the appointment of adversary counsel. The State Public Defender was appointed, and the court appointed Dr. Kevin Miller to conduct an independent examination. At the conclusion of the hearing, the court ordered Sandra's protective placement to be continued.

There is no arguable issue regarding the sufficiency of the evidence. Under WIS. STAT. § 55.18(3)(e):

If the court finds that the individual continues to meet the standards [for protective placement] under s. 55.08(1) and the protective placement of the individual is in the least restrictive environment that is consistent with the requirements of s. 55.12(3), (4), and (5), the court shall order the continuation of the protective placement in the facility in which the individual resides at the time of the hearing.

Doctor Miller testified that, over the years, Sandra's mental health diagnosis vacillated between bipolar disorder and schizoaffective disorder, and that she has also been diagnosed with dementia. He opined that Sandra's "primary mental health diagnosis is schizoaffective disorder and a possibility of bipolar disorder." He believed that the disorders were so substantial as to be consistent with a finding of incompetency. Miller stated the psychotic disorders and the medications used likely caused early onset of what he referred to as "global dementia," which was manifested by frontal or "executive" symptoms.

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

Of most concern to the doctor was the dementia, which was evinced by the impairment of Sandra's memory and speech. He suggested Sandra may have suffered from subcortical strokes in the past as well. These findings caused the doctor to conclude that Sandra's condition was permanent. He emphasized that her memory, reasoning, executive functioning, and emotional and behavioral functioning all remained "severely impaired."

Sandra also suffered from various health problems that required monitoring and treatment, including vascular disease, insulin-dependent diabetes, a previous pulmonary embolism, low thyroid function, a history of kidney disease, deep vein thrombosis, hypertension and high cholesterol. Of particular concern was the diabetes, because Sandra had been unable to learn to administer her insulin, and her limited math skills rendered her incapable of calculating the proper dosage.

A social worker testified that nursing home staff plan and prepare Sandra's meals, do her laundry and housekeeping, administer her medications, and check her blood sugar three or four times per day. She stated Sandra had a history of noncompliance with a proper diet, and could not live by herself. Sandra needed to be in a twenty-four-hour per day supervised setting. A worker in the community options program had attempted to find placement for Sandra in a community based residential facility or an adult family home, without success.

After hearing the testimony, the circuit court found that Sandra could not live by herself, that she continues to require residential care and custody, remains incompetent, and has a serious and persistent mental illness, as well as a degenerative brain disorder, which renders her incapable of providing for her own care and custody so as to create a substantial risk of serious harm to herself, and those conditions are permanent. *See* WIS. STAT. § 55.08(1). The court also

agreed with Miller's recommendation that the least restrictive facility for Sandra would be a twenty-four-hour supervised setting, but "until that CBRF with Community Options funding that can take care of your needs and is willing to accept you surfaces, then the nursing home is going to have to be where [she] remain[s]." The circuit court's findings are supported by the evidence.

Our independent review of the record discloses no other issues of arguable merit. Therefore,

IT IS ORDERED that the order is summarily affirmed. *See* WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that attorney Steven Phillips is relieved of further representing Sandra B. in this matter.

Diane M. Fremgen
Clerk of Court of Appeals