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DISTRICT III

June 21, 2016

To:

Hon. Thomas H. Barland
Reserve Judge

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R. H.

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

2014AP2912-NM Eau Claire County v. R. H. (L. C. No. 2014GN26)

Before Stark, P.J.

Counsel for R. H. has filed a no-merit report concluding there is no arguable basis for challenging guardianship and protective placement orders. R. H. has responded. Upon our independent review of the record as mandated by ***Anders v. California***, 386 U.S. 738 (1967), no arguable issues of merit appear, and we summarily affirm.

Petitions for guardianship and protective placement were filed by the Eau Claire County Corporation Counsel on March 6, 2014. R. H., through his guardian ad litem, requested a jury trial. The jury found R. H. was incompetent, his condition was permanent or likely to be

permanent, and that he was in need of protective placement. The circuit court entered a "determination and order" finding R. H. was incompetent and in need of protective placement.

There is no arguable merit to any claim challenging the orders for guardianship and protective placement based on procedural flaws. Prior to trial, a guardian ad litem was appointed who met with R. H. and registered the objection to the petition. *See* WIS. STAT. § 55.40. The jury trial was held within the required time limits for hearing a petition set forth in WIS. STAT. § 55.10(1). R. H. was present in person at trial, represented by counsel, and the case was tried to a six-person jury in accordance with §§ 55.10(1)(a) and (4)(c). The psychologists' reports were filed with the court in compliance with WIS. STAT. § § 54.36 and 54.44(1).

R. H.'s response to the no-merit report challenges the sufficiency of the evidence. WISCONSIN STAT. § 805.14 provides:

> No motion challenging the sufficiency of the evidence as a matter of law to support a verdict, or an answer in a verdict, shall be granted unless the court is satisfied that, considering all credible evidence and reasonable inferences therefrom in the light most favorable to the party against whom the motion is made, there is no credible evidence to sustain a finding in favor of such party.

In order to prove R. H. was in need of a guardian, the County was required to prove by clear and convincing evidence under WIS. STAT. § 54.10(3)(a) that R. H. was incompetent, the definition of which has four subparts. First, it was necessary to present evidence that R. H. was at least seventeen years and nine months old. R. H.'s birth year was listed in psychologists' reports as 1965.

Next, the County was required to prove R. H. suffers from a serious and persistent mental illness. The testimony from both psychologists at trial diagnosed R. H. with a personality

disorder. Doctor Paul Caillier explained that a personality disorder is a mental illness. Doctor Caillier further explained:

> Individuals with this disorder … typically demonstrate a failure to conform to societal norms. They often get arrested. They show deceitfulness, repeated lying for profit or pleasure, impulsivity and a failure to plan ahead, reckless disregard for their own safety, consistent irresponsibility. They don't sustain work behavior. They don't honor financial obligations, et cetera, and they essentially don't have any remorse.

Doctor Brian Stress also testified as to the third element, which involves R. H.'s ability to receive and evaluate information as a result of his mental illness. Doctor Stress explained that "the way [R. H.] perceives information based on his personality disorder and his inability to remember information, results in his – results in impaired ability to receive and evaluate information based on the data that I generated and reviewed." As an example, Dr. Stress stated, "[R. H.] continues to be homeless. He continues to make poor decisions which I believe are a direct result of his personality disorder and cognitive difficulties resulting in him being arrested time and time again over what he determines – what he defines as petty stuff."

Finally, on the question of incompetence, the County was required to present clear and convincing evidence that R. H.'s needs could not be met with less restrictive services. Doctor Stress opined that guardianship and protective placement were the least restrictive means of meeting R. H.'s needs. A social worker who prepared a comprehensive evaluation of R. H. in anticipation of the guardianship and protective placement proceedings also testified R. H. already received the services of a representative payee, but that person was not able to assist him with long-term financial needs or with his issues regarding taking medication and securing housing.

The County was also required to prove R. H.'s condition was permanent or likely to become permanent. Doctor Caillier explained the personality disorder is one of the "most pervasive, long-lasting and permanent mental disorder[s] that you can have."

The jury was also asked to answer whether R. H. was in need of protective placement pursuant to WIS. STAT. § 55.08(1). This required the County to present evidence on two elements. First, the County was required to prove by clear and convincing evidence that as a result of a serious and persistent mental illness R. H. is so totally incapable of providing for his own care or custody as to create a substantial risk of harm to himself or others.

As noted above, the psychologists' testimony was sufficient to show R. H. was suffering from a serious and persistent mental illness. Moreover, there was testimony that as a result of his mental illness, R. H. would be a "vulnerable adult if he was not placed in a facility where he was monitored and his outings were monitored, et cetera." There was also testimony that when R. H. "hasn't been homeless or – he's been in jail and when he has been homeless, he's had difficulty managing his medications. He's had difficulty just keeping clothing to keep himself warm and safe in the winter time." There was also testimony from a police officer who had been dispatched to a laundromat following a report of man sitting in the store drinking beer but not doing laundry; the officer regarded R. H. as a danger to himself and others based on R. H.'s degree of intoxication and aggression toward the officers. R. H. also acknowledged setting a fire in a hospital waiting room to get a doctor's attention. These actions and omissions as a result of R. H.'s mental illness provide sufficient evidence of the first element necessary to impose a protective placement.

It was also necessary for the County to present clear and convincing evidence that R. H. has a primary need for residential care and custody. There was evidence R. H. was often homeless. In addition, Dr. Stress testified that, based on his evaluation of R. H., he was in need of twenty-four-hour supervision in a group-home setting. This sufficiently proved the second element of protective placement.

R. H.'s response to the no-merit report also challenges the veracity of the witnesses at trial. However, the credibility of witnesses and the weight to be accorded evidence is the province of the jury. *See* ***Estate of Dejmal***, 95 Wis. 2d 141, 151-52, 289 N.W.2d 813 (1980). There is no arguable merit to any claim that the evidence available to the jury was insufficient to sustain the jury's verdict. The circuit court's determination and order that R. H. was incompetent and in need of protective placement was also 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. WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that attorney Ellen Krahn is relieved of further representing R. H. in this matter.

Diane M. Fremgen
Clerk of Court of Appeals