



OFFICE OF THE CLERK
WISCONSIN COURT OF APPEALS

110 EAST MAIN STREET, SUITE 215
P.O. BOX 1688
MADISON, WISCONSIN 53701-1688

Telephone (608) 266-1880
TTY: (800) 947-3529
Facsimile (608) 267-0640
Web Site: www.wicourts.gov

DISTRICT III

January 10, 2017

To:

Hon. William M. Atkinson
Circuit Court Judge, Br. 8
Brown County Courthouse
P.O. Box 23600
Green Bay, WI 54305-3600

Cheryl A. Beekman
Register in Probate
Brown County Courthouse
P.O. Box 23600
Green Bay, WI 54305-3600

Susan E. Alesia
Asst. State Public Defender
P.O. Box 7862
Madison, WI 53707-7862

Rebecca S. Lindner
Assistant Corporation Counsel
P.O. Box 23600
Green Bay, WI 54305-3600

T.E.W.
c/o Anna's House
5449 County Trunk K
New Franken, WI 54229

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

2016AP1563-NM Brown County v. T.E.W. (L. C. No. 2010GN62)

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

Counsel for T.E.W. has filed a no-merit report concluding there is no arguable basis for appealing orders denying T.E.W.'s petition for termination of his guardianship of his person and his estate, and granting Brown County's petition for protective placement. T.E.W. was informed of his right to respond to the report and has not responded. Upon our independent review of the record, we conclude there is no issue of arguable merit for appeal.

T.E.W. has been living at Anna's House, a community-based residential facility. He filed a petition for termination of guardianship. Upon receiving T.E.W.'s petition, Brown County realized he should not have been placed at Anna's House without a protective placement order

because Anna's House is a facility with more than sixteen beds. *See* WIS. STAT. § 55.055.¹ The County filed a petition for protective placement, alleging T.E.W. suffered from alcohol-induced dementia and required twenty-four-hour supervision and assistance.

The circuit court held a contested guardianship and protective placement hearing. Brown County adult protection worker Kristin Fenlon testified she became involved with T.E.W. in 2010, prior to the initial guardianship. She testified T.E.W. was placed under emergency detention and ultimately transferred to a treatment center, a nursing home, and then to adult family homes before he was placed at Anna's House because "the provider felt [T.E.W.] needed far more supervision than they could provide." At Anna's House, T.E.W. receives twenty-four-hour supervision, medical monitoring, meals, and leisure activities. Fenlon believed placement at Anna's House was in T.E.W.'s best interest and is the least restrictive placement.

Doctor Kevin Miller testified T.E.W. has a neurocognitive disorder, specifically an impairment of memory and executive function likely due to alcohol use. He also opined T.E.W. has a mood disorder and primary depression with some anxiety that has led to past suicide attempts. Miller testified T.E.W. was unable to remember having met him less than one hour after they had held a one hour conversation. Miller testified, "The memory impairment is one of the most severe I've seen in years." He testified T.E.W.'s "memory is so bad he really doesn't acknowledge that he has problems. So that leads to impaired judgment and decision making and insight." Leading up to the petition for guardianship, T.E.W. had over twenty documented emergency room visits, all related to inability to care for himself, not eating, electrolyte

¹ All references to the Wisconsin Statutes are to the 2015-16 version unless otherwise noted.

imbalance due to dehydration, and wasting muscles. Miller testified alcohol-related dementia is a permanent condition. He also testified T.E.W. is not able to effectively receive and evaluate information regarding his finances due to memory impairment. Miller opined T.E.W. would present a substantial risk of harm to himself due to self-neglect without the current level of placement.

The guardian ad litem also recommended that the guardianship remain in place and that a protective placement order be entered.

T.E.W. testified on his own behalf. He stated his desire to return to Arizona and resume working there. He believes he is capable of caring for himself.

Our review of the record discloses no arguable basis for challenging the order denying T.E.W.'s petition to terminate the guardianship. In a proceeding to terminate a guardianship, the person asserting competence has the burden to prove by the preponderance of the evidence that his condition has changed and he has returned to a state of mental competence. *Colliton v. Colliton*, 41 Wis. 2d 487, 490, 164 N.W.2d 480 (1969). Whether the evidence satisfies the legal standard for competency is a question of law. *Cheryl F. v. Sheboygan Cty.*, 170 Wis. 2d 420, 425, 489 N.W.2d 636 (Ct. App. 1992).

The criteria for a guardianship are set forth in WIS. STAT. § 54.10(3)(a): (1) the individual is at least seventeen years and nine months old; (2) for purposes of guardianship of the person, because of an impairment, the individual is unable to effectively receive and evaluate information or to make or communicate decisions to such an extent that the individual is unable to meet the essential requirements for his physical health and safety; (3) for purposes of guardianship 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 the management of his property or financial affairs if: the individual has property that will be dissipated in whole or in part, the individual is unable to provide for his or her support, or the individual is unable to prevent financial exploitation; and (4) the individual's need for assistance in decision making or communication will not 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.

The record supports all four of these criteria. T.E.W. is sixty-three years old. The record documents impairments that prevent him from providing for his physical health and safety, resulting in multiple trips to the emergency room to address issues arising from his failure to eat and drink adequately. Miller testified T.E.W. is still unable to effectively receive and evaluate information to the point where he could safely take care of his own medical needs or to manage his financial affairs based on his severe memory impairment. Miller's assessment that T.E.W.'s condition required twenty-four-hour supervision establishes that training, support services or assistance cannot meet T.E.W.'s needs.

The evidence also supports the protective placement order. Protective placement is appropriate when: (1) the individual has a primary need for residential care and custody; (2) the individual is an adult who has been determined to be incompetent by a circuit court; (3) as a result of developmental disability, degenerative brain disorder, serious and persistent mental illness, or other like incapacities, the individual is so totally incapable of providing for his or her own care or custody as to create a substantial risk of serious harm to himself as evidenced by overt acts or omissions; and (4) the disability is permanent or likely to be permanent. WIS. STAT. § 55.08(1). These elements must be proved by clear and convincing evidence.

Both Fenlon and Miller testified that T.E.W. has a primary need for residential care and custody, and Anna's House was the least restrictive alternative. T.E.W. was found incompetent by a circuit court on August 12, 2010. Miller's testimony established T.E.W. is so totally incapable of providing for his own care or custody as to create a substantial risk of serious harm to himself. The twenty emergency room visits and his memory impairment that causes him not to acknowledge any problems satisfy the third criterion. Finally, Miller's testimony that T.E.W.'s alcohol-related dementia is permanent satisfies the final standard.

Our independent review of the record discloses no other potential issue for appeal. Therefore,

IT IS ORDERED that the orders are summarily affirmed. WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that attorney Susan Alesia is relieved of her obligation to further represent T.E.W. in this matter. WIS. STAT. RULE 809.32(3).

Diane M. Fremgen
Clerk of Court of Appeals