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**DISTRICT III**

January 27, 2017

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

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2016AP2142-NM

In the matter of the guardianship of C.M.:  
Winnebago County v. C.M. (L.C. # 1997GN48)

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

C.M. appeals the circuit court's protective placement order transferring her to a locked facility pursuant to WIS. STAT. § 55.12(2). Appointed appellate counsel, Gina Frances Bosben,

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<sup>1</sup> This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(d) (2015-16). All references to the Wisconsin Statutes are to the 2015-16 version unless otherwise noted.

has filed a no-merit report pursuant to *Anders v. California*, 386 U.S. 738, 744 (1967), and WIS. STAT. RULE 809.32. C.M. was notified that Bosben filed a no-merit report and was informed of her right to respond, but she did not do so. After reviewing the no-merit report and conducting an independent review of the record, we conclude that there are no issues of arguable merit that could be pursued on appeal. Therefore, we summarily affirm the circuit court’s order.

The no-merit report addresses whether there would be arguable merit to a claim that the circuit court erred in changing C.M.’s protective placement to a locked facility.

A person subject to a protective placement order is entitled to be placed “in the least restrictive environment ... consistent with the needs of the individual to be protected.” WIS. STAT. § 55.12(3). “Protective placement in a locked unit shall require a specific finding of the court as to the need for the action.” Section 55.12(2). We review the circuit court’s finding regarding the least restrictive environment consistent with the needs of the person subject to a protective placement order under a clearly erroneous standard. *Fond Du Lac Cty. v. J.G.S., Jr.*, 159 Wis. 2d 685, 687-88, 465 N.W.2d 227 (Ct. App. 1990). We “will search the record for evidence to support the trial court’s finding of fact.” *Id.* “Findings of fact shall not be set aside unless clearly erroneous.” *Id.* at 688.

The circuit court held a hearing on December 17, 2015, to determine if it was necessary to change C.M.’s protective placement from an unlocked to a locked facility. C.M.’s treating psychiatrist, Dr. John Whelan, who has treated C.M. for over twenty years, testified that he was in favor of C.M.’s being moved to a locked unit because she has been refusing care and has been “kicking and hitting, pinching, scratching, spitting, screaming, cursing at others, [making] disruptive sounds, ... pinching the staff, ... [and] pushing or grabbing people who are passing

by.” He further stated that she is dangerous to others “even though she’s in a wheelchair” because “[s]he’ll come right up to people and punch them in the face for no reason at all.” Dr. Whelan testified that he has attempted to adjust her medication for years to improve her behavior, but her behavior has not changed. Dr. Whelan further testified that a locked unit is the least restrictive environment equipped to deal with C.M.

An independent evaluation by Dr. Gary Ankarlo, a psychologist, was also performed. Dr. Ankarlo testified by phone at the December 17 court hearing. He concurred with Dr. Whelan’s opinion that C.M. is in need of a locked unit due to her “very unpredictable, sometimes aggressive” behaviors on the current unit. When asked for examples of aggressive behaviors, Dr. Ankarlo testified that C.M. had a lot of angry outbursts at residents and staff and had tried to hit other residents and staff. Dr. Ankarlo testified that a locked unit is the least restrictive placement for C.M.

The circuit court ruled that a locked facility was the least restrictive protective placement for C.M. that would ensure her, as well as residents and staff’s safety based on the testimony of Dr. Whelan and Dr. Ankarlo. The circuit court’s decision is based on the hearing testimony and thus not clearly erroneous. Therefore, we conclude that there would be no arguable merit to a claim that the circuit court erred in placing C.M. in a locked facility under WIS. STAT. § 55.12.

Our independent review of the record reveals no other potential 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 Gina Frances Bosben is relieved of further representation of C.M. in this matter. *See* WIS. STAT. RULE 809.32(3).

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*Diane M. Fremgen*  
*Clerk of Court of Appeals*