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DISTRICT II/IV

June 28, 2017

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

2016AP2277-NM

In re the matter of the guardianship and protective placement of
M.D.: Sheboygan County v. M.D. (L.C. # 2016GN18)

Before Kloppenburg, P.J., Sherman, and Blanchard, JJ.

M.D. appeals a Chapter 54 guardianship order and an accompanying Chapter 55 protective placement order. Attorney Len Kachinsky has filed a no-merit report seeking to withdraw as appellate counsel. *See* WIS. STAT. RULE 809.32 (2015-16);¹ *Anders v. California*, 386 U.S. 738, 744 (1967); and *State ex rel. McCoy v. Wisconsin Court of Appeals*, 137 Wis. 2d 90, 403 N.W.2d 449 (1987), *aff'd*, 486 U.S. 429 (1988). The no-merit report addresses the lack

¹ All further references in this order to the Wisconsin Statutes are to the 2015-16 version, unless otherwise noted.

of notice given to potential interested parties, compliance with time limits and other procedural requirements, and the sufficiency of the evidence to support the guardianship and protective placement determinations. M.D. was sent a copy of the report, but has not filed a response. Upon reviewing the entire record, as well as the no-merit report, we agree with counsel's assessment that there are no arguably meritorious appellate issues.

Notice

WISCONSIN STAT. § 54.38 directs that notice of a hearing on guardianship of the person or of the estate be provided to certain interested parties, including “[a]ny presumptive adult heirs” of the proposed ward and “[a]ny public or private agency, charity, or foundation from which the proposed ward is receiving aid or assistance.” Section 54.38(2)(b). WISCONSIN STAT. § 55.09 similarly directs that notice of a petition for protective placement be provided to “presumptive adult heirs” of the individual sought to be protected and “[a]ny governmental or private body or group from whom the individual sought to be protected is known to be receiving aid.” Section 55.09(2).

M.D., by his adversary counsel, filed a motion to dismiss the guardianship and protective placement petitions on the grounds that no notice was provided either to M.D.'s presumptive heirs, or to Medicare, which was providing benefits to M.D. The circuit court reasoned that Medicare was not an “agency,” but rather a trust fund, and that insurance benefits under the program did not constitute public aid, such as a means-tested program would provide. The court therefore held that it was not necessary to provide notice to Medicare.

As to providing notice to M.D.'s presumptive heirs, M.D. advised the court that he had four siblings, from whom he had been estranged for 30 years. M.D. told the adult special

services specialist assigned to his case that he would rather kill himself than have them advised of the proceedings. The circuit court decided to waive providing notice to the siblings on the grounds that no one had addresses for the siblings, publication would be unduly burdensome, and providing notice could be detrimental to M.D.'s well-being. Adversary counsel advised the court that he was willing to waive any objection from M.D. to the lack of notice to the heirs, because M.D. did not want them notified, but noted that he was not sure whether he actually had the ability to waive notice on behalf of other parties.

Appellate counsel asserts that, even assuming for the sake of argument that Medicare or M.D.'s siblings were entitled to statutory notice, M.D. lacks standing to raise the issue because the lack of notice to other interested parties was not adverse to him. We agree. *See generally Foley-Ciccantelli v. Bishop's Grove Condo. Ass'n, Inc.*, 2011 WI 36, ¶5, 333 Wis. 2d 402, 797 N.W.2d 789 (discussing standing). Additionally, we are unaware of any authority under which the circuit court would lack competence to proceed on a guardianship or protective placement due to lack of notice to interested parties other than the subject of the proceedings.

Other Procedural Matters

The record supports counsel's assertion that all relevant deadlines were met; that both a guardian ad litem and adversary counsel were properly appointed for M.D.; and that M.D. was present for all court proceedings. We agree that there is no arguable basis to allege a violation of M.D.'s procedural rights.

Sufficiency of the Evidence

Adult Special Services specialist Katherine Pruitt filed the guardianship and protective placement petitions. Pruitt's first contact with M.D. was when he showed up at the Sheboygan Memorial Hospital suffering from the delusion that his fingers, toes, and an ear had been cut off. From the hospital, M.D. had been moved to the Sunny Ridge rehabilitation center, and Pruitt was working toward transitioning M.D. to a less restrictive placement, and obtaining the necessary funding for that.

Psychologist Dr. Kevin Miller performed an examination of M.D. at the request of Sheboygan County Adult Protective Services. Miller testified that M.D. was disoriented as to place and time, not able to tell him what city they were in or what year it was; that he demonstrated low attention and concentration abilities; that his sensory and motor functioning skills were severely impaired, placing him at risk of falling; that his language and communication skills were adequate; that his memory and reasoning skills were impaired; and that he showed poor judgment and insight into his condition, and could not identify things that he could do differently in the future, other than to simply stop drinking. Miller also noted that M.D. was malnourished and had a history of traumatic brain injuries that had resulted in small vessel ischemic disease, which was shrinking the brain. M.D. had been spitting up blood for some time, but had not sought treatment.

Miller diagnosed M.D. with a permanent major neurocognitive disorder due to multiple factors, including alcohol use. The disorder interfered with M.D.'s ability to receive and evaluate information; to protect himself from abuse, exploitation, or neglect; and to meet the essential requirements for his own health and safety. M.D.'s memory problems and inability to

perform basic math calculations also left him incapable of managing his own financial affairs. In Miller's expert opinion, M.D. was at substantial risk of harming himself, and needed to be placed in a residential care facility, at least until several of his current medical problems were resolved.

The circuit court could properly rely on Miller's expert testimony to conclude that the criteria for guardianship and protective placement had been satisfied.

Conclusion

Upon our independent review of the record, we have found no other arguable basis for reversing the guardianship and protective placement orders. We conclude that any further appellate proceedings would be wholly frivolous within the meaning of *Anders* and WIS. STAT. RULE 809.32.

IT IS ORDERED that the guardianship and protective placement orders are summarily affirmed under WIS. STAT. RULE 809.21(1).

IT IS FURTHER ORDERED that Attorney Len Kachinsky is relieved of any further representation of M.D. in this matter. *See* WIS. STAT. RULE 809.32(3).

IT IS FURTHER ORDERED that this summary disposition order will not be published and may not be cited except as provided under WIS. STAT. RULE 809.23(3).

Diane M. Fremgen
Clerk of Court of Appeals