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DISTRICT I

September 11, 2017

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

2017AP457-NM

St. Joseph Regional Medical Center v. A. S. B.
(L.C. #2015GN635)

Before Brennan, P.J., Kessler and Dugan, JJ.

Summary disposition orders may not be cited in any court of this state as precedent or authority, except for the limited purposes specified in WIS. STAT. RULE 809.23(3).

Counsel for A.S.B. has filed a no-merit report concluding there is no arguable basis for challenging guardianship and protective placement orders for A.S.B. A.S.B. has not responded.

Upon our independent review of the record as mandated by *Anders v. California*, 386 U.S. 738

(1967) and WIS. STAT. RULE 809.32 (2015-16),¹ no arguable issues of merit appear, and we summarily affirm.

Petitions for guardianship and protective placement were filed by the St. Joseph Regional Medical Center on December 22, 2015. The guardianship petition alleged that a permanent guardian should be appointed for A.S.B., a man in his late fifties, due to incompetency. The petition asserted that A.S.B. had been “admitted to St. Joseph Regional Medical Center after he was found in bed unresponsive at his group home.” It was later determined that his blood alcohol content at the time of his admission to the hospital was .557, a level of intoxication that often causes death. A.S.B. had to be intubated and placed in the intensive care unit. The petition asserted that A.S.B. “has a history of insulin dependent diabetes, hypertension, pancreatitis and alcoholism” and “requires 24 hour supervision.”

A.S.B., through his guardian ad litem, objected to the petitions for guardianship and protective placement. Subsequently, adversary counsel was appointed to represent A.S.B. A court trial was conducted, at which a psychologist, program coordinator, social worker, and A.S.B. testified. The trial court found that A.S.B. needed a guardian of the person as a result of “other like incapacities.”² See WIS. STAT. §§ 54.10(3)(a), 54.01(14) (defining “impairment”), and 54.01(22) (“‘Other like incapacities’ means those conditions incurred at any age that are the result of accident, organic brain damage, mental or physical disability, or continued consumption or absorption of substances, and that produce a condition that substantially impairs an individual

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

² The petitioner did not seek, and the trial court did not order, that there be a guardian of A.S.B.’s estate.

from providing for his or her own care or custody.”). The trial court also found that A.S.B. was in need of protective placement in an unlocked unit. *See* WIS. STAT. § 55.08(1).

The no-merit report addresses whether there was sufficient evidence to support the trial court’s guardianship and protective placement orders. We agree with counsel’s thorough analysis and summary of the trial testimony. We will briefly discuss the sufficiency of the evidence. But first, we address whether there would be arguable merit to challenge the trial court’s orders based on procedural flaws.

After the petition was filed, a guardian ad litem was appointed. She met with A.S.B. and registered the objection to the petition. The court trial was held within the required time limits for hearing a petition set forth in WIS. STAT. § 55.10(1). A.S.B. was present in person at trial, represented by counsel. *See* § 55.10(2) and (4)(a). We discern no issues of arguable merit with respect to the procedures used in this case.

We turn to the sufficiency of the evidence for the guardianship. In order to prove A.S.B. was in need of a guardian of the person, the petitioner was required to prove by clear and convincing evidence that A.S.B. was incompetent. *See* WIS. STAT. § 54.10(3)(a); *see also* WIS JI—CIVIL 7060 (2013). First, it was necessary to present evidence that A.S.B. was at least seventeen years and nine months old. It was undisputed that A.S.B. satisfies the age requirement.

The petitioner was also required to prove that A.S.B. suffers from “other like incapacities” and as a result, he “is unable effectively to receive and evaluate information or to make or communicate decisions to such an extent that [he] is unable to meet the essential requirements for his ... physical health and safety.” *See* WIS. STAT. §§ 54.01(22); 54.10(3)(a)2.

The psychologist testified that A.S.B. suffers from a neurocognitive disorder and that the disorder is “likely” permanent “given his long history of alcohol dependency.” The psychologist said that A.S.B. “wasn’t aware of the medical issues and how serious his health was.” The psychologist also noted that during A.S.B.’s hospitalization, “he refused treatment for pneumonia,” refused to participate in therapy, and “refused getting cleaned up” after soiling himself. The testimony of the program coordinator and the social worker, which provided additional details about A.S.B.’s hospitalization, also supported the trial court’s findings.

Finally, the petitioner was required to prove that A.S.B.’s needs could not be met with less restrictive services. *See* WIS. STAT. § 54.10(3)(a)4. The program coordinator testified that the least restrictive placement that would meet A.S.B.’s needs was a community-based residential facility or “an adult family home with 24/7 supervision.” She explained that the constant supervision was necessary to provide “help with activities of daily living, at least prompts for things like bathing, but definite oversight of medication management, [and] making sure that he’s eating.” A.S.B.’s social worker explained that while he was in the hospital, A.S.B. “refused to eat or drink,” which injured his kidneys and required the hospital “to restart the IV fluids on him.”

This testimony supports the trial court’s findings that A.S.B. does not “appreciate the severity of [his] various illnesses” and needs assistance making decisions. We conclude there would be no arguable merit to challenge the sufficiency of the evidence supporting the trial court’s order appointing a guardian of the person.

Finally, we turn to the sufficiency of the evidence supporting the protective placement order. Pursuant to WIS. STAT. §§ 55.06 and 55.08(1), the petitioner was required to demonstrate

that A.S.B. was found incompetent, “has a primary need for residential care and custody,” “has a disability that is permanent or likely to be permanent,” and, as a result of that disability, “is so totally incapable of providing for his ... own care or custody as to create a substantial risk of serious harm to himself ... or others.” *See id.* We agree with counsel’s analysis: the testimony of the psychologist, social worker, and program coordinator supported the trial court’s findings. For instance, A.S.B.’s continued alcohol abuse, which required several hospitalizations in the year prior to the hearing, demonstrated that his condition created a substantial risk of serious harm to himself. *See* § 55.08(1)(c). Further, testimony concerning A.S.B.’s inability to recognize the seriousness of his health issues, in addition to his need for reminders about and assistance with activities of daily living, supported the finding that A.S.B. “has a primary need for residential care and custody.” *See* § 55.08(1)(a). We conclude there would be no arguable merit to assert that there was insufficient evidence supporting the protective placement order.

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

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

IT IS FURTHER ORDERED that attorney Dustin C. Haskell is relieved of further representing A.S.B. in this matter.

IT IS FURTHER ORDERED that this summary disposition order will not be published.

Diane M. Fremgen
Clerk of Court of Appeals