



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

September 11, 2018

To:

Hon. Eugene D. Harrington
Circuit Court Judge
P.O. Box 339
Shell Lake, WI 54871

Jeffrey R. Kohler
W7165 Luther Rd.
Spooner, WI 54801

Shannon Anderson
Register in Probate
Washburn County Courthouse
10 W. 4th Ave., P.O. Box 339
Shell Lake, WI 54871

Katherine M. Stewart
P.O. Box 364
Spooner, WI 54801

Leonard D. Kachinsky
Kachinsky Law Offices
832 Neff Ct.
Neenah, WI 54956-0310

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

2018AP721-FT

Washburn County v. L. M. W. (L. C. No. 2017GN11)

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

Washburn County appeals an order granting postdispositional relief in this guardianship action to L.M.W. based upon a violation of the ninety-day time limit for a hearing contained in WIS. STAT. § 54.44(1) (2015-16).¹ Pursuant to this court's order of May 16, 2018, and a

¹ This is an expedited appeal under WIS. STAT. RULE 809.17. All references to the Wisconsin Statutes are to the 2015-16 version unless otherwise noted.

presubmission conference, the parties have submitted memorandum briefs. *See* WIS. STAT. RULE 809.17(1). Upon review of those memoranda and the record, we affirm the order of the circuit court.

On July 20, 2017, a County social services worker petitioned for protective placement and the appointment of a permanent guardian for L.M.W., based upon physician opinions that L.M.W. was suffering from dementia. A temporary guardian was appointed on August 1, 2017, and a hearing on the petitions was set for September 11, 2017. The September 11 hearing date was converted to a scheduling conference, at which time L.M.W. requested an independent medical evaluation. The hearing was subsequently rescheduled for November 9, and then rescheduled again to November 28, 2017. Following the final hearing on November 28, the court found L.M.W. incompetent and appointed guardians for her person and her estate.

L.M.W. filed a postdispositional motion to dismiss the petition for lack of competency to proceed based upon the circuit court's failure to timely hold a final hearing. The motion noted L.M.W. had been transferred to another nursing home on October 10, 2017, but that the transfer did not affect the court's statutory obligation under WIS. STAT. § 54.44(1) to hold a hearing within ninety days of the petition's filing. L.M.W.'s position was that the guardianship petition had to be heard no later than October 18, 2017. The circuit court agreed, vacated its order, and released L.M.W. from the guardianships.

On appeal, the County acknowledges the statutory time limit was not met, but it portrays this as a case of "rights collid[ing]." In essence, it argues L.M.W. invited error by requesting an independent medical examination that likely would not be completed by the statutory deadline. We rejected a similar argument in *Tina B. v. Richard H.*, 2014 WI App 123, ¶19,

359 Wis. 2d 204, 857 N.W.2d 432. There, the circuit court dismissed the foster parents' WIS. STAT. ch. 54 guardianship petition based upon the failure to timely hold a final hearing. We observed that the statutory deadline contained in WIS. STAT. § 54.44(1) is mandatory, a violation of the deadline cannot be waived, and failure to comply with the deadline deprives the court of competency to proceed. *Tina B.*, 359 Wis. 2d 204, ¶¶22-27.

Whether a circuit court has lost competency to proceed on a matter is a question of law that we review de novo. *Id.*, ¶21. The final hearing regarding L.M.W.'s guardianship was plainly held outside of the ninety-day period established by WIS. STAT. § 54.44(1). The circuit court thus correctly recognized it lacked competency to enter the guardianship order, and it properly vacated that order.²

Therefore,

IT IS ORDERED that the order of the circuit court is affirmed.

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

Sheila T. Reiff
Clerk of Court of Appeals

² In support of its argument, the County cites the unpublished, per curiam opinion in *Constance N. v. Anna Mae Z.*, No. 2009AP795, unpublished slip op. (WI App Feb. 9, 2010). As justification for this citation, the County relies on WIS. STAT. RULE 809.24(3)(b), which does not exist. We presume the County meant to rely on WIS. STAT. RULE 809.23(3)(b), but that rule provides that only unpublished *authored* opinions may be cited for their persuasive value. Unpublished per curiam opinions may not be cited as persuasive or controlling authority. *Tina B. v. Richard H.*, 2014 WI App 123, ¶30, 359 Wis. 2d 204, 857 N.W.2d 432.