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DISTRICT III

May 19, 2020

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

2018AP1140-NM Eau Claire County Department of Human Services v. R. C. C.
(L. C. No. 2017GN29)

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).

Counsel for R.C.C. has filed a no-merit report concluding there is no basis to challenge an order for protective placement of R.C.C. and an order appointing a guardian of his person and his estate. R.C.C. has responded. Upon our independent review of the record as mandated by *Anders v. California*, 386 U.S. 738 (1967), we conclude there is no arguable merit to any issue

that could be raised on appeal. Therefore, we summarily affirm the orders. *See* WIS. STAT. RULE 809.21 (2017-18).¹

The Eau Claire County Department of Human Services filed petitions seeking guardianship over R.C.C.’s person and estate, and protective placement of R.C.C. The petitions recounted that R.C.C. was admitted to the hospital for “aspiration pneumonia with possible sepsis, E. Coli UTI, Thrombocytopenia due to liver disease and alcoholism, multiple falls and contusions, Atrial Fibrillation, Acute Hypoxic Respiratory Failure and malnutrition.” On the same day the petitions were filed, a guardian ad litem (GAL) was appointed, and four days later, the court granted a temporary guardianship of R.C.C.’s person.

The GAL submitted a report recounting that after interviewing R.C.C. and advising R.C.C. of his rights, R.C.C. objected to the petitions and requested adversary counsel, but he did not demand a jury trial. The GAL supported the petitions and opined, based on her investigation, that R.C.C. “is substantially incapable” of caring for himself and managing his property. An examining psychologist, Julie M. Grieves, filed a report opining that R.C.C. “is a proper subject for guardianship and protective placement.” After a bench trial, the circuit court ordered R.C.C.’s guardianship and protective placement.

Appointed counsel filed a postdisposition motion to vacate the orders on the ground that R.C.C. was denied the effective assistance of trial counsel. Specifically, the motion recounted that trial counsel was appointed to represent R.C.C. the day before the final hearing. Therefore, counsel was not provided a copy of Dr. Grieves’s evaluation “at least 96 hours in advance of the

¹ All references to the Wisconsin Statutes are to the 2017-18 version unless otherwise noted.

hearing,” as required under WIS. STAT. § 54.44(1)(a). The motion alleged trial counsel was ineffective by failing to object to the noncompliance with § 54.44(1)(a), and by failing to request an adjournment in order to adequately prepare to represent R.C.C. at the final hearing.

After a hearing on the postdisposition motion, the parties stipulated that R.C.C. received ineffective assistance of counsel at the final hearing, thus entitling him to a new hearing on the petitions, “with the understanding that [R.C.C.] would have all of the rights and privileges ... he would have had if we were starting from the very beginning.” Consistent with the stipulation, the circuit court ordered a new hearing, emphasizing that R.C.C. was “entitled to all substantive and procedural statutory and constitutional rights granted pursuant to chapters 54 and 55 of the Wisconsin Statutes, including but not limited to an independent evaluation, the right to counsel ... and the right to request a jury trial.” The parties further stipulated that R.C.C. would remain under guardianship and protective placement pending the final hearing.

R.C.C. demanded a jury trial. He was subsequently re-examined by Dr. Grieves, and she, along with a second examining psychologist, submitted reports. Doctor Grieves opined that R.C.C. has a degenerative brain disorder—specifically, alcohol-induced dementia with psychosis. Doctor Brian Stress opined that R.C.C. has “serious and persistent mental illness” and a degenerative brain disorder related to extensive long-term alcohol use. Both doctors opined that R.C.C.’s incapacity was permanent and unlikely to resolve with treatment. After a jury trial, the circuit court entered the orders for guardianship and protective placement that are the subject of this appeal.

The no-merit report addresses whether the evidence at trial was sufficient to support the jury’s finding of incompetence, and the elements necessary for guardianship and protective

placement pursuant to WIS. STAT. §§ 54.10(3) and 55.08(1). The no-merit report also addresses whether there is any arguable basis to challenge the orders based on procedural flaws. Upon reviewing the record, we agree with counsel's description, analysis, and conclusion that these potential issues lack arguable merit. The no-merit report sets forth an adequate discussion of the potential issues to support the no-merit conclusion, and we need not address them further.

In his response to the no-merit report, R.C.C. raises several challenges to the circuit court's initial appointment of a temporary guardian pursuant to WIS. STAT. § 54.50(3). Specifically, R.C.C. contends he was not given notice of the hearing until after it occurred; he was not appointed counsel for the temporary guardianship hearing; he was not allowed to appear in person at the hearing; and he was not given a psychological examination prior to the hearing. To the extent R.C.C. asserts he did not receive notice of the hearing until after it occurred, the record belies his claim. An affidavit of service reflects that four days before the hearing, notice of the hearing was served at Mayo Clinic-Oakridge, the facility where R.C.C. was receiving care, along with the petitions for guardianship and protective placement, the statement of incapacity, the notice of hearing, and the order appointing the guardian ad litem.

In any event, R.C.C. cannot show how any errors regarding the temporary guardianship proceedings made any difference with respect to the ultimate decision to grant the Department's permanent guardianship petition. Because resolution of his arguments regarding the temporary guardianship proceedings would have no practical effect on the validity of the permanent guardianship order that is the subject of this appeal, his arguments are moot and do not form an arguable basis for appeal. *See Milwaukee Cty. Pers. Rev. Bd. v. Clarke*, 2006 WI App 186, ¶28, 296 Wis. 2d 210, 723 N.W.2d 141 (holding that an issue is moot when its resolution will have no practical effect on the underlying controversy).

Although the no-merit report does not address it, we conclude there is no arguable merit to challenge the effectiveness of either trial or postconviction counsel. To establish ineffective assistance of counsel, R.C.C. must show that his counsel's performance was not within the range of competence demanded of attorneys and that the deficient performance affected the outcome of the proceeding. *See Strickland v. Washington*, 466 U.S. 668, 687, 694 (1984). R.C.C. may argue that postconviction counsel was deficient by stipulating to a new hearing on the petitions, rather than insisting that the case be dismissed, thus requiring the Department to file new petitions. As noted above, however, the parties stipulated "with the understanding that [R.C.C.] would have all of the rights and privileges ... he would have had if we were starting from the very beginning." Because R.C.C. received all the rights he would have had if new petitions were filed, any claim that he was prejudiced by counsel's stipulation would lack arguable merit.

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

Therefore,

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

IT IS FURTHER ORDERED that attorney Diane C. Lowe is relieved of her obligation to further represent R.C.C. in this matter. *See* WIS. STAT. RULE 809.32(3).

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

Sheila T. Reiff
Clerk of Court of Appeals