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December 16, 2020

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

2020AP170 In the matter of the guardianship and protective placement of R.H.P.: Ozaukee County DHS v. R.H.P. (L.C. #2018GN65)

Before Neubauer, C.J., Reilly, P.J., and Gundrum, J.

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).

R.H.P. appeals from an order granting a petition for guardianship of his person and his estate and from an order granting a petition for protective placement, both of which were entered

in February 2019.[1] On appeal, R.H.P. does not contest the establishment of a guardianship or his need for protective placement. Instead, he argues: (1) the circuit court's conclusion that placing R.H.P. "in a skilled nursing facility was the least restrictive environment consistent with R.H.P.'s needs was wrong as a matter of law" and (2) the circuit court "erroneously exercised its discretion when it rejected R.H.P.'s siblings in favor of appointing a corporate guardian." Based upon our review of the briefs and record, we conclude at conference that this case is appropriate for summary disposition. WIS. STAT. RULE 809.21 (2017-18).[2] We summarily affirm the orders.

On December 20, 2018, R.H.P. had a doctor's appointment with his primary physician. R.H.P. had been discharged from the hospital one week earlier after a month-long stay and was living with his older brother and sister. However, he attended the appointment alone. Based on the doctor's observations of R.H.P.'s mental and physical health, she was "worried about him not having appropriate care." She spoke with R.H.P.'s brother by phone and learned that R.H.P. had not yet started taking a prescribed blood thinner. R.H.P. was taken to the emergency room and later transferred to a skilled nursing facility.

The County filed petitions for temporary and permanent guardianship and protective placement. The guardianship petition alleged that R.H.P., who was in his early 60s, had a history of serious health issues, including chronic kidney disease, diabetes, coronary heart disease, and stroke. It further alleged that R.H.P. was "very impaired in the range of severe dementia" and

[1] The record suggests that there have been subsequent proceedings in the circuit court concerning R.H.P. Those proceedings are not before this court at this time.

[2] All references to the Wisconsin Statutes are to the 2017-18 version unless otherwise noted.

was "in need of 24-hour supervision and assistance with all activities of daily living to ensure safety." The petition asked the circuit court to appoint a corporate guardian.

The court commissioner granted the temporary petitions and appointed a corporate guardian as the temporary guardian of R.H.P.'s person and estate. R.H.P. remained at the skilled nursing facility, where his siblings visited him.

R.H.P.'s siblings filed their own petition asking that one of them be appointed the guardian. They asserted that they were "able to provide 24 hour care" and would "allow[] service providers to come into the residence."

About one month after the emergency placement, the circuit court held a two-day hearing to consider the petitions for permanent guardianship and protective placement. The circuit court heard testimony from the primary physician, the examining psychologist, the County social worker, the nursing home administrator, and R.H.P.'s two siblings.

On the second day of the hearing, R.H.P. had trouble staying awake. The circuit court paused the hearing so R.H.P.'s blood sugar level could be tested. When the test revealed a high blood sugar level and the social worker suggested that R.H.P. should be evaluated in an emergency room, the circuit court summoned an ambulance and R.H.P. was taken to the hospital. The circuit court continued the hearing in R.H.P.'s absence, without objection from the parties or the guardian ad litem.

At the conclusion of the hearing, the circuit court found that guardianship was necessary, and it appointed as the permanent guardian the same corporate guardian that had been the

temporary guardian since December 2018. The circuit court further found that R.H.P. should be protectively placed in a facility that provides skilled nursing care. R.H.P. now appeals.

A circuit court's decisions on whether to appoint a guardian and order protective placement are determinations within the discretion of the circuit court. ***Robin K. v. Lamanda M.***, 2006 WI 68, ¶12, 291 Wis. 2d 333, 718 N.W.2d 38; ***Anna S. v. Diana M.***, 2004 WI App 45, ¶7, 270 Wis. 2d 411, 678 N.W.2d 285. "We affirm discretionary decisions if the circuit court applies the proper legal standard to the relevant facts and uses a rational process to reach a reasonable result." ***Robin K.***, 291 Wis. 2d 333, ¶12 (citation omitted). This court will sustain a circuit court's reasonable exercise of discretion even if this court or another judge might have exercised discretion differently. *See* ***Hartung v. Hartung***, 102 Wis. 2d 58, 66, 306 N.W.2d 16 (1981). "Although the proper exercise of discretion contemplates that the circuit court explain its reasoning, when the court does not do so, we may search the record to determine if it supports the court's discretionary decision." ***Randall v. Randall***, 2000 WI App 98, ¶7, 235 Wis. 2d 1, 612 N.W.2d 737.

In both guardianship and protective placement cases, we give deference to the circuit court's factual findings unless those findings are clearly erroneous. *See* WIS. STAT. § 805.17(2); ***Robin K.***, 291 Wis. 2d 333, ¶12. Whether the evidence satisfies the legal standard for granting a guardianship or a protective placement is a question of law that this court reviews de novo. *See* ***Cheryl F. v. Sheboygan Cnty.***, 170 Wis. 2d 420, 425, 489 N.W.2d 636 (Ct. App. 1992).

R.H.P.'s first argument concerns the protective placement. He argues that the circuit court's decision to place R.H.P. in a skilled nursing facility was "wrong as a matter of law." He asserts that even if a protective placement was necessary, he could have been placed in his own

home, *see* WIS. STAT. § 55.12(2), which would have been "the least restrictive environment and in the least restrictive manner consistent with the needs of the individual to be protected and with the resources of the county department," *see* § 55.12(3). He continues: "There was simply no evidence presented at the hearing to support the court's conclusion that the least restrictive placement that would meet R.H.P.'s needs was a skilled nursing facility." We disagree.

Although the examining psychologist's written report did not recommend a skilled nursing facility, it acknowledged that R.H.P. "will require 24-hour supervision to assist with all daily living needs." The report further indicated: "If this family is unable to provide this level of care then he will need to have placement." At the hearing, the psychologist testified that R.H.P. may need to be placed outside his home if his siblings are unable to provide "round-the-clock care" or lack adequate knowledge to address R.H.P.'s health issues. The testimony of R.H.P.'s primary physician suggested the siblings could not provide the requisite care.

R.H.P.'s physician testified that when she spoke with R.H.P.'s brother on December 20, 2018, he "seemed confused" when she referred to a specific blood thinner that R.H.P. was supposed to be receiving. She said she was concerned that the prescription had not been filled, as well as the fact that some of the necessary follow-up medical appointments had not yet been scheduled. When asked whether she thought "the supportive services that were being provided in the community were sufficient," she answered, "The support that he was getting was from his family, and I was worried about his safety. So no, I would—I did not think it was appropriate."

The circuit court found that R.H.P. needed to be in a structured setting rather than with his siblings at home. The circuit court noted that R.H.P.'s health "is a very variable situation."

It said, "We can hardly manage his blood sugar level in a structured setting." The circuit court found that R.H.P. "requires skilled nursing care" in light of medical conditions that were "taking a terrible toll on him." The circuit court also commented on the challenge of managing R.H.P.'s conditions, stating:

> I think that the progressive nature of what we're dealing with has gotten to the point where it's beyond the average layperson to manage, even … where you've got three people living there….
>
> [W]e would be putting [R.H.P.] through a series of ups and downs just like we had here today. He looked worse to me today than he did the last time he was here…. He could not stay awake.
>
> And you know, yes, [his brother] did know how to [test] that blood sugar. But the problem is we're in a secure facility where we can summon[] an ambulance very quickly and react very quickly….
>
> But to say we're going to put him into this never-ending process where you go into [emergency rooms] and sit there for four or five hours with a doctor that doesn't know you, and then you get back out and you get back into this cycle, that's just not fair to him.

The circuit court's findings are not clearly erroneous and they support its determination that R.H.P. should be placed in a skilled nursing facility. The extent of R.H.P.'s mental and physical ailments, including significant challenges maintaining healthy blood sugar levels, provide more than adequate justification for the circuit court's determination, and we reject R.H.P.'s challenge to the circuit court's exercise of discretion. ***Robin K.***, 291 Wis. 2d 333, ¶12.

The second issue R.H.P. raises on appeal is the circuit court's decision to appoint a corporate guardian rather than appointing one of R.H.P.'s siblings to be his guardian. The circuit court found that the corporate guardian was more appropriate and began to explain its reasoning, but it then addressed a related issue and did not provide a complete explanation. As noted, this

court "may search the record to determine if it supports the court's discretionary decision." *See* ***Randall***, 235 Wis. 2d 1, ¶7. Here, the record supports the circuit court's decision.

The siblings clashed with the staff at both the nursing home and the hospital, leading to a police response in one instance. Further, the circuit court heard testimony that R.H.P.'s brother told the primary physician that he was an "RN" even though he was not a registered nurse and seemed unfamiliar with the blood thinner the doctor mentioned. He also told R.H.P.'s social worker that "he was an RN and could take care of his brother." Whether R.H.P.'s brother was exaggerating his medical experience or, as he testified, he erroneously thought he was a registered nurse, a corporate guardian may be more effective at interacting with medical and social welfare personnel. There was also testimony that the siblings had not filled an important prescription and may have been allowing R.H.P. to have unhealthy foods. Finally, the fact that the corporate guardian had already been serving as the temporary guardian of the person and the estate avoided the need for a transition. We conclude that the circuit court did not erroneously exercise its discretion when it determined that the appointment of a corporate guardian was in R.H.P.'s best interests. *See* ***id.***; *see also* ***Robin K.***, 291 Wis. 2d 333, ¶12; WIS. STAT. § 54.15(1).

Upon the foregoing,

IT IS ORDERED that the orders of the circuit court are summarily affirmed.

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

Sheila T. Reiff
Clerk of Court of Appeals