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DISTRICT IV

July 15, 2021

To:

Hon. Todd P. Wolf
Circuit Court Judge
Electronic Notice

Mary Anderson
Register in Probate
Electronic Notice

Frederick A. Bechtold
Electronic Notice

Peter A. Kastenzholz
Electronic Notice

B. R. P.
301 N. Schmidt Ave.
Marshfield, WI 54449

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

2020AP939-NM

In the matter of the guardianship of B.R.P.:
Wood County v. B.R.P. (L.C. # 2018GN69)

Before Kloppenburg, J.¹

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).

B.R.P. appeals the circuit court's order for protective placement. Attorney Frederick Bechtold, appointed counsel for B.R.P., has filed a no-merit report pursuant to WIS. STAT. RULE 809.32 seeking to withdraw as appellate counsel. B.R.P. was sent a copy of the report and has filed a response. Based upon the report, the response, and an independent review of the record, I conclude that there is no arguable merit to any issue that could be raised on appeal. Accordingly, I affirm the protective placement order.

¹ This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(d) (2019-20). All references to the Wisconsin Statutes are to the 2019-20 version unless otherwise noted.

In December 2018, the circuit court appointed a guardian for both B.R.P.'s estate and his person due to his incompetency. Subsequent to the guardian's appointment, the Department of Health Services petitioned for protective placement of B.R.P. under WIS. STAT. ch. 55.² B.R.P.'s case proceeded to a jury trial. B.R.P.'s social worker testified, as did the psychologist who evaluated B.R.P. B.R.P. also testified. In a special verdict, the jury found that B.R.P. met the criteria for protective placement. Based on the jury's verdict and the circuit court's factual findings as to the least restrictive placement consistent with B.R.P.'s needs, the court ordered B.R.P. protectively placed in an unlocked facility.

The no-merit report first addresses whether the evidence was sufficient to support the jury's verdict. "A jury's verdict must be sustained if there is any credible evidence, when viewed in a light most favorable to the verdict, to support it." *Outagamie Cnty. v. Michael H.*, 2014 WI 127, ¶21, 359 Wis. 2d 272, 856 N.W.2d 603 (quoted source omitted). Without reciting all of the evidence here, I conclude that it would be frivolous to challenge the jury's verdict based on insufficiency of the evidence. The no-merit report thoroughly analyzes this issue, and I agree with the analysis. In short, the testimony and written reports by B.R.P.'s social worker and the psychologist who evaluated B.R.P. provide ample evidence to support the jury's verdict.

The no-merit report next addresses whether there would be any arguable merit to challenging the circuit court's factual findings as to the least restrictive placement for B.R.P. The no-merit report properly analyzes this issue as having no arguable merit. The same evidence that supported the jury's verdict also supported the court's factual findings, and it would be

² A previous petition for protective placement was dismissed due to a defect in service.

frivolous to challenge those findings as clearly erroneous. *See Fond du Lac Cnty. v. J.G.S.*, 159 Wis. 2d 685, 688, 465 N.W.2d 227 (Ct. App. 1990) (“Findings of fact shall not be set aside unless clearly erroneous.”).

In his response, B.R.P. makes several assertions regarding his mental condition and level of independent functioning. For example, he asserts that he does not have schizophrenia and that he has taken medication on his own. These assertions are similar to assertions that B.R.P. made in his trial testimony in which he disputed the contrary testimony by his social worker and the psychologist. B.R.P.’s assertions do not provide an arguable basis to appeal. These assertions at most present factual disputes and questions of witness credibility that were resolved by the jury and the circuit court. An appellate court does not “reweigh the evidence or reassess the witnesses’ credibility.” *Dickman v. Vollmer*, 2007 WI App 141, ¶14, 303 Wis. 2d 241, 736 N.W.2d 202.

The no-merit report next addresses whether there are any arguably meritorious issues with respect to jury selection, the presentation of evidence, B.R.P.’s decision to testify, the jury instructions, or trial counsel’s effectiveness. I am satisfied that the no-merit report properly analyzes each of these issues as having no arguable merit.

My review of the record discloses no other arguably meritorious issues for appeal.

Therefore,

IT IS ORDERED that the circuit court’s order is summarily affirmed. *See* WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that Attorney Frederick Bechtold is relieved of any further representation of B.R.P. in this matter.

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

Sheila T. Reiff
Clerk of Court of Appeals