



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

October 19, 2021

To:

Hon. John B. Rhode
Circuit Court Judge
Electronic Notice

Brenda Sue Mayr
Register in Probate
Langlade County Courthouse
Electronic Notice

Tristan Breedlove
Electronic Notice

Catherine Malchow
Electronic Notice

Robin James Stowe
Electronic Notice

K. M. B.

Deborah L. Hatfield
Hatfield Law Office
P.O. Box 307
Elcho, WI 54428

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

2019AP872-NM Langlade County v. K. M. B. (L. C. No. 2010GN4)
2019AP873-NM

Before Stark, P.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).

Counsel for K.M.B. has filed a no-merit report pursuant to WIS. STAT. RULE 809.32, concluding no grounds exist to challenge consolidated orders continuing K.M.B.'s protective placement. Counsel has also submitted to this court a request from K.M.B., which we construe as a response to the no-merit report, "to inform the court of the following information: K.M.B. likes it where he is, but he does want to live with his mom, and he is ready to be an adult." Upon

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

an independent review of the records as mandated by *Anders v. California*, 386 U.S. 738 (1967), no arguable issues of merit appear. Therefore, the orders are summarily affirmed.

K.M.B. is developmentally disabled and has an extensive history of out-of-home placement. K.M.B. lacks an understanding of concepts secondary to his developmental disability, and he has he been described as having little or no behavioral control and being incapable of caring for himself.

K.M.B. was adjudicated incompetent, and his mother was his guardian for a number of years, but she was eventually replaced by a successor guardian. His protective placement was originally at North Central Health Care following his physical aggression toward his family, but at the time of the present annual review, K.M.B. was protectively placed at Dungarvin in Milwaukee.

At Dungarvin, K.M.B. lives in the top apartment of a duplex, and he has twenty-four-hour-a-day supervision with two staff members with him at all times. K.M.B.'s apartment is equipped with magnetic locks on the perimeter doors, a time-out room with padding on the walls and a locking system, and a monitoring system to ensure there is a line of sight at all times. The television is enclosed in a case, the furniture is all foam so that it cannot be weaponized, and all sharp objects are locked up. His bed frame is also bolted to the ground. Prior to K.M.B.'s placement at Dungarvin, many other options were explored, including locations in the Oshkosh area where his mother resides, but no appropriate alternatives were available to provide the services K.M.B. required.

An annual review hearing of K.M.B.'s protective placement was held. The circuit court acknowledged that no one was contesting the guardianship, and the issue was whether K.M.B.

continued to meet the standards for protective placement. A social worker who worked with K.M.B. testified that K.M.B. continued to need protective placement and recommended that he remain at Dungarvin, which was the least restrictive environment. *See* WIS. STAT. § 55.18(3)(e). She further stated that she would have concerns about K.M.B. living with his mother because “I would be fearful he would become aggressive and they wouldn’t be able to manage that.”

When K.M.B. resided with his mother previously, the police were contacted on multiple instances because of his aggressive outbursts, and he attacked his mother on one occasion. The program manager for K.M.B. at Dungarvin testified that K.M.B. continued his aggressive behavior at Dungarvin, which they were “learning to manage very well,” and K.M.B. currently averaged about two instances per month that required physical restraints. The social worker testified that before she would recommend a less restrictive placement for K.M.B., she would like to see him not needing to be restrained for several months at least. The guardian ad litem’s report also opined that K.M.B. continued to meet the standard for protective placement and recommended continued placement at Dungarvin. Adversary counsel for K.M.B. requested that the circuit court order an updated independent medical examination (IME) during its oral ruling. Following the presentation of witnesses, and arguments by the parties, the court expressed a desire for the parties to reach a stipulation regarding an IME, and it then ordered continued protective placement at Dungarvin.

A motion for reconsideration was filed, together with a request to amend the protective placement order to include an order for an IME.² After a hearing, the circuit court granted the motion for reconsideration, entered an amended order appointing an independent examiner, and ordered K.M.B.'s protective placement at Dungarvin to continue pending further order of the court. The independent examiner subsequently filed a report and opined that "there continues to be clear and convincing evidence that [K.M.B.] is so incapable of providing for his own care and custody as to create a substantial risk of serious harm to himself and others." The IME report concluded that K.M.B. continued to meet the standards for protective placement, and it recommended continued protective placement at Dungarvin.

The no-merit report discusses whether any arguable issues of merit appear concerning the sufficiency of the evidence supporting the circuit court's finding that K.M.B. met the standards for protective placement in WIS. STAT. § 55.08(1), and whether his current placement was the least restrictive environment consistent with WIS. STAT. § 55.18(3)(e). We agree with counsel's analysis and conclusion that any challenge to the court's ruling would lack arguable merit. The no-merit report sets forth an adequate discussion of the issues, and we need not address them further. Our independent review of the record discloses no other potential issues for appeal. We

² There is no requirement that a medical opinion be provided to establish the "least restrictive environment." *See generally* WIS. STAT. § 55.18(1)-(3). The original orders for guardianship and protective placement are not before this court, but the record indicates that multiple doctors' opinions were included in the circuit court filings. Although no transcripts apparently exist, the court's minutes show the doctors' reports were admitted without objection, and all parties stipulated to K.M.B.'s original guardianship and protective placement orders. Even if it was argued that the County failed to present a medical expert during the hearing on the present annual review, the independent examiner ordered by the circuit court opined that K.M.B. continued to meet the standards for protective placement and that his current placement was the least restrictive environment consistent with his needs. There is thus neither an arguable claim that a formal petition to modify or terminate the order for protective placement should have been filed, nor any arguable claim to challenge the order continuing placement and ordering an independent evaluation.

therefore conclude any further appellate proceedings would be wholly frivolous within the meaning of *Anders* and WIS. STAT. RULE 809.32.

Upon the foregoing,

IT IS ORDERED that the orders are summarily affirmed pursuant to WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that Attorney Catherine Malchow is relieved of any further representation of K.M.B. in these matters pursuant to 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