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DISTRICT III

December 6, 2022

To:

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Circuit Court Judge
Electronic Notice

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Pierce County Courthouse
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Jason M. Fey
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Ellen J. Krahn
Electronic Notice

Joseph N. Ehmann
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P.C.A.

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

2022AP705-NM Pierce County v. P.C.A. (L. C. No. 2021GN14)

Before Stark, P.J., Hruz and Gill, 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 P.C.A. has filed a no-merit report concluding that there is no arguable basis for an appeal challenging guardianship and protective placement orders.¹ *See* WIS. STAT. RULE 809.32 (2019-20).² P.C.A. filed a response and then filed an additional short letter regarding this matter. This court has considered the no-merit report and P.C.A.'s submissions,

¹ Assistant State Public Defender Ellen J. Krahn filed the no-merit report on P.C.A.'s behalf. Attorney Joseph N. Ehmann, State Public Defender Regional Attorney Manager, later filed a notice of appearance as co-counsel for P.C.A. but did not seek to file a supplemental no-merit report.

² All references to the Wisconsin Statutes are to the 2019-20 version unless otherwise noted.

and we have conducted an independent review of the record as mandated by *Anders v. California*, 386 U.S. 738 (1967). We conclude that no arguably meritorious issues exist for an appeal. Therefore, we summarily affirm.

The Pierce County Human Services Department filed petitions on September 15, 2021, seeking guardianship and protective placement for P.C.A. See WIS. STAT. §§ 54.10(3)(a), 55.08(1). The County alleged that P.C.A., a seventy-one-year-old woman, was incompetent, an alcoholic, incapable of following basic medical directions, and in need of assistance to complete the tasks of daily living. An accompanying physician’s report prepared by Dr. Enoch Arhinful stated that P.C.A.’s intelligence was moderately reduced, that her functional knowledge was “extremely poor,” and that her reasoning and executive functioning were severely impaired. The report concluded that, due to P.C.A.’s incapacities, she was unable to care for herself, leading to “serial hospitalizations for conditions that are otherwise easily preventable.” The circuit court appointed a guardian ad litem (GAL) for P.C.A. the following day.

The County voluntarily withdrew the petition for protective placement on September 24, 2021, because P.C.A.’s family did not want to pursue it and because Dr. Arhinful opined that P.C.A.’s incapacity was not likely to be permanent. On October 8, 2021, however, the County filed a new petition for protective placement. The County alleged in the new petition that P.C.A. was currently hospitalized due to injuries from a fall, that she required assistance with the tasks of daily living, and that she needed residential care and custody to protect her from self-harm. An accompanying physician’s report prepared by Dr. Jackson Long and dated October 7, 2021, stated that P.C.A.’s functional knowledge was “well below average” and that her reasoning and other executive functioning were severely impaired. Long diagnosed P.C.A. as suffering from

alcohol abuse and depression, and he concluded that her incapacity was permanent or likely to be permanent.

P.C.A., through her GAL, objected to the petitions for guardianship and protective placement, and the circuit court appointed adversary counsel to represent her. The case subsequently proceeded to a hearing before the court. At the hearing, the County and the GAL both took the position that P.C.A. required a guardian and protective placement. P.C.A. disagreed. The court concluded that P.C.A. was incompetent and met the criteria for both the appointment of a guardian and protective placement. The court entered an order establishing a guardianship of P.C.A.'s person and estate. The court also entered a protective placement order designating an unlocked unit as the least restrictive placement for P.C.A.

In the no-merit report, appellate counsel considers whether the evidence presented at the hearing was sufficient to support the circuit court's orders for guardianship and protective placement. We agree with appellate counsel's assessment that the evidence was sufficient.

Before a circuit court may order a guardianship on incompetency, the court must find by clear and convincing evidence that:

1. The individual is aged at least 17 years and 9 months.
2. For purposes of appointment of a guardian of the person, because of an impairment, the individual is unable effectively to receive and evaluate information or to make or communicate decisions to such an extent that the individual is unable to meet the essential requirements for his or her physical health and safety.
3. For purposes of appointment of a guardian of the estate, because of an impairment, the individual is unable effectively to receive and evaluate information or to make or communicate decisions related to management of his or her property or financial affairs, to the extent that any of the following applies:

- a. The individual has property that will be dissipated in whole or in part.
- b. The individual is unable to provide for his or her support.
- c. The individual is unable to prevent financial exploitation.

4. The individual's need for assistance in decision making or communication is unable to be met effectively and less restrictively through appropriate and reasonably available training, education, support services, health care, assistive devices, a supported decision-making agreement under [WIS. STAT.] ch. 52, or other means that the individual will accept.

WIS. STAT. § 54.10(3)(a). An "impairment" is defined as "a developmental disability, serious and persistent mental illness, degenerative brain disorder, or other like incapacities." *See* WIS. STAT. § 54.01(14). The phrase "[o]ther like incapacities" means those conditions ... that are the result of accident, organic brain damage, mental or physical disability, or continued consumption or absorption of substances, and that produce a condition that substantially impairs an individual from providing for his or her own care or custody." *See* § 54.01(22).

Pursuant to WIS. STAT. § 55.08(1), a circuit court may order a protective placement for an individual who meets all of the following standards:

- (a) The individual has a primary need for residential care and custody.
- (b) The individual is ... an adult who has been determined to be incompetent by a circuit court.
- (c) As a result of developmental disability, degenerative brain disorder, serious and persistent mental illness, or other like incapacities, the individual is so totally incapable of providing for his or her own care or custody as to create a substantial risk of serious harm to himself or herself or others. Serious harm may be evidenced by overt acts or acts of omission.

(d) The individual has a disability that is permanent or likely to be permanent.

See id. These standards also must be established by clear and convincing evidence. *See* WIS. STAT. § 55.10(4)(d).

Doctor Long testified that he had treated P.C.A. over the course of “multiple hospital admissions” from approximately August to October 2021. He said that he prepared his October 7, 2021 report after examining P.C.A. the previous day and reviewing nursing and clinical hospital notes as well as emergency medical system reports. The circuit court admitted Long’s report into evidence. The report reflected that P.C.A. was seventy-one years old and suffering from a serious and persistent mental illness. Long then testified that at the time of his examination, P.C.A. was hospitalized for both a right arm fracture, sustained in a fall, and for a general failure to thrive. Long diagnosed P.C.A. with depression and alcohol abuse. According to Long, P.C.A.’s alcohol abuse had caused ongoing cognitive decline resulting in severe mental impairment that prevented P.C.A. from caring for herself, leading to poor nutrition, falls, fractures and infections. He opined to a reasonable degree of medical certainty that P.C.A. was incompetent and that her incapacities were likely to be permanent.

Michelle Meinen, a social worker with the Pierce County Aging and Disability Resource Center, testified that she had frequent contact with P.C.A. over the course of many years. Meinen said that in the summer of 2021, she received reports from emergency medical providers that P.C.A. “was not moving when she was at home.” Meinen additionally testified that she went to the home and observed P.C.A. sitting in her own excrement. According to Meinen, P.C.A. did not understand that her significant alcohol abuse was leading to her physical deterioration and to her inability to ambulate, resulting in sepsis and infections from exposure to

excrement. Further, despite their years of interaction with each other, P.C.A. appeared not to recognize Meinen. Meinen then testified that in late September 2021, P.C.A. slipped in feces and was admitted to the hospital with a broken arm, which precipitated the petition for protective placement.

Meinen went on to testify that she had concerns that P.C.A.'s domestic partner, T.S., was abusing and financially exploiting P.C.A. Specifically, Meinen described how T.S. used P.C.A.'s bank card for his own purposes, including the purchase of alcohol. Meinen further described P.C.A.'s disclosures that T.S. damaged P.C.A.'s vocal cords some years earlier and that he had recently broken P.C.A.'s leg by stepping on it.

P.C.A. testified on her own behalf and said that she was "of sound mind and body." She said that she injured her vocal cords while doing carpentry work and that she broke her leg due to an unspecified inherited condition. She denied that she had an alcohol dependency, and she testified, "I don't drink like you think I do."

We will uphold a circuit court's findings of fact unless they are clearly erroneous. *See* WIS. STAT. § 805.17(2). Whether the evidence meets the legal standards for incompetency and for protective placement are questions of law that we review de novo. *See Walworth County v. Therese B.*, 2003 WI App 223, ¶21, 267 Wis. 2d 310, 671 N.W.2d 377. We agree with appellate counsel that the testimony and other materials presented, some of which we have described above, support the court's findings and constitute clear and convincing evidence that P.C.A. meets the standards for guardianship and for protective placement. A challenge to the sufficiency of that evidence would be frivolous within the meaning of *Anders*.

We have independently considered whether P.C.A. could pursue an arguably meritorious challenge to the orders for guardianship and protective placement on the ground that the circuit court failed to comply with statutory deadlines. We conclude that she could not do so.

Pursuant to WIS. STAT. § 54.44(1)(a)-(b), a petition for guardianship shall be heard within ninety days after it is filed, except that the deadline shall be shortened to sixty days if the proposed ward is an incapacitated person who has been admitted to a facility pursuant to WIS. STAT. § 50.06. Here, the exception requiring a hearing within sixty days did not apply. Although the County filed a document on September 15, 2021, giving notice of a contemplated transfer to a protective placement facility under § 50.06, counsel for the County notified the circuit court on September 24, 2021, that P.C.A.'s family had elected not to pursue that transfer. Meinen's guardianship report, admitted as an exhibit at the hearing, confirmed the abandonment of a contemplated transfer under § 50.06. The court heard the petitions in this matter on December 1, 2021. That date was seventy-seven days after September 15, 2021, the date on which the County filed the petition for guardianship. Accordingly, the record reflects that a challenge to the timeliness of the guardianship hearing would lack arguable merit.

A petition for protective placement shall be heard within sixty days after it is filed unless the deadline is extended for no more than forty-five days. *See* WIS. STAT. § 55.10(1). In this case, the circuit court dismissed the protective placement petition that the County filed on September 15, 2021. On October 8, 2021, the County filed a new protective placement petition. The December 1, 2021 hearing occurred fifty-four days later, well within the sixty-day deadline. A challenge to the timeliness of the hearing would lack arguable merit.

Finally, we have considered P.C.A.'s response to the no-merit report and her subsequent letter to this court. Neither of those short submissions identified or suggested any specific issues that P.C.A. believed might have merit. In the first submission, P.C.A. asked that "justice reign, prevail." In the second, she said that she moved "for a petition to withdraw all protective placement, guardian guardianship estate [sic] and or county department agency with it contracts." We construe P.C.A.'s submissions as reflecting her wish to challenge the orders for guardianship and protective placement in this case. While this court recognizes that P.C.A. is dissatisfied with the outcome of the litigation, our independent review of the proceedings does not reveal an arguably meritorious basis for appeal.

No other potential issues warrant discussion. We conclude that any further appellate proceedings would be wholly frivolous within the meaning of *Anders* and WIS. STAT. RULE 809.32.

Therefore,

IT IS ORDERED that the orders for guardianship and protective placement are summarily affirmed. WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that Attorneys Ellen J. Krahn and Joseph N. Ehmann are relieved of any further representation of P.C.A. 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