



*The Guardian* is a quarterly newsletter published by the Greater Wisconsin Agency on Aging Resources' (GWAAR) Wisconsin Guardianship Support Center (GSC).

The GSC provides information and assistance on issues related to guardianship, protective placement, advance directives, and more.

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**Interested in Receiving *The Guardian*?**

Do you want more information about guardianship, POAs and related issues?

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You can also subscribe by emailing your name, email address, and organization to  
[guardian@gwaar.org](mailto:guardian@gwaar.org).



## ***National Center on Law & Elder Rights Webinar – Dementia Informed Advocacy***

On April 20<sup>th</sup>, from 1-2 pm, the National Center on Law & Elder Rights (NCLER) will present a [free webinar](#) on dementia-informed advocacy for advocates, attorneys, and other professionals. The training will apply the informed services model to understanding how dementia impacts a person's ability to communicate, remember, and give informed consent. Participants will also learn how responses and behaviors are impacted by dementia and will hear about methods to support effective communication and understanding when representing older adults living with dementia.

## ***Alzheimer's Association 36<sup>th</sup> Annual State Conference – May 2-3, 2022***

This year, the Alzheimer's Association will hold its conference virtually over two half-days. The conference will feature five keynote speakers and one panel. Topics range from the latest in Alzheimer's research, mental illness and dementia, how dementia impacts diverse communities, and caregiver safety. Continuing education credits will be offered. For more information and to register, visit [the conference website](#).

## ***Academy for Lifelong Learners – June 7, 2022***

[Registration is now open](#) for the Academy for Lifelong Learners (formerly Senior Americans Day), scheduled for June 7 in Eau Claire. Portions will be livestreamed as well. A variety of sessions are offered on topics ranging from health and wellness to arts and crafts, as well as sessions on Social Security and Medicare. Ingrid Kunder of the Wisconsin Senior Medicare Patrol will present on Medicare and fraud issues, and the Guardianship Support Center will present on advance directives.

<p style="text-align: center;"><b>Save the Date</b></p> <p style="text-align: center;"><b>Wednesday, May 11th, 2022, 1:00 – 4:00 p.m.</b></p> <p style="text-align: center;"><b>Aging Advocacy Day</b></p> <p style="text-align: center;">Wisconsin Aging Advocacy Network</p>	
<p style="text-align: center;"><b>You are invited!</b></p> <p>Join aging advocates virtually from across the state to celebrate our legislative successes and prepare to make issues impacting older adults and family caregivers a top priority for state legislators in 2022 and beyond.</p>	
<p style="text-align: center;">Register at:</p> <p style="text-align: center;"><a href="https://gwaar.wufoo.com/forms/wisconsin-aging-advocacy-day-2022/">https://gwaar.wufoo.com/forms/wisconsin-aging-advocacy-day-2022/</a></p> <p style="text-align: center;">More details coming soon!</p> <p style="text-align: center;"><a href="https://gwaar.org/aging-advocacy-day-2022">https://gwaar.org/aging-advocacy-day-2022</a></p>	
<p>Contact: Janet Zander, 1414 MacArthur Rd., Madison, WI 53714, <a href="mailto:janet.zander@gwaar.org">janet.zander@gwaar.org</a>, (715) 677-6723</p>	<p style="text-align: center;"><b>#WisAgingAdvocacy2022</b></p>



## ***Guardianship Training Requirements – Effective January 2023***

In December, Governor Evers signed a bill to establish initial training requirements for guardians before they are appointed. These requirements go into effect in January 2023. The GSC will publish more information about training opportunities and options as it becomes available over coming months.

## ***Alzheimer’s Association Releases 2022 Alzheimer’s Disease Facts and Figures Report***

In March, the Alzheimer’s Association released its annual *Alzheimer’s Disease Facts and Figures Report*. The update includes a special report, “[More than Normal Aging: Understanding Mild Cognitive Impairment \(MCI\)](#),” which examines understanding and primary care providers’ understanding of real-world awareness, diagnosis, and treatment of mild cognitive impairment, whether due to Alzheimer’s Disease or another cause.

The report also includes a new section on the dementia care workforce, including current numbers as well as projected needs for an aging population between now and 2050.

## ***April is National Healthcare Decisions Month By the GWAAR Legal Services Team (for reprint)***

Every year in April we celebrate National Healthcare Decisions Month. This movement became national recognized in 2008 to help raise awareness of the importance of advanced care planning, to empower people to draft advance planning documents, and to encourage discussions with family members and medical professionals about healthcare wishes.

### **Why is it important to have advance care planning documents?**

These documents enable a trusted person to make decisions on your behalf if you are unable to do so. Wisconsin is not a “next of kin” state, meaning that family members do not have the inherent ability to make financial or healthcare decisions on behalf of another person just by virtue of being a spouse, adult child, sibling, or other relative. Decision-making authority can only be given to another person by the individual themselves, via a power of attorney document, or through a court process, such as a guardianship, conservatorship, or personal representative.

If a person has not completed powers of attorney documents and later becomes unable to make their own decisions, it may be necessary to have a court appoint a guardian on their behalf. The process of obtaining a court ordered guardianship can be expensive and emotionally taxing.

*(Continued on page 4)*



*(Healthcare Decisions, continued from page 3)*

## What documents are generally included in an advance care plan?

### Power of attorney for healthcare (POA-HC)

A power of attorney for healthcare allows a trusted person to make medical decisions on your behalf if you are unable to make or communicate medical decisions. For example, a POA-HC may consent to a surgery on your behalf, make treatment decisions, decide which doctors you see, evaluate the pros and cons of medical options, admit you to a nursing home, and make end of life decisions with your consent. It is important that the individual speak with their agent in advance to let them know their wishes, if the person would ever become incapacitated in the future.

### Power of attorney for finances (POA-F)

A power of attorney for finances allows another person to manage your bank accounts, pay your bills, buy or sell real estate, purchase and manage insurance, apply for public benefits, hire a lawyer on your behalf, and run a business on your behalf.

### A Living Will—Declaration to Physicians

A Living Will is typically not required if someone has a POA-HC since the POA-HC provides authority to make the decisions listed in the Living Will document. However, some people prefer to do them both, and that is fine as long as they do not have conflicting provisions. A Living Will allows a person to direct a doctor as to their preferences in specific circumstances if they are unable to make or communicate a choice. For example, a Living Will allows a person to indicate that a doctor can withhold or withdraw a feeding tube if they are in a terminal state and it is unlikely that they would recover. A Living Will also allows a person to direct a doctor to withhold life-saving procedures if they are in a persistent vegetative state. This document does not

name an agent to act on the person's behalf, and only applies in the very specific set of circumstances outlined within the document itself.

### Authorization for Final Disposition

This document allows a person to indicate their funeral and burial preferences in writing and to appoint an agent to carry out those wishes upon the person's death.

## Do I need an attorney to fill out these forms?

No. While the basic forms are available online for free, an attorney can provide legal advice and counseling regarding the person's specific circumstances to ensure that their wishes are stated and carried out as desired. An attorney will also help ensure that the documents are executed properly—a common reason why documents are invalid.

## Where can I obtain these forms?

For free forms and more information on advance directives, visit the Wisconsin Guardianship Support Center's website at <https://gwaar.org/guardianship-resources>. This program provides legal information about powers of attorneys, advance directives, and guardianships via a helpline at (855) 409-9410 (leave a voicemail) or email at [guardian@gwaar.org](mailto:guardian@gwaar.org).

The Department of Health Services also has the statutory powers of attorney and Living Will forms available on its website. The powers of attorney forms are now available in English, Spanish, Hmong, and Vietnamese. <https://www.dhs.wisconsin.gov/forms/advdirectives/adformspoa.htm>





**Title:** *Rock County v. H.V.*

**Court:** Court of Appeals, District IV

**Date:** January 13, 2022

**Citation:** [2021AP1760-FT](#)

## Case Summary

H.V., who was diagnosed with schizophrenia, appealed orders of an extension of mental commitment and involuntary medication. H.V. argued that it was plain error to admit hearsay by the examining psychiatrist and his due process rights were violated. H.V. also argued that even with the hearsay, the evidence did not support a clear and convincing finding he was dangerous. The court rejected these arguments and affirmed the ch. 51 order.

## Case Details

H.V. has been under a Wis. Stat. ch. 51 commitment since 2014. In January 2021, Rock County petitioned to extend H.V.'s commitment.

The court-appointed examining psychiatrist, Dr. Taylor, testified that H.V. was diagnosed with schizophrenia in 2007 and that after meeting with him, she believed it remained the correct diagnosis. She testified that he has continued to have delusions since that time. As an example of his delusional behavior, she described an incident in 2016 in which he assaulted someone because of a delusion that the person was having an affair with his ex-wife. H.V. indicated in court that he believes he does not have mental illness and said he would stop taking his medication if he was not committed. Taylor believed this to be true and testified that the likelihood of H.V. becoming dangerous should treatment be withdrawn was 100% percent.

The court determined H.V. was dangerous under the third standard Wis. Stat. § 51.20(1)(a)2.c. (an

individual is dangerous where he or she "[e]vidences such impaired judgment... that there is a substantial probability of physical impairment or injury to himself or herself or other individuals.)

H.V. appealed two issues. First, he argued that the testimony concerning the 2016 assault was inadmissible hearsay. While his attorney did not preserve the issue, H.V. argued that under the plain error doctrine, it would constitute a reversible error. Second, he argued that the sum of evidence presented, even including the 2016 assault testimony, did not support a clear and convincing finding that he is dangerous.

To prove plain error, the appellant must show that the error is "fundamental, obvious, and substantial." H.V. argued his Sixth Amendment due process rights were violated because he did not have the opportunity for confrontation and cross-examination. The judge dismissed H.V.'s claim, holding that Sixth Amendment rights are not implicated in a civil case such as this. The judge did not consider any 14th amendment due process rights. The appellate court found that H.V. had not established that a finding of plain error doctrine was warranted.

The appellate court found H.V.'s arguments concerning his dangerousness went to the assessment of credibility and weight of the evidence, which are determinations for the circuit court. Dr. Taylor predicted that should commitment be withdrawn there was a high probability of decompensation, delusions, and dangerous behavior. The appellate court concluded the undisputed testimony of Taylor, based on H.V.'s treatment and past record, met the third standard for dangerousness and affirmed the orders of the circuit court.

*(Continued on page 6)*





**Title:** *Portage v. K.K.*

**Court:** Court of Appeals, District IV

**Date:** February 10, 2022

**Citation:** [2021AP1315](#)

## Case Summary

This case examined whether summary judgment was appropriate for ch. 55 protective placement proceedings. The circuit court granted summary judgment for a ch. 55 annual review. The appellate court decided the issue, in this case, was moot and declined to rule on the merits. However, it made clear that between due process requirements and ch. 55's explicit procedural requirements, it is highly unlikely that any party in the future will request summary judgment or any court will grant summary judgment in a ch. 55 proceeding.

## Case Details

K.K. has been under guardianship since 2017 and under protective placement since 2018. In October 2020, Portage County petitioned for the annual review of K.K.'s protective placement under Wis. Stat. § 55.18. The circuit court appointed a guardian ad litem who indicated that K.K. was contesting the protective placement. Legal counsel was appointed. K.K. requested a jury trial and an independent evaluation.

During the preparatory period for the jury trial, Portage County filed a motion for summary judgment claiming there were no genuine issues of material fact for a jury to decide. K.K. argued that summary judgment was not allowed since ch. 55 set forth a specific procedure for when an individual contests protective placement. The circuit court granted summary judgment for Portage County in May 2021. K.K. appealed the order.

While this appeal was pending, the next annual review was petitioned, and placement ordered. K.K.

did not contest either. Since K.K. was under a new protective placement order, the appellate court decided this appeal is moot and declined to rule on the merits. The decision was moot as it would have no practical effect on the underlying controversy. *Portage County v. J.W.K.*, 2019 WI 54, 386 Wis. 2d 672, 972 N.W.2d 509.

K.K. urged the appellate court to address the issue, as ch. 55 proceedings are common. The appellate court declined, as there is no reason to believe requesting or granting summary judgment on a ch. 55 proceeding has occurred before this one. The court of appeals followed, saying it is "quite unlikely" to occur in the future. Ch. 55 provisions set forth detailed procedural rules for parties and courts to follow involving protective placements. (See Wis. Stat. § 55.18 for the general process for annual reviews.) And the court of appeals made clear there are "recognized due process requirements, and the explicit procedural requirements set forth in ch. 55 by the legislature." So, although the appellate court declined to rule on the merits of this case, it noted that it is unlikely that in any future ch. 55 proceedings "(1) a party will request summary judgment; or (2) a circuit court will use summary judgment procedure or grant a summary judgment motion."

**Title:** *Outagamie County v. D.D.G.*

**Court:** Court of Appeals, District III

**Date:** January 20, 2022

**Citation:** [2021AP511](#)

## Case Summary

D.D.G. appealed the circuit court's decision that Outagamie County met its burden of proof of dangerousness by relying on incidents far in the past. She also challenged the determination she was not competent to refuse medication or treatment.

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*(Outagamie v. D.D.G., continued from page 6)*

The appellate court found there was sufficient evidence based on past history and the informed opinion of her medical team to meet the burden of proof for both the standard of danger and that D.D.G. was incompetent to refuse medication or treatment for her schizophrenia.

### Case Details

D.D.G., referred to under the pseudonym “Dana” by the court, was committed in 2017. She had taken her medication and had no incidents of violence since 2017. She was appealing an order to extend her involuntary commitment and an order for involuntary medication and treatment under Wis. Stat. ch. 55. She argued that Outagamie County did not meet the standards under Wis. Stat. § 51.20(1)(a) (2). She also challenged the circuit court’s determination she was not competent to refuse medication or treatment.

Dana’s treating physician, psychiatrist Dr. Bales, testified prior to commitment Dana neglected herself, had limited food in her apartment, was not bathing, and would put paper into electrical outlets. He testified that Dana responded well to her medication but does not fully accept she is severely mentally ill. During appointments, Dana would constantly request to be taken off, change the dosage, and argue about her medicine. In his opinion, Dana could not understand the advantages and disadvantages of medications. Dr. Bales testified that he believed Dana to be dangerous under the third or fourth dangerousness standard. He opined Dana would decompensate absent a commitment and return to neglecting herself, become psychotic, and engage in endangering behavior. For Dana to be released from the commitment he would like to see more insight from her about her condition, and medication, “less arguing,” and demonstrations she would willingly take her medication.

Dana’s clinical therapist at her support program also testified that Dana lacked insight into her condition, that she questioned her diagnosis, did not believe there was any benefit to her medication, and had stopped taking her medications due to the side effects. She recommended that Dana remain committed to prevent her from falling into her past dangerous behavior.

Dana retained a psychologist to perform an independent evaluation. While agreeing that Dana has mental illness, she did not believe Dana to be dangerous, given there have been no incidents since 2017, and she has been independent in her daily activities and regularly attended her medical appointments. She noted Dana lacked insight into her illness.

The circuit court weighed Dana’s treating physician’s and caseworker’s opinion against Dana’s claims and the independent psychologist’s opinion and decided that the County had met its burden of proving dangerousness, based on the fact Dana likely would not avail herself of treatment absent a commitment. Her condition untreated would deteriorate to neglect and engaging in potentially dangerous activities. The circuit court also ruled that Dana could not understand the advantages and disadvantages of her medication.

Dana appealed the recommitment and order for involuntary medication. Dana challenged whether the county met its burden to prove dangerousness, as well as the ruling she was not competent to refuse medication or treatment.

To establish that a person is dangerous under Wis. Stat. § 51.20(1)(a)2.c. in recommitment proceedings, the county must show that “there is a substantial probability of physical impairment or injury to himself or herself or other individuals.” *Winnebago Cnty. v. S.H.* 2020 WI App 46, 393 Wis. 2d 511, 947 N.W.2d 761.

*(Continued on page 8)*





*(Outagamie v. D.D.G., continued from page 7)*

The court of appeals found that the circuit court had sufficient evidence from Dana's history and the testimony of her doctors to conclude Dana would likely not continue treatment and her condition would degrade to the point of dangerousness. The question of credibility and weight of evidence is for the circuit court.

Dana argued that she had not engaged in any dangerous activity since 2017, but the appellate court pointed out that the standard for dangerous behavior does not center on recent dangerous behavior, but on the likelihood that the individual would be a proper subject for commitment if treatment was withdrawn.

"Dangerousness in an extension proceeding can and often must be based on the individual's precommitment behavior, coupled with an expert's informed opinions and predictions." *Winnebago Ctny. v. S.H.* 2020 WI App 46, ¶16. Therefore, Dana's behavior prior to her commitment could be a basis for finding current dangerousness.

In cases of multiple recommitments, the appellate court noted that it may rely on symptoms that have not presented themselves recently. When analyzing these issues, the appellate court made sure to "seriously consider the liberty interests of the individual" and "ensure that appropriately rigorous evidence has been presented" to justify recommitment.

The evidence presented by Dana's physician and clinical therapist, as well as the independent examiner, concluded that Dana lacks insight into her condition. Her physician and clinical therapist testified Dana could not understand the advantages and disadvantages of her medication. The circuit court noted that based on the testimony of her treating physician and therapist, the questioning went beyond offering a reasonable dissenting opinion. The court of appeals found there was sufficient evidence to find Dana not competent to refuse medication or treatment. The orders were affirmed. □

### **What is the Guardianship Support Center able to help with?**

The GSC is a neutral statewide informational helpline for anyone throughout the state. We can provide information on topics such as Powers of Attorney, Guardianship, and Protective Placement. The GSC is unable to provide information on minor guardianships, wills, trusts, property division or family law. The GSC is also unable to give legal advice or specific direction on completing court forms such as the inventory and annual accounting. The GSC does not have direct involvement in cases nor are we able to provide legal representation.

### **What are some other free or low-cost legal resources?**

Other resources include the American Bar Association's Free Legal Answers [website](#) where members of the public can ask volunteer attorneys legal questions. The State Bar of Wisconsin also offers a Modest Means Program for people with lower income levels. The legal services are not free but are offered at a reduced rate. Income qualifications must be met to qualify. For more information, visit the state bar's [website](#) or call **800-362-9082**.





## **What happens to my voting rights if I have an activated power of attorney or am under guardianship?**

The right to vote is one of the most fundamental rights under our Constitution. Activation of a power of attorney document, by itself, is not enough to demonstrate that an individual does not understand the purpose of an election. In addition, even though a power of attorney document has been activated, the individual may have periods of lucidity, or the situation that required the activation of the POA document may resolve itself by Election Day. Likewise, a person under guardianship retains the right to vote unless a court specifically removes the right in the guardianship order.

Only a court can remove the right to vote, either through a standalone petition alleging that the person is incompetent for voting purposes or through a guardianship action. If the court finds by clear and convincing evidence that the person does not understand the objective of the elective process, the court may then remove the right to vote. Wis. Stat. § 54.25(2)(c)1.g. Once a court has made this finding, the clerk of court is responsible for sending notice of the removal to the appropriate election official and/or the Elections Commission.

If guardianship is terminated or the individual requests that the court review their understanding of the voting process, the right can be restored. Once an order to that effect has been signed, the clerk of courts sends the information to the appropriate election official. Wards whose right to vote has been restored and individuals whose guardianships have been terminated may also request a copy of the order restoring their right to vote to take with them when they register to vote.

*Note:* Guardians may not vote on behalf of their wards. The right to vote belongs only to the individual and may not be exercised by anyone else if the individual has lost the right to vote.

## **If a health care power of attorney (HCPOA) was activated based upon incapacity but a new HCPOA is executed, can the same activation papers be used for the new HCPOA?**

No. The activation from a prior HCPOA cannot be used to activate a subsequent HCPOA. Each activation is specific to HCPOA and is not transferrable. Each act of activation is specific to the principal's state at the time of the examination. Wis. Stat. § 155.05(2) states, "Unless otherwise specified in the power of attorney for health care instrument, an individual's power of attorney for health care takes effect upon a finding of incapacity by 2 physicians . . . who personally examine the principal and sign a statement specifying that the principal has incapacity." This language refers only to one HCPOA and to only the then-applicable finding of incapacity.

Also remember the execution of a new HCPOA revokes a previous HCPOA. Wis. Stat. § 155.40(1)(d). Use of a previous activation would mean using an activation from a revoked document. A principal, who is later sound of mind enough to execute a valid HCPOA, is unlikely to meet the standard for incapacity. While the standards for execution and activation are different, they can be seen as related when viewing a person's actual state. It is possible that one who is unable to make health care decisions and needs his or her HCPOA activated is also unable to understand the terms of a HCPOA and is not sound of mind. Care should be used when reviewing newly executed HCPOAs that are soon activated after their execution because of incapacity. □