



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.

To contact the GSC—

Call:
(855) 409-9410

E-mail:
guardian@gwaar.org

Website:
<http://gwaar.org/guardianship-resources>

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guardian@gwaar.org.



How to Stay Healthy as Summer Temps Rise – AARP

The AARP recently published [an article](#) with tips to avoid heatstroke and other illnesses during hot summer months. Many older adults and individuals with disabilities have conditions or take medications that can impact their ability to regulate their body temperature, making it even more important to be aware of the impact of heat, humidity, and outdoor activity. The tips in the article can help people stay healthy and safe during the summer and beyond.

Milwaukee Wellness Symposium – Aug. 4

Milwaukee County DHHS Aging & Disabilities Services, in collaboration with AARP Wisconsin and community partners, will be holding its second annual Milwaukee Wellness Symposium on August 4, with the theme *Connecting for a Healthier Community*. This event will focus on healthier aging and a healthier Milwaukee County. The objective is to raise awareness around wellness challenges facing older adults in our community, highlight wellness resources and strategies, and also build connections to strengthen the network of agencies and individuals working towards better health for older adults. The format for the event will be a half day event beginning with a sit-down breakfast, Gina Green-Harris from Wisconsin Alzheimer's Institute as keynote speaker, breakout sessions, and interactive group discussion.

The event is free, but requires pre-registration by August 1: <https://bit.ly/MKEWellness2022>.

National Center on Law & Elder Rights – Recent Webinars

The National Center on Law & Elder Rights (NCLER) recently held several webinars that may provide useful information for advocates. All were recorded and available for review [via NCLER's website](#).

- Identifying and Addressing Undue Influence in Elder Abuse Cases
- Building Capacity and Partnerships to Address Housing Issues for Older Adults
- Unwinding the Public Health Emergency: Strategies for Advocates to Protect Beneficiaries

Driver License Invisible Disability

By The GWAAR Legal Services Team (for reprint)

When a police officer pulls over a vehicle, it is routine for the officer to run the driver's license or plate to see information about the person's vehicle, driving history, and criminal record. Sometimes, however, the driver may be capable of driving but have certain medical conditions or behaviors that could be misinterpreted by police. These conditions, in turn, could put the driver in danger. For example, conditions could make the driver more anxious, agitated, or cause difficulty communicating.

Effective January 1, 2019, an applicant for a Wisconsin driver license, identification (ID) card and/or vehicle registration can choose to disclose on these documents that they have a disability that may not be immediately apparent to another person.

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Points of Interest



(Invisible Disability, continued from page 2)

These conditions include the following:

- Appears deaf or unable to understand;
- Has difficulty speaking or communicating;
- Engages in repetitive or self-stimulating behaviors such as rocking or hand flapping;
- Appears anxious, nervous, or upset;
- Becomes agitated due to physical contact or stressful situations;
- Acts indifferent or unresponsive; and
- Other.

A person can complete the Invisible Disability Disclosure form MV2167 to make such a disclosure and send it to the address on the form or present it to their local DMV Service Center. The disclosure will be available so that when officers run driver license and plate information they will also be alerted to the invisible disability.

An invisible disability disclosure is completely voluntary, and a person can remove information about their invisible disability at any time by using the same form MV2167.

For more information and to access the form, visit <https://wisconsin.gov/Pages/dmv/license-drvs/mdcl-cncrns/inv-dis.aspx#:~:text=Effective%20January%201%2C%202019%2C%20an,immediately%20apparent%20to%20another%20person.>

News



Non-Emergency Medical Transportation Provider Merger

Non-Emergency Medical Transportation (NEMT) is a benefit provided to Wisconsin residents who are on Medicaid. The current brokerage provider in Wisconsin is Veyo LLC, which took over on November 1, 2021. Prior to that, Medical Transport Management, Inc. (MTM) was the brokerage provider for Wisconsin. **In a [press release](#) dated June 8, 2022, it was announced that MTM Inc. is acquiring Veyo LLC as of July 1, 2022.** This acquisition/merger is not expected to impact business or interrupt services to consumers. Consumers should keep using the same phone number to schedule rides (866-907-1493) or file complaints. It is okay to keep using the Veyo forms for mileage reimbursement logs and the Veyo website wi.ridewithveyo.com. Announcements and new information will be provided on the WI DHS NEMT webpage here <https://www.dhs.wisconsin.gov/nemt/manager.htm>.





Coming soon: 988 Suicide & Crisis Lifeline

As of July 16, 2022, anyone in mental health distress can call 988, send a text to 988, or use the online chat function on suicidepreventionlifeline.org to connect with a counselor through what will be known as the 988 Suicide & Crisis Lifeline. Wisconsinites who use 988 will connect with an in-state service funded by WI DHS known as the Wisconsin Lifeline.

Although 988 is not yet being publicly promoted, WI DHS is encouraging all people involved in providing mental health resources (counselors, medical professionals, schools, etc.) to learn about 988 on [its website](#). This webpage will be updated frequently with information regarding the implementation of 988 in Wisconsin.

Restoring the Right to Vote for People under Guardianship

By: Ellen J. Henningsen, J.D.

Wisconsin law on removing the right to vote of people alleged to be incompetent was discussed in the January 2022 (Volume 9, Issue 4) edition of this newsletter. This article discusses Wisconsin law on restoring the right to vote for people who lost that right in a guardianship proceeding. (This article does not address the loss or restoration of the right to vote for any other reason, such as conviction of a felony).

A note on vocabulary – this article uses the term “ward” to refer to the person under guardianship because that is the term used in the guardianship statute.

If the right to vote was lost in a guardianship case, Wisconsin statutes provide a procedure for reexamining this issue and potentially changing the earlier

decision. Since the law states that only a court can take away the right to vote from a person alleged to be incompetent, returning to court is the only way to restore the right to vote.

Why would someone want to go back to court and try to convince the court to change its earlier decision? One reason is that the court’s decision may have been wrong. Or the court’s decision may have been right, but circumstances have changed.

How could the court have made the wrong decision? The petitioner in the original case may have checked the box in the “Petition for Permanent Guardianship Due to Incompetency” (Form Number GN-3100) to take away the right to vote without thinking it through. The psychiatrist or physician who examined the proposed ward and completed the written report for the court may not have understood the legal standard for voting. The guardian ad litem (GAL), judge or court commissioner may not have considered the issue carefully. If the person under guardianship wants to vote and believes they have the capacity to vote, Wisconsin law permits them to ask the court to reexamine the issue.

It’s also possible that the court’s initial decision was correct - the ward did lack the capacity to vote when the court made its decision. But with the passage of time and additional life experience, education and/or medical treatment, the ward may have sufficiently matured or medically improved so that they now have the capacity to vote. For example, a parent who moved forward with guardianship when their child was 18 and still in school may now realize their child has matured. Again, if the person under guardianship wants to vote and believes they have the capacity to vote, Wisconsin law permits them to ask the court to reexamine the issue.

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(Restoring Right to Vote, continued from page 4)

The procedure for returning to court to restore the right to vote is found in the guardianship statutes at Sec. 54.64, Stats. This section is entitled “Review of incompetency and termination of guardianship”. As the title suggests, it covers both limiting the scope of the guardianship and ending the guardianship (due to recovery of competency, moving out of state, etc.). Section (2) of sec. 54.64 states that a petition may be filed “to have the guardianship limited and specific rights restored.” One of the rights that can be restored is the right to vote. (Other rights can be included in such a petition, but this article only addresses the right to vote).

Briefly, the steps of the procedure to restore the right to vote are: 1. filing a petition; 2. scheduling a hearing and giving notice of the hearing; 3. appointing a Guardian ad Litem (GAL); 4. holding a hearing; and 5. issuing the decision. These steps are discussed below.

The process is started by filing a formal legal petition at the Register in Probate’s office. The petition may be filed by the ward, the guardian, or anyone else acting on the ward’s behalf. There is no cost to file the petition.

The petitioner can handle the entire process by themselves, hire an attorney, or ask the court to appoint and pay for an attorney if the ward is unable to afford one.

There is a standardized form called A “Petition to Modify Guardianship” (Form Number GN-3655) which can be used to initiate this process. It can be found at:

<https://www.wicourts.gov/formdisplay/GN-3655.pdf?formNumber=GN-3655&formType=Form&formatId=2&language=en>

Since this form contains a wide range of issues unre-

lated to voting, a petitioner may prefer to use a petition limited to requesting a restoration of the right to vote. Sample forms are available at: <https://disabilityvote.org/2020/guardianship-and-voting-restoring-your-right-to-vote/>

The only restriction on filing the petition is timing. At least 180 days (roughly six months) must have passed since the date of the last guardianship hearing before a petition to restore voting rights can be filed. The date of a Watts hearing to review a protective placement order is irrelevant since that hearing is not conducted under the guardianship statute.

After the petition is filed, the court will schedule a hearing and send out a “Notice and Order for Hearing” with the date, time, and place of the hearing to the ward, the guardian, and any other person or agency the court decides should get notice.

The court will also appoint an attorney called a Guardian ad Litem or GAL. The GAL will interview the ward and make a recommendation to the court about whether the ward should have their right to vote restored. The GAL represents what the GAL believes is in the ward’s best interests, not the wishes of the ward.

The court may also decide that it wants the ward interviewed by a physician or psychologist, particularly if the original report was that the ward was not capable of voting. The ward can also ask that their own doctor or psychologist write a letter or come to court and testify in support of the right to vote.

The court will conduct a hearing to hear evidence in support of restoring the ward’s right to vote. The court may question the ward about what they understand about voting. It is important that the ward think about this before the hearing. The ward may also want to bring letters of support from teachers, family members, etc. that address the ward’s capacity to vote.

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(Restoring Right to Vote, continued from page 5)

The ward may want to have supporters appear in court and testify on their behalf.

The court is deciding whether the ward is capable of understanding the objective of the elective process. This is a low standard of cognition. There is no definition of the phrase in the elections or guardianship statutes, and there are no published court cases. The Merriam-Webster dictionary defines “objective” as “something toward which effort is directed: an aim, goal, or end of action.” Thus, the capacity to vote requires only that one understand the aim, goal, or outcome of voting - that is, who the voter wants to win.

The court will make a decision based on the evidence, including the testimony of the ward and other witnesses, the opinion of the GAL and the opinion of the examining physician/psychologist (if one was consulted).

The court will issue a written Order which will state whether the person’s right to vote has been restored. If the court restores the right to vote, the court will also send a “Notice of Voting Eligibility” to the office that manages elections which will supersede the earlier Order and Notice that took away the right to vote. The ward (who can now be called a voter) should keep a copy of these documents.

If the right to vote is restored, the voter will need to register to vote. They may want to request an absentee ballot. Assistance is available from their municipal clerk, or from the Disability Rights Wisconsin (DRW) Voter Hotline at 1-844-347-8683.

If the right to vote is not restored, another petition can be filed 180 days after the hearing. If the ward has an attorney, she or he can suggest other options, including the right to appeal the decision.

In summary, Wisconsin statutes provide a process for removing someone’s right to vote and a process for restoring the right to vote. The right to vote can be removed if the person is incapable of understanding the objective of the elective process. And it can be retained or restored if the person is capable of understanding the objective of the elective process, even if they lack the capacity to make other types of decisions.

About the Author: Henningsen is Director of the Voting Rights and Guardianship Project at Disability Rights Wisconsin (DRW). A 1975 graduate of the University of Wisconsin Law School, she formerly staffed the Wisconsin Guardianship Support Center at the Coalition of Wisconsin Aging Groups (CWAG), serving as a registered lobbyist for the passage of 2005 Act 387 (Chapter 54). She then worked at DRW, providing technical assistance for Disability Benefit Specialists and direct representation for clients before the Social Security Administration and federal court.

About Disability Rights Wisconsin: As the federally mandated Protection and Advocacy system for Wisconsin, DRW is charged with protecting the voting rights of people with disabilities and mandated to help “ensure the full participation in the electoral process for individuals with disabilities, including registering to vote, casting a vote, and accessing polling places.” Help America Vote Act, 42 U.S.C. § 15461 (2002). As part of this charge, the DRW Voting Rights and Guardianship Project seeks to preserve and restore the voting rights of individuals under guardianship by providing training and resource materials, and by creating a pro bono network to assist individuals in restoration cases. DRW’s brochure “Competency, Guardianship and Voting in Wisconsin” is available on the Wisconsin Disability Vote Coalition website at: <https://disabilityvote.org/2018/competency-guardianship-and-voting-in-wisconsin/>. Assistance is available from the DRW Voter Hotline at 1-844-347-8683. □





Coverage Updates for At-Home COVID Tests

As of January 15, 2022, private health insurance plans are now required to reimburse members for at-home COVID tests. By establishing different reimbursement levels, the new guidance incentivizes insurance companies to establish their own preferred provider networks where members can receive at-home COVID tests. Plans with a preferred provider network are only required to reimburse \$12 for each test kit purchased outside the preferred network. Plans that fail to establish a preferred provider network are required to reimburse the full purchase cost of over-the-counter test kits. Interested individuals should contact their insurance plans to find out whether the plan has identified preferred providers for in-home test kits. Plans are required to cover up to eight test kits per month for each covered member of a household. It is important to note that the new guidance only affects private health insurance plans.

Effective January 31, 2022, BadgerCare Plus and full-benefit Medicaid programs in Wisconsin began covering COVID at-home tests. Members can receive up to eight tests per month without cost or a copay through a participating pharmacy. Note that Medicaid cannot directly reimburse members – for at-home tests to be covered, Medicaid recipients must use their pharmacy benefit. In addition, people who have private health insurance or Medicare as primary to Medicaid are not eligible for Medicaid coverage of at-home COVID tests, since they can be covered by the primary insurance.

On April 4, 2022, Medicare started covering at-home COVID tests. People who are enrolled in Medicare Part B can get up to eight free at-home COVID tests per month covered by Medicare by visiting a participating pharmacy and showing their Original Medicare card. For more information and a list of participating pharmacies, visit <https://www.medicare.gov/medicare-coronavirus>.

Residential households in the United States can order free at-home COVID tests for delivery by mail through www.covidtests.gov. Each household can request up to eight free tests that will ship within seven to twelve days after the request is submitted. People who are blind or have low vision may order accessible tests [online](#) or by calling 1-800-232-0233. □



Photo by Annie Spratt



Title: *Sauk County v. S.A.M.*

Court: Supreme Court of Wisconsin

Date: June 23, 2022

Citation: [2022 WI 46](#)

Case Summary

In February 2018, S.A.M. was involuntarily committed pursuant to Chapter 51, Wisconsin Statutes, for a period of six months. In June 2018, Sauk County filed a petition to extend S.A.M.'s commitment for an additional twelve months. S.A.M. contested the petition, and the Sauk County Circuit Court issued an order extending S.A.M.'s commitment for six months, rather than the requested twelve months. Nearly a year later – and four months after the extension had expired – appointed counsel for S.A.M. filed an appeal of the order extending S.A.M.'s commitment. Following supplemental briefing on the whether the issue was moot, the Court of Appeals found that it was and did not reach the merits of the commitment order.

Because mootness is a frequent issue in commitment appeals (even a fast-tracked appeal can take 10-11 months for a decision, which means even a 12-month extension may have expired by the time the decision is reached), the Supreme Court of Wisconsin agreed to hear the case. Finding that the collateral consequences of a commitment (or recommitment) may outlast the order, the Court reversed and found that S.A.M.'s appeal was not moot. On the merits, however, the Court upheld the order for recommitment.

Case Details

Whether a case is moot is a legal question: will a decision on the underlying controversy have a practical effect on either of the parties? Because appellate cases for commitment orders can take months, courts often decline to decide the merits because the order will no longer be in effect by the time a

decision is issued. If the underlying order has expired, reversing or affirming it has no impact on the subject of the order.

A handful of cases have challenged the mootness finding based on the potential for collateral consequences of the original order. A collateral consequence exists when there is a “causal relationship” between a legal consequence and the challenged order. *State v. Theoharopoulos*, 73 Wis. 2d (1976). S.A.M. argues there are three collateral consequences to his now expired recommitment order: (1) the firearms ban; (2) the liability for the cost of his care while committed; and (3) the stigma associated with a mental health commitment. The Supreme Court found that there are collateral consequences from both the firearms ban and the liability for the cost of his care, and thus determined that his case was not moot, as both would be impacted if the underlying order were to be reversed.

The Court has already ruled that in cases of original commitment orders, an appeal of an expired order is not moot because the order collaterally subjects the committed person to a continuing firearm ban. Winning on appeal would void a firearm ban. This “practical effect” is a result of a successful appeal and therefore the Court found original commitment appeals not moot. *Marathon Cnty. v. D.K.*, 2020 WI 8, ¶ 25, 390 Wis. 2d 50, 937 N.W. 2d 901.

The Court in this case considered whether this applies to recommitment orders. The appellate court ruled the rationale did not apply to recommitment cases, since the ban from the original commitment would still be in place, and thus there would be no practical effect. The Court disagreed. While there would still be a ban, a successful appeal would “alter a committed person’s ‘record and reputation’ for dangerousness, a factor a reviewing court must consider” when reviewing the ban.

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(*Sauk v. S.A.M.*, continued from page 8)

The Court emphasized, that even if it is a marginal effect, it could not be minor as it is concerned with the suspension and restoration of constitutional rights.

The Court then considered the liability for the cost of care while committed. An individual under commitment “shall be liable for the cost of the care, maintenance, services and supplies” related to each commitment period. Wis. Stat. § 46.10(2). If an appeal is successful and the order vacated, there is no liability for the costs. This direct causal relationship is sufficient to render recommitment appeals not moot.

Because there are two collateral consequences on which an appeal would have a practical effect, a recommitment order appeal is not a moot issue even if that commitment period has ended. The Court did not discuss S.A.M.’s stigma argument, nor did it address whether the Court has the authority to expedite review of commitment order appeals. As a result of this opinion, Wisconsin is now in line with the vast majority of states concerning the mootness of commitment order appeals.

The Court then considered S.A.M.’s appeal on its merits. S.A.M. argues that the County’s “imprecise pretrial filings violate his due-process right to adequate notice as to which specific theory of dangerousness justified his recommitment.” He relied on *Langlade Cnty. v. D.J.W.*, 2020 WI 41, ¶ 3, 391 Wis. 2d 231, 941 N.W.2d 277., which requires that circuit courts make specific factual findings with reference to one of the five standards of dangerousness. The Court found that *D.J.W.* did not support S.A.M.’s argument, as it is prospective (and S.A.M.’s recommitment was before this recent decision) and it is about the “circuit court’s responsibility to facilitate meaningful appellate

review, not a county’s pretrial notice responsibilities.” However, the Court did not hold there was no possible argument for the violation of due-process rights.

S.A.M.’s second argument was that the County did not provide sufficient evidence, and that the County’s witnesses did not “recite the statutory standards being applied with near exactness,” as Wisconsin case law requires. The Court disagreed with both arguments.

The Court found that there was sufficient evidence that S.A.M. was dangerous under the Third Standard of dangerousness, by way of the recommitment alternative. The testimonies of the examining psychiatrist and S.A.M.’s social worker, were enough to find there was a “a substantial probability” S.A.M. would harm himself and there was no “reasonable provision for [his] protection... available in the community,” or that S.A.M. would not to a “reasonable probability,” “avail himself...of these services.” The circuit court clearly found S.A.M. to be unreliable, and the Supreme Court deferred to its judgment.

The Court found that although the witnesses did not recite the statute exactly, it was clear from the record that they were properly assessing the “probability of physical impairment or injury to himself” if the commitment ended.

The dissent concurred on the recommitment order and disagreed with the ruling of recommitment appeals as not moot. The dissent asserts that the majority overturns *Portage Cnty. v. J.W.K.*, 2019 WI 54, 386 Wis. 2d 672, 927 N.W.2d 509, which concluded that a sufficiency of evidence arguments against a Chapter 51 recommitment was moot when the order expired.

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(*Sauk v. S.A.M.*, continued from page 9)

They believed that the firearm ban did not have collateral consequences since he would still be subject to the ban from the original commitment and so had no practical change on his ability to possess a firearm. The justices also thought the liability for the cost of care was too speculative to have a practical effect, because although the County may still choose to do so in the future, they said they had no plans to pursue the debt S.A.M. owed. The justices dissenting were also concerned about the number of cases, since this will affect all future cases, as all persons subject to a mental commitment are required to be given a firearm ban and are liable for the cost of care. A dramatic increase in caseload is unlikely, however. Based on [data provided by the Wisconsin Court of Appeals](#) in May 2021, the majority opinion noted that of 68 recommitment appeals considered between 2018-2020, only 27 (40%) were decided before the underlying order expired. The remaining cases would add perhaps 13-14 merits cases per year to the court's workload – cases the court is already handling and deciding, whether on the merits or mootness.

Title: *Milwaukee County v. A.J.G.*

Court: Court of Appeals, District I

Date: May 3, 2022

Citation: [2021AP1338](#)

Case Summary

This case saw “Adam” appeal an order for involuntary commitment under Wis. Stat. § 51.20. Adam asked the order to be vacated, given the circuit court did not specify one of the five standards of dangerousness under § 51.20(1)(a)2. The court agreed, stating that a court must specify which standard of dangerousness, and reversed.

Case Details

Milwaukee County filed a Statement of Emergency Detention on November 10, 2020. On November 12,

2020, a court commissioner found probable cause to believe that Adam was mentally ill, a proper subject for treatment, and dangerous to himself or others. The final hearing was held on November 25, 2020.

Two witnesses, a caregiver at Adam's group home, and a clinical psychologist testified at the hearing. The circuit court found the following facts. Adam began engaging in inappropriate activity and “was told to go to [his] room and then he went off.” Adam punched a caregiver in the face and pulled her hair. The caregiver called her supervisor and the police. Adam talked and then fought with the police.

The circuit court found that Adam was mentally ill and a proper subject for treatment. With regard to the third element needed, dangerousness, the circuit court stated “[t]here is dangerousness all over the place,” and “[i]f that's not dangerousness, I don't know what is.” Adam argued the court must specify which standard of dangerousness and asked for the order to be vacated.

The appellate court agreed, and quoted *Langlade Cnty. v. D.J.W.*, in which the Wisconsin Supreme Court stated, “circuit courts in recommitment proceedings are to make specific factual findings with reference to the subdivision paragraph of § 51.20(1)(a)2 on which the recommitment is based.” *Langlade Cnty. v. D.J.W.*, 2020 WI 41, ¶ 3, 391 Wis. 2d 231, 941 N.W.2d 277. This provides “clarity and extra protection to patients.” *Id.* ¶ 42.

The appellate court found that the requirement also includes original commitments, not just recommitments. Original commitments hold the same, if not more important, liberty interests, and require the same clarity and protection. The appellate court also reviewed the circuit court's statements and found that they were insufficient, since it was not clear which standard the circuit was referencing, and the statements did not fit any one standard.

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(Milwaukee v. A.J.G., continued from page 10)

The appellate court included a footnote to explain they would not apply a rule of forfeiture here, regardless of whether or not Adam forfeited his argument by not raising it in circuit court. The interests at stake in this case are too important.

Another footnote stated that since the County never addressed Adam's proposed remedy, the appellate court outright reversed the order as Adam requested.

Title: *Walworth County v. P.C.*

Court: Court of Appeals, District II

Date: April 13, 2022

Citation: [2021AP13](#)

Case Summary

P.C. argued that Walworth County failed to establish dangerousness pursuant to Wis. Stat. § 51.20(1)(a)2. The appellate court found that the evidence supported the circuit court's findings and affirmed the decision.

Case Details

A three-party petition for examination was filed against P.C. pursuant to Wis. Stat. § 51.20(1)(a)2. A probable cause hearing was held at which P.C. was found mentally ill, a proper subject for treatment, and a danger to himself or others. He was ordered to be held at the Winnebago Mental Health Institute until a final commitment hearing. Evaluations by two mental health professionals were ordered and filed before the final hearing.

The court appointed psychologist, Dr. Marshall Bales, testified, that P.C. suffered from schizophrenia, paranoia, and delusions. He also testified that P.C. was a proper subject for treatment and pre-

sented a danger to others, particularly P.C.'s father. Dr. Bales said P.C. showed multiple threatening behaviors toward his father, that he was not going to be able to care for his basic needs on his own, and that without help he could not continue to live with his father, likely resulting in homelessness. Dr. Bales continued, saying P.C. denied having a mental illness, and had "gross impairment of insight and judgment."

T.C., P.C.'s father, testified to multiple instances in which he feared for his or P.C.'s safety. P.C. threatened to jump from a moving car, P.C. "swiped" at his legs while T.C. walked down the stairs as he cleared P.C.'s bedroom of empty liquor bottles, P.C. stated he would "put something" in T.C.'s medication and CPAP machine, P.C. refused to let him sleep and knocked on T.C.'s locked bedroom door until P.C.'s knuckles bled. There was also an instance several years ago in which P.C. tried to choke T.C. P.C. also has gone on walks in the middle of the night without reflective gear or flashlights. T.C. has received multiple calls to come pick him up miles from his house. P.C. has also "gone from door to door knocking on people's doors at 6:00 in the morning scaring people."

The circuit court stated, "the County has clearly met by clear and convincing evidence that [P.C.] is dangerous under the standards of Chapter 51," and ordered a commitment of 6 months, with an order of involuntary medication and treatment.

P.C. appealed the order. The County argued that it is a moot issue since the initial commitment order had expired. The appellate court found that, regardless of mootness, there was sufficient evidence to support the circuit court's finding of dangerousness. The above incidents included in the circuit court's fact-finding were clear and convincing evidence that P.C.'s untreated mental illness and his impaired judgment created a substantial probability of harm to himself or others.

(Continued on page 12)





(Walworth v. P.C., continued from page 11)

The appellate court distinguished this from *Langlade Cnty. v. D.J.W.*, 2020 WI 41, 391 Wis. 2d 231, 941 N.W.2d 277 in a footnote. Although the circuit court did not state the specific statutory subsection, the circuit court's findings were specific, tracked the statutory criteria, and were supported by the record. The commitment was affirmed.

Title: *Outagamie County v. C.J.A.*

Court: Court of Appeals, District III

Date: June 1, 2022

Citation: [2020AP2032](#) (recommended for publication, formal citation pending)

Case Summary

C.J.A. appealed a decision on her recommitment, arguing that the special verdict question given to the jury was misleading, and did not properly describe the statutory standards of dangerousness. The standard special verdict question was modified to include "Is [C.J.A.] dangerous to herself or to others if not recommitted?" The appellate court agreed, deciding the question asked the jury to consider future dangerousness instead of current dangerousness. The court found the question improperly stated the legal standard and was prejudicial to C.J.A. The order was reversed.

Case Details

C.J.A., referred to under the pseudonym "Catherine" by the court, was committed in 2016. She was committed after her schizoaffective disorder caused paranoia, mania, and delusions that caused her family to fear for their safety. Her commitment was set to expire May 8, 2020.

Outagamie County Department of Health and Human Services petitioned to extend Catherine's com-

mitment another year. At the time, Catherine was in an outpatient program. Her social worker wrote "it is believed" Catherine would "decompensate" and "become a proper subject for a [Wis. Stat. ch. 51] commitment" if she was not recommitted. Catherine, represented by counsel, requested a jury trial. A one-day trial was held on August 18, 2020.

During the trial, a conference was held concerning the jury instructions and special verdict questions. The circuit court added language to the standard second question of the special verdict. The original question was "[I]s the subject dangerous to herself or to others?" The new question read "Is [Catherine] dangerous to herself or to others if not recommitted?"

At the time, Catherine objected to this change, arguing that the language misstated the standard and "failed to convey the primary question: whether Catherine was currently dangerous." Catherine believed that the jury instructions properly conveyed the standards of dangerousness, but not the special verdict question. The circuit court overruled her objection and explained that the standard questions were "really aimed at a commitment as opposed to a recommitment." The circuit court noted this was first time in 13 years that the judge felt the need to deviate from pattern instructions. The jury answered "yes" to the questions: whether Catherine was mentally ill; whether she was a proper subject for treatment; and whether she was dangerous to herself or others if not recommitted.

The appellate court considered this question, despite the fact that it would ordinarily be moot, for multiple reasons: this issue is likely to recur, evade review, and should be resolved to avoid uncertainty; and the question is of great importance, as the standard of dangerousness is "the cornerstone" of a recommitment hearing and is a matter of the subject's liberty interest.

(Continued on page 13)





(Outagamie v. C.J.A., continued from page 12)

Catherine argued that the added modifier, “if not recommitted,” “improperly changed the question of whether Catherine was *currently* dangerous to whether she would *become* dangerous if not recommitted.” The appellate court agreed. The changed question was confusing and did not accurately represent the legal standard.

The petitioner has the burden of proving that the subject individual is *currently* dangerous under Wis. Stat. § 51.20(1)(a)2. Alternatively, if the subject individual is under a commitment “immediately prior” to the extension, then the petitioner can prove dangerousness by showing there is “a substantial likelihood, based on the subject individual’s treatment record, that the individual would be a proper subject for commitment if treatment were withdrawn.” Wis. Stat. § 51.20(1)(a)2.a.-e. This relieves the petitioner of needing to show recent acts to establish dangerousness. It alters the type of evidence required, not the essential proof required. The subject individual must be proved to be *currently* dangerous.

The modified question changed whether the jury considered the present or the future. “Is the subject dangerous to herself or to others” considered the individual’s *current* dangerousness. The question “Is the subject danger-

ous to herself or to others if not recommitted?” asked the jury to consider the individual’s *potential future* dangerousness.

The appellate court stated that a commitment is a “significant deprivation of liberty that requires due process protection,” and there is “no constitutional basis for confining...persons involuntary if they are dangerous to no one.” Thus, the “if not recommitted” addition did not accurately represent the alternative burden of proof under Wis. Stat. § 51.20(1)(am). The “overarching question” in this standard is still whether the person is *currently* dangerous. The jury could find the person dangerous for “any number of improper reasons.” The appellate court also refused to infer that the jury understood the special verdict question, because as the County argued it did not submit any questions to the circuit court during deliberations.

The appellate court also noted that the Wisconsin Civil Jury Instruction Committee recently created a recommended special verdict form for recommitment cases, with the new special verdict question of, “Is (respondent) dangerous to [(himself) (herself)] or to others?” If the jury answers “yes”, the verdict form lists the standards of dangerousness for the jury to select as its reasoning. □

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**.





Wisconsin’s protective placement statutes allow a guardian to admit a ward to a facility licensed for fewer than 16 beds without a protective placement order. If the individual needs to move to a larger facility, can they move before a protective placement order is issued?

Yes, as long as the admission is not for treatment or services related to mental illness or developmental disability. Wis. Stat. § 55.055(1)(b) allows a guardian to admit a ward to a facility of any size for a period of time not to exceed 60 days if the ward needs recuperative care (i.e., post-hospitalization rehab) or is unable to provide for their own care in a less restrictive environment so as to create a serious risk of substantial harm or injury to the ward or others. This can be extended for 30 days if needed for discharge planning or for 60 days if a petition for protective placement has been filed, pending the outcome of the proceeding. If the ward objects to the placement, the facility must contact the appropriate county department (typically Adult/Elder Protective Services) to evaluate whether the protest is ongoing and whether protective placement is required for the individual’s safety. With the facility’s permission, the court may order the individual to remain there pending the outcome of the placement proceeding.

Can I pick the same person to be my agent for both health care and financial powers of attorney?

Yes, and this is very common! Many people will choose a spouse or trusted family member or friend to serve as agent for both types of power of attorney documents. But it’s also possible to choose different agents for each if desired.

In addition, while a new health care POA automatically revokes all past health care POAs, the same is not true of financial – this means that someone could have multiple valid financial POAs and could have different agents on each. An individual might choose to have multiple POAs for any number of reasons: if they own a business and want different people to manage personal vs. business interests, if they have property interests in multiple states, etc. People and entities relying on a financial POA should carefully review the document to determine what authority it provides the agent and in what circumstances. Likewise, a principal who creates a new financial POA that explicitly revokes past financial POAs should make sure that anyone who has relied on the old document is notified that it has been revoked.

Are the “Five Wishes” and “Honoring Choices” health care POAs valid in Wisconsin?

Yes, although if executed in Wisconsin, both must include the “Notice to Person Making This Document” outlined in [Wis. Stat. § 155.30\(1\)](#) and comply with Wisconsin’s valid signature requirements (principal’s signature witnessed by two disinterested witnesses).

The Wisconsin version of the Honoring Choices form includes the Notice and specifies Wisconsin’s signature requirements. Similarly, if the Five Wishes form is purchased for individual use directly from the Five Wishes website, it includes the Notice as the last page of the document. Organizations that wish to purchase the form for distribution need to add the Notice if it is not already present.