



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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Domestic Violence in Later Life Conference Webinar – Oct. 12, 8 am-12:15 pm

This year's Domestic Violence in Later Life conference is now open for registration. The conference is free and virtual. This year's theme is "The Dynamics of Intimate Partner Violence Within the Older LGBTQ+ and Transgender Communities." Continuing education credits are available. More information and registration are available [here](#).

Webinar – Collaborative Approaches in Elder Justice for Protecting Adults Living with IDD – Oct. 18, 12-1:30 EDT/11-12:30 CDT

The Benjamin Rose Institute on Aging (Cleveland, OH) will [present a webinar](#) featuring experts in the field on elder justice, specifically highlighting work to protect those with dementia or IDD. Topics will include collaborative approaches to provide virtual capacity assessments to Adult Protective Services clients who need them; emerging evidence about the impact of pets in the lives of people affected by dementia, as well as the benefits and challenges of pet ownership encountered by APS professionals; and information about a training program designed to educate mandatory reporters on abuse, neglect, and exploitation. Free, but requires registration via the link above.

Tips and Resources from Falls Free Wisconsin

Falls are more common as people age, but many are preventable and there are steps one can take to

reduce the risk. Falls Free Wisconsin includes a number of tips for older adults, home safety information, and other resources, available for free [on their website](#).

Staying Active in Cold Weather: A Safety Guide for Older Adults – National Council on Aging

Fall has arrived in Wisconsin, which means the weather will be getting colder, wetter, and icier in coming months. The National Council on Aging (NCOA) has produced a [guide on how to stay active and safe in cold weather](#). They note that regular physical activity offers physical, mental, emotional, and social benefits; that older adults are at risk for vitamin D deficiency and subsequent health conditions, and that outdoor activity can increase sun exposure and boost vitamin D production; and that many resources are available to help find ways to keep moving, whether indoors or outdoors.

National Strategy to Support Family Caregivers – Administration for Community Living

The Administration for Community Living's National Strategy to Support Family Caregivers was created in 2022 to support family caregivers of all ages, from youth to grandparents, regardless of where they live or what caregiving looks like for them and their loved ones. The NSSFC's [resource guide](#) provides a number of actions and resources that local governments, advocates, professionals, employers, and caregivers can take to help lighten the load for family caregivers and provide ongoing support.

Interested in Receiving *The Guardian*?

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

Signing up is easy with a link on our website: [Guardian Newsletter Sign-Up](#).

You can also subscribe by emailing your name, email address, and organization to guardian@gwaar.org.





Affordable Connectivity Program **By the GWAAR Legal Services Team** **(for reprint)**

The Affordable Connectivity Program is an FCC benefit program that helps ensure that households can afford the broadband internet they need for work, school, healthcare and more.

The benefit provides a discount of up to \$30 per month toward internet service for eligible households and up to \$75 per month for households on qualifying Tribal lands. Eligible households can also receive a one-time discount of up to \$100 to purchase a laptop, desktop computer, or tablet from participating providers if they contribute more than \$10 and less than \$50 toward the purchase price. The Affordable Connectivity Program is limited to one monthly service discount and one device discount per household.

Who Is Eligible for the Affordable Connectivity Program?

A household is eligible for the Affordable Connectivity Program if the household income is at or below 200% of the Federal Poverty Level (FPL) Guidelines, or if a member of the household meets at least one of the criteria below:

- Received a Federal Pell Grant during the current award year;
- Meets the eligibility criteria for a participating provider's existing low-income internet program;
- Participates in one of these assistance programs:
 - Free and Reduced-Price School Lunch Program or School Breakfast Program, including at U.S. Department of Agriculture (USDA) Community Eligibility Provision schools

- SNAP (FoodShare in Wisconsin)
 - Medicaid
 - Federal Housing Assistance, including:
 - Housing Choice Voucher (HCV) Program (Section 8 Vouchers)
 - Project-Based Rental Assistance (PBRA)/ Section 202/Section 811
 - Public Housing
 - Affordable Housing Programs for American Indians, Alaska Natives or Native Hawaiians
 - Supplemental Security Income (SSI)
 - WIC
 - Veterans Pension or Survivor Benefits; or
 - Lifeline
- Participates in one of these assistance programs and lives on Qualifying Tribal Lands:
 - Bureau of Indian Affairs General Assistance
 - Tribal TANF
 - Food Distribution Program on Indian Reservations
 - Tribal Head Start (income-based)

Two Steps to Enroll

1. Go to [GetInternet.gov](https://www.getinternet.gov) to submit an application or print out a mail-in application.
2. Contact your preferred participating provider to select a plan and have the discount applied to your bill.

Some providers may have an alternative application that they will ask you to complete.

Which Internet Service Providers Are Participating in the Affordable Connectivity Program?

Various internet providers, including those offering landline and wireless internet service, are participating in the Affordable Connectivity Program. Find internet service providers offering benefits in your

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(Affordable Connectivity, continued from page 3)

area by using the Companies Near Me tool, located here: <https://www.affordableconnectivity.gov/companies-near-me/>.

Resources to help spread the word about the Affordable Connectivity Program are available here: <https://www.fcc.gov/acp-consumer-outreach-toolkit>

Medicare Part B Preventative Benefits By the GWAAR Legal Services Team (for reprint)

Did you know that Medicare Part B covers many preventive benefits at no cost to beneficiaries, as long as the services are provided by a doctor or other qualified health care provider who accepts Medicare assignment? These preventive services include:

- Abdominal aortic aneurysm screenings for at-risk individuals (with a referral from a doctor or other qualified health care provider)
- Alcohol misuse screenings and counseling (up to four free counseling sessions per year)
- Bone mass measurements once every 24 months to check if an individual is at risk for broken bones (for people with certain medical conditions or who meet certain criteria)
- Cardiovascular behavioral therapy (discussion of aspirin use, blood pressure check, tips on eating well, etc.) one time per year to help lower the risk for developing cardiovascular disease
- Cardiovascular disease screenings once every five years that help detect conditions, such as high cholesterol, that may lead to a heart attack or stroke
- Cervical, vaginal and breast cancer screenings at least once every 24 months
- Colorectal cancer screenings, such as colonosco-

pies, to help find precancerous growths or find cancer early, when treatment is most effective. Note, however, that if a polyp or other suspicious tissue is found and removed during a screening procedure, the patient must pay 15% of the Medicare-approved amount for doctors' services and hospital fees

- Counseling to prevent tobacco use and tobacco-caused disease, up to 8 times per year
- Vaccines, including for COVID-19, flu, Hepatitis B (for those at medium or high risk for Hep B) and pneumococcal infections. Most other recommended adult immunizations (such as for shingles, tetanus, diphtheria and pertussis) are covered by Medicare Part D drug plans.
- COVID-19 monoclonal antibody treatments and products to help fight the disease and keep an individual out of the hospital (This treatment will be covered through the end of 2023. In 2024, Original Medicare will cover monoclonal antibody treatments if someone has COVID-19 symptoms. In the case of individuals with weakened immune systems, Part B will continue covering the cost, even following the end of the COVID-19 public health emergency on May 11, 2023.)
- Depression screenings (one per year), as long as it is performed in a primary care setting (like a doctor's office) that can provide follow-up treatment and/or referrals, if necessary
- Diabetes self-management training for diagnosed diabetics to learn to cope with and manage the disease, with a written order from the patient's doctor or other health care provider
- Glaucoma test, for those at high-risk, once every 12 months
- Screenings for Hepatitis B and C, as well as HIV and lung cancer, if certain conditions are met
- Mammogram screenings to check for breast cancer – once every 12 months for women 40+, and one baseline mammogram for women ages 35-39

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(Medicare Preventative Benefits, continued from page 4)

- Behavior change program to help prevent type 2 diabetes (offered once-per-lifetime to high-risk individuals)
- Nutrition therapy services for individuals with diabetes or kidney disease and those who have had a kidney transplant in the last 36 months, as long as a physician referral is provided
- Obesity screenings and behavioral therapy for those with a body mass index (BMI) of 30 or more, to help individuals lose weight by focusing on diet and exercise. The counseling must be provided in a primary care setting (like a doctor's office), so that an individual's personalized prevention plan can be coordinated with the patient's other care.
- Prostate cancer screenings once every 12 months for men over 50
- Sexually transmitted infection (STI) screenings and counseling for high-risk individuals and those who are pregnant. Medicare covers these tests once every 12 months or at certain times during pregnancy. Medicare also covers up to two individual, 20-30 minute, face-to-face, high-intensity behavioral counseling sessions for high-risk adults. To be covered, counseling sessions must be provided in a primary care setting (like a doctor's office). Medicare will not cover counseling as a preventive service in an inpatient setting, such as a skilled nursing facility.
- "Welcome to Medicare" preventive visit during the first 12 months that someone is enrolled in Part B. The visit includes a review of the patient's medical and social history related to health. It also includes education and counseling about preventive services, including certain screenings, shots or vaccines (like flu, pneumococcal and other recommended shots or vaccines), as well as referrals for other care, if needed.
- Yearly "Wellness" visit after someone has had Part B for longer than 12 months, to develop or

update the patient's personalized plan to prevent disease or disability based on current health and risk factors. □

New RSV Vaccine for Older Adults By the GWAAR Legal Services Team (for reprint)

Following approval by the Food and Drug Administration, the Centers for Disease Control and Prevention's Advisory Committee on Immunization Practices recently recommended the new Respiratory Syncytial Virus (RSV) vaccines for people ages 60 years and older. RSV is a respiratory virus that typically causes cold-like symptoms in healthy adults and older children but can lead to more serious illness, like pneumonia, as well as hospitalizations and even death in very young children and older adults. Adults at high risk of severe RSV illness include older adults, adults with chronic heart or lung disease, adults with weakened immune systems, and adults living in nursing homes or long-term care facilities. Each year, RSV causes an estimated 60,000-160,000 hospitalizations and 6,000-10,000 deaths among older adults. Because RSV may look like other respiratory infections, the number of RSV cases in older adults is likely undercounted.

The new vaccines will help protect older adults against severe illness from RSV during the time of year when multiple respiratory illnesses are circulating in the population. In addition, vaccination of older adults may help prevent young children from being exposed to RSV. These vaccines involve a single-dose in one shot and are expected to be available at pharmacies this fall. Talk to your healthcare provider about whether the RSV vaccine is right for you and any other vaccines you might need this fall to help prevent illness. □





Disability Rights Wisconsin Announces Executive Director

Press/News Release

Dated: July 26, 2023

Contact: Bob Poeschl, (920)-944-2544, bobp@drwi.org

Disability Rights Wisconsin (DRW) Board of Directors is excited to announce that Jill Jacklitz will become its next Executive Director, effective August 22, 2023.

Jill comes to DRW from the UW-Madison Center for Patient Partnerships, where she served as Co-Director and Director of Education, leading the organization's strategic direction, health equity, educational and advocacy programming. She holds a Master of Science in Social Work from UW-Madison and has worked in child advocacy and community health as a lobbyist, community engagement educator and organizational leader in non-profit and health care organizations.

Jill's personal experience as an advocate for members of her own family give her particular insight into the same systems DRW strives to make more inclusive for people in Wisconsin with disabilities. "As Executive Director, Jill will champion the critical work of DRW, fighting for the rights of people with disabilities and serving as the civic image for DRW while inspiring operational vision and oversight. She will build our organization's strength and financial viability while cultivating strong partnerships to move initiatives forward and developing relationships to expand DRW's storied history of system advocacy," stated DRW Board President Nancy Heltemes.

Jill begins her DRW journey on August 22, 2023. The community can reach out to her at executivedirector@drwi.org.

Disability Rights Wisconsin is the federally mandated Protection and Advocacy system for the state, charged with protecting the rights of individuals with disabilities and keeping them free from abuse and neglect. DRW uses a variety of strategies to achieve its mission, including individual casework and systemic change. The organization increases its effectiveness by collaborating with other advocacy and service organizations. It receives funding from federal and state grants, as well as other funding streams. Donations help DRW push forward public policy improvements that make a difference for thousands across the state. □

BOALTC Names Kim Marheine State Ombudsman

Press/News Release

**From the State of Wisconsin Board on Aging and Long-Term Care
1402 Pankratz Street, Suite 111, Madison, WI
53704-4001**

The State of Wisconsin Board on Aging and Long Term Care (BOALTC) is pleased to announce Kim Marheine has been selected to serve as our State Long Term Care Ombudsman. Marheine, who currently serves as the Ombudsman Services Supervisor, assumes responsibilities on September 25, 2023.

The State Ombudsman was previously a joint position with the Executive Director. Given the complexity of the work and growing older population, a dedicated full-time State Ombudsman became a necessity. We are grateful to the legislature and Governor Evers for recognizing this need and approving the State Ombudsman position in the 23-25 budget.

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(State Ombudsman, continued from page 6)

Marheine has worked in aging and long-term care for more than 30 years, including employment as a long-term care provider as well as a Program Director for the Alzheimer's Association of Greater WI. In 2008, Kim became the Ombudsman Services Supervisor where she has supported the ombudsman program staff, while also serving on statewide and national committees examining opportunities for issue advocacy to impact long-term systems changes. Marheine holds a Bachelor's degree in Music Therapy and a Master's degree in Community/Agency Counseling, both from UW-Oshkosh, where she also taught in the Music Therapy Division and mentored aspiring music therapists for several years.

"We are honored to have Kim Marheine serve as the State Ombudsman for Wisconsin", says Executive Director Jessica Trudell. "Kim's experience and comprehensive knowledge of the long-term care system makes her a great fit for this role and will enhance the agency's ability to advocate for older adults in Wisconsin and promote positive systemic change." Board Chair Abigail Lowery also expressed excitement that Kim is taking on increased leadership in the organization, stating "With Kim's breadth and depth of experience, knowledge, and compassion, the older adults of this state will benefit greatly."

"I am humbled and honored to serve Wisconsin and BOALTC in such a meaningful way. I succeed distinguished advocates George Potaracke, the late Heather Bruemmer, and current Executive Director Jessica Trudell, and will serve with the same dignity and respect for our clients in furtherance of the mission of Board on Aging and Long Term Care," said Marheine.

The mission of the Board on Aging and Long Term Care is to advocate for the interests of the state's long-term care consumers, to inform those consumers of their rights, and to educate the public at large

about health care systems, insurance and long-term care. The Board operates the Ombudsman Program, Volunteer Ombudsman Program and the Medigap Helpline Program.

Ombudsman Program (800) 815-0015
Medigap Helpline (800) 242-1060
Part D Helpline (855) 677-2783
Fax (608) 246-7001
<http://longtermcare.wi.gov> ☐

Governor Proclaims October as National Disability Employment Awareness Month

On September 25th, Governor Evers issued a proclamation recognizing October as National Disability Employment Awareness Month, joining with the Department of Workforce Development in celebrating the critical role that workers with disabilities play in strengthening the state's workforce and economy and in reaffirming the state's commitment to fostering an environment that encourages and promotes self-sufficiency, independent living, and equitable employment opportunities for Wisconsinites of all abilities. The proclamation is available via the governor's website in both [standard](#) and [accessible](#) formats.

Wisconsin's Caregiver Crisis: What Happens When No One Shows Up?

A recent article in [Madison Magazine](#) highlights concerns regarding the 81,000 Wisconsin adults with disabilities who rely on in-home caregivers funded by state and Medicaid programs. Some of those affected weigh in on the issues they're facing, why caregivers are quitting, and what solutions could make a difference. ☐





Does activating a health care POA cause someone to lose their driver's license? If a guardianship order removes the ward's right to apply for a driver's license, what happens if they already have one?

The decision to suspend or revoke a driver's license is typically made by the Division of Motor Vehicles. It is not automatic with either activation of a power of attorney for health care or a guardianship order. The guardianship statutes note that a guardianship order may remove the right to *apply* for a driver's license; they do not remove the right of an existing licensee to continue to hold the license. The DMV, however, can and does assess safety concerns and can restrict or cancel a license as necessary. There is no requirement that the driver have an activated POA or a guardian for the DMV to take action.

If there are concerns about someone's ongoing ability to drive, there are three options:

1. Ask the individual to [voluntarily surrender](#) their license and apply for a free photo ID.
2. [Report a concern](#) and request the DMV evaluate whether the individual is competent to drive. Upon receiving a report, the DMV can require the person to undergo a medical or driving competency exam. The examiner can recommend restrictions (like daylight driving only) or can recommend canceling the license.
3. Ask the individual's primary care provider to assess the person and [provide a report to the DMV](#). This is the only way for the DMV to immediately cancel a driver's license.

In addition, the DMV has resources and safety tips available for [older drivers](#), [driving with a disability](#), and [driving with medical conditions](#) that may be a cause for a concern.

Does a Power of Attorney for Finances need a statement of incapacity to be activated?

This will depend on how the document is drafted. If the principal used the current state form, the default is that the document is activated upon signing. The principal could indicate in the special instructions or could have a Power of Attorney for Finances (POA-F) drafted so it is only activated upon incapacity. If incapacity is not further defined or clarified within the POA document, under Wis. Stat. § 244.09(3), this means an incapacity as determined by one physician or one psychologist. Incapacity for a POA-F is an inability to manage property, finances or business affairs because of an impairment in the ability to receive and evaluate information or make or communicate decisions even with the use of technological assistance. Wis. Stat. § 244.02(7). A certification of incapacity to make health care decisions cannot by default be used to indicate the principal has an incapacity to manage finances.

Is there a time frame requirement between the two clinicians' signatures for a Power of Attorney for Health Care activation due to incapacity?

No. There is no specific time frame requirement mentioned in the statutes for when the two clinicians must sign to activate a POA-HC. The only requirement is that the two clinicians sign a statement indicating that they have personally examined the individual and found that they have incapacity to make medical decisions. However, the longer the time frame between the two signatures might leave more room for someone to challenge the activation document. For example, are the two signatures describing the same reason for incapacity, or did the person recover from the previous incapacity and now there is a new reason for their inability to make decisions? Best practice would be to have the signatures as close in time as possible. □



Title: *Walworth County v. M.R.M.*

Court: Wisconsin Supreme Court

Date: 06/29/2023

Citation: [2023 WI 59](#)

Case Summary

This case brings the question of whether 2021's decision in *Waukesha County v. E.J.W.* should apply retroactively. In *E.J.W.*, the Supreme Court of Wisconsin held that a jury demand in a Ch. 51 mental commitment case was timely if filed at least 48 hours before a rescheduled final hearing. The GSC provided a summary of *E.J.W.* in our [January 2022 newsletter](#).

In 2021, M.R.M. was involuntarily committed and under an involuntary medication order for a period of six months, following a mental health crisis. When Walworth County sought to extend his commitment, M.R.M. filed a demand for a jury trial. The circuit court denied the demand, reasoning that the demand was untimely, and extended M.R.M.'s commitment for another year. *E.J.W.* was decided after M.R.M.'s final hearing, but before he filed his appeal. M.R.M. argued in his appeal that this rule should apply retroactively to his case and that the extension order should be reversed. The Court of Appeals certified the case directly to the Supreme Court, which agreed with M.R.M., reversing the order for the commitment extension.

Case Details

M.R.M. was involuntarily committed in January 2021. After the initial six month commitment, Walworth County petitioned the circuit court to extend M.R.M.'s commitment by 12 months. The final hearing on the extension was rescheduled so that M.R.M. could retain counsel. At least 48 hours before the rescheduled hearing, M.R.M. filed a jury demand.

In holding that M.R.M.'s jury demand was untimely, the circuit court turned to the holding in *Marathon County v. R.J.O.*, 2020 WI App 20, 392 Wis. 2d 157, 943 N.W. 2d 898. In *R.J.O.*, the Court of Appeals held that Wis. Stat. § 51.20(11)(a) "requires a subject individual to request a jury trial at least forty-eight hours before 'the time set for final hearing,' not at least forty-eight hours before the final hearing actually occurs." *R.J.O.* at ¶41. However, the Supreme Court of Wisconsin overturned *R.J.O.* in *Waukesha County v. E.J.W.*, 2021 WI 85, 399 Wis. 2d 471, 966 N.W. 2d 590. The *E.J.W.* decision came after M.R.M.'s final hearing, but before M.R.M. filed an appeal. M.R.M. argued that his jury demand would have been timely if *E.J.W.* had been decided before his rescheduled final hearing.

M.R.M. filed an appeal which the Court of Appeals certified to the Supreme Court of Wisconsin. The Supreme Court of Wisconsin contemplated two issues: (1) whether *E.J.W.* applies retroactively, and (2) if it does, whether the appropriate remedy for the denial of M.R.M.'s jury demand is reversal, or reversal and remand.

On the issue of retroactive application, the Court turned to three determinative questions set forth by *Kurtz v. City of Waukesha*, 91 Wis. 2d 103, 109, 280 N.W.2d 757 (1979). The first question the Court considered was whether the rule establishes a new principle of law, either by overruling clear past precedent on which litigants may have relied, or by deciding an issue of first impression whose resolution was not clearly foreshadowed. The Court opined that retroactive application of *E.J.W.* clearly would overrule past precedent. The rule set forth by *R.J.O.* governed involuntary commitment cases for 18 months before *E.J.W.* was decided. Such represents a clear break with the past precedent governing jury demands. Therefore, the Court reasoned, the first factor weighs against retroactively applying *E.J.W.* In considering the second and third factors, however, the Court found in favor of retroactivity.

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(*Walworth v. M.R.M.*, continued from page 9)

The second question was whether retroactive application would further or impede the operations of the new law. The Court decided that retroactive application would further the operation of *E.J.W.*, noting that retroactive application of *E.J.W.* would support the due process protections reflected by the legislature's policy choices in ch. 51. The Court looked to Wis. Stat. § 51.20(11)(a), which states that a jury demand is timely so long as it is filed at least 48 hours prior to the time set for the final hearing. See *E.J.W.* at ¶128. The Court reasoned, "This statute reflects the legislature's 'determin[ation] that a minimum of 48 hours' notice is sufficient for the circuit court to secure the presence of jurors and the County to prepare for a jury trial in a mental health commitment case.'" *Id.*, ¶129. The Court also reasoned that the retroactive application of *E.J.W.* would promote the case's operation by freeing M.R.M. from the collateral consequences of the extension order.

The third question which the Court considered was whether retroactive application would produce substantial inequitable results. The Court held that it would not, finding that *E.J.W.* and *M.R.M.* presented similar circumstances which ought to be treated the same under the ch. 51 timely jury trial provision. Therefore, the Court concluded, the three-factor analysis "does not provide a reason for departing from our presumption of retroactivity in civil cases" and held that *E.J.W.* applies retroactively, and thus M.R.M.'s jury demand was timely.

The second issue for the Court to decide was the proper remedy for the circuit court's denial of M.R.M.'s jury demand. The Court held that reversing of the circuit court's order would be appropriate, rather than remanding the case for a new order. Following the rule laid out last year in *Sheboygan County v. M.W.*, the court held that when the order at issue (here the 12-month extension) expires while an appeal is pending, reversal is the

appropriate remedy. See *Sheboygan County v. M.W.*, 2022 WI 40, ¶137, 402 Wis. 2d 1, 974 N.W.2d 733. In applying this rule, the Court found that both the extension order and the initial six-month commitment order would have expired by the time the appeal was resolved. Based on *M.W.*, the Court ruled that circuit courts lose competency to hold an extension hearing when the preceding commitment order has expired. Thus, the Court concluded, if an extension order is reversed on appeal, the circuit court's competency to conduct proceedings on remand depends on whether the preceding commitment order has expired. In this case, M.R.M.'s order expired nearly a year before this decision was issued, and the circuit court no longer had the competency to re-adjudicate the issue. Therefore, reversal without remand was the appropriate remedy. □

Title: *Department on Aging v. R.B.L.*

Court: Court of Appeals, District I

Date: June 27, 2023

Citation: [2022AP1431](#)

Case Summary

This case follows on last year's decision in *Racine County v. P.B.*, 2022 WI App 62, 405 Wis. 2d 383, 983 N.W.2d 271, regarding the right to be physically present at guardianship hearings (GSC summarized this case in our [January 2023 newsletter](#)).

Following an annual review continuing his protective placement, R.B.L. appealed, arguing that the petition for review of his protective placement had been filed after the statutory deadline. He also argued that he was required to be physically present at the review hearing, and that the requirement had not been properly waived. The Court of Appeals agreed with R.B.L. but ultimately decided the case based on the county's concessions during the appeal, rather than on the merits. The Court reversed the order continuing the protective placement.

(Continued on page 11)





(*Dept on Aging v. R.B.L.*, continued from page 10)

Case Details

R.B.L. has been under guardianship and protective placement in Milwaukee County since 2018. Following his first *Watts* review, an order continuing his protective placement was filed in December 2019. The county Department on Aging filed the petition for his next annual review in February 2021. R.B.L.'s guardian *ad litem* filed a report and recommendation, which waived R.B.L.'s attendance but did not give a reason for the waiver. The court held three separate hearings on the petition. As a result of the GAL's waiver of his attendance, R.B.L. was not physically present at any of them. After the hearings, the circuit court entered the order continuing R.B.L.'s protective placement on March 7, 2022. R.B.L. appealed that order.

R.B.L. alleged that the circuit court lost its competency to proceed with the annual review of his protective placement because the Department on Aging missed the deadline to petition for review of his protective placement. Per Ch. 55, Wis. Stats., a petition for annual review shall be filed "no later than the first day of the 11th month after the initial order is made for protective placement for an individual and annually thereafter." Wis. Stat. § 55.18(1)(a). Here, the first placement review order was filed on December 30, 2019, and the petition for annual review was filed on February 12, 2021 – 1.5 months after the "annually thereafter" deadline – and the

final order was issued more than two years after the previous *Watts* review. The Department of Aging did not respond to this argument in its briefing.

R.B.L. further argued that the GAL did not properly waive his physical presence for the annual review hearings. Under Wis. Stat. § 55.10(2), the GAL must provide a written certification that provides a reason for the individual's inability to be physically present. The Department conceded on this point and agreed that the circuit court had lost competency as a result of the inappropriate waiver. It asked the Court of Appeals to reverse the order and remand for a new hearing at which R.B.L. could be physically present, as had been ordered in *Racine County v. P.B.*

The Court of Appeals accepted the Department's concession that the circuit court had lost competency to proceed. However, because the Department did not respond to R.B.L.'s argument that the court had also lost competency because of the late petition, the Court also found it had conceded this argument as well. It granted R.B.L.'s motion to reverse and dismiss the underlying protective placement. The Court noted that its decision was not based on the merits of R.B.L.'s argument, but rather on the Department's failure to respond to it, and noted that the Department may file a new petition for protective placement if it feels R.B.L. continues to meet the standard. □

(More Case Law on next page)

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?

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Titles: *Waupaca County v. G.T.H.*, [22AP2146](#), District IV, August 24, 2023
Kenosha County v. L.A.T., [22AP1730](#), District II, August 23, 2023
Marinette County v. A.M.N., [22AP1395](#), District III, August 29, 2023

Case Summaries

These three cases share one central issue: the application of evidence in experts' testimony in Ch. 51 recommitment hearings. In each, the Court of Appeals noted that the experts' testimony consisted largely of inadmissible hearsay. However, despite similar findings, these cases have different outcomes. We share them together to clarify the court's findings on the clinical experts' evidence and explain the difference in outcomes.

Note: as of the end of September, the Court of Appeals has decided at least one other case on similar grounds; this is likely to continue to be a hot issue going forward.

In *Waupaca County v. G.T.H.*, the Court of Appeals considered whether the witness testimony was sufficient to support the court's finding of dangerousness for a commitment extension. The Court found that the witnesses' testimony was based on hearsay and insufficient to support the finding, reversing the commitment extension.

In *Kenosha County v. L.A.T.*, the Court of Appeals similarly grappled with the availability of evidence and its application to the statutory standards of dangerousness. Although the Court questioned the examining experts' reports, ultimately it found that sufficient evidence had been presented to demonstrate a pattern of acts which satisfied the statutory requirement for L.A.T.'s dangerousness.

In *Marinette County v. A.M.N.*, the Court of Appeals dealt with issues of evidence sufficiency. The Court concluded that the evidence presented was suffi-

cient to sustain the commitment order, but not the involuntary medication order.

Case Details

Waupaca County v. G.T.H.

G.T.H. was initially committed in May 2021. This order was subsequently reversed by the Court of Appeals in December 2021. A few weeks later, G.T.H. was again placed in emergency detention following an alleged road rage incident and a new commitment was ordered. In June 2022, Waupaca County filed a petition to extend his commitment and the court appointed Dr. Marshall Bales to examine him.

The county presented two witnesses, Dr. Bales and a county crisis worker. Dr. Bales testified that he had attempted to meet with G.T.H. multiple times but had been unsuccessful. He therefore had based his report on collateral sources. As he discussed the findings of reports he had reviewed, G.T.H.'s counsel objected repeatedly, noting that Dr. Bales was essentially testifying about events he had not witnessed, and was overruled without explanation. G.T.H.'s counsel eventually made a standing objection, which the court noted for the record. Similarly, the county crisis worker testified about events he had been told about, but had not witnessed. Neither witness had first-hand knowledge of the events on which they based their opinions. The county did not call additional witnesses or offer additional evidence about the events the two witnesses described.

The circuit court found that the county had met its burden to prove G.T.H.'s dangerousness, noting in particular the incidents the two witnesses had related from their collateral review. The Court of Appeals reversed, finding that the two witnesses' testimony was based entirely on inadmissible hearsay, and that the circuit court's conclusion required it to assume that the incidents about which they had testified were true without any corroboration from witnesses with first-hand knowledge.

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(Waupaca v. G.T.H., continued from page 12)

Although the County argued that the experts' testimony was not offered for the truth of the incidents, but rather to provide a context for other testimony showing a pattern of behavior, no other testimony or evidence was offered. The Court of Appeals thus found this argument unpersuasive, noting that Dr. Bales' discussion of G.T.H.'s decompensation necessarily relied on his testimony about events he had not personally witnessed. The Court noted that if the inadmissible evidence were excised, Dr. Bales testimony essentially amounted to a hypothetical: "if, and only if, the secondhand accounts were accurate, then Bales' opinion regarding current dangerousness was established."

The Court found that the County could not prove that a pattern of behavior or even specific incidents existed without relying on the experts' testimony about the reports they had read. While the Court acknowledged that experts may rely on inadmissible evidence while producing their opinions, it also noted that that does not make the underlying evidence admissible for its truth, and that the circuit court cannot rely on this testimony alone to make its findings.

Kenosha County v. L.A.T.

"Linda" was the subject of a Ch. 51 commitment and involuntary medication order. Kenosha County petitioned for an extension of both. The trial court conducted a hearing on the extension, at which three witnesses testified. The first witness, Dr. Bales, was the court-appointed psychiatrist who had met with Linda on a few occasions. Dr. Bales testified about the altercation which led to Linda's original commitment. Bales explained that in October 2021, Linda had thrown a roll of tape at her father which caused Linda's parents to be fearful of Linda. Dr. Bales also testified about an incident that occurred on January

5, 2022, in which Linda was at her nurse practitioner's office and began "yelling and screaming at staff and patients." Additionally, Dr. Bales testified about an incident that occurred on March 10, 2022, in which caused Linda's father to be concerned for her safety. Lastly, Dr. Bales testified about incidents which occurred around the end of November 2022 in which Linda "displayed extreme anger and was loud and irritable." Dr. Bales concluded that Linda suffered from a major mental disorder. Additionally, Dr. Bales concluded that Linda would be dangerous if untreated as she "put others in fear for their safety."

The second witness, Dr. Gail Tasch, was called by Linda's defense. Dr. Tasch, a licensed psychiatrist, interviewed Linda and prepared a report for this case. While Dr. Tasch agreed with Dr. Bales regarding Linda's major mental disorder, she testified that Linda was "not a danger to herself or others."

The final witness was Linda herself. Linda testified to the incidents mentioned by Dr. Bales, admitting to the tape-throwing incident and that she had screamed at the nurse practitioner's office. She also recounted an argument with her father in March 2022, which resulted in her father calling a crisis line.

The trial court found that Linda had a mental illness and was a proper subject for treatment. The trial court also found Linda to be dangerous based on evidence of recent violent behavior: the tape throwing incident, the provider's office incident, and the altercation with Linda's father in March 2022. The trial court concluded that each of these incidents contributed to a "pattern or practice" of violent behavior. Based on the three incidents, the trial court extended Linda's commitment and involuntary medication orders by 12 months. Linda appealed the extension order, arguing that the County hadn't proven dangerousness under the statute.

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(Kenosha v. L.A.T., continued from page 13)

On appeal, Linda argued that the County's only evidence of dangerousness came from Dr. Bales' testimony regarding the incidents and that that testimony was inadmissible as hearsay. The Court of Appeals agreed that some of the evidence referred to in the trial court's ruling was inadmissible hearsay. Despite this, the Court concluded that there was still plenty of admissible evidence which supported a finding of dangerousness, including Linda's own testimony. The Court held that the trial court satisfied the standard of showing Linda would become a proper subject for commitment if treatment were withdrawn by looking to her pattern of aggression, which was reasonably based on the admissible evidence in the record, the testimony, and the opinions of all the witnesses.

Marinette County v. A.M.N.

In April 2022, "Alex" was detained under Ch. 51 due to paranoid behaviors. At the final commitment hearing, Dr. Michele Andrade, Dr. Kevin Miller, Deputy David Oginski, and Alex testified. Deputy Oginski testified about a conversation he had with Alex's grandfather alleging that Alex had cut wires belonging to the furnace, water heater, freezer, and other electrical appliances. In addition, Deputy Oginski noted his personal observations of the cut wires. Alex's counsel objected to this testimony on grounds of hearsay, but the circuit court overruled the objection and noted that the testimony provided background.

Dr. Miller, one of the county's examining experts, testified that that his examination was based on "collateral information" because Alex refused to speak during their meeting. Dr. Miller gave a brief summary of Alex's history; Alex's counsel again objected on hearsay grounds. The circuit court overruled the objection because "Miller is an expert, and he can use collateral information to base his opin-

ions on." Additionally, Dr. Miller explained that Alex had been cutting the wires "in a dangerous way," and that such behavior had happened multiple times. On the issue of medication, Dr. Miller opined that Alex was incompetent to refuse medication. In support of this opinion, Miller testified that a nurse had unsuccessfully tried to explain the risks, benefits, and alternatives of medication to Alex.

Like Dr. Miller, Dr. Andrade stated that her findings were also based on collateral information because Alex refused the examination. She further testified that there was no one in the home, other than Alex, who could have cut the wires. Alex's counsel again objected and was again overruled due to Dr. Andrade's status as an expert witness.

Finally, Alex testified. He stated that he had taken the appropriate safety measures when cutting the wires. He also testified that no one had explained to him the benefits or disadvantages of medication.

The circuit court ordered Alex to be committed for a period of six months, concluding that Alex was mentally ill, dangerous, and a proper subject for treatment. The court also found Alex to be incompetent to refuse medication. Alex appealed both orders, arguing that the circuit court made an error when it admitted and relied on inadmissible evidence. Alex further argued that there was insufficient evidence to support the involuntary medication order because he had not received the required reasonable explanation of the advantages, disadvantages, and alternatives to the proposed medications.

Here, as in *G.T.H.* and *L.A.T.*, the Court of Appeals again found that the circuit court had admitted and relied on hearsay evidence. However, because other admissible testimony showed that Alex's wire cutting was part of a pattern of dangerous behavior, the Court determined that it amounted to a harmless error because the outcome of the proceeding would have been the same even if the court hadn't relied on that evidence.

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(Marinette v. A.M.N., continued from page 14)

The Court also reviewed Alex’s claim that the County had failed to prove he was given the required explanations for medication. For a circuit court to order an individual be involuntarily medicated, the petitioner must prove two things: The individual is incapable of understanding the advantages, disadvantages and alternatives to medication, and the individual is substantially incapable of making an informed choice to accept or refuse medication. The Court found that the records Dr. Miller relied upon in testifying about the nurse practitioner’s attempt to provide Alex with an explanation of the advantages, disadvantages, and alternatives to medication were insufficient. Overall, the court found that the testimony given lacked the details needed to satisfy the statutory rule. The Court reversed the involuntary medication order and concluded that the County had not presented any evidence to show that Alex was provided with the explanation of medication under the statute.

The Different Outcomes

A note about evidence and hearsay in these cases: hearsay is defined as “a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted.” Wis. Stat. § 908.01(3). It is generally inadmissible unless an exception exists (there are many, and some may depend on the purpose for which the evidence is being submitted).

Example: a law enforcement officer responds to an incident and writes a report about what they observed. That report might be submitted as evidence to prove that the report itself exists, or it might be submitted to prove that the officer used certain words or phrases in writing it. It could also be submitted as proof that the matter discussed in the report is true. If it is used for this last purpose, typically the person who wrote the report must testify

about the observations contained in it.

Experts who testify in trials often rely on reports produced by others when forming their opinion, and sometimes these underlying reports aren’t admissible on their own. For example, an expert might rely on that police report, among other documents and interviews, and this is permitted. However, an expert cannot testify about whether the incident described in the report actually happened, because the expert was not present and did not observe the incident. The fact that the expert relies on the report does not make the report itself admissible – it is simply part of the foundation the expert may use to draw conclusions.

In *G.T.H.*, expert testimony was all the evidence the court had to rely on (the experts’ reports were not submitted into evidence). The court based its conclusions that G.T.H. was dangerous because it accepted as true the incidents the experts had testified about, but no direct evidence was given about those incidents. There were no police reports or first-hand witnesses to corroborate them, and G.T.H. himself did not testify. Neither expert spoke to G.T.H. directly to form a conclusion based on their own observations of him. The Court of Appeals found that no direct evidence of the alleged incidents existed in the record, only the hearsay statements of the experts, and that that was not enough for the county to prove its case.

In both *L.A.T.* and *A.M.N.*, however, there was additional evidence to support the court’s findings: both subjects testified about the incidents in question, and in *A.M.N.*, the court also relied on the testimony of a law enforcement officer about his observations. While both courts did admit evidence that should have been inadmissible hearsay (for which both were taken to task by the Court of Appeals), both did also have sufficient evidence to support their conclusions without that hearsay evidence. □

