



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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NCALL Webinar Series: Collaborating for Justice for Older African Americans – last session April 16

The National Clearinghouse on Abuse in Later Life has been holding a series of webinars to help equip professionals working with older adults to build stronger and more equitable collaborations with African American community-based and culturally specific programs. The first two webinars took place in March; the last, scheduled for April 16, will feature a conversation with culturally specific program leaders about their experience and insights on equitable partnership development.

- Session 1: Introduction to *Collaborating for Justice* – this webinar introduced the [Collaborating for Justice for Older African Americans Guide for Elder Justice Teams](#) (PDF) and discussed the need for culturally specific organizations. Recording available on [YouTube](#).
- Session 2: Guiding Principles of Equitable Collaboration – recording available on [YouTube](#).
- Session 3: In Conversation about *Collaborating for Justice* – April 16; more information and registration [available from NCALL](#).

NCLER Webinar: Financial Exploitation & Family Dynamics – April 25, 1 PM CDT

Recent reports estimate that more than \$20 billion is lost from older adults each year due to financial exploitation by family, friends, and caregivers. Because of the significant costs and emotional impact associated with such exploitation, it is important to work with older adults to identify their options and remedies to recover from abuse.

This training from the National Center on Law & Elder Rights will discuss the options that can be used to address financial exploitation by family members, including mediation, restorative justice, and other solutions to remedy the situation and preserve the relationship with family. The training will also provide information on the importance of advanced

planning and how to work with banks and financial institutions to prevent financial exploitation by family members and preserve autonomy.

Free, but [pre-registration is required](#). If you are unable to attend, a recording and a link to the slides will be made publicly available after the event.

7th Annual Older Adult Mental Health Awareness Day Symposium – May 2, online

The National Council on Aging is presenting its annual Older Adult Mental Health Awareness Day Symposium on May 2, 2024, beginning at 9 AM CDT. Attendees will enjoy a keynote address from “Black-ish” star Jennifer Lewis, 9 sessions and presentations, and actionable steps to bring back to their communities. Continuing education credits will be available for several professions. The symposium is free but [pre-registration is required](#).

Circles of Life Conference – Stevens Point, May 16-17

Circles of Life is Wisconsin’s annual conference for children with disabilities, their families, and professionals who support them. This year’s theme is “Building Community” and will include learning strategies to build a community, as well as programs and services that support families to create an inclusive community for children, teens and adult family members with disabilities. Some sessions will be available virtually; some will also be presented in Spanish. [Registration](#) closes May 3.

Wisconsin DATCP Consumer Protection Presentations

The Wisconsin Department of Agriculture, Trade, & Consumer Protection has scheduled presentations around the state throughout April on a variety of topics. To request a presentation or see what’s coming up in your area, visit [DATCP’s presentation schedule](#). ☐





National Center on Elder Abuse Fact Sheet Now Available in Multiple Languages

The National Center for Elder Abuse recently revised its “Signs of Elder Abuse” Fact Sheet and has released it in [English](#), [Spanish](#), [Chinese](#), and [Korean](#). Additional resources and fact sheets are available through the [NCEA website](#) and cover a wide spectrum of topics relating to elder abuse.

Adult Protective Services Technical Assistance Resource Center – New Report on Self-Neglect

The Adult Protective Services Technical Assistance Resource Center recently released a [new issue brief](#) on self-neglect. Self-neglect is different from other types of maltreatment since it does not involve abuse (unless there are multiple allegations) by a perpetrator. While the definition cites the “inability ... to perform essential self-care tasks,” self-neglect is also often the consequence of the failure of formal and informal support networks (familial or social) to compensate for the individual’s difficulty to self-care. This brief provides a comprehensive overview using [National Adult Maltreatment Reporting System \(NAMRS\) data](#) of APS clients/victims and cases in which there is an allegation of self-neglect.

National Consumer Protection Week Resources

National Consumer Protection Week took place in early March. Consumer issues have been identified as one of the most common problem areas experienced by low-income older adult households. Often, consumer and debt issues impact an older adult’s ability to age in place or meet their basic needs. The following are just some of the resources that are available for individuals, advocates, and community partners to help identify and prevent scams and other issues.

- [Federal Trade Commission Publications](#) (can be downloaded and printed or bulk-ordered for free, multiple languages available)
- [Consumer Financial Protection Bureau Publications](#) (same)
- Webinars from the National Center on Law & Elder Rights (NCLER):
 - Strategies for Responding to Debt Collectors (held 2/28/24) [recording](#) and [slides](#)
 - Home Equity Theft and Other Emerging Scams (held 8/22) [recording](#) and [slides](#)
 - Addressing “We Buy Houses” and Foreclosure Rescue Scams (held 05/21) [recording](#) and [slides](#)
 - Money Mule Scams (held 03/2021) [recording](#) and [slides](#)
- Webinars from the National Consumer Law Center [on a variety of topics](#), from issues relevant to homeowners to surprise medical bills

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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.





2023 Wisconsin Act 130 – Remote Notarization/ Witnessing for POAs is Now Possible

[2023 Wisconsin Act 130](#), enacted at the end of March, now allows for remote notarization and witnessing of estate planning documents, including powers of attorney for health care and finance, living wills, and other estate documents. The GSC is working on a resource to walk through the new requirements, but in the meantime, the Wisconsin Legislative Council’s legislative memo [provides a summary of the changes and requirements](#). In brief:

- The signing must be supervised by a Wisconsin attorney in good standing, who may serve as the notary or a witness;
- All individuals (signer, attorney, any other witnesses) must be located in Wisconsin and visible on camera;
- The signer must identify anyone else in the room with them and if possible, make a visual sweep so the attorney/notary/witnesses can verify;
- The signer must display the document, confirm the number of pages and the page number on which they will sign, and affirm they are over 18 and creating the document voluntarily;
- The signer may have someone sign for them in their presence and at their direction if they’re physically unable to do so;
- The supervising attorney must complete an affidavit indicating that the signing of the document is in compliance.

April 16 is National Healthcare Decisions Day

By the GWAAR Legal Services Team (for reprint)

Governor Evers has issued a [proclamation](#) recognizing April 14-20 as Healthcare Decisions Week and April 16 as National Healthcare Decisions Day. This movement became nationally recognized in 2008 to help raise awareness of the importance of advance

care planning, to empower people to draft advance planning documents, and to encourage discussions with family members and medical professionals about healthcare wishes.

The law on advance care planning documents and authority varies by state. In Wisconsin, practitioners typically recommend the following documents:

- Power of attorney for finances
- Power of attorney for healthcare
- Living Will (optional)
- Authorization for Final Disposition (burial & funeral arrangements)

Advance planning documents can be executed with or without an attorney. While the basic forms are available online for free, an attorney can provide legal advice and counseling regarding the person’s specific circumstances to ensure that their wishes are stated and carried out as desired. It is important that the healthcare power of attorney is signed in front of two unrelated witnesses. While the power of attorney for finances does not technically require witnesses, it is granted important protections under Wisconsin law if it is notarized when signed.

Powers of attorney (POAs) provide authority for someone to make financial and/or healthcare decisions for another person. Wisconsin is not a “next of kin” state, meaning that family members do not have the ability to make healthcare decisions on behalf of another person just by virtue of being a relative. Powers of attorney documents are valid once they are drafted and signed, but the agents do not have authority to act on behalf of the principal until the document is activated. Healthcare POAs are usually activated upon subsequent incapacity of the principal. Financial POAs can be activated immediately or upon a future event.

A Living Will is a document which on its face may look similar to a power of attorney for healthcare;

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however, there are several important differences. In writing a Living Will, a person is making a directive to his or her doctor regarding the person's end of life decisions. There is no authority given to another person to act as an agent on the principal's behalf, as is the case in the power of attorney documents. Additionally, a Living Will only contemplates and provides for actions in very specific circumstances. By contrast, a power of attorney for healthcare provides for an agent to have broad authority to make decisions in a wide range of situations. A person can have both a power of attorney for healthcare and a Living Will, if desired, or one or the other. It's important that if a person has both documents that the wishes expressed within them be consistent.

Finally, the Authorization for Final Disposition allows a person to indicate his or her funeral and burial preferences in writing and to appoint an agent to carry out those wishes upon the person's death. This document is recommended as part of a comprehensive estate plan because the authority under a power of attorney ends upon the principal's death. If no agent is appointed under an Authorization for Final Disposition form, Wisconsin law indicates that a surviving spouse, child, parent, sibling, close friend, or guardian (in that order) can make funeral and burial decisions on behalf of a decedent.

The Guardianship Support Center's [website](#) includes links to forms, more information on advance directives, and Do-It-Yourself Guides.

The Department of Health Services also has the statutory forms for all of these documents Living Will forms available on its [website](#).

Myth-busting false beliefs about POAs:

1. I do not need a POA because my spouse or family can make decisions on my behalf.

- a. Wisconsin is not a "next of kin" state, meaning that family members do not have inherent

authority to make decisions solely based on their relationship with you. Authority must be specifically given to a person through a POA or a court order.

2. I do not need a POA until I am older or sick.

- a. Too often, people wait until it is too late to do advance planning. If a person no longer has the capacity to execute a POA document, then a guardianship action in court may be needed. All adults over the age of 18 should consider creating advance directives.

3. Once I create a POA, I'm set for life.

- a. The POA documents are not locked in stone. They can be revoked or re-executed at any time. The [Wisconsin Medical Society](#) recommends that advance planning documents be reviewed if any of the 4 "d's" occur:
 - i. **Death** (if any of the agents named in your POA pass away)
 - ii. **Decade** (if it has been more than 10 years since you drafted or reviewed your documents)
 - iii. **Divorce** (if you subsequently get a divorce after drafting your POA—in Wisconsin, this invalidates your documents by law)
 - iv. **Disease** (if you become sick or are diagnosed with an illness).

Hospice Care Myths

By the GWAAR Legal Services Team (for reprint)

When people think of the term "hospice," many believe it means a person has given up on life or has just days to live. Many others think hospice is a type of facility, like a hospital or nursing home, that once a person enters they can never leave. However, hospice care is much different. The following are several common hospice care myths and the facts behind them.

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Myth: Hospice is for people who have given up.

Fact: Hospice is for patients who are in the last phases of an incurable disease, but instead of focusing on curing an illness or prolonging death, the goal of hospice care is to relieve symptoms and give patients the best quality of life. The purpose of hospice care is to manage pain and other symptoms and to focus on the comfort and dignity of the person. And contrary to popular belief, research shows that in many cases, hospice care increases life expectancy, rather than decreases it.

Myth: Hospice is a place.

Fact: Hospice is rarely an actual location that people go to. Instead, the care almost always is provided where a person lives. Hospice patients are assigned a team of providers, such as a physician, registered nurse, home health aid, social worker, and chaplain. This team regularly checks in with the person, and works together to provide medical, emotional, spiritual and grief support to not only the patient but also their family.

Myth: People on hospice have to stop taking all medications.

Fact: This isn't always true. While it is true that hospice focuses on providing comfort rather than a cure, the decision to stop medication is usually left up to the patient. Depending on where people are in their diseases, it may be best to stop taking a medication that's a source of discomfort, but this is determined on a case-by-case basis. People are able to continue taking medications for pain and symptom control.

Myth: Once you sign up for hospice, there's no turning back.

Fact: Hospice doesn't mean a person is giving up control over their care or the ability to choose who provides it. A person can leave hospice and reapply at any time. For example, if a person on hospice wants to try a new drug trial or experimental thera-

py, they can always leave hospice and return at a later time, if needed.

Myth: You can only be on hospice for a limited amount of time.

Fact: Eligibility for hospice care requires that two physicians agree that the person has six months or less to live, however, this does not mean a person has to die within six months. If the person lives longer than six months but doctors continue to certify that they're terminally ill, they'll receive hospice care for as long as needed.

For families that have used hospice care for loved ones, nearly all say they wished they'd known about it sooner. You do not have to wait for your doctors to bring it up – it is never too early to ask about hospice and what benefits it could provide.

For more information, visit:

- <https://leadingage.org/common-myths-of-hospice-care-debunked/>
- <https://www.npr.org/2023/12/28/1221648271/hospice-care-myths-jimmy-carter-end-of-life>

May is Older Americans Month — 2024 Theme Announced

By the GWAAR Legal Services Team (for reprint)

Every May is Older Americans Month – a month to honor and recognize the valuable contributions of older Americans. The Administration for Community Living (ACL) sets a theme each year. The ACL declared that this year's theme is "**Powered by Connection**" which recognizes the profound impact that meaningful relationships and social connections have on our health and well-being. We will explore the vital role that connectedness plays in supporting independence and aging in place by combatting isolation, loneliness, and other issues."

ACL suggests the following ways in which individu-

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als can participate in promoting the benefits of connecting with others:

- Share facts about the mental, physical, and emotional health benefits of social connection and how it contributes to overall well-being.
- Promote resources that help older adults engage, like community events, social clubs, and volunteer opportunities.
- Connect older adults with local services, such as transportation, that can help them overcome obstacles to achieving or maintaining meaningful relationships.
- Encourage partners to host a connection-centric event or program focused on older adult mentors to youth, peer-to-peer support, or similar efforts.
- Challenge professional and personal networks to prioritize meaningful social connections and share the benefits.
- Inspire older adults to share what connection means to them on social media using the hashtag #PoweredByConnection.

For more information, visit: <https://acl.gov/oam/2024/older-americans-month-2024>

Press/News Release

Dated: February 1, 2024

Contact: Elizabeth Goodsitt, 608-266-1683

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Feeling Sick? Report it Quick!

DHS launches new tool letting people report suspected illnesses from food or water

In time for the annual peak in norovirus cases and outbreaks, the Wisconsin Department of Health Services (DHS) has launched a [new online tool](#) to encourage Wisconsinites to report food or water sickness when symptoms occur. The online questionnaire, which takes less than five minutes to complete, helps local health departments identify

sources of contamination to prevent others from getting sick. This tool is especially important as cases of norovirus, the leading cause of vomiting and diarrhea, tends to spike in the winter.

"By using this tool, Wisconsinites can help other people in their community from getting sick and prevent outbreaks," said DHS State Health Officer Paula Tran. "Ingesting contaminated food and water may cause just a little stomach upset for some, for others it can lead to hospitalization and be life threatening. We're asking people - when you're feeling sick, report it quick."

Contaminated food or water can come from a variety of sources, including food from grocery stores or restaurants, or water from pools, lakes, or rivers. Certain bacteria, viruses, or parasites can cause vomiting and diarrhea. In Wisconsin and the United States, it is believed these illnesses are under-reported, since many people who are infected get better without seeing a doctor. This new online tool is just one way for public health professionals to learn about food and water related illnesses and outbreaks to help prevent others from getting sick too. This tool is not a substitute for health care, and people who are feeling sick should contact their health care provider.

The new tool is a simple questionnaire that asks for current symptoms, places recently visited, and food items recently eaten. The information is sent to local health departments that identify potential sources of illness. If additional information is needed, public health specialists may contact Wisconsinites who report their illness. All follow-up will remain confidential.

The launch of the new tool will be accompanied by a "Feeling Sick? Report it Quick!" message campaign which will share information and resources about prevention, symptoms of food or waterborne illness, and the reporting system through print materials and on social media.

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To avoid food poisoning before it happens, here are a few tips:

- Wash hands and surfaces touched with food often.
- Keep raw meat, chicken, seafood, and eggs away from food that will not be cooked.
- Cook food to the [right temperature](#) to kill germs that can cause illness.
- Refrigerate food at 40 degrees Fahrenheit or colder within 1-2 hours of cooking.

Find more information on the [Report an Illness Caused by Food or Water webpage](#).

Attend Aging Advocacy Day May 14th!

Are you interested in issues affecting older adults and caregivers? Would you like to tell your legislator what aging/caregiver services mean/have meant to you, your family, or those you serve?

Join members of the Wisconsin Aging Advocacy Network (WAAN), aging network professionals, older adults, and family caregivers to “tell your story” and help educate state legislators about issues impacting Wisconsin’s aging population.

Citizens from around the state will gather in Madison on Tuesday, May 14 for training, to meet with other constituents from your Senate and Assembly district, and for office visits with your legislators. No experience is necessary; you’ll get the training and support you need before meeting with state lawmakers. Following the training, join others from your state Senate and Assembly district to provide information and share personal stories with your legislators to help them understand how specific policy issues and proposals impact you, your family, and older constituents.

A virtual training will be available on May 7 from 1-2 p.m. with a brief overview of this year’s issues and talking points. Not required, but recommended for attendees.

Wisconsin Aging Advocacy Day (WIAAD) Schedule—10:00 a.m. — 3:00 p.m.

Best Western Premier Park Hotel, 22 S. Carroll St.,
Madison and the Wisconsin State Capitol

9:00 – 10:00 a.m.: **Event check-in**,
Best Western Premier Park Hotel

10:00 a.m. - Noon: **Training** - Issue briefing/
advocacy skills, district planning time & lunch,
Best Western Premier Park Hotel

12:15 p.m.: Cross the street to the State
Capitol

12:30 p.m.: **Group photo**, State Capitol –
Martin Luther King, Jr. Entrance (accessible)

1:00 – 3:00 p.m.: **Legislative visits**, advocacy ac-
tivities/networking, check-out and
debriefing, State Capitol Offices and North Hear-
ing Room—2nd Floor

Your voice can make a difference!

The registration deadline is April 29. [Register online](#)
or contact your local aging unit or ADRC. ☐





I am no longer able to serve as agent for a POA. What should I do?

An agent who is no longer willing or able to serve may resign. Wisconsin's health care POA statutes do not provide any information on how to resign, but the agent may want to inform the principal (if possible) and the alternate agent (if any). If the health care POA has been activated, the agent should also inform the principal's providers and/or care facility. It may be helpful to provide notice in writing to avoid any future confusion, but it is not required.

Wisconsin's statutes are more specific about the process for a financial agent to resign. An agent may resign by giving notice to the principal. If the principal is incapacitated, the agent should also provide notice to any co-agents or successor agents or to a guardian if one has been appointed for the individual. If there are no co-agents or successor agents and no guardian, the agent should provide notice to the individual's primary caregiver, another person the agent believes to have sufficient interest in the individual's welfare, or to a government agency that has authority to protect the individual's welfare (e.g., Adult Protective Services). There is no requirement that notice be given in writing, but again, it may be helpful to avoid any confusion in the future. See [Wis. Stat. § 244.18](#).

I recently completed my Power of Attorney/Living Will documents. What should I do with them?

You may make copies of your documents; they are as valid as the original. You can also scan them for later printing if you prefer. Give copies of your health care Power of Attorney and Living Will to your health care providers; you may also want to give a copy to your agent(s). You may want to give a copy of your financial POA to your bank or other financial institution, especially if you intend for your agent to act on your behalf in the near future, but you may also give a copy to your agent or keep it in a safe place and let your agent know where to find it if needed. You should not keep your POAs in a safe deposit box unless your agent has separate access to the box or has access to a copy of your POA stored somewhere else.

You may also be able to file your POAs at your county courthouse for a small fee – check with the probate office to find out the process for that and how your agents may access them if needed.

I am the health care agent for my loved one. May I complete a Medicaid application on their behalf?

No. Effective April 12, 2024, the Department of Health Services [updated its policy](#) on who can sign Medicaid applications to align with federal law on the application process. Previously, a "person acting responsibly" (which could include health care agents, a guardian of the person, health care facility employees, or others acting in the person's interest) could complete a Medicaid application. The new guidance limits applications to financial power of attorney agents, guardians of the estate, conservators, and guardians of the person if the court has granted them the authority to manage public benefits (this must be specifically included in the order and Letters of Guardianship).

If an individual already receives Medicaid, a health care agent or guardian of the person may complete forms to enroll or disenroll them into programs such as Family Care or IRIS.



Title: *Douglas County v. K.A.D.*

Court: Court of Appeals, District III

Date: 02/13/2024

Citation: 2023AP1072

Case Summary

K.A.D (“Kyle”) appealed an order by the Douglas County Circuit Court for involuntary medication and treatment under Wis. Stat. § 51.61(1)(g). Kyle argued that the County failed to prove both that his medication and treatment was adequately explained and that he was incompetent to refuse medication and treatment. The County argued that the case was moot; however, the Court of Appeals found that this case fell under an exception to the mootness doctrine and opted to decide the case on its merits. The Court found that Kyle was given the required explanation of advantages, disadvantages, and alternatives to medication and treatment, and any failures in that regard were excused because they stemmed from Kyle’s own conduct. The Court also stated that there was sufficient evidence to find Kyle incompetent to refuse medication and treatment and affirmed the order.

Case Details

In February 2023, the County filed a Chapter 51 petition against Kyle to obtain an order for commitment and involuntary medication administration, alleging that Kyle was a danger to himself or others. The petition alleged that Kyle had become increasingly paranoid and physically aggressive and had punched a staff member at his residential facility. Kyle was examined by a psychiatrist and a psychologist, and the psychiatrist, Dr. Bales, recommended a six-month commitment with involuntary medication. The court subsequently ordered a commitment to a locked inpatient facility and involuntary medication administration.

On appeal, the County raised the question as to whether the case was moot since the commitment order had already lapsed. The Court decided that this issue is not moot because it is likely that the same issue will recur for Kyle in the future. There was also some discussion of whether the cost of care liability incurred under a medication order is enough to avoid mootness, but the Court opted not to decide that question in this particular case since there were other grounds to justify a decision on the merits.

Kyle argued that the County failed to prove he was adequately informed about the medication’s benefits, side effects, and alternatives, as mandated by Wis. Stat. § 51.61(1)(g)4. Chapter 51 requires patients to be fully informed before a court can determine their competence to refuse medication or treatment. Dr. Bales attempted to educate Kyle on the medication prior to the hearing; however, the informational session was only 5 minutes long and Dr. Bales concluded the session by telling Kyle that there were no good alternatives to medication. The interview was cut short because Kyle exhibited aggression and ended the examination early.

The Court of Appeals concluded that Dr. Bales’ session on its own would not have been sufficient to inform an individual of the benefits, side effects, and alternatives to medication. However, the Court explained that Kyle took steps to waive his right to being fully informed via his aggression and ending the examination early. Furthermore, Dr. Bales also testified that he had created reports on the medications that he attempted to provide to Kyle. The Court concluded that all of these factors created a scenario where Kyle was sufficiently informed under the statute.

The circuit court also relied on Dr. Bales’ report to conclude that Kyle was incompetent to refuse medications and treatment. Kyle argued that Dr. Bales’ report was inadmissible because it was based on

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(Douglas Cty v. K.A.D., cont. from pg 10

hearsay. However, the appellate court concluded that Dr. Bales' report was based on direct observation and, therefore, a legitimate source for the court's finding of incompetence.

The Court then moved to five factors that are considered when determining if an individual is incompetent to refuse medications. These factors consider whether a patient can identify a medication, whether it has been used previously, whether the impact of that previous treatment can be described by patient, whether risk and benefits can be described if the treatment hasn't been previously used, and whether the patient holds any patently false beliefs about the medication/treatment.

After considering the factors in light of Kyle's behavior, the Court found that there was clear and convincing evidence that Kyle was "incapable of expressing an understanding of the advantages and disadvantages of accepting medications and treatment or their alternatives, and he is therefore incompetent to refuse medication." During the medication consultation Kyle did not show competence to refuse medications and he reacted to education with obscene gestures, tearing up information documents, and simply stating that he didn't take medications without identifying risks and benefits. Thus, the Court affirmed the lower court's order for involuntary medication and treatment.

Title: *Winnebago County v T.S.*

Court: Court of Appeals, District II

Date: 03/06/2024

Citation: 2023AP1267

Case Summary

T.S. ("Terry") appealed a decision from the Winnebago County Circuit Court for a six-month mental health commitment and involuntary administration

of medication. Terry argued that the court did not provide specific factual findings for the dangerousness standard and the court did present sufficient evidence. The appellate court ruled for Terry and found that the circuit court did not follow the criteria set out by the case of *Langdale County v. D.J.W.* The circuit court failed to reference a specific standard to support a finding of dangerousness. Even if the lower court had referenced a standard, the appellate court finds insufficient factual findings to support any of the standards.

Case Details

In 2018, Terry was found not guilty by reason of mental defect in a criminal case involving stalking and violating a restraining order. He was subsequently committed to the custody of the Wisconsin Department of Health Services and placed at Mendota Mental Health Institute. In 2023, as his commitment was ending, a Statement of Emergency Detention was filed with Dane County Circuit Court. A court commissioner found probable cause that a Ch. 51 commitment for Terry was proper, and the case was sent to Winnebago County Circuit Court.

The elements for a Ch. 51 commitment are that an individual must be mentally ill, a proper subject for treatment, and dangerous to himself or others. For the first two elements, psychiatrist Dr. Bales testified that Terry suffered from schizoaffective disorder and was a proper subject for treatment. For the final element, Dr. Bales stated that Terry met the second of five possible standards of dangerousness. The second standard states that there is evidence of a "substantial probability of physical harm to other individuals."

Dr. Bales and the Mendota Mental Health Institute associate medical director, Dr. Knudson, also testified to dangerousness under Wis. Stat. § 51.20(1) (am). This section applies to individuals who have received treatment prior to a commitment proceed-

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(*Winnebago Cty v. T.S.*, cont. from pg 11)

ing and recognizes that there may be no recent acts of dangerousness because treatment prevented such behavior.

To support a finding of dangerousness under the second standard, the County relied on Dr. Bales' testimony that Terry threatened staff, tried to headbutt staff, and threatened a peer. Dr. Knudson's testimony on dangerousness under Wis. Stat. § 51.20(1)(am) was based on "incidents at Mendota" when Terry was off medication. One incident was documented in a letter that Terry had written, in which he stated that he was threatened by a peer and he was now "done with being nice" and "started imagining killing for fun." Terry stated that he walked away from the fight and that the language on killing was about wildlife he saw outside because he was a sport hunter.

The Court of Appeals found that the circuit court's order in this case did not comply with *Langdale County v. D.J.W.*, 2020 WI 41, 291, 391 Wis. 2d 231, 942 N.W.2d 277. Under *D.J.W.*, a court must make specific factual findings in relation to a particular subdivision paragraph in Wis. Stat. § 51.20(1)(a)2. The circuit court's oral ruling did not refer to any of the five standards for dangerousness under Wis. Stat. § 51.20(1)(a)2. Furthermore, the appellate court found that the circuit court's remarks "[didn't] track the elements of those standards or explain how the evidence satisfied those elements." Finally, the circuit court failed to check any of the boxes for the five standards in its written order.

The circuit court did refer to evidence under Wis. Stat. § 51.20(1)(am); however, the Court of Appeals held that this is not sufficient to prove dangerousness in the absence of language referencing any of the five standards. The circuit court also referenced psychiatric testimony that highlighted Terry's "potential" for violence. The appellate court found this to be insufficient evidence of any of the five

standards, because these standards require a "substantial probability" of harm to self or others and not just a potential.

The Court then contemplated the remedy for the *D.J.W.* violation in this case. The County argued that Terry cannot be granted reversal because his argument is underdeveloped and because he failed to raise a *D.J.W.* violation at the circuit court level. The Court found that both arguments were unsupported by law. Terry argued that reversal must be granted because of the *D.J.W.* violation and that, in the alternative, the second standard was not met based on insufficient evidence. The County rebutted that there was sufficient evidence for dangerousness under the second standard and that the *D.J.W.* violation was therefore harmless error. However, the Court of Appeals disagreed and stated that one of the reasons for the *D.J.W.* rule is so that the record can be developed with enough facts that the appellate court can review the sufficiency of the evidence for the relevant standard. The Court was hesitant to decide on harmless error or the sufficiency of evidence because, in this instance, the factual findings were too minimal to draw conclusions. The Court also believed it would be improper to do its own fact finding. Thus, the Court found that this *D.J.W.* violation required reversal.

Title: *Winnebago County v B.R.C.*

Court: Court of Appeals, District II

Date: 02/14/2024

Citation: 2023AP1842

Case Summary

B.R.C. ("Brooke") appealed her involuntary commitment and medication orders. Brooke argued that the court failed to make specific factual findings of dangerousness in violation of *Langlade Cty v. D.J.W.* She also argues that the County failed to provide sufficient admissible evidence to find her dangerous

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(Winnebago Cty v. B.R.C., cont. from pg 12)

under Wis. Stat. § 51.20(1)(a)2.a. or 2.b. Finally, Brooke argued that the County failed to provide clear and convincing evidence that she did not understand the advantages and disadvantages of her medication. Therefore, she argued both the commitment and the administration orders should be reversed. The Court of Appeals found that Brooke was properly deemed dangerous and that the trial court did show she did not understand her medications, and affirmed the orders.

Case Details

Winnebago County filed for an Emergency Detention of Brooke in April 2023. She had been taken into custody a few days before the filing following reports by her parents that she was making suicidal statements, had attacked her dad, and exhibited other threatening behavior. Both her parents and the examining psychiatrist, Dr. Bales, testified at the final hearing on the petition for commitment and involuntary medication. At the hearing, Dr. Bales stated that Brooke suffers from bipolar disorder and that she was a danger to herself and others. Dr. Bales and Brooke's parents recounted some recent incidents that indicated a potential danger to self or others, which included going out in the middle of the road at night, scratching her father, threatening her mother, and saying she needed the suicide hotline. At the hearing, Brooke testified that she did not touch her father and that she was taking Abilify, though her testimony did not clarify whether she was doing so because she was required to by the court or of her own free will.

The Court of Appeals first addressed the question of mootness and noted that there might be collateral consequences that would circumvent the mootness doctrine. It appeared that this commitment would be a first-time firearm prohibition for Brooke, and while the county had not yet billed Brooke for medical costs, they could potentially do so at some point

in the future. The Court did not firmly decide if collateral consequences applied in this case, but it nonetheless decided to address the case on its merits.

The Court started by clarifying the need to base a commitment on specific factual findings. This issue has risen to the appellate level frequently since the *D.J.W.* case and the Court took the opportunity to lay out the requirements clearly. The Court noted that while there are no magic words that are required, the circuit court must follow a systematic process. First, it must look to the evidence that was presented and form its opinion. Then, it must summarize the evidence that supports its order. When it is referencing dangerousness at this stage, it must be sure to identify the specific paragraph in the statute that supports dangerousness in the case, and it must tie to evidence to that standard. The appellate court encouraged the circuit to be as detailed as possible. Finally, the circuit court should read aloud the factual findings and conclusions that are in the standard form for commitment and administration orders. In this case the appellate court found that the trial court did make specific factual findings by referencing testimony and relying on a properly admitted report by Dr. Bales.

Brooke also argued on appeal that there was insufficient evidence to find dangerousness under the identified standards. She argued that the testimony of her parents was insufficient and that the report from Dr. Bales was hearsay. The appellate court disagreed and laid out the standard for hearsay for expert testimony. While an expert cannot be a conduit for introducing inadmissible hearsay, the expert can rely on hearsay to form his or her own expert opinions. In this case, hearsay was not an issue because most of Dr. Bales' testimony and conclusions were drawn from his own interviews with Brooke. These reports, along with the testimony of Brooke's parents, created clear and convincing evidence of dangerousness.

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(Winnebago Cty v. B.R.C., cont. from pg 13)

Finally, Brooke contested the medication administration order and argued she was able to understand the advantages and disadvantages of medication. However, Brooke's testimony to the circuit court contradicted itself. She said that she was taking the medication by choice, but also because a court ordered her to do so. In addition, during cross examination, she stated that she was not mentally ill, thus making the appellate court question if she would take her medication as needed without a court order. Additionally, in an interview with Dr. Bales, she stated that she did not see the need for her medication and could not weigh the pros and cons. The Court of Appeals found that the trial court's decision to enforce a medication order in this case was not clearly erroneous and therefore did not meet the standard for reversal.

Title: *Winnebago County v J.D.J.*

Court: Court of Appeals, District II

Date: 02/21/2024

Citation: 2023AP1085

Case Summary

J.D.J appealed a decision to extend his involuntary commitment and medication orders. J.D.J. argued that the evidence presented did not establish that he was dangerous or that he was incompetent to refuse medications. The Court of Appeals agreed that there was not clear and convincing evidence of dangerousness and vacated the commitment. They further concluded that the medication administration order must also be vacated because it requires a commitment order.

Of note, there were a number of questions in this case as to whether the medication J.D.J was incompetent to refuse was the one prescribed to treat his mental illness or medications necessary to treat metabolic syndrome, a physical illness that was reportedly exacerbated by his psychotropic medication. For purposes of an involuntary medication order under Ch. 51, the medication must be the one to treat the mental illness.

Case Details

In early 2023, Winnebago County filed a petition to extend J.D.J.'s commitment. At a hearing in February, Dr. Monese testified that J.D.J. suffered from schizophrenia and would become a proper subject for a commitment if his current commitment was withdrawn. As evidence, Dr. Monese stated that this scenario had happened previously, but did not provide details of that previous incident of commitment withdrawal and relapse.

Dr. Monese also discussed the fact that he had spoken with J.D.J. about medication and found that he was unable to understand the advantages and disadvantages and was incompetent to refuse medication. Dr. Monese testified that J.D.J. was refusing to take metformin, which had been prescribed to treat metabolic syndrome following a substantial weight gain that was attributed to his psychotropic medication. J.D.J. testified that his psychotropic medication had caused harmful effects to his body, including the weight gain, and

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(*Winnebago Cty v. J.D.J.*, cont. from pg 14)

that he did not want to take either med because they were “screwing up [his] senses,” impacting his ability to pray, and that he was continuing to hear voices even while taking it.

The Court of Appeals reviewed the record to discover if the circuit court had adequately proven the fifth standard for dangerousness and if the record showed J.D.J. was incompetent to refuse medication. The fifth standard requires the County to prove, by clear and convincing evidence, five separate elements. These five elements include that a person has a mental illness that causes a substantial impairment, that they have are unable to consent to medication or treatment, that they need to care to prevent further disability or deterioration, that they will lack services necessary for their health safety if left untreated, and that they will suffer severe harm that will result in the loss of their ability to function independently or loss of control over their thoughts and actions.

The Court found that the evidence was insufficient to prove the last element. Dr. Monese testified that this was met because of J.D.J.’s refusal to take his metformin. The Court disagreed, noting that the phrase “left untreated” refers to psychiatric treatment and that metformin is a treatment for a physical condition of metabolic syndrome, not a psychiatric condition. In addition, the Court noted that there was no evidence presented that leaving J.D.J.’s mental illness untreated would change his willingness to treat the metabolic syndrome, give that active treatment had not appeared to make a difference.

The Court found that the failure to meet the last element was sufficient grounds for reversal (and noted in a footnote that the County had not met the third or fourth elements either). But the Court also further concluded that the circuit court did not follow the rule in the *D.J.W.* case and make specific factual findings regarding the standard of dangerousness. The circuit court simply stated in its order that the standard was met because J.D.J. was dangerous to himself, but had not provided specific factual findings to support this conclusion. Since the Court concluded that the commitment order should be reversed, it also reversed the medication order, because it requires that the person be under a commitment. □

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**.

