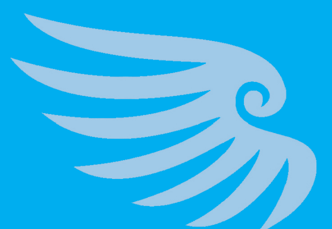

The Guardian

Volume 12, Issue 2 (June 2024)

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

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

To contact the GSC:

Call:
(855) 409-9410

E-mail:
guardian@gwaar.org

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

Subscriptions to *The Guardian* are free. To subscribe, fill out our newsletter contact form.

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July NCLER Webinars

The National Center on Law & Elder Rights has a number of webinars coming up in July. All are free but you must register in advance. Click on the titles below for more information and registration.

- July 16, 1 PM CDT: Trauma Informed Practices: Serving Older Adults Facing Housing Instability
  - Trauma-informed lawyering and advocacy practices aim to reduce re-traumatization and recognize the role trauma plays in the advocate-client relationship. Integrating trauma-informed practices is particularly important when representing clients facing housing instability. This webinar will explore how trauma can appear uniquely for older adults facing a loss or change in their housing and how advocates can adjust their practice to accommodate and empower their clients. The webinar will also explore how trauma can impact older adults in a nursing facility setting who may be facing involuntary discharge.
- July 23, 1 PM CDT: Nursing Home Debt Collection Against Residents, Caregivers and Other Third Parties
  - Long-term nursing home care is expensive. While most older adults rely on Medicare and Medicaid to help pay for their care, these programs often come with significant out-of-pocket expenses and bills for residents to cover. When a nursing home bill is not paid, facilities can pursue several different strategies to collect payment from residents. In some cases, nursing homes will also pursue third parties for these bills, such as family members and caregivers, despite federal law prohibiting third-party guarantees in nursing home admission agreements. This session will provide an overview of how these collection actions come about and will provide attorneys and advocates with the tools to defend these cases.
- July 30, 1 PM CDT: Serving Older Adults with Limited English Proficiency (Rescheduled from July 10)
  - Legal assistance, elder rights, and aging services professionals often work with older adults with limited English proficiency (LEP). At the intersection of their LEP status and older age, they often have unique legal needs and may face barriers to accessing services and supports, especially in a language they understand or prefer. Under Title VI of the Civil Rights Act of 1964, recipients of federal financial assistance cannot discriminate on the basis of national origin and must provide meaningful access to individuals with LEP. Legal assistance, aging services, and elder rights advocates should be well versed in these language access rights and how to utilize tools and strategies to help older adults with LEP access program and services.

Recent NCLER Webinars – Materials and Recordings Available Online

The National Center on Law & Elder Rights has held a number of webinars over the past couple of months and recordings/materials are available online. Topics include:

- Title II Auxiliary Benefits: Social Security Benefits You've Never Heard of, and Who is Eligible for Them (April 30, 2024)
  Recording, slides, chapter summary
- New Federal Policies to Prevent Reverse Mortgage Foreclosures (May 8, 2024)
  Recording, slides
- Strategies for Addressing the Needs of LGBTQ+ Veterans (May 14, 2024)
  Recording, slides, resource guide
- A Deep Dive into HUD's New Income and Asset Rules (June 13, 2024)
  Recording, slides, chapter summary

(Continued on page 3)

- Power of Attorney Revocations 101 (June 25, 2024)
  Recording, slides, tip sheet.

Free Legal Clinics for the Public

There are a number of recurring legal clinics throughout the state on a variety of topics. There may be others in addition to this list; check with the State Bar or your local bar association to find out if there are other free or low-income legal services in your area.

Eau Claire County Bar Free Legal Clinic
Third Wednesday each Month, 5:30-7 p.m.
LE Phillips Library
400 Eau Claire St, Eau Claire

Dane County Bar Association Small Claims Assistance Program (SCAP)
Tuesdays, 9-11:30 a.m.
Dane County Courthouse
215 S Hamilton Street, Madison

Dane County Bar Association Family Law Assistance Center (FLAC)
Wednesdays, 11:30 a.m.-2 p.m. (Spanish assistance available 1st and 3rd Wednesdays)
Dane County Courthouse
215 S Hamilton Street, Madison

La Crosse County Bar Association Free Legal Clinic
Third Wednesday each month, 6-7:30 p.m. (Spanish assistance available 1st and 3rd Tuesdays)
First Baptist Church
1209 Main St., La Crosse

Eviction Defense Project (Legal Action of Wisconsin)
Milwaukee:
  Mondays and Wednesdays, 12:30 pm; 2nd and 4th Friday, 12:30 pm.
  Milwaukee County Courthouse, Room 406
  901 N 9th St, Milwaukee
La Crosse: Fridays beginning at 8:30
La Crosse County Courthouse, 3rd Floor
333 Vine St, La Crosse

Consumer Debt Defense Project (Legal Action of Wisconsin)
Wednesdays, 8:30-11 am
Milwaukee County Courthouse, Room 406
901 N 9th St, Milwaukee

Marquette Volunteer Legal Clinics
Multiple dates available

Milwaukee Mobile Legal Clinic
Multiple dates available
View locations and calendar of events here.

Ozaukee Family Law Assistance Center
Wednesdays, 11:30 am-12:30 pm
Ozaukee County Justice Center Room 211
1201 S Spring St, Port Washington

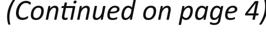
Pierce County Legal Clinic (by phone)
Fourth Wednesday each month, 6-7:30 p.m.
Monthly information available on the Pierce County Clerk of Court Facebook

Sheboygan County Legal Aid Clinic
Second and fourth Thursdays each month, 1-4 p.m.
The Salvation Army
710 Pennsylvania Ave., Sheboygan

St. Croix Valley Bar Association Free Legal Clinic
Third Wednesday of the month, 6-7:30 p.m.
Virtual

Vera Court Neighborhood Center Family Law Clinic
Second Wednesday of the month, 9 am-1 pm
Vera Court Neighborhood Center
614 Vera Court, Madison

Winnebago County Free Legal Assistance Clinic
Multiple dates available.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Guardianship & Voting: Resources for Attorneys and Pro Bono Opportunities

Disability Rights Wisconsin has provided a number of resources to assist individuals under guardianship who want to restore their right to vote. The resources include video trainings, sample forms, and more.

In addition, DRW and its Voting Rights and Guardianship Project are recruiting volunteer attorneys state-wide who are willing to be on a referral list to provide pro bono representation to individuals currently under guardianship of the person who are seeking to restore their voting rights. The focus of this pro bono representation is on amending the existing guardianship order, not full restoration. Individuals who are interested in restoring their right to vote would benefit from legal representation, including filing the sec. 54.64 (2) petition; serving the petition and notice of hearing on the parties designated by the court; preparing supporting evidence; communicating with the GAL and the examining physician/psychologist, if any; advocating at the hearing; and completing and distributing the Order and the Notice of Voting Eligibility. It is estimated that representation will take 20 hours over several months.

For more information or to sign up, contact the DRW Voter Hotline at 844-347-8683 or info@disabilityvote.org, or the State Bar's pro bono portal. ❐

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.**

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.

REGISTER TODAY!

VOTERS LIVING IN RESIDENTIAL SETTINGS – MAKING A PLAN TO VOTE AND KNOWING YOUR RIGHTS

Learn about voting rights for people living in residential settings like a nursing home, adult family home, or community based residential facility (CBRF).

Plan to attend if you are a voter in a residential setting, staff from residential facilities, or anyone interested in this topic.

Join Janet Zander, Advocacy and Public Policy Coordinator at the Greater Wisconsin Agency on Aging Resources, and the Wisconsin Disability Vote Coalition to learn about your voting rights for people living in a residential setting.

July 23, 2024 * 12:00 – 12:45 pm via Zoom

Register at https://bit.ly/VotinginResidentialSettings
or scan the QR code.

Stay tuned for future webinars!

Sign Language Interpreters will be available.

Visit us at DisabilityVote.org

or email us at info@DisabilityVote.org

Need help with voting?

Contact the Disability Rights WI Voter Hotline at 844-DIS-VOTE/ 844-347-8683

Wisconsin Supreme Court Restores Use of Ballot Drop Boxes

On July 5, the Wisconsin Supreme Court issued a 4-3 decision that restored the use of ballot drop boxes in Wisconsin. This decision, which reverses the court's July 2022 decision to prohibit the use of secure voter drop boxes, will be in effect for the upcoming August primary and November general election.
Drop boxes have long been available in some Wisconsin communities and around the country. During the COVID-19 pandemic, when voters wanted a safe and convenient way to return their absentee ballots in time, the number of drop boxes was expanded to 570, available in 66 of Wisconsin's 72 counties. Voter drop boxes are required or broadly accessible in 29 states including neighboring Minnesota, Michigan and Illinois.

Personal Needs Allowance Increase Effective July 1

As of July 1, the personal needs allowance amount for institutionalized individuals on Medicaid increases from $45 to $55 per month. For more information, see DMS Operations Memo 24-13.

DHS Announces New Grant Opportunity to Create Dementia Stabilization Unit

The Department of Health Services (DHS) has announced a grant opportunity to Wisconsin counties interested in developing a dementia crisis stabilization unit (DCSU). This competitive grant opportunity is intended to provide counties with the opportunity to develop a DCSU that will provide crisis assessment, stabilization, and necessary treatment for individuals for whom the crisis is judged to be significantly related to the person's cognitive issues (suspected or diagnosed dementia) and whose needs cannot be appropriately met with other resources in the region. The goal of a DCSU is to stabilize a dementia-related crisis and return the person to their previous residence or a least restrictive setting within 28 days or less. Additional information about the opportunity and the application process can be found here.

DHS Rulemaking Public Comment Period—Crisis Urgent Care and Observation Facilities

Work is underway to create an emergency and permanent state administrative rule for the certification and operation of crisis urgent care and observation facilities. This facility type was created with the enactment of 2023 Wisconsin Act 249. Crisis urgent care and observation facilities are intended to fill a gap in services by offering people experiencing mental health and substance use concerns a no wrong door option to receive immediate supports.

The public is invited to share feedback on the statement of scope for the emergency and permanent state administrative rule. Feedback will be accepted at a virtual preliminary public hearing July 16, 2024, from 3 p.m. to 4 p.m. or anytime in writing now through midnight July 16, 2024. See the notice of preliminary public hearing and comment period for information on how to join the preliminary public hearing or submit written feedback.

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DHS Seeks Input for Upcoming IRIS Waiver Renewal

The Wisconsin Department of Health Services is renewing the IRIS waiver. A waiver is a special set of rules that allows us to have Medicaid programs like the IRIS program. For IRIS, it includes the 1915(c) waiver. With it, DHS can fund services and supports to help IRIS participants stay in their homes and communities.

DHS must renew the waiver every five years. This is a chance for DHS to make the IRIS program better between 2026 and 2031. DHS can improve policy, services, and other things that can make the programs better for participants. To share your feedback, please complete the DHS survey. The survey closes on August 2.

DHS Announces Social Isolation and Loneliness Livable Community Grant Awardees

The Wisconsin Department of Health Services recently announced the award of 37 grants to form or enhance a local coalition and develop innovative and relevant solutions that address the unique needs of local populations and communities related to social isolation.

For more information or to get involved, please visit the DHS American Rescue Plan Act website, which includes information on the organization, contact information, coalition type, and projects that received awards.

DHS Announces New IDD-MH System Improvement Report

The Wisconsin Department of Health Services recently announce the release of the Wisconsin IDD-MH System Improvement Report. The report includes 37 specific recommendations from DHS, self-advocates, partners, providers, and others from across the state for how to improve systems and services for people with intellectual and developmental disabilities and mental health (IDD-MH) needs.

Preventing Heat Exhaustion and Heat Stroke and Recognizing the Warning Signs

By the GWAAR Legal Services Team (for reprint)

As the temperature rises, so does the risk of heat-related illnesses like heat exhaustion and heat stroke. Recognizing the warning signs and understanding the differences between these conditions can help keep you safe and healthy all summer long.

Heat Exhaustion

Heat exhaustion occurs when the body overheats, often due to strenuous activity in hot, humid weather. Symptoms include:

- Heavy sweating
- Cold, pale, and clammy skin
- Muscle cramps
- Fast, weak pulse
- Fatigue, weakness, or dizziness
- Headache
- Nausea or vomiting
- Dark urine or decreased urination

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If left untreated, heat exhaustion can escalate to heat stroke, so it is essential to seek shade, rest, loosen your clothing, and hydrate immediately, when you first experience symptoms. Get medical help right away if you are throwing up, your symptoms worsen, or your symptoms last longer than one hour.

Heat Stroke

Heat stroke is more severe and occurs when the body's temperature rises to 103°F or higher. It can cause damage to the brain, kidneys, and muscles. Warning signs include:

- High body temperature
- Headache
- Dizziness
- Nausea
- Hot, dry, damp, or red skin
- Rapid heartbeat
- Confusion, agitation, or unconsciousness
- Seizures

Heat stroke is a medical emergency and requires immediate medical attention, so call 911 if you suspect you or someone else is suffering from this life-threatening condition! In addition, move the person to a cool place, and help lower their body temperature by putting cool cloths or ice on them. Do NOT give the person anything to drink unless they are fully awake and alert and sitting completely upright. Otherwise, doing so could cause them to choke and aspirate.

Prevention Is Key

To avoid heat-related illnesses, on hot, humid days, be sure to stay hydrated, wear light-colored and breathable clothing, and take breaks in cool, shaded areas. Additionally, never leave children or pets in hot cars. Be sure to also check on neighbors at high risk, such as the elderly or those with chronic health conditions. If you or someone you know is at high risk and is living in a home without air conditioning, be sure they at least have a fan. In addition, on very hot days, suggest they go to a local shelter that has air conditioning.

Most communities offer shelters with air conditioning where members of the public can go to stay cool on particularly hot days.

Conclusion

Knowing the signs of heat exhaustion and heat stroke and taking steps to prevent them can make all the difference when it comes to enjoying a safe and healthy summer. Remember to stay cool, stay hydrated, and stay informed.

New Federal Rules Expand Access to Health Insurance Marketplace for Noncitizens

By the GWAAR Legal Services Team (for reprint)

The US. Department of Health and Human Services (HHS) and the Centers for Medicare and Medicaid Services (CMS) recently finalized a rule that modified the definition of "lawfully present" as it relates to enrollment in the Health Insurance Marketplace. In particular, the regulation clarifies that the following groups are considered "lawfully present" and thus eligible to enroll in plans through the Health Insurance Marketplace:

- Deferred Action for Childhood Arrivals (DACA) Recipients,
- Children with an approved petition for Special Immigrant Juvenile status,
- Children under age 14 who have filed an application for asylum or other humanitarian relief,
- Individuals with a pending application for adjustment to Lawful Permanent Resident status,
- Citizens of the Freely Associated States living

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in the United States under the Compacts of Free Association (COFA) (commonly referred to as COFA migrants), and

- All noncitizens who have been granted employment authorization.

Please note that HHS and CMS have not yet finalized a definition of “lawfully present” for Medicaid and the Children’s Health Insurance Program. The agency is still reviewing public comments about the proposed definition of “lawfully present” as it relates to these programs. The definition of “lawfully present” finalized in this rule is only for the purpose of determining eligibility to enroll in a plan through the Health Insurance Marketplace. It does not apply to any other benefit program.

Newly eligible individuals will be able to enroll during a special enrollment period (SEP) between November 1, 2024 and December 31, 2024. Individuals who use the SEP to enroll in November 2024 will have Marketplace coverage beginning December 1, 2024 if they meet all other eligibility requirements. Those who use the SEP to enroll in December 2024 will have coverage beginning January 1, 2025. In addition, individuals who enroll in coverage in January 2025 during the Marketplace annual open enrollment period will have coverage beginning February 1, 2025.

For more information about eligible immigration statuses for the Marketplace, please see: https://www.healthcare.gov/immigrants/immigration-status/. Individuals can apply for Marketplace coverage online (www.healthcare.gov), by phone (1-800-318-2596 or TTY: 1-855-889-4325), or in person. For assistance applying for coverage in person, please see: https://www.healthcare.gov/find-assistance/.

Supporting Older Adults After Incarceration

By the GWAAR Legal Services Team (for reprint)

Here are some tips to help navigate benefits counseling with someone being released from incarceration.

Medicare

If someone does not have Medicare before being incarcerated, for example, if they turn 65 while incarcerated, they will have the 12-month Special Enrollment Period (SEP) to get into Medicare Part B (and Part A if they do not qualify for premium-free Part A) once they are released from incarceration. This incarceration SEP is available to anyone with a release date on or after January 1, 2023. The form to apply for Medicare using this SEP is CMS-10797.

If someone has Medicare before becoming incarcerated, they can keep Medicare if they continue paying the premiums. However, Medicare will not pay for claims for health care services while the person is incarcerated. Additionally, most individuals pay their Medicare premiums through their Social Security benefit check, but if they are incarcerated for longer than 30 days, they are no longer eligible for a check. Often times, then the premiums will go unpaid, and the person will be disenrolled from Medicare after the three-month grace period. However, then, upon release from incarceration, even if the beneficiary uses the incarceration SEP to reenroll in Medicare, they will have three-month grace period premiums deducted from their first Social Security benefit check. To prevent this, the person should affirmatively disenroll from Part B before incarceration and then use the leaving incarceration SEP upon release.

The individual will also need a Medicare Advantage (MA) plan with drug coverage or a Part D plan. When they are released, they will have an SEP to join a Part D plan or a Medicare Advantage Plan. Their SEP begins as early as the month before re-

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lease and lasts up to two months after release. Additionally, while incarcerated, beneficiaries are considered to be outside the service area. They are not eligible for Part D and as a result, the time they are incarcerated does not count towards the Part D late enrollment penalty.

If someone misses the SEP, there may be other ways to help get them into an MA plan or Part D plan. First, if they qualify for Medicaid and/or a Medicare Savings Plan (MSP), they will qualify for the Low-Income Subsidy (LIS) and will be automatically enrolled into a low-cost Part D plan. If they have QMB, this program will pick up costs that Medicare leaves behind and full-benefit Medicaid will cover most of these costs and more, but if they only have SLMB or SLMB+, they will probably also want a Medicare Advantage (MA) plan or Supplement. To get into an MA plan, they can use the LIS SEP or any other SEP for which they may qualify.

If the individual does not qualify for Medicaid or an MSP or any of the other SEPs and they are over 65, they can apply for SeniorCare. SeniorCare counts as creditable drug coverage. Additionally, if they are level 2b or 3 of SeniorCare, they would qualify for the State Pharmaceutical Assistance Program (SPAP) SEP and can get into an MA or Part D plan that way.

Social Security Disability Insurance (SSDI), Social Security Retirement (SSRE), and Supplemental Security Income (SSI)

Someone is not eligible for an SSI, SSDI, or SSRE benefit if they are incarcerated for more than 30 days. Sometimes, these benefits are not stopped right away, and this may result in an overpayment. Once the person is released from incarceration, their benefits can be reinstated the month following release. For SSI, if the person is incarcerated for 12 or more months, they must submit a new application.
The Social Security Administration (SSA) also has a prerelease procedure so that incarcerated individuals may apply for their benefits prior to release. (See POMS SI 00520.900 Prerelease Procedure - Institutionalization). For reinstatement information regarding Title II benefits (SSDI and SSRE), see GN 02607.840 Retirement, Survivors, and Disability Insurance (Title II) Reinstatement Policies for Prisoners.

Other Benefits

When someone leaves incarceration, they might not have income right away, or even when they do get income, they still may need assistance. It's a good idea to do a full benefits check up to see if someone qualifies for a Medicaid program, FoodShare, Energy Assistance, or any other benefit for which they may be eligible. To apply for these benefits, someone can contact their local Income Maintenance Consortium, Aging and Disability Resource Center, and/or Elder Benefit Specialist.

GWAAR Welcomes Emily O'Fallon

Please help us welcome Emily O'Fallon to the GWAAR Elder Law & Advocacy Center! Emily just finished her first year as a law student at Marquette University Law School and is doing an internship in the GWAAR legal services programs this summer to gain experience in elder law, public benefits, advance directives, and guardianship. Emily is part of the Estate Planning Society at her law school and has volunteered at Legal Action of Wisconsin, Wills for Heroes clinics, and the Milwaukee Justice Center where she worked on the adult guardianship forms clinic. Prior to attending law school, Emily worked as an admissions clerk in a nursing home. Emily enjoys traveling and has spent a month in both Morocco and New Zealand. In her free time, Emily plays the violin and oboe. She also loves dogs. Please help us welcome Emily to GWAAR this summer! ❒

If a ward has a standby guardian, does the standby guardian need to be contacted in addition to the guardian for every decision? When does the standby guardian have the authority to act?

A standby guardian does not need to be contacted for decisions. The standby does not have authority to act until they have formally assumed their duties, either temporarily or permanently. If the initial guardian will be unavailable for a period of time (e.g., on vacation or handling their own medical emergency) or if the initial guardian resigns, becomes incapacitated, or dies, the standby must notify the court using form GN-3220 and will receive new Letters of Guardianship outlining their authority and the effective dates.

A court may order that certain information (e.g., medical records) should be shared with a standby guardian. This does not authorize the standby to make decisions for the ward—they are only authorized to receive the specific information authorized in the order.

If an individual already under guardianship later gets married, is the guardianship automatically terminated?

No. Guardianship can only be modified or terminated by a court. The ward or an interested person can file a petition to terminate the guardianship if the ward marries a competent spouse. The court is required to review the guardianship and may terminate it if appropriate for the ward. See Wis. Stat. § 54.62(2)(d).

In addition, the new spouse does not automatically become the guardian if they were not already appointed to that role. If they wish to become the guardian, the current guardian must step down or be removed by the court and the court must find that appointment of the new spouse is in the ward's best interest.

The state power of attorney forms do not provide enough room to include my special instructions. Can I add an addendum to the state form?

Yes, an addendum or attachment can be added to the state forms. Any attachment should be referenced in the main document and witnessed on the same date and in the same manner as the main document.
The state POA forms include a blank space for the principal to include any additional statements or clarifications of their wishes or instructions. The blank space is sometimes not enough room to include everything. Individuals who want to use the state forms but find they do not have enough room for their additional information can include an addendum to the POA document. Best practice would be to include reference to the addendum within the body of the main POA document. One way to do this would be to include the phrase "see attached addendum" or something similar in the space provided for additional instructions.

In addition, the addendum should be signed, dated, and witnessed at the same time as the main POA to make clear that it is part of the same document and help avoid questions about the validity of the addendum.
The law is silent on whether amendments to a POA would be valid. It is not recommended to add an addendum with substantial instructions or information after the POA is executed. If the principal wants to make a change to a previously executed POA document, they can execute a new POA instead of making changes to the previous document.❒

Title: *Waukesha County v. M.A.C.*
Court: Wisconsin Supreme Court
Date: July 5, 2024
Citation: 2024 WI 30

Case Summary

M.A.C. challenges recommitment and involuntary medication orders on three grounds. First, she argues that a person subject to commitment has a right to notice of recommitment and involuntary medication hearings. Second, she asserts that default judgment is unavailable in those hearings. Third, she claims that the County failed to provide sufficient evidence that she should be involuntarily medicated. The Supreme Court of Wisconsin agreed with M.A.C. on all three grounds, reversing the Court of Appeals and overruling the contrary holdings of *Waukesha County v. S.L.L.*, 2019 WI 66, 387 Wis. 2d 333, 929 N.W.2d 140.

Case Details

M.A.C. has mental health disorders and was committed in Waukesha County in 2020. At that time, the court ordered outpatient commitment and involuntary medication. The commitment was extended twice. During her last extension, M.A.C. was homeless. She was taking three medications, one by injection at appointments with the county health department; she missed some of her scheduled appointments, and on multiple occasions, the department sought orders for M.A.C. to be taken into custody for injection. The department also reported that M.A.C. refused temporary housing during this time.

Six weeks before M.A.C.'s extension expired, the County filed another petition for extension. The petition noted that she was homeless and that documents should be sent to her case manager. The court issued a notice of hearing the same day; M.A.C.'s copy was sent to her case manager. The court also appointed two doctors to examine M.A.C. and notified them that she was homeless and documents should be sent to her case manager.

Three weeks later, the county filed a Notice of Extension of Commitment Hearing and Witnesses. This notice was addressed to the "State Public Defender Office" and M.A.C.; M.A.C.'s address was listed as "Homeless C/O Danielle Weber, Case Manager." The notice listed three potential witnesses for the recommitment hearing: M.A.C.'s case manager and the two court-appointed doctors.

Both court-appointed doctors filed examination reports in the days before the hearing. Both reported that they had completed their evaluations based on collateral reports because they had been unable to meet with M.A.C. Both recommended recommitment based on her history, but also answered "N/A" in the section of the report that asked whether they had explained medication options to M.A.C.

M.A.C. did not appear at the hearing. Her appointed counsel was present, but reported that she had not spoken with M.A.C. at all. Both she and the case worker reported that they had been trying unsuccessfuly to reach M.A.C. In M.A.C.'s absence, the court asked the parties how to resolve the hearing. Counsel for both sides proposed dispositions. The County asked for a default judgment and suggested that a detention order would not be appropriate. The County asked the court to "rely upon the doctor reports" to make factual findings and order recommitment. M.A.C.'s appointed counsel said she had "no direction" from M.A.C. and "didn't know [M.A.C.'s] position." Counsel did suggest that M.A.C. would likely not want to be detained. Counsel said she was "not in a position to object" to the County's proposed factual findings.

The court found M.A.C. in default. The court made findings based on the doctors' reports and her failure to appear. It also found that M.A.C. appeared by counsel. Ultimately, the court determined that M.A.C. met the conditions for continued commit-

(Continued on page 13)

(Waukesha Cty v. M.A.C., cont. from pg 12)

ment because she was mentally ill, a proper subject for treatment, and dangerous. Further, the court found that the advantages, disadvantages, and alternatives to medication had been explained to M.A.C. and that she was incompetent to refuse medication. The court ordered involuntary medication and a twelve-month extension of commitment. M.A.C. appealed.

On appeal, M.A.C. argued that: (1) the County should have provided notice of the hearing to M.A.C. under Wis. Stat. § 51.20(10)(a) and as a matter of due process, (2) the circuit court improperly granted a default judgment, and (3) the County presented insufficient evidence to show that she was incompetent to refuse medication. The Court of Appeals affirmed. For each of the first two issues raised by M.A.C., the Court emphasized it was "bound by *S.L.L.*," in which the Supreme Court had found that it was sufficient to serve notice on a subject's counsel and that a court could issue a default judgment in a Ch. 51 case. *Waukesha County v. S.L.L.*, 2019 WI 66, 387 Wis. 2d 333, 929 N.W.2d 140. The Court of Appeals found that M.A.C. forfeited her claim by failing to object to the County's evidence in circuit court.

The Supreme Court of Wisconsin agreed to review the case and ultimately addressed all three issues. First, with regard to the notice requirement, the Court found that Ch. 51 requires that notice be provided to the individual *and* their counsel. While the rules of civil procedure generally note that notice to counsel is sufficient, Ch. 51 includes language to indicate that these rules apply "[e]xcept as otherwise provided in [chapter 51]." Wis. Stat § 51.20(10)(c). The civil rules contain a similar self-limitation. *See* Wis. Stat. § 801.01(2). The Court reasoned that since the legislature did prescribe a procedure for notice in chapter 51, counties must notify both the subject individual and their counsel.

In addition, the Court noted that while it had previously addressed the notice issue in *S.L.L.*, the reasoning in *S.L.L.* was unsound because it did not adequately address the plain text of Wis. Stat. § 51.20 (10)(a). In *S.L.L.*, the court addressed § 51.20(10)(a) only in response to the dissent and only in the footnote, where it reasoned it would be difficult to read a personal-service mandate into §51.20(10)(a). This Court disagreed and held that the plain text of the statutes supported the requirement that the individual needed to receive their own notice of hearings. The Court also held that the same requirement applies to hearings for involuntary medications, not just hearings for commitment, because the language of that statute is similar.

On the second issue, default judgment, Wis. Stat. § 51.20(10(d) provides that a court may issue an order to detain the individual if the individual fails to appear at a hearing. M.A.C. argued that the detention order is the outer limit on the court's power, while the County suggested that the circuit court can go further and enter a default judgment. The Court agreed with M.A.C. that the detention order is the outer limit on the circuit court's power, noting that the legislature did not include a default judgment provision in Ch. 51. The court may take evidence about the cause of the non-appearance. Then, based on that evidence, the court has two options: issue a detention or adjourn the hearing.

The Court noted that in Wis. Stat. § 51.20(10)(c), the legislature said that "the court shall hold a final hearing" to determine if recommitment is appropriate. In an earlier case, the Court of Appeals reasoned that summary judgment would shortchange subject individuals by depriving them of a commitment hearing. *In re Mental Condition of Shirley J.C.*, 172 Wis. 2d 371, 378, 493 N.W.2d 382 (Ct. App. 1992). Similarly, this Court reasoned that if a court entered a default judgment, it would undermine the legislature's mandate that the court hold a hearing. The Court looked to precedent from the United States Supreme Court as well, which noted that this is especially important in the context of a civil com-

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mitment because it "constitutes a significant deprivation of liberty." *Addington v. Texas*, 441 U.S. 418, 425, 99 S. Ct. 1804, 60 L. Ed. 2d 323 (1979). This Court further held that given the severity of a default judgment and the important interests at stake, it would decline to read default judgment into chapter 51's recommitment process. The Court also addressed its previous decision in *S.L.L.*, which had permitted default judgments in recommitment hearings. This Court found that holding unsound in principle and overruled it.

Based on similar language in the statutes for involuntary medication hearings, the Court also found that default judgment is not available in involuntary medication hearings. The Court reached this conclusion by looking at the statute's text of § 51.61(1)(g) 3. In § 51.61(1)(g)3., the legislature said that a court orders involuntary medication "following a hearing." Further, the statutory text stated that the involuntary medication hearing shall meet the same requirements as other hearings under chapter 51. The Court reasoned that under those requirements, a hearing must conform to the essentials of due process and fair treatment, including the right to counsel and present and cross-examine witnesses. Wis. Stat. § 51.20(5)(a).

The Court further reasoned that if a circuit court were allowed to enter a default judgment, it would undermine the directive to hold a fair hearing. The Court drew similarities between criminal cases, which do not have default judgments, and commitment proceedings. All these hearings implicate liberty interests. The Court reasoned that, like summary judgment, default judgment undermines the hearing mandate and would violate the statutory requirement to hold hearings with "fair treatment." *See* Wis. Stat. § 51.20(5)(a).

For the third issue, M.A.C. argued that the County did not provide sufficient evidence for the circuit court to order involuntary medication. The County argued that she had forfeited this argument by not raising it at the hearing. The Court agreed with M.A.C., noting that Wis. Stat. § 805.17(4) allows questions of sufficiency of the evidence to be raised whether or not the party objected in the trial court. In addressing the merits, the Court noted that Wis. Stat. § 51.61(1)(g)4. requires the County prove that the individual is unable to make informed choice to accept or refuse medications. Past case law also requires that the County prove that the individual was provided with an adequate explanation of medication options to make an informed choice possible at all. *Outagamie County v. Melanie L.*, 2013 WI 67, 349 Wis. 2d 148, 833 N.W.2d 607.

Relying on its holdings in *Melanie L.* that the evidence cannot be perfunctory and the County must actually prove the person received an explanation of the advantages, disadvantages, and alternatives with respect to medication, the Court held that the circuit court erred when it concluded M.A.C. had received this explanation given that the doctors' reports show that the opposite is true.

In overruling *S.L.L.*, this case leaves a number of questions unanswered, including whether detention tolls the statutory timeframes for hearings and how notice should be provided to the individual if they cannot be located.

Title: *My Choice Wisconsin v. S.L.H.-K.*
Court: Court of Appeals, District I
Date: 04/09/2024
Citation: 2022AP1461

Case Summary

This case involves the appeal of the circuit court's orders granting guardianship and protective placement of S.L.H.-K. ("Sarah"). Sarah argues that her power of attorney for healthcare ("HPOA") rendered guardianship unnecessary, and thus, the petitions for guardianship and protective placement should

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(My Choice v. S.L.H-K., cont. from pg 14)

have been dismissed. My Choice Wisconsin brought the petitions because Sarah's agents were unavailable to the extent needed. The Court agreed with Sarah, stating that My Choice failed to prove that guardianship was necessary. Thus, the guardianship and protective placement orders were reversed, and Sarah's HPOA was reinstated.

Case Details

Sarah had been diagnosed with neurocognitive disorder and paranoid schizophrenia and demonstrated severe levels of cognitive, academic, social, and functional impairment. She had signed an HPOA in May 2021, which was later activated in July of the same year based on a certification of incapacity by Dr. Michael Kula and a certified physician assistant. My Choice Wisconsin filed petitions for guardianship and protective placement in December 2021, stating that Sarah required "heightened decision[-]making support." The petitions noted that Sarah frequently eloped from her group home and that her HPOA agent, D.K., and the alternative, C.K., were often unreachable over the phone or were too busy with great-grandchildren.

At the hearing, Nina Gelfand, Sarah's nurse case manager, and Michelle Hernandez, a program coordinator, were called to testify by My Choice Wisconsin. Gelfand and Hernandez testified that Sarah's current placement at her group home was the "most safe and least-restrictive environment for her." Gelfand further testified that even if guardianship were not granted, all the support and assistance she currently receives would continue as long as she is enrolled in My Choice Wisconsin. When asked why guardianship was necessary since there was an HPOA, Gelfand testified that Sarah's agents were unavailable "to the degree needed." She specifically noted times when Sarah had eloped, and the agents could not be reached via telephone and did not participate in the search for Sarah. Gelfand nominated Easter Seals to serve as Sarah's guardian.

Sarah testified on her own behalf, stating that she did not want a guardian and that she believed that she could make all necessary decisions with the help of her family. She testified that she was committed to taking her medications and did not want to stop.

The circuit court granted the petition for guardianship and protective placement, stating that the lack of communication with the health care agents, as well as Ms. Gelfand's desire to work with the corporate guardian Easter Seals to take some dramatic steps to improve and help Sarah's situation, made granting the petitions appropriate in light of the HPOA.

The Court of Appeals focused on whether Sarah's HPOA rendered guardianship unnecessary. According to Wis. Stat. § 54.46(1)(a)2, a court should dismiss a petition for guardianship if the court finds "advance planning by the ward … renders guardianship unnecessary." The types of advance planning include "any advance planning for financial and health care decision making that would avoid guardianship," such as power of attorney for health care. Wis. Stat. § 54.10(3)(c). The Court of Appeals concluded that My Choice Wisconsin failed to establish by clear and convincing evidence that guardianship and protective placement were necessary and that Sarah's HPOA should be revoked.

One of the points of contention was the scope of the health care agent's duties. Sarah argued that searching for her after she eloped was outside the scope of an agent's duties. My Choice conceded to Sarah's argument, but said that this limitation on their authority was the problem, and created the need for guardianship. However, the Court of Appeals noted that My Choice Wisconsin failed to identify what non-healthcare support was needed outside of the services Sarah was already receiving at her current group home. Gelfand's testimony established that these services were to be continued regardless of the outcome of the guardianship petition. In addition, the Court noted that there was no

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evidence presented at the hearing that the HPOA agents were unavailable to speak with Sarah's doctors, refused to allow her to obtain medical care, encouraged her to discontinue or refuse her medications, or undermined the services provided to Sarah by her group home. The testimony reflected that My Choice Wisconsin initially sought guardianship based on Sarah's elopements and the agents' lack of help searching for her. They did not present any evidence explaining how or why the appointment of a third-party corporate guardian would prevent Sarah from eloping.

In support of its argument, My Choice Wisconsin pointed to *Sauk County v. W.B.*, 21AP322 (WI App Sept. 9, 2022), where the court rejected an argument that an HPOA rendered guardianship for W.B. unnecessary. In that case, guardianship was sought to prevent W.B. from moving out of a nursing home. In contrast to Sarah's situation, guardianship was not sought to keep her at her current placement. She testified at the hearing that she enjoyed living at her current placement and had no desire to leave; the Court ruled that Sauk County v. W.B. was not an appropriate case for this situation. (Note: this case was included in the GSC's October 2022 newsletter). Thus, the Court found that the petitions were improperly granted and reversed.

Title: *Outagamie County H.H.S. v L.C.E.*
Court: Court of Appeals, District III
Date: June 4, 2024
Citation: 2023AP929

Case Summary

Lauren is under guardianship and has a history of involuntary commitments. In 2021, the Court of Appeals reversed a commitment extension (2021AP324, WI App Sept. 8, 2021). Outagamie County subsequently filed a petition for protective placement under Ch. 55, which was granted. In this appeal, Lauren argues that the Outagamie Department of Health and Human Services failed to prove, by clear and convincing evidence, that she is so incapable of providing for her care as to create a substantial risk of serious harm to herself or others as required under Wis. Stat. § 55.08(1)(c). The Court of Appeals agreed and reversed the protective placement order.

Case Details

Lauren was found to be incompetent in 2018 due to a developmental disability and was appointed a guardian of her person and a guardian of her estate under Wis. Stat. ch. 54. In 2019, Lauren was evicted from her apartment and was involuntarily committed under Wis. Stat. ch. 51. During this period of involuntary commitment, Lauren eloped from the mental health facility, moved back to her apartment, and then further eloped to Chicago before being returned to her mental health facility, where she spent time at both the facility and the hospital due to her being "acutely psychotic." Afterward, Lauren was placed in an apartment that was managed by a mental health provider and had staff to assist Lauren with medication management and various activities of daily living. This housing arrangement was "contingent upon or...management through" Lauren's commitment. Lauren's commitment was extended in 2020; however, in September 2021, the Court of Appeals reversed the order, finding that the circuit court had failed to make specific factual findings regarding Lauren's dangerousness. Following that reversal, Outagamie County petitioned to have Lauren protectively placed under Wis. Stat. ch. 55.

At the protective placement hearing, the County called Kim Luke, a community support specialist working with Lauren, and Dr. Michele Andrade to testify. Luke's testimony was primarily about Lauren's condition in the apartment. This included details such as that Lauren "would prefer to have no involvement with any kind of county management"

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and that Lauren would like to leave the apartment. Luke also offered her opinions on several things: that money would not be a motivator to keep Lauren at the apartment due to impulsiveness; that if she left the apartment, she would be "vulnerable to abuse of other people;" she might stop taking her medication and mental health symptoms might reappear; and she may not be able to complete her activities of daily living without prompts from mental health workers.

Dr. Andrade testified that Lauren's incapacity was permanent and due to the incapacity, Lauren was "so incapable of providing for her care or custody as to create a substantial risk of serious harm to herself or others." Andrade stated that Lauren did not keep her apartment clean, and it was "quite dirty;" she was concerned that her physical environment would deteriorate even more if she were no longer protected. Andrade further opined that Lauren might not take her medication without the protective placement. To support this statement, Andrade mentioned that Lauren "jumped out of a two-story window." However, Lauren testified that she had never jumped out of a two-story window. She also testified that she had been searching for an apartment to live in, that she would take her medication without the County's help, and that her family was willing to help her.

The circuit court agreed with the County, stating that it took notice of her ch. 51 "file" and Dr. Andrade's report. The court found that Lauren's incapacity rendered her incapable of providing for her own care based on her overall history, including jumping out of a two-story window and noncompliance with her treatment plan without daily support. Further, the court stated that without the protective placement, she would not be able to prevent herself from being financially exploited.

Lauren appealed this decision, stating that the County failed to prove that she could not provide for her care to create a substantial risk of serious harm to herself or others. Lauren argued that the County only provided speculative and vague testimony about her dangerousness.

For a court to order that Lauren be protectively placed under Wis. Stat. ch. 55, the County was required to prove by clear and convincing evidence that Lauren's incapacities made her so incapable of proving for her care as to create a substantial risk of serious harm to herself or others. Serious harm may be proven by overt acts or by acts of omission, per Wis. Stat. §55.08(1)(c). The risk of harm must be substantial, and it must be foreseeable and not mere speculation.

The Court of Appeals compared Lauren's case to *Wood County v. Zebulon K.*, 2013 WI App 41, 346 Wis. 2d 731, 828 N.W.2d 592, where it had reversed the protective placement of two brothers because the County failed to prove that the brothers were so incapable of providing for their care as to create a substantial risk of serious harm to themselves. The County presented evidence that the brothers suffered from developmental disabilities and, because of their disabilities, were unable to prevent financial exploitation, were not safe from being manipulated, and were unable to meet their own hygiene needs. However, on appeal, the court stated that while there were concerns about the brothers' abilities to provide for their care, there was nothing in the record to establish that they were *incapable* of providing for their care, and nothing in the record established that their incapacities created a "substantial risk of serious harm" to themselves or others.

Similarly, the Court noted that the testimony of the experts alone did not provide specific examples of Lauren being so incapable of providing for her care as to create a substantial risk of serious harm to herself or others. All the statements in Luke's testimony were vague and speculative. Luke did not specify what kind of abuse Lauren would be "vulnerable

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to," what activities Lauren may not be able to perform on her own, or how any of these concerns would lead to serious harm to Lauren or others. As such, the Court held that this evidence did not rise to the specific and substantial risk of serious harm required by the statute 55.08(1)(c). Further, the protective placement would not change Lauren's financial guardianship remains unchanged and the Court held that the record did not support the finding that she would be vulnerable to financial exploitation.

The Court also determined that Dr. Andrade's testimony did not prove that Lauren cannot provide for her care to create a substantial risk of serious harm to herself or others. Vague concerns about hygiene or Lauren's apartment being dirty did not rise to the level of specific harms needed to justify a protective placement. Further, to support her testimony, Dr. Andrade used the example of Lauren jumping out of a two-story window. However, Dr. Andrade's knowledge of the incident came from collateral sources and no other witnesses were available to confirm whether the incident was true, and Lauren herself testified that she had not jumped. Without further proof, the circuit court could not rely on Dr. Andrade's testimony about this allegation as proof of Lauren's risk to herself.

The Court held that while the County had presented evidence that Lauren did not always make the best decisions for herself, there was not enough evidence prove that she presented a substantial risk of specific, foreseeable, and serious harm to herself or others. The Court thus reversed Lauren's protective placement order.

Title: Outagamie County v. C.J.A.
Court: Court of Appeals, District III
Date: April 12, 2024
Citation: 2022AP2186

Case Summary:

C.J.A. ("Catherine") appeals a recommitment order entered according to Wis. Stat. § 51.20, arguing that the County failed to prove that she is currently dangerous. She claims that the County only provided evidence pointing to her past and potential future dangers. She also claims that the County did not prove that there was a substantial likelihood that she would become dangerous if treatment were stopped. However, the court of appeals found that the County provided sufficient evidence to prove that Catherine is currently dangerous and the other required elements for her recommitment under Wis. Stat. § 51.20 and affirmed the recommitment order.

GSC Note: Catherine has had a number of appeals of her commitments. An appeal of the 2016 initial commitment appeared in the GSC's March 2018 newsletter. In 2022, Catherine's appeal resulted in a reversal of her extension order in a published decision; this is covered in our July 2022 newsletter. This case involves a subsequent recommitment.

Case Details

Catherine threatened a judge in 2011, and following her prosecution, she was placed on probation, where she started receiving mental health services. After a few years, these services became voluntary, she discontinued treatment, and her mental health declined. In September 2016, Catherine was emergently detained after allegedly making violent threats towards the same judge and appearing at the judge's home with a knife. After a hearing, Catherine was involuntarily committed under Wis. Stat. § 51.20 for six months; she has been consecutively recommitted six times for twelve months each.
In September 2022, the County filed another petition to recommit Catherine, alleging that there was a substantial likelihood, based on her treatment record, that she would be a subject for commitment if treatment were withdrawn. At the hearing, the County presented two witnesses: Dr. Marshall Bales,

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Catherine's treating psychiatrist, and Russ Marmor, a clinical coordinator for the County. Dr. Bales testified to Catherine's medication regimen, stating that he believed that without a commitment in place, she would stop the medication because she believed she did not need it. Further, Dr. Bales stated that if she were to stop medication, Catherine would become dangerous again, but could not predict specifically how. Dr. Bales testified that Catherine still denies ever having threatened a judge in the past; he also stated that she has not made any new threats while on her treatment regimen but continues to dispute the past events and becomes upset when they are brought up. In addition, Marmor testified that the original emergency detention in 2016 was sought due to Catherine threatening a judge and that these threats were "well documented" and were "homicidal threats."

The circuit court found that the County met the elements for recommitment and entered an order extending Catherine's commitment for twelve months. The court relied on testimony that Catherine would likely stop her medication and stop seeing County health providers. The court considered previous instances when Catherine stopped her medication and her mental health declined; the court also linked how irritable Catherine gets when the threatening judge incident is brought up to concerns that she would again become violent. The court specifically found that, like in the past, Catherine's prior symptoms would "come forward," and she would begin engaging in threatening behaviors that would place others in fear of violence and serious physical harm again.

On appeal, Catherine's main argument was that the County's only evidence of her dangerousness was stale and vague allegations of her past threats. Because an individual may not have any recent overt acts or omissions while receiving treatment, courts may consider past incidents to prove current dangerousness. *See Portage County v. J.W.K.*, 2019 WI 54, 386 Wis. 2d 672, 927 N.W.2d 509. Here, the Court concluded that the County met its burden to prove Catherine's current dangerousness and that the circuit court's legal analysis was sound. The key determinations were that Catherine needs her medication to avoid decompensating, she would likely stop taking that medication absent a court order, and she would exhibit symptoms that are much more likely than not to lead her to engage in violent and threatening behavior against others. The Court affirmed Catherine's commitment.

Title: *St. Croix County v. B.T.C.*
Court: Court of Appeals, District III
Date: June 11, 2024
Citation: 2023AP2085-FT

Case Summary

B.T.C. ("Bob") appeals an order for his involuntary commitment according to Wis. Stat. § 51.20 and an order for his involuntary medication and treatment according to Wis. Stat. § 51.61(1)(g). Bob argues that the County failed to prove that he is dangerous under § 51.20(1)(a)2.b. Specifically, Bob argues that the County's claim of dangerousness, Bob's statement that he was going to bring the police chief to justice, is too vague to support a finding of dangerousness. The Court agreed that without more context, the statement alone is too vague and reversed the orders for involuntary commitment and involuntary medication.

Case Details:

Bob was taken into criminal custody in February 2023 after allegedly making a threatening statement against the police chief, specifically, that he was going to "bring the police chief to justice." While in jail, staff became concerned about his mental health and contacted a crisis responder, which resulted in his emergent detainment. Following a hearing, the circuit court found that Bob was mentally ill, a proper subject for treatment, and dangerous to himself

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or others, all the elements necessary for commitment under ch. 51.

At the final hearing, Dr. Jeffrey Marcus, a psychiatrist, Nathan Cundiff, a case manager, and Dr. John Bartholow, the inpatient psychiatrist, all testified. Cundiff stated that it is normal for a person to be upset when they are in jail and that “bringing someone to justice” is a “vague statement” that “can mean a lot of different things.” Dr. Marcus testified that he believed that Bob posed a danger to himself or others due to his threat of harm to a police officer and noted that there had been other incidents leading up to that. A criminal complaint included several of those concerning incidents. Dr. Bartholow testified that Bob was not competent to refuse medication because he was incapable of understanding his medication or treatment. Bob’s stepson testified on his behalf, speaking about his good character and about the struggles he recently went through; his wife and “best friend” just passed away. The circuit court found that there was sufficient evidence that Bob was mentally ill and a proper subject for treatment. Further, the court found that Bob was dangerous due to Bob’s threat to the police chief.

On appeal, Bob argued that the County did not present sufficient evidence to prove he was dangerous under Wis. Stat. § 51.20(1)(a)2.b. For this standard, dangerousness can be established by proving that the individual shows a substantial probability of physical harm to other individuals as manifested by evidence of recent homicidal or other violent behavior or by evidence that others are placed in reasonable fear of violent behavior and serious physical harm to them, as evidenced by a recent overt act, attempt or threat to do serious physical harm. Wis. Stat. § 51.20(1)(a)2.b. Bob argued that the County failed to provide any context for the statement to indicate specific threats or risk of harm and that all that is known is that at an unspecified time, in an unspecified context, Bob said he “needed to bring the chief to justice.”

The Court agreed with Bob that the record lacks context and detail to support that his sole allegedly threatening statement does not make it much more likely than not that he will physically harm others. The Court noted that the circuit court had described the alleged threat as vague and looked to Dr. Marcus’s report to fill in the blanks, primarily relying on hearsay information from the criminal complaint.

The court then stated that, with the context provided by Marcus’s report, Bob’s statement has a “dark and sinister” meaning. However, the criminal complaint itself was never admitted into evidence at the final hearing nor given to the Court on appeal. Without the complaint, the Court had no context in which to evaluate the dangerousness of Bob’s statements. The Court noted that “bring the chief to justice” can mean various, non-threatening things without context to make clear whether it truly is a threat. Furthermore, The Court stated that nothing in the record suggested that the criminal complaint had been adjudicated as being true or accurate, and that the County therefore could not rely on it to claim the allegations as truth.

The County argued that Dr. Marcus was permitted to base his expert opinion on secondary sources and the circuit court was permitted to rely on that opinion, but the Court rejected that argument. Per Wis. Stat. § 907.03, the information relied upon by the expert is not “automatically admitted into evidence.” Dr. Marcus could testify that he had read it and that based on what he had read, he had formed an opinion; he could not testify as to whether the allegations in the collateral sources were true. Thus, any reliance by the court on the criminal complaint, or any other hearsay from Dr. Marcus’s testimony or report would have been clearly erroneous.
Because the Court found that the circuit court’s findings were clearly erroneous. It reversed the orders of involuntary commitment and involuntary medication and treatment.❒