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STATE OF WISCONSIN

IN SUPREME COURT

Case No. 2021AP000322

In the matter of the condition of W.B.:
SAUK COUNTY,

Petitioner-Respondent,

v.

W.B.,

Respondent-Appellant-Petitioner.

PETITION FOR REVIEW

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ISSUE PRESENTED

In 2012, when he was competent, W.B. executed a durable power of attorney for finances and a power of attorney for health care. Those powers of attorney were activated after W.B. suffered a stroke in 2015 and was declared incapacitated. Thereafter, J.B., acting as agent pursuant to the authority granted to him by the power of attorney for health care, had W.B. admitted to a nursing home. W.B. continued to reside at that nursing home under J.B.'s direction until 2019, when he made comments expressing his desire to leave the facility and return home. Those comments prompted Sauk County to file the petitions for guardianship and protective placement at issue in this case.

> Did W.B.'s advance planning render guardianship unnecessary and, therefore, require dismissal of the petitions pursuant to Wis. Stat. § 54.46(1)(a)2.?

The circuit court denied W.B.'s motion to dismiss and granted the petitions for guardianship and protective placement. The court of appeals affirmed, holding that a health care agent cannot require continued placement in a nursing home over an incapacitated principal's objection.

CRITERIA FOR REVIEW

Guardianships and protective placements are significant deprivations of a person's liberty and thus implicate important due process rights. *See In re Mills*, 250 Wis. 401, 404-405, 27 N.W.2d 375 (1947)("Liberty of the person and the right to control her property are very sacred rights which should not be taken away without most urgent reasons.").

As this court explained, the "core purpose" of Wisconsin's laws governing durable powers of attorney and powers of attorney for health care is to provide individuals with an alternative to guardianship and protective placement; "they are both intended to ensure that the wishes of the principal made while competent are effectuated in the event of the individual's incapacity." *In re Guardianship of Muriel K.*, 2002 WI 27, ¶¶30, 40-41, 251 Wis. 2d 10, 640 N.W.2d 773. Specifically, a power of attorney for health care "allows competent individuals to designate agents to make health care decisions for them should they become incompetent." *Id.* ¶40.

The court of appeals' interpretation of the statutes governing powers of attorney for health care not only disregards this purpose, it ignores the context of the statutes and renders sections meaningless. The effect of the court of appeals' decision is that an agent is not truly an agent and the wishes of the now incapacitated individual trump those expressed while competent to make his own health care decisions. If the wishes of the incapacitated individual control,

however, the power of attorney for health care is meaningless and can never provide an alternative to guardianship and protective placement as it was meant to do.

Thus, review is necessary to clarify the authority of a health care agent and once again "ensure that the wishes of the principal made while competent are effectuated in the event of the individual's incapacity." *Id.* ¶41. Review is warranted as the issue presented is both novel and one which is likely to recur without guidance from this court. Wis. Stat. § 809.62(1r)(a),(c).

STATEMENT OF THE CASE AND FACTS

On August 2, 2012, W.B., while competent, executed a durable power of attorney for finances and power of attorney for health care. (31; 32; App. 29-51). Both documents named, J.B., W.B.'s son, as attorney-in-fact/agent for health care and set forth W.B.'s wishes for the management of his finances, property, and health care, in the event he became unable to make those decisions himself. (31; 32; App. 29-51).

Unfortunately, that situation arose in 2015 when W.B. suffered a stroke. (5:1; 26:3). W.B. was found to be incapacitated and his power of attorney for health care was activated. (3:23). W.B. recovered in the hospital and was later placed at the Sauk County Healthcare Center, at J.B.'s direction. (5:1; 26:3). W.B. continued to reside there with no concerns until 2019, when he was referred to the Sauk County Department of Health and Human Services due to statements he

made expressing a desire to leave the facility and return home. (28:1).

As a result of the referral, on June 23, 2020, Sauk County filed petitions for guardianship and protective placement of W.B.. (3; 4). The petitions alleged that W.B. was suffering impairment due to "Major Neurocognitive Deficit." (3:3; 4:2). Further, both petitions acknowledged that W.B. had a current, valid durable power of attorney for finances and power of attorney for health care which had been activated. (3:1-2; 4:1). However, the space on the petition for Sauk County to explain why guardianship and protective placement were necessary despite the existence of these powers of attorney was left blank. (3:2; 4:1).

Subsequently, three separate physician's or psychologist's reports were filed with the court. (5; 6; 26). All three examiners found that W.B. was suffering from permanent incapacity and that guardianship and protective placement were appropriate. (5:2-4; 6:2,5; 26:10-14).

A comprehensive evaluation was also filed with the court. (28). The writer of the report noted that W.B.'s powers of attorney for health care and finances had been activated and that he had been living at the healthcare center since his stroke in 2015, but also recommended guardianship and protective placement of W.B.. (28:1, 4).

A final hearing on the petitions was held on July 29 and 30, 2020. (78; 79). All three doctors testified consistent with their reports. (78:9-27). Cherie Green, a social worker with adult protective services, also testified. (79:5-16). As relevant, she explained that W.B. "needs placement in a skilled nursing facility" where he can receive assistance with his activities of daily living, such as his current placement at the healthcare center. (79:13). She also informed the court that there had been no concerns with W.B.'s son, J.B., acting in W.B.'s best interest as his health care power of attorney over the prior five years. (79:14).

After testimony, the court heard arguments from the parties. (79:19-28; App. 52-61). Sauk County argued that the evidence supported a finding that W.B. required a guardianship and protective placement. (79:19-20; App. 52-53). It also stated that, "as the Court is well aware, the power of attorney cannot mandate placement," and requested that the powers of attorney be "invalidated." (79:19; App. 52). The GAL then informed the court that it was her position that guardianship and protective placement were in W.B.'s best interest "because of the concerns of his want and possible intention of leaving his placement." (79:20-21; App. 53-54). Finally, W.B., through counsel, addressed the court.

W.B. argued that, pursuant to Wis. Stat. § 54.46(1)(a), the court was required to dismiss the petitions as the activated durable power of attorney for finances and health care power of attorney rendered

the guardianship unnecessary. (79:21-24; App. 54-57). Alternatively, W.B. argued that Sauk County had failed to meet its burden of proof. (79:24-25; App. 57-58).

Following W.B.'s argument, the circuit court asked both counsel if there was "any legal impediment" to W.B. leaving the facility on his own if protective placement were not granted. (79:25; App. 58). Counsel for W.B. responded that he was not sure, but that the power of attorney document gave the agent authority to authorize admission to a health care facility. (79:26-28; App. 59-61). Counsel for Sauk County, without citing any legal authority, stated that there was no legal impediment and that a "power of attorney cannot mandate placement." (79:26-28; App. 59-61).

The circuit court then made an oral ruling, noting that the issue of whether W.B. could leave the nursing home without a protective placement appeared to be "the whole reason that we're here." (79:28; App. 61). The court went on to hold that guardianship of the person and estate was necessary. (79:29-30; App. 62-63). It also found that W.B. had a need for protective placement in a nursing home. (79:31-32; App. 64-65).

The determination and order on petition for guardianship due to incompetency, and the order on petition for protective placement or protective services, were signed on July 30, 2020. (52; 53; App. 20-28).

W.B. appealed. The court of appeals affirmed the circuit court in a decision dated September 9, 2022. (App. 3-19). The court of appeals held that W.B.'s power of attorney for health care is "insufficient to require him to remain in a nursing home over his objection and provisions in both the power of attorney and the Wisconsin Statutes make this clear." (App. 11, ¶14).

This petition for review follows.

ARGUMENT

This court should grant review and hold that an agent under a power of attorney for health care can require continued placement in a nursing home over the incapacitated principal's objections, and, therefore, W.B.'s advance planning rendered guardianship unnecessary.

"Liberty of the person and the right to control her property are very sacred rights which should not be taken away without most urgent reasons." *In re Mills*, 250 Wis. 401, 404-405, 27 N.W.2d 375 (1947). To overcome those rights and succeed on its petitions for guardianship and protective placement, Sauk County was required to prove, by clear and convincing evidence, that W.B. "is suffering from a mental disease or disability, that such condition is permanent, that [he] is substantially incapable of providing for [his] own care, and that [he] has a need for residential care

and custody."[1] *In re Guardianship of Therese B.,* 2003 WI App 223, ¶13, 267 Wis. 2d 310, 671 N.W.2d 377.

Not surprisingly, if those criteria are not proven, the petitions must be dismissed. Wis. Stat. § 54.46(1)(a)3.. The legislature, however, has also required dismissal if "[a]dvance planning by the ward, as specified in s. 54.10(3)(c)3., renders guardianship unnecessary." Wis. Stat. § 54.46(1)(a)2. Specifically, the circuit court must dismiss a petition if it finds that guardianship is unnecessary due to "advance planning for financial and health care decision making that would avoid guardianship," such as a durable power of attorney or a power of attorney for health care. Wis. Stat. §§ 54.10(3)(c)3., 54.46(1)(a)2.. Here, the circuit court failed to comply with this mandate when it failed to dismiss the petitions for guardianship and protective placement even though the durable power of attorney for finances and power of attorney for health care rendered them unnecessary.

Whether a circuit court properly granted petitions for guardianship and protective placement is a mixed question of law and fact. *Therese B.,* 2003 WI App 223, ¶21. The circuit court's findings of fact will not be overturned unless clearly erroneous. *Id*. However, [t]he issues of whether the evidence satisfies the legal standard for incompetency and whether the evidence supports protective placement are questions

[1] The specific statutory criteria for each are set forth in Wis. Stats. §§ 54.10(3) & 55.08(1).

of law" which this court reviews de novo. *Id*. (quoting *Coston v. Joseph P.,* 222 Wis. 2d 1, 22-23, 586 N.W.2d 52 (Ct. App. 1998)).

Further, statutory construction is a question of law that this court reviews de novo. *State v. Leitner*, 2002 WI 77, ¶16, 253 Wis. 2d 449, 646 N.W.2d 341. "[S]tatutory interpretation 'begins with the language of the statute. If the meaning of the statute is plain,'" the inquiry ordinarily stops there. *State ex. Rel. Kalal v. Circuit Court for Dane County*, 2004 WI 58, ¶45, 271 Wis. 2d 633, 681 N.W.2d 110. "[S]tatutory language is [also] interpreted in the context in which it is used; not in isolation but as part of a whole; in relation to the language of surrounding or closely-related statutes; and reasonably, to avoid absurd results." *Id*., ¶46.

This case turns on the answer to one question – can the agent under a power of attorney for health care require the principal's continued placement in a nursing home over his objection? If the answer is no, the petitions for guardianship and protective placement in this case were properly granted. If, as W.B. contends, the answer is yes, the circuit court erroneously concluded that guardianship, and by extension protective placement, were not rendered unnecessary by W.B.'s advanced planning.

A. An agent under an activated power of attorney for health care has authority to require continued placement in a nursing home over the incapacitated principal's objection.

Wisconsin law governing powers of attorney for health care is found in Chapter 155, Wis. Stats. It provides that any "individual who is of sound mind and has attained age 18 may voluntarily execute a power of attorney for health care." Wis. Stat. § 155.05(1).

The statutes also clarify whose wishes or decision – that of the principal or the agent – take precedence: "[t]he desires of a principal *who does not have incapacity* supersede the effect of his or her power of attorney for health care at all times." Wis. Stat. § 155.05(4)(emphasis added). A person is incapacitated when he or she no longer has the ability "to receive and evaluate information effectively or to communicate decisions to such an extent that the individual lacks the capacity to manage his or her health care decisions." Wis. Stat. § 155.01(8). Thus, once found to be incapacitated, the principal no longer has the capacity to make health care decisions for himself; he can neither admit, nor discharge, himself from a nursing home. Rather, per the principal's wishes, that authority is transferred to the agent.

Further, the statutes set forth the powers and limitations of health care agents. *See* Wis. Stat. § 155.20. As relevant to this case, § 155.20(c)(2) states

that a health care agent may only consent to the admission of a principal to a nursing home, or other facility, for purposes other than recuperative care or temporary placement, if the power of attorney for health care document specifically authorizes it.

Thus, there is no statutory support for the court of appeals' holding that a health care agent cannot require continued placement in a nursing home. As set forth above, if given the authority to do so, a health care agent can admit a principal to a nursing home. Wis. Stat. § 155.20(c)(2). And, once the principal is found to be incapacitated, not only do the terms of the power of attorney document control, the individual can no longer make his own health care decisions. Wis. Stat. § 155.05(4).

Further, unlike other situations, there is no statutory requirement that a petition for protective placement be filed if an individual, placed in a nursing home under the direction of a health care agent, objects to that placement. The legislature has required immediate action from the county in specific situations in which an incapacitated or incompetent individual objects to placement in a nursing home or other facility; the situation in this case – involving admission by a health care agent – is not among them. *See* Wis. Stat. §§ 50.06(2) & 55.055. This demonstrates that the agent's decision, based on the principal's desires expressed while competent, trumps that of the now incapacitated principal.

Finding otherwise, the court of appeals relied on the mandatory notice given to the principal executing a power of attorney for health care without the advice of legal counsel, as well as the language in § 155.20(5) and other provisions. (App. 12, 15-16, ¶¶15, 22-23). Based on those, it concluded that an agent must follow the direction of the principal, even when incapacitated. (App. 17-18, ¶24). When read in full, and in context, however, it is clear that these sections support W.B.'s position that an agent is not bound by the instructions of an incapacitated principal.

The mandatory notice clarifies that, while ordinarily a person has the right to make health care decisions for himself and cannot be given care without consent, situations may arise where the person is physically or mentally unable to make such decisions. Wis. Stat. § 155.30(1).[2] It goes on to explain that in

[2] The notice set forth in § 155.30(1) states in full:

"NOTICE TO PERSON
MAKING THIS DOCUMENT

YOU HAVE THE RIGHT TO MAKE DECISIONS ABOUT YOUR HEALTH CARE. NO HEALTH CARE MAY BE GIVEN TO YOU OVER YOUR OBJECTION, AND NECESSARY HEALTH CARE MAY NOT BE STOPPED OR WITHHELD IF YOU OBJECT.

BECAUSE YOUR HEALTH CARE PROVIDERS IN SOME CASES MAY NOT HAVE HAD THE OPPORTUNITY TO ESTABLISH A LONG-TERM RELATIONSHIP WITH YOU, THEY ARE OFTEN UNFAMILIAR WITH YOUR BELIEFS AND VALUES AND THE DETAILS OF YOUR FAMILY RELATIONSHIPS. THIS POSES A PROBLEM IF YOU BECOME PHYSICALLY OR MENTALLY UNABLE TO MAKE DECISIONS ABOUT YOUR HEALTH CARE.

IN ORDER TO AVOID THIS PROBLEM, YOU MAY SIGN THIS LEGAL DOCUMENT TO SPECIFY THE PERSON WHOM YOU WANT TO MAKE HEALTH CARE DECISIONS FOR YOU IF YOU ARE UNABLE TO MAKE THOSE DECISIONS PERSONALLY. THAT PERSON IS KNOWN AS YOUR HEALTH CARE AGENT. YOU SHOULD TAKE SOME TIME TO DISCUSS YOUR THOUGHTS AND BELIEFS ABOUT MEDICAL TREATMENT WITH

order to avoid the problems that may occur when the person is unable to make decisions about his own healthcare, the person may execute a power of attorney for health care naming an individual he wants to make those decisions for him. Wis. Stat. § 155.30(1). The notice further directs the person to discuss their wishes and beliefs with the health care

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THE PERSON OR PERSONS WHOM YOU HAVE SPECIFIED. YOU MAY STATE IN THIS DOCUMENT ANY TYPES OF HEALTH CARE THAT YOU DO OR DO NOT DESIRE, AND YOU MAY LIMIT THE AUTHORITY OF YOUR HEALTH CARE AGENT. IF YOUR HEALTH CARE AGENT IS UNAWARE OF YOUR DESIRES WITH RESPECT TO A PARTICULAR HEALTH CARE DECISION, HE OR SHE IS REQUIRED TO DETERMINE WHAT WOULD BE IN YOUR BEST INTERESTS IN MAKING THE DECISION.

THIS IS AN IMPORTANT LEGAL DOCUMENT. IT GIVES YOUR AGENT BROAD POWERS TO MAKE HEALTH CARE DECISIONS FOR YOU. IT REVOKES ANY PRIOR POWER OF ATTORNEY FOR HEALTH CARE THAT YOU MAY HAVE MADE. IF YOU WISH TO CHANGE YOUR POWER OF ATTORNEY FOR HEALTH CARE, YOU MAY REVOKE THIS DOCUMENT AT ANY TIME BY DESTROYING IT, BY DIRECTING ANOTHER PERSON TO DESTROY IT IN YOUR PRESENCE, BY SIGNING A WRITTEN AND DATED STATEMENT OR BY STATING THAT IT IS REVOKED IN THE PRESENCE OF TWO WITNESSES. IF YOU REVOKE, YOU SHOULD NOTIFY YOUR AGENT, YOUR HEALTH CARE PROVIDERS AND ANY OTHER PERSON TO WHOM YOU HAVE GIVEN A COPY. IF YOUR AGENT IS YOUR SPOUSE OR DOMESTIC PARTNER AND YOUR MARRIAGE IS ANNULLED OR YOU ARE DIVORCED OR THE DOMESTIC PARTNERSHIP IS TERMINATED AFTER SIGNING THIS DOCUMENT, THE DOCUMENT IS INVALID.

YOU MAY ALSO USE THIS DOCUMENT TO MAKE OR REFUSE TO MAKE AN ANATOMICAL GIFT UPON YOUR DEATH. IF YOU USE THIS DOCUMENT TO MAKE OR REFUSE TO MAKE AN ANATOMICAL GIFT, THIS DOCUMENT REVOKES ANY PRIOR RECORD OF GIFT THAT YOU MAY HAVE MADE. YOU MAY REVOKE OR CHANGE ANY ANATOMICAL GIFT THAT YOU MAKE BY THIS DOCUMENT BY CROSSING OUT THE ANATOMICAL GIFTS PROVISION IN THIS DOCUMENT.

DO NOT SIGN THIS DOCUMENT UNLESS YOU CLEARLY UNDERSTAND IT.

IT IS SUGGESTED THAT YOU KEEP THE ORIGINAL OF THIS DOCUMENT ON FILE WITH YOUR PHYSICIAN OR OTHER PRIMARY CARE PROVIDER."

agent and/or set forth their directives in the document. Wis. Stat. § 155.30(1). It concludes by emphasizing that the power of attorney is an important legal document which "GIVES YOUR AGENT BROAD POWERS TO MAKE HEALTH CARE DECISIONS FOR YOU." Wis. Stat. § 155.30(1).

This notice demonstrates that once an individual is determined to be physically or mentally unable to make health care decisions for himself, the agent designated under the power of attorney for health care will be responsible for making those decisions. Thus, it is important that before the person becomes incapacitated, he discusses what health care he wants or does not want to receive with the agent, or puts that information in writing in the power of attorney document. This is consistent with the purpose of the power of attorney for health care laws – to ensure that the wishes of the competent individual are honored even after he becomes incapacitated. *Muriel K.*, 2002 WI 27, ¶41.

This purpose is further demonstrated in § 155.05(4), which provides: "The desires of the principal *who does not have incapacity* supersede the effect of his or her power of attorney for health care at all times." Wis. Stat. § 155.05(4)(emphasis added). The legislature made clear that the desires of a non-incapacitated principal trump those of the health care agent. In so doing, it also clarified that the instructions of the health care agent control over those of an incapacitated principal. If, as the court of appeals found, the desires of the principal always control, even

after incapacitation, the legislature would have said as much. It could have simply stated "the desires of the principal supersede the effect of his or her power of attorney at all times," but it did not.

This makes sense, as incapacity means more than the lack of an ability to communicate decisions, it means "the inability to receive and evaluate information effectively or to communicate decisions to such an extent that the individual lacks the capacity to manage his or her health care decisions." Wis. Stat. § 155.01(8). Why would the decisions of an individual who has been determined to be unable to make those decisions control? How would that avoid the need for guardianship and protective placement?

If an incapacitated principal is still in control, because the agent can't make decisions over a current objection, the agent is not an agent at all. *See Muriel K.*, 2002 WI 27, ¶25 (noting that an agent "acts for," "in the place of," and "instead of" the principal). Having an agent who is restricted in such a way would serve no purpose in situations in which the principal is mentally unable, but physically able, to make decisions for himself. Nor would it provide the protection meant to be afforded by the power of attorney document – an assurance that the wishes of the individual, made while competent, will be honored. *Id.* ¶41.

With this context in mind, it is clear that the language in § 155.20(5) does not stand for the proposition the court of appeals asserts. That section

provides that the agent "shall act in good faith consistently with the desires of the principal as expressed in the power of attorney for health care instrument or as otherwise specifically directed by the principal to the health care agent at any time." Wis. Stat. § 155.20(5). This language clarifies that, if known, the agent is required to act, not in the principal's best interest, but in accordance with the directions of the principal. The directions to be followed are those which the principal set forth in the power of attorney document or otherwise discussed with the agent prior to incapacitation. If an individual can no longer receive and evaluate information effectively, for the power of attorney for health care to serve any purpose, it is that individual's desires expressed prior to incapacitation, not after, that should control the agent's decisions.

As previously explained, "[d]urable powers of attorney are intended to give competent individuals the ability to delegate to an agent broad powers to manage their affairs and assets in the event of incompetency." *Knight*, 2002 WI 27, ¶27. Similarly, "the power of attorney for health care…allows competent individuals to designate agents to make health care decisions for them should they become incompetent." *Id.* ¶40. The "core purpose" of laws governing durable powers of attorney "is to provide an alternative to guardianship with powers given to the agent that are as broad if not broader than those traditionally undertaken by guardians." *Id.* ¶30. "[B]oth are intended to ensure that the wishes of a

principal made while competent are effectuated in the event of the individual's incapacity." *Id.* ¶41.

In sum, by enacting Chapter 155, Power of Attorney for Health Care, and Chapter 244, Uniform Power of Attorney for Finances and Property, the legislature has provided avenues for individuals to avoid the severe curtailment of their rights associated with guardianship and protective placement. An individual, such as W.B., can avoid guardianship and protective placement by executing a durable power of attorney for finances and a power of attorney for health care. The deference that is to be given to these documents, and consequently, the individual's wishes, is demonstrated by § 54.46's requirement of dismissal if the powers of attorney, or other advance planning, render guardianship and protective placement unnecessary. It is further made evident by the requirement that the powers of attorney remain in force, despite guardianship, unless the circuit court finds "good cause" to revoke them. Wis. Stat. § 54.46(2)(b)-(c).

B. The orders for guardianship and protective placement must be vacated as W.B.'s advance planning rendered them unnecessary.

Section 54.46(1)(a)2.'s requirement is clear. When an individual has engaged in advance planning, as specified in § 54.10(3)(c)3., which renders guardianship unnecessary, "the court shall dismiss the petition."

W.B. engaged in exactly the advanced planning that the legislature anticipated could render a guardianship and protective placement unnecessary. While competent, he executed a durable power of attorney for finances and a power of attorney for health care, appointing his son, J.B., to act as agent under both.

There was no dispute that W.B.'s power of attorney documents were valid, had been activated, and were in effect at the time of the final hearing. (79:15-16). Nor did Sauk County present any evidence that J.B. was failing to fulfill his duties as agent for W.B.. In fact, the evidence was to the contrary. Ms. Green testified that J.B. "has been [W.B.'s] health care power of attorney for the past five years and there have been no concerns related to his acting in the proposed ward's best interest." (79:14). Further, J.B. had placed W.B. in the very facility Sauk County was seeking to have him protectively placed in, and W.B. had been residing there for five years without incident. (79:13). Finally, the circuit court found J.B. appropriate to serve as guardian of W.B.'s person and estate, further demonstrating that there was no question that J.B. had taken care of W.B.'s needs, both financial and medical, while acting under the authority granted by the power of attorney documents. (79:14, 31; App. 64).

It is apparent from the record that the only reason that both Sauk County and the circuit court believed that guardianship was necessary was in order to obtain protective placement, which they incorrectly

believed was necessary because W.B. had expressed a desire to leave his current placement at the healthcare center. (79:9, 19, 25-28; App. 58-61).

As shown above, in entering the orders for guardianship and protective placement, and revoking the powers of attorney, the circuit court showed a misunderstanding of the law surrounding powers of attorney for health care and acted contrary to the directive in § 54.46(1)(a)2.. With his power of attorney for health care activated, W.B. was not free to leave the healthcare center and therefore, guardianship and protective placement were not necessary in order to prevent him from doing so.

W.B.'s power of attorney for health care, executed prior to his incapacitation, set forth his desire to have his son, J.B., manage his health care decisions in the event he could no longer do so. It also set forth his consent for J.B. to admit him to a nursing home for long term care, a power that is not automatically granted to health care agents. (32:4; App. 127); Wis. Stat. § 155.20(2)(c). Those wishes, made while he was competent, should be honored. The orders for guardianship and protective placement granted in this case should be vacated as W.B.'s advance planning rendered them unnecessary. *See* Wis. Stat. § 55.08(1)(order for protective placement cannot be made without a valid order finding W.B. incompetent).

CONCLUSION

For the reasons stated above, this court should grant review and hold that an agent, granted authority to admit an individual to a nursing home for long-term care under an activated power of attorney for healthcare, can mandate placement over the principal's objection. Further, this court should hold that, in this case, W.B.'s advance planning rendered guardianship and protective placement unnecessary and, therefore, vacate the orders for guardianship and protective placement and order that the petitions be dismissed.

Dated this 28th day of September, 2022.

Respectfully submitted,

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CERTIFICATION AS TO FORM/LENGTH

I hereby certify that this petition conforms to the rules contained in §§ 809.19(8)(b) and (bm) and 809.62(4) for a petition produced with a proportional serif font. The length of this petition is 4,650 words.

CERTIFICATE OF COMPLIANCE WITH RULE 809.19(12)

I hereby certify that I have submitted an electronic copy of this petition, including the appendix, if any, which complies with the requirements of § 809.19(12). I further certify that this electronic petition is identical in content and format to the printed form of the petition filed on or after this date.

A copy of this certificate has been served with the paper copies of this petition filed with the court and served on all opposing parties.

Dated this 28th day of September, 2022.

Signed:

KATHILYNNE A. GROTELUESCHEN
Assistant State Public Defender