STATE OF WISCONSIN

IN SUPREME COURT

Case No. 2021AP001315

In the matter of K.K.:

PORTAGE COUNTY,

Petitioner-Respondent,

v.

K.K.,

Respondent-Appellant-Petitioner.

PETITION FOR REVIEW

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ISSUE PRESENTED

Is summary judgment available and appropriate in a contested continued protective placement proceeding under Chapter 55?

The circuit court answered yes. The court of appeals declined to address the question and dismissed the appeal as moot.

CRITERIA FOR REVIEW

There are individuals, such as K.K., whose mental disorders and developmental disabilities make it difficult for them to function safely in society without assistance. In these circumstances, Wisconsin's statutory scheme provides mechanisms for the government to step in. Often, however, necessary treatments and services for these individuals result in "a massive curtailment of liberty." *Vitek v. Jones*, 445 U.S. 480, 491–92, 494 (1980) (internal citations and quotations omitted). Because of the significant liberty interests involved, Chapter 55, governing Wisconsin's protective service and placement system, contains procedures and standards to ensure that when the government does step-in in the name of assistance, the individual's constitutional due process rights are protected.

This case presents the question: may a court use the summary judgment procedure as a basis for a continued protective placement order instead of holding a full due process hearing? Under the plain language of Wis. Stat. § 55.18 and under principles of due process and equal protection, when a ward requests a full due process hearing – as K.K. did in this case – the answer is a resounding no.

Yet that is precisely what occurred in this case. Rather than addressing the alleged statutory violation and constitutional concerns, the court of appeals dismissed this case as moot. *Portage Cnty. v. K.K.*, No. 2021AP1315, ¶11, unpublished slip. op. (Feb. 10, 2022) (App. 3-7). Because of the real and significant questions of federal and state constitutional law and because a decision from this Court will clarify whether summary judgment is permitted under Wis. Stat. § 55.18, review is warranted under Wis. Stat. (Rule) 809.23(b) and (c). Further, though the court of appeals has held that summary judgment is not appropriate in Chapter 51 cases (governing mental commitments), no published or unpublished cases have addressed the propriety of summary judgment in Chapter 55 continuing protective placement cases, making this issue appropriate for review under Wis. Stat. (Rule) 809.23(c)(2). *See Shirley J.C. v. Walworth Cnty.*, 172 Wis. 2d 371, 377, 493 N.W.2d 382 (Ct. App. 1992) (holding summary judgment is inappropriate in Chapter 51 cases).

Several exceptions to the mootness doctrine – mirroring the criteria for review set forth in Wis. Stat. (Rule) 809.23 – also make this case appropriate for this Court's review. First, Chapter 55 proceedings are common and "a definitive decision is essential to guide the trial courts." *See Portage Cnty v. J.W.K.,* 2019 WI 54, ¶12, 386 Wis. 2d 672, 927 N.W.2d 509. The court of appeals declined to apply the exception to the mootness doctrine in part because K.K. did not point to other counties or cases who have ordered a continued protective placement based on summary judgment. COA Decision, ¶10. Chapter 55 cases are confidential; it would be impossible to search court records to ascertain exactly where and how often this is happening. Not only is it likely that Portage County will move for summary judgement in other cases, but because protective placements are permanent and K.K. remains a ward of the state, it could very well happen again to K.K. Without a definitive decision from this Court, K.K. cannot be assured that his statutory, equal protection and due process rights will be protected if he again contests his protective placement.

This issue is also "likely to arise again and should be resolved by the court to avoid uncertainty." *Portage Cnty v. J.W.K.,* 386 Wis. 2d 672, ¶12. At least Portage County – who asked for publication on the issue – and the circuit court believe that summary judgment is available and appropriate in Chapter 55 continuing protective placement proceedings. Without a decision from this Court expressly stating the summary judgement is not available, it is very likely

other counties and courts will deem it appropriate for the same reasons Portage County did.

Further, because of the short timelines between annual reviews, this issue is extremely "capable and likely of repetition and yet evades review." *Id.* COA Decision, ¶8. It is often very difficult to complete appellate litigation within one year. For this reason, appellate courts will often reach the merits in Chapter 51 or 55 cases despite the fact that the controversy has become moot. *See, e.g., State ex rel. Watts v. Combined Cmty. Servs. Bd. of Milwaukee Cty.*, 122 Wis. 2d 65, 362 N.W.2d 104 (1985); *Shirley J.C.*, 172 Wis. 2d 371; *Langlade Cnty v. DJW,* 2020 WI 41, 931 Wis. 2d 231, 942 N.W.2d 277. By dismissing this case as moot, the court of appeals ensured that this issue evades review. Clarification from this Court is necessary so that K.K., and those similarly situated, do not continuously appeal summary judgment orders only to evade review.

Above all, whether summary judgment may be issued against an individual under a Chapter 55 protective placement "is an issue of great public importance." *Shirley J.C.,* 172 Wis. 2d at 377. When addressing the role of summary hearings in Chapter 55 proceedings, this Court held:

> These issues transcend the fortunes of a single elderly woman in Dunn County. They implicate the rights of thousands of persons who have been protectively placed in Wisconsin institutions because of the infirmities of age, chronic mental illness, developmental disabilities, or similar

> incapacities. They address the legislature's concern that these citizens be given the maximum freedom with the minimum restriction that their troubled conditions allow.
>
> …
>
> Taking a few moments to protect the rights of our most vulnerable citizens is not an unacceptable cost to society. It is an expression of our humanity. It is a commitment that no person will be warehoused and forgotten by the legal system.
>
> *Cnty. of Dunn v. Goldie H.,* 2001 WI 102, ¶¶4, 35, 245 Wis. 2d 538, 629 N.W.2d 189.

Like in *Goldie H.,* the issues in this case, and the constitutional protections they implicate, are larger than K.K. When the court of appeals dismissed this case as moot, it abdicated its responsibility to "say what the law is." *Marbury v. Madison,* 5 U.S. 1 (1803). This Court should remedy that and take review.

STATEMENT OF THE CASE

K.K. entered into a guardianship on April 25, 2017, and has been under a protective placement order since November 27, 2018. (100:3-8, 12-14). Portage County most recently petitioned for review of the protective placement on October 7, 2020. (67). A guardian ad litem was subsequently appointed and the GAL filed a report pursuant to Wis. Stat. § 55.18(2). (71, 75). The GAL report noted K.K. was contesting the placement and recommended that "legal counsel be appointed for the ward." (75:1).

The circuit court appointed adversary counsel who then requested a jury trial and filed a motion for an independent evaluation on K.K.'s behalf. (79, 82, 113:2). Dr. Hamilton Wright performed the independent evaluation and her report opined in support of K.K.'s continued protective placement. (88).

Both parties filed several documents in preparation for the trial, including witness lists, motions in limine, and proposed jury instructions (92, 93, 94, 95, 96, 97, 98). However, in addition to the filings pertaining to the upcoming jury trial, the county also filed a motion for summary judgment. (99, 100). The county provided a single affidavit from corporation counsel in support of the motion for summary judgment. (100). Attached to the affidavit were documents already in the record, including the order for guardianship, the original petition and order for protective placement, the protective services agency report and Dr. Hamilton Wright's report. (100:3-28).

Adversary counsel filed a brief opposing the motion for summary judgment with an affidavit from K.K. reiterating that he was contesting the placement and wished to exercise his right to cross-examine witnesses. (102, 103). Adversary counsel argued summary judgment was inappropriate in Chapter 55 proceedings generally, inappropriate in this case in particular and violative of due process and equal protection. (102). The circuit court held a hearing on the motion held "[n]owhere in Chapter 55 does it indicate or imply that a trial or hearing must be held

where there is no issue of disputed material fact identified" and "as it relates to due process, equal protection issues, it has to be considered implicit in the legislature's decision to include the rules of civil procedure as applicable to [Chapter 55] proceedings." (111:12, 13-14; App. 12, 13-14). The court found that there were no issues of material fact in dispute, that there were no statutory or constitutional problems with summary judgment and granted the county's request for summary judgment. (111:14-15; App. 14-15).

As a result, the court issued an order for K.K.'s continued protective placement and the jury trial K.K. requested was never held.[1] (111:14-15, 106; App. 8, 14-15).

ARGUMENT

Summary judgment is inappropriate in contested continuing placement proceedings.

A. Standard of Review

Whether summary judgment is available and appropriate is a question of law, reviewed de novo. *Steven V. v. Kelley H.,* 2004 WI 47, ¶20, 271 Wis. 2d 1, 14, 678 N.W.2d 856. "[C]ontentions that the

[1] The Findings and Order Continuing Protective Placement indicates "The court ordered and held a full due process hearing" however the record is clear a full due process hearing was not held. (106:1; App. 8).

protections of due process and equal protection have been transgressed will also be reviewed de novo." *State v. Seeley*, 212 Wis. 2d 75, 81–82, 567 N.W.2d 897 (Ct. App. 1997).

B. Chapter 55 protective placements and *Watts* reviews.

Chapter 55 "provides for residential care and custody of those persons with mental disabilities that are likely to be permanent." *Fond du Lac Cnty v. Helen E.F.,* 2011 WI App 72, ¶33, 333 Wis. 2d 740, 798 N.W.2d 707. It "is designed to establish protective services and protective placements… [for] all individuals…in need of them, and to place the least possible restriction on personal liberty and exercise of constitutional rights consistent with due process..." Wis. Stat. § 55.001 (Declaration of policy).

Long ago, Chapter 55 protective placements were not systematically reviewed by the courts. Then in 1985, *Watts,* 122 Wis. 2d 65, held the equal protection clause of the United States Constitution required an annual judicial review for individuals under protective placement. Under the statutory scheme at the time, Chapter 55 protective placements – which are permanent – were not subjected to systematic judicial review whereas Chapter 51 required periodic court reviews of any commitment before it could be continued. *Id.* at 75. *Watts* concluded that while the "distinction between commitment and placement in the two statutes has a rational basis" … "the same rational foundation is not present when

considering procedural requirements of periodic review in the one and not the other statute." *Id.* at 79. As a remedy, *Watts* held "there must be an annual review of each protective placement by a judicial officer" and detailed the necessary procedures for that review. *Id.* at 84.

As a result of *Watts*, every protectively placed individual now has an annual "*Watts* review hearing." *See* 2005 Wis. Act 264 (Joint Legislative Council Prefatory Note). This Court later clarified that the annual review may be either a "summary hearing" or a "due process hearing." *Goldie H.,* 245 Wis. 2d 538, ¶28. Either way, the circuit court must hold the hearing on the record. *Id.*

The procedure originally set forth in *Watts* and refined in *Goldie H.* is now codified in Wis. Stat. § 55.18. Under this statute, a court may hold either "a summary hearing" if the continued placement is not contested or a full due process "hearing under the requirements of s. 55.10(2) to (4)" if it is. Wis. Stat. § 55.18(3)(d). The statute unambiguously states a court "*shall* hold a hearing under the requirements of s. 55.10(2)-(4) if … the individual … so requests." Wis. Stat. § 55.18(3)(d)1. (emphasis added); *see also Watts,* 122 Wis. 2d at 85 ("[a] full due process hearing should be required whenever the protectively placed individual … requests it").

C. A ward has an absolute right to a full due process hearing, if requested, and denying that request is violative of the provisions of Chapter 55 and the Constitution.

"The Constitution forbids the government from depriving any person of life, liberty, or property, without due process of law. U.S. CONST. AMEND. V (applying the prohibition to the federal government); amend. XIV, § 1 (applying the same to the States)." *Waupaca Cnty v. K.E.K.*, 2021 WI 9, ¶33, 395 Wis. 2d 460, 954 N.W.2d 366. When liberty is deprived, procedural safeguards are essential to ensure that the deprivation is necessary and justified.

> The power of the state to deprive a person of the fundamental liberty to go unimpeded about his or her affairs must rest on a consideration that society has a compelling interest in such deprivation. In criminal cases, this authority is derived from the police power, granted because of the necessity of protecting society from anti-social actions. This power is tempered with stringent procedural safeguards designed to protect the rights of one accused of crime, to assure that no one will be arrested except upon probable cause nor convicted of a crime except in conformity with these procedural rules. In civil commitment proceedings the same fundamental liberties are at stake.
>
> *Lessard v. Schmidt*, 349 F. Supp. 1078, 1092 (E.D. Wis. 1972).[2]

[2] The full cite is: *Lessard v. Schmidt*, 349 F. Supp. 1078 (E.D. Wis. 1972), *vacated and remanded on procedural*

1. Chapter 55 requires a full due process hearing, if requested.

With these significant liberty interests in mind, the legislature expressly stated that protective placements can be implemented only with the "exercise of constitutional rights consistent with due process..." Wis. Stat. § 55.001. Chapter 55 devotes a significant segment to outlining the precise procedures and protections the legislature identified as being "consistent with due process." Wis. Stat. § 55.10(2)-(4); The right to a jury trial and to cross-examine witnesses at a *Watts*-review hearing, "when the individual so requests" is explicit and unambiguous. Wis. Stat. §§ 55.10(4)(c) and 55.18(3)(d)1. *See also Walworth Cnty. v. Therese B.,* 2003 WI App 223, ¶7, 267 Wis. 2d 310, 323, 671 N.W.2d 377 ("the right to cross-examine the physician or psychologist appointed to examine [the subject individual]" is guaranteed) (discussing Chapter 55's predecessor statute, Chapter 880).

Adversary counsel in this case asserted her client was contesting the protective placement and formally requested a jury trial on his behalf; a hearing under the requirement of s. 55.10(2)-(4) was so request[ed]. (113:2). Under Wis. Stat. § 55.18(3)(d)1., the court was plainly required to hold a full due

grounds; 414 U.S. 473 (1974); *judgment reentered,* 379 F. Supp. 1376 (E.D. Wis. 1974), *vacated and remanded on procedural grounds,* 421 U.S. 957 (1975); 413 F. Supp. 1318 (E.D. Wis. 1976).

process hearing; its failure to do so violated K.K.'s statutory due process rights.

The court of appeals decision cites the provisions of Wis. Stat. § 55.18 as a justification for declining review, insinuating that summary judgment would not be used in light of these statutory protections. COA Decision, ¶10. The circuit court ruled summary judgment is appropriate *notwithstanding* these statutory provisions. This Court should take review to clarify whether these provisions permit summary judgment.

2. The Due Process Clause requires a full due process hearing, if requested

A due process challenge to a protective placement involves a balancing of three factors: "1) [t]he private interest affected by the official action, 2) the risk of erroneous deprivation of the interest through the procedures used and the probable value of additional or substitute procedural safeguards, and 3) the government's interest." *Therese B.,* 267 Wis. 2d 310, ¶11.

K.K. "has a huge liberty interest at stake because protective placements are the only involuntary commitments under Wisconsin law that are indefinite in duration and thereby are tantamount to a life sentence to a nursing home or other custodial setting." *Id.* ¶12 (cleaned up). Federal and Wisconsin courts have repeatedly reiterated the need for significant procedural protections when a mentally ill

person's liberty is at stake. *See Lessard,* 349 F. Supp. at 1088 (noting the "importance of strict adherence to stringent procedural requirements and the necessity for narrow, precise standards" when the government takes control of a mentally ill individual); *Vitek v. Jones,* 445 U.S. at 491–92 (significant due process protections are required because "the loss of liberty produced by an involuntary commitment is more than a loss of freedom from confinement."); *see also, e.g., Foucha v. Louisiana*, 504 U.S. 70, 80 (1992); *Addington v. Texas,* 441 U.S. 418, 425-26 (1978); *O'Connor v. Donaldson*, 422 U.S. 563 (1975); *Outagamie Cnty. v. Michael H.,* 2014 WI 127, ¶¶23-27, 359 Wis. 2d 272, 856 N.W.2d 603.

Wis. Stat. § 55.18(3)(d) provides for a summary procedure when the protective placement is truly not contested. *See also Goldie H.,* 245 Wis. 2d 538. It is not clear what additional value summary judgment would offer but the risk of erroneous deprivation of a ward's liberty interest in a contested protective placement hearing is sizable. In general, out-of-court hearsay statements are considered less reliable than those subject to cross-examination. *See e.g. Therese B.*, 267 Wis. 2d 310, ¶13 (a doctor's out-of-court findings and assertions are an insufficient basis on which to allow the government to restrict a mentally-ill individual's rights); *see also Lessard,* 349 F. Supp. at 1103 ("strict adherence to the rules of evidence [against the use of hearsay]" is "imperative" when "an individual's liberty is in jeopardy").

"The primary dangers to be feared from the use of out-of-court statements … are substantially eliminated when the declarant of the statement is present in court and subject to effective cross-examination concerning it." *Vogel v. State*, 96 Wis. 2d 372, 388, 291 N.W.2d 838, 846 (1980). Only through cross-examination of the medical professional is a ward able to "adequately probe the professional's qualifications, the facts underlying the opinion and the method undertaken to reach the opinion." *Therese B.*, 267 Wis. 2d 310, ¶13. This procedural safeguard – eliminated by the summary judgment procedure – ensures the truth will be discovered and greatly reduces the possibility a ward will be erroneously deprived of his liberty.

Last, the government has a substantial interest in discovering the truth. *Therese B.*, 267 Wis. 2d 310, ¶15. Citizens suffering from any of the maladies that might trigger a Chapter 55 petition are among the most vulnerable in the state. The government has an interest in ascertaining with certainty that these individuals are protected from "abuse, exploitation and neglect." Wis. Stat. § 55.001. To this end, the government is interested in protecting the due process rights of those sought to be protectively placed. *Id.*

This Court should take review and hold that due to the great liberty interest at stake, principles of due process dictate that wards are entitled to a full due process hearing, when they request it, and that summary judgment is never appropriate in contested protective placement proceedings.

3. The Equal Protection Clause requires a full due process hearing, if requested.

The Fourteenth Amendment mandates that individuals in similar situations be treated equally by the law. U.S. CONST. AMEND. XIV. The first step in an equal protection challenge is to identify similarly situated, yet differently treated individuals. *K.E.K.*, 395 Wis. 2d 460, ¶33 (citing *State v. Dennis H.*, 255 Wis. 2d 359, ¶31, 647 N.W.2d 851). The second step is to determine if the government has an appropriate basis for the different classifications and treatment. *Id.*

This Court has already determined in *Watts* that individuals subject to Chapter 55 protective placements are similarly situated to those under Chapter 51 commitments. *Watts,* 122 Wis. 2d at 77. While Wisconsin courts have not addressed whether summary judgment is available and appropriate in Chapter 55 proceedings, *Shirley J.C.,* 172 Wis. 2d 371, addressed this issue with respect to Chapter 51 proceedings. *Shirley J.C.* held summary judgment is not allowed "in cases where the subject contests the commitment." *Id.*

While acknowledging that the rules of civil procedure apply to Chapter 51 proceedings, *Shirley J.C.* held "a grant of summary judgment would offend our concepts of due process." *Id. Shirley J.C.* analogized a subject individual's refusal to be voluntarily committed to the entry of a not guilty plea

in a criminal case: "In a criminal case, to grant a summary judgment to the state, even where the state's evidence is overwhelming and the evidence of the defendant to the contrary is totally lacking, would be anathema to all of our precepts of constitutional law." *Id.* at 379 (*quoting State v. Koput,* 142 Wis. 2d 370, 392, 418 N.W.2d 804 (1998)).

If summary judgment is disallowed in Chapter 51 but permissible in Chapter 55, it would create the same disparate treatment and equal protection problems identified in *Watts.* Wisconsin Stat. § 51.20(5), (13)(g)3 and (10)-(13) provide for jury trials at commitment extension proceedings, if demanded, and Chapter 51 committees routinely exercise this right. There is no rational basis to afford a jury trial to individuals sought to be extended under Chapter 51 but disallow it for individuals whose protective placement is sought to be continued. The fact that the circuit court did not allow K.K. to have the jury trial he requested and issued an order for continued protective placement on summary judgment instead violates equal protection.

A similar issue came up in the guardianship context in *R.S. v. Milwaukee Cnty.,* 162 Wis. 2d. 197, 470 N.W.2d 260 (1991). In this case, the county attempted to meet its burden by submitting the medical examiner's written report rather than offering live testimony. *Id.* The court held the doctor's written report was hearsay and that it was not admissible under any exception to the hearsay rule. *Id.* at 205. The court determined that while "nothing in [the

guardianship statute] requires the petitioner to call the reporting physician or psychologist to testify in person, in a contested guardianship proceeding… [t]he statute is written… on the premise that the petitioner would call the reporting licensed professional to testify as a witness in a contested proceeding." *Id.* at 208. In holding that live testimony was required, the court noted "the proposed wards right's must be protected by a meaningful hearing." *Id.* at 210.

Again, there is no rational basis for requiring the reporting physician to testify in-person in contested Chapter 54 (guardianship) proceedings but not in contested protective placement proceedings. Anyone subject to a protective placement must have first gone through the guardianship process and thus the statutes cover the exact same class of people. *See* Wis. Stat. § 55.075 ("a petition for guardianship shall be heard prior to ordering protective placement…"). *R.S.'s* rationale that a medical professional's "hearsay written report" is insufficient evidence in a contested guardianship must also apply to a contested protective placement. *Id.* at 207. The fact that the liberty interest at stake in a protective placement is greater than that in a guardianship underscores this point.

Wisconsin courts have made clear that a full due process hearing, with cross-examination of the medical professional, is required under Chapters 51 and 54. Equal protection demands that it is also required for the similarly situated individuals sought to be protected under Chapter 55.

D. There were disputed issues of material fact in this case; summary judgment is not appropriate.

When there are no issues of material fact in a dispute, a party may seek summary judgment as a matter of law. Wis. Stat. § 802.08(2). In reviewing a summary judgment decision, appellate courts employ the same methodology that should have been applied by the circuit court. *Donaldson v. Town of Spring Valley,* 2008 WI App 61, ¶5, 311 Wis. 2d 223, 750 N.W.2d 506. Materials submitted in support of or in opposition to a motion for summary judgment should be viewed in the light most favorable to the party opposing the motion. *Lambrecht v. Estate of Kaczmarczyk,* 2001 WI 25, ¶23, 241 Wis. 2d 804, 623 N.W.2d 751. In addition, "doubts as to the existence of a genuine issue of material fact are resolved against the moving party." *Id.*

In granting summary judgment in this case, the circuit court held that there were no issues of material fact in dispute because the independent evaluator's report addressed each of the standards under Wis. Stat. § 55.08(1)[3] and opined in favor of continued

[3] To obtain a protective placement order, the county must prove, by clear and convincing evidence, the individual sought to be protected meets the following criteria:

(a) The individual has a primary need for residential care and custody.

(b) The individual … is an adult who has been determined to be incompetent by a circuit court.

protective placement. (111:14; App. 9). The court concluded because there were no submissions with contrary information "the court is obligated to grant the motion and order the judgment sought as a matter of law based on the uncontested facts." (111:14; App. 9); *see Erickson v. Prudential Property and Cas. Ins. Co.*, 166 Wis.2d 82, 479 N.W.2d 552 (Ct. App. 1991) (evidentiary matters in affidavits accompanying motion for summary judgment are deemed uncontroverted when competing evidentiary facts are not set forth in counter affidavits).

The circuit court, however, was wrong for several reasons. First, by contesting the placement, K.K. created a dispute about the need for the placement. As noted in *Shirley J.C.,* "[s]imply by refusing to be voluntarily committed, an alleged mentally ill individual joins the question of whether he or she fits the criteria for involuntary commitment…This creates a genuine issue of material fact." *Id.* at 377.

(c) As a result of developmental disability, degenerative brain disorder, serious and persistent mental illness, or other like incapacities, the individual is so totally incapable of providing for his or her own care or custody as to create a substantial risk of serious harm to himself or herself or others. Serious harm may be evidenced by overt acts or acts of omission.

(d) The individual has a disability that is permanent or likely to be permanent.

Wis. Stat. § 55.08(1).

Second, a motion for summary judgment must be accompanied by an affidavit made with personal knowledge. Wis. Stat. § 802.08(3). "Affidavits 'made by persons who do not have personal knowledge' are insufficient to support summary judgment 'and will be disregarded.'" *Gemini Cap. Grp., LLC v. Jones*, 2017 WI App 77, ¶22, 378 Wis. 2d 614, 904 N.W.2d 131. The only affidavit submitted by the county was an affidavit from corporation counsel. (100). Her affidavit referenced and attached documents already in the record, including K.K.'s hearsay statements in the doctor's report, but made no averments based on her personal knowledge. (100:1-28). Because the summary judgment motion failed to conform with the rules of civil procedure, summary judgment is not appropriate. Wis. Stat. § 802.08(3).

Last, the court was incorrect when it stated that no counter-affidavits were submitted. (111:14; App. 9). K.K. submitted an affidavit in which he stated "I am contesting the protective placement…" (103). The affidavit, based on K.K.'s personal knowledge – and although unnecessary – further established that there was a dispute of material fact in this case.

* * *

In sum, when K.K. contested his continued protective placement, a dispute about the material facts was created. The summary judgment motion was procedurally deficient and more importantly its grant created significant violations of K.K.'s statutory and constitutional rights. The legislature intended and due process and equal protection require that K.K. should have the jury trial he'd requested. The circuit court erred when it granted summary judgment in this case.

CONCLUSION

For the reasons stated above, this Court should take review and hold the summary judgment is improper and unavailable in Chapter 55.

Dated this 8th day of March, 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 809.62(4) for a petition produced with a proportional serif font. The length of this petition is 3563 words.

CERTIFICATE OF COMPLIANCE WITH RULE 809.19(12)

I hereby certify that I have submitted an electronic copy of this petition, excluding 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 8th day of March, 2022.

Signed:

FRANCES REYNOLDS COLBERT
Assistant Public Defender