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**SUPREME COURT**

STATE OF WISCONSIN

IN SUPREME COURT

Case No. 2021AP1315

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*In the matter of K.K.:*

PORTAGE COUNTY,

Petitioner-Respondent,

v.

K.K.,

Respondent-Appellant.

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**PETITIONER – RESPONDENT RESPONSE TO PETITION FOR  
REVIEW**

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Brianna L. Sweeney  
Assistant Corporation Counsel  
State Bar No. 1086886  
1516 Church Street  
Stevens Point, Wisconsin 54481  
(715) 346-1368 Telephone  
(715) 343-6258 Facsimile  
sweeneyb@co.portage.wi.us

ATTORNEY FOR PETITIONER-RESPONDENT

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### **CRITERIA FOR REVIEW**

Petitioner presents one primary issue for review in this matter, whether or not summary judgment is appropriate in Chapter 55 protective placement WATTS reviews. The circuit court found that summary judgment was appropriate in these cases. The court of appeals determined the issue was moot as K.K. was no longer contesting his placement at the time the appeal was being decided and therefore there would be no practical legal effect upon any existing controversy. Therefore, the county requests that the petition for review in this case be denied due to mootness.

### **STATEMENT OF THE CASE**

The County agrees, for the most part, with the Statement of the Case as laid out by K.K. and his attorney. However, it should be noted that K.K. had another WATTS review hearing held on December 21, 2021 in front of the Honorable Judge Shannon. K.K. no longer contests the protective placement as of the date of this filing.

### **ARGUMENT**

K.K. requests that this Court grant review to determine whether summary judgment is ever available in chapter 55 matters. The County is of the opinion this matter is moot due to the fact that K.K. no longer contests his placement and should the circuit court be overturned, there is no further remedy available for K.K., therefore resulting in no practical legal effect upon the existing controversy.

Mootness exists when a determination is sought upon some matter which, when rendered, cannot have any practical legal effect upon an existing controversy. *Dane County v. Sheila W.*, 2013 WI 63, ¶ 4, 348 Wis. 2d 674, 835 N.W.2d 148. There are several established exceptions under which this court may elect to address moot issues:

(1) "the issues are of great public importance;" (2) "the constitutionality of a statute is involved;" (3) the situation arises so often "a definitive decision is essential to guide the trial courts;" (4) "the issue is likely to arise again and should be resolved by the court to avoid uncertainty;" or (5) the issue is "capable and likely of repetition and yet evades review." *Id.* at ¶12.

First, K.K. does not allege that it falls under the exception relating to constitutionality, so the County will not respond to that.

With regard to the other assessments made by K.K, while chapter 55 protective placements are an issue of great public importance, overturning a previous WATTS review order does not have any effect on K.K.'s liberty interests since he no longer contests his placement as of December 2021. Additionally, another review hearing will be held within timelines, furthering his due process rights as set forth in the statutes.

Further, K.K. states that due to the short timelines of annual reviews, the issue of whether summary judgment is applicable in chapter 55 cases is likely of repetition and yet evades review, that it is likely to arise again and should be resolved by the court to avoid uncertainty, and that a decision needs to be made by

this Court to provide a guide for the trial courts because this situation arises so frequently.

K.K. has not provided any evidence that that summary judgment has ever been granted in a prior chapter 55 case. It is alluded to that based on the confidentiality of these cases, we may never know if that had been the case. The County counters that a petition for review should not be granted on the mere idea that it could have happened previously and may happen in the future. There is no concrete evidence presented or argued that this is the case. Admittedly, Portage County did request publication in their appellate response, however, based upon court of appeals decision, the County does not think the issue is appropriate for review.

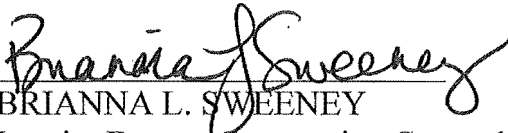
As the appellate court stated, “K.K. gives me no reason to conclude that any party has requested, or any circuit court has granted, summary judgment in any prior ch. 55 proceeding. Second, it is quite unlikely that summary judgment will be requested by any party or granted by any court, in any future ch. 55 case.” (Pet. App. 6-7). If the order was overturned and returned to the circuit court, there would be no further remedy for K.K. as he no longer wishes to contest placement. There are no liberty issues for K.K. at stake here. Due to this, the county believes this matter is moot and that none of the exceptions to mootness that would require review have been met.

### CONCLUSION

For the foregoing reasons, Portage County respectfully requests the Court deny the petition for review.

Dated this 16th day of March 2022.

Respectfully Submitted,

  
BRIANNA L. SWEENEY  
Interim Deputy Corporation Counsel  
State Bar No. 1086886

Portage County Corporation Counsel's Office  
1516 Church Street  
Stevens Point, WI 54481  
(715) 346-1368  
[sweeneyb@portage.co.wi.us](mailto:sweeneyb@portage.co.wi.us)

Attorney for the Petitioner-Respondent

**CERTIFICATION AS TO FORM/LENGTH**

I hereby certify this brief meets the form and length requirements of Rule s. 809.19 (8) (b), (bm), and (c) and in that it is: proportional serif font, minimum printing resolution of 200 dots per inch, 13 point body text, 11 point for quotes and footnotes, leading of minimum 2 points and maximum of 60 characters per line of body text. The length of the brief is 757 words.

**CERTIFICATION REGARDING ELECTRONIC BRIEF PURSUANT TO SECTION 809.19(12)(f), STATS.**

I hereby certify that I have submitted an electronic copy of this brief, excluding the appendix, if any, which complies with the requirements of §809.19(12).

I further certify that this electronic brief is identical in content and format to the printed form of the brief filed on or after this date.

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

Dated this 17th day of March 2022.

  
BRIANNA L. SWEENEY  
Assistant Corporation Counsel  
Portage County  
State Bar Number 1086886  
1516 Church Street  
Stevens Point, WI 54481  
Tel. 715.346.1368  
Fax 715.343.6258  
[sweeneyb@co.portage.wi.us](mailto:sweeneyb@co.portage.wi.us)

Attorney for the Petitioner-Respondent