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CERTIFIED FOR PUBLICATION

COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

Conservatorship of the Person of CHRISTOPHER A.	
SAN DIEGO COUNTY HEALTH AND HUMAN SERVICES AGENCY, Petitioner and Respondent, v. CHRISTOPHER A., Objector and Appellant.	D048447 (Super. Ct. No. MH98397)

APPEAL from a judgment of the Superior Court of San Diego County, Kerry Wells, Judge. Appeal dismissed.

Christopher Blake, under appointment by the Court of Appeal, for Objector and Appellant.

On January 26, 2006, a petition was filed for a rehearing on the reestablishment of a conservatorship of the person of Christopher A. under the Lanterman-Petris-Short Act

(LPS Act) (Welf. & Inst. Code, § 5350 et seq.).[1] The court found insufficient evidence to change the terms of the existing conservatorship, found Christopher gravely disabled, and denied the petition.

Christopher's appointed counsel on appeal advises us he is unable to find any issue to raise on appeal, and, citing *Anders v. California* (1967) 386 U.S. 738 (*Anders*) and *People v. Wende* (1979) 25 Cal.3d 436 (*Wende*), he asks that we independently review the record to determine whether any arguable appellate issue exists. We deny the request and dismiss the appeal.

DISCUSSION

I

In *Anders*, the United States Supreme Court held that when appointed counsel conducts a conscientious examination of the proceedings but finds no meritorious ground in a criminal defendant's first appeal as of right, counsel should advise the court and request permission to withdraw. To protect the defendant's constitutional right to assistance of counsel, the "request must . . . be accompanied by a brief referring to anything in the record that might arguably support the appeal" (*Anders*, *supra*, 386 U.S. at p. 744), and a copy of the brief should be provided to the indigent defendant and time given to enable he or she to "raise any points that he [or she] chooses." (*Ibid.*) The appellate court fully examines all the proceedings to decide whether the appeal is "wholly frivolous." (*Ibid.*) In *Wende*, California's Supreme Court held that in a criminal appeal

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1 All statutory references are to the Welfare and Institutions Code.

Anders requires the court to review the entire record whenever appellate counsel submits a brief that raises no specific issues. (*Wende, supra*, 25 Cal.3d at pp. 441-442.)

In *In re Sade C.* (1996) 13 Cal.4th 952 (*Sade C.*) the California Supreme Court held that *Wende* and *Anders* should not be extended to juvenile dependency proceedings. The court said, "[b]y its very terms, *Anders*'s 'prophylactic' procedures are limited in their applicability to appointed appellate counsel's representation of an indigent *criminal defendant* — and there only in his [or her] first appeal as of right. An indigent parent adversely affected by a state-obtained decision on child custody or parental status is simply not a criminal defendant. Indeed, the proceedings in which he [or she] is involved must be deemed to be civil in nature and not criminal. [Citation.] To quote Chief Justice Burger's concurring opinion in *Lassiter v. Department of Social Services* (1981) 452 U.S. 18, 34 . . . , they are simply 'not "punitive."' That they may be said to 'bear[] many of the indicia of a criminal trial' [citation] goes to form and not to substance. As a consequence, they are far removed from the object of the *Anders* court's concern, which was the first appeal as of right *in a criminal action*." (*Sade C., supra,* 13 Cal.4th at p. 982.)

The question here is whether, in light of the California Supreme Court's opinion in *Sade C.*, the procedural safeguards established by *Anders* and *Wende* apply on appeal of an order for conservatorship of the person under the LPS Act. In *Conservatorship of Margaret L.* (2001) 89 Cal.App.4th 675 (*Margaret L.*) a majority of the Fourth District Court of Appeal, Division Three, answered the question affirmatively. We respectfully

disagree and hold our independent review of the record is unavailable in such cases to determine whether there is any arguable appellate issue.

II

In *In re Andrew B.* (1995) 40 Cal.App.4th 825, 830-831, decided before *Sade C.*, the Fourth District Court of Appeal, Division Three, concluded that the *Anders* and *Wende* procedures are required when reviewing termination of a father's parental rights in a child dependency proceeding. In *Conservatorship of Besoyan* (1986) 181 Cal.App.3d 34, 36 (*Besoyan*), the Fifth District Court of Appeal held that the *Wende* procedure applies to an appeal of appointment of a conservator under the LPS Act.

In *Sade C.*, the court disapproved of *In re Andrew B.*, *supra*, 40 Cal.App.4th 825. (*Sade C., supra,* 13 Cal.4th at p. 983, fn. 13.) It noted, however, that "[g]enerally, the Courts of Appeal have confined *Anders* and *Wende* to criminal appeals," but cited *Besoyan* and other cases for the proposition that "[e]xceptions, however, are apparent." (*Sade C., supra,* 13 Cal.4th at p. 962, fn. 2.) The observation that *Besoyan* is an exception is noted in the context of a footnote that sets forth the status of then-existing law. Although the Supreme Court did not later in its opinion expressly disapprove of *Besoyan*, it stated, "[t]o the extent that *any* decision of ours or of the Courts of Appeal states or implies that the applicability of *Anders* goes beyond what is described in the text, it is disapproved." (*Sade C., supra,* at p. 983, fn. 13, italics added.) Notably, in *Sade C.*, the Supreme Court more than once emphasized that *Anders*'s "prophylactic" procedures apply only to appointed appellate counsel's representation of an indigent

criminal defendant in his or her first appeal. (*Sade C., supra*, 13 Cal.4th at pp. 977-979, 982-983, 985-986, 991.)

In *Margaret L.*, the majority noted that *Sade C.* did not expressly overrule *Besoyan* and concluded that after *Sade C., Anders* and *Wende* remain applicable to LPS Act proceedings for conservatorship of the person. (*Margaret L., supra*, 89 Cal.App.4th at pp. 680, 682.) We disagree. The Supreme Court's express disapproval in *Sade C.* of *any* Court of Appeal case extending *Anders* and *Wende* beyond criminal appeals reflects the Supreme Court's disagreement with *Besoyan*.

However, even if *Sade C.* did not set precedent regarding appellate review of an order granting a conservatorship, we conclude the procedural protections of *Anders* and *Wende* are inapplicable to LPS Act conservatorship proceedings.

In *Margaret L.*, the majority found *Anders* and *Wende* applicable to LPS Act conservatorship proceedings because they are analogous to criminal proceedings. It noted that although Margaret L. was accused of no crime, she faced "severe stigma and even more disabilities than a convicted felon. Not only is her sentence potentially indeterminate, she has lost the power to manage her property . . . , to have a professional license, to drive, to vote and even the right to refuse consent to certain medical treatment." (*Margaret L., supra*, 89 Cal.App.4th at p. 682.) *Margaret L.* relied on *Conservatorship of Roulet* (1979) 23 Cal.3d 219, 235, in support of its application to review of a criminal appeal to a civil appeal. In *Conservatorship of Roulet, supra*, the California Supreme Court held that in criminal cases, "[t]he due process clause of the

California Constitution requires that proof beyond a reasonable doubt and a unanimous jury verdict be applied to conservatorship proceedings under the LPS Act." (*Ibid.*)

In determining whether our independent review of the record is required, we consider the LPS Act's delicate balance between the medical objectives of treatment without legal delays and protecting against deprivation of liberties without due process of law. "Integral to this delicate balance is the presence or absence of procedural safeguards at specific stages of LPS Act proceedings." (*Conservatorship of Kevin M.* (1996) 49 Cal.App.4th 79, 89.) We agree with the dissent in *Margaret L.,* that our independent review of the appellate record is not a procedural safeguard required to maintain this delicate balance because there are safeguards afforded the conservatee throughout the duration of the conservatorship process. (*Margaret L., supra,* 89 Cal.App.4th at pp. 686-687 [conc. & dis. opn. of Rylaarsdam, J.].)

As the dissent in *Margaret L.* explained: "[B]ecause a conservatee's commitment is different in purpose and duration from a criminal defendant's incarceration, differences exist that afford a conservatee rights not granted to a criminal defendant. For example, conservatorships under section 5350 last for only one year. [Citation.] During that time, a conservatee can petition for immediate release or for a modification of the conservatorship's terms. [Citations.] Also, . . . conservatees who display improvement can receive day passes to temporarily leave the facility where they are committed. [¶] To extend the commitment beyond one year, the petitioning party must again prove beyond a reasonable doubt the conservatee is, at that time, gravely disabled.

[Citations.] And, if requested, the conservatee is entitled to have the new proceeding tried before a jury. [Citations.]" (*Margaret L., supra,* 89 Cal.App.4th at pp. 686-687 [conc. & dis. opn. of Rylaarsdam, J.].) Thus, conservatorship proceedings are distinguishable from criminal proceedings in which defendants may be sentenced to prison for lengthy terms and their only avenue of relief from error is through the appellate court or a petition for a writ of habeas corpus.

Additionally, the one-year limitation on conservatorships significantly renders *Wende* review ineffective because by the time an appeal is processed the commitment order may have automatically expired. Extension of *Anders* and *Wende* review to LPS Act proceedings would prompt counsel who cannot find any appealable issue to seek our independent review of the entire appellate record each time a recommitment order is entered. We must balance the benefit of applying *Anders* and *Wende* to ensure appellate counsel "'acts in the role of an active advocate in behalf of his [or her] client,'" against "the lost time and money, and most importantly, delay in entering a final decision." (*Margaret L., supra,* 89 Cal.App.4th at p. 687 [conc. & dis. opn. of Rylaarsdam, J.].) In the juvenile dependency context, this court has noted that *Wende* review is "nearly always unproductive" and results in needless delay. (*In re Kayla G.* (1995) 40 Cal.App.4th 878, 888; *In re Angelica V.* (1995) 39 Cal.App.4th 1007, 1016 ["we [cannot] justify the devotion of time and energy for duplicative review of this special class of civil case, when all our experience teaches that such review is unproductive"].)

For these reasons, we hold the review procedure expressed in *Anders* and *Wende* does not apply to conservatorship proceedings under the LPS Act. We do not independently review the record for error in an appeal from a judgment appointing a conservator or reestablishing a conservatorship.

DISPOSITION

The appeal is dismissed.

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BENKE, Acting P. J.

WE CONCUR:

McDONALD, J.

IRION, J.