

**COURT OF APPEALS
DECISION
DATED AND FILED**

December 14, 1999

Marilyn L. Graves
Clerk, Court of Appeals
of Wisconsin

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See § 808.10 and RULE 809.62, STATS.

No. 99-2070

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT III**

**IN THE MATTER OF THE GUARDIANSHIP AND
PROTECTIVE PLACEMENT OF BERMUDA H.:**

SHAWANO COUNTY,

PETITIONER-RESPONDENT,

v.

BERMUDA H.,

RESPONDENT-APPELLANT.

APPEAL from an order of the circuit court for Shawano County:
EARL W. SCHMIDT, Judge. *Affirmed.*

¶1 PETERSON, J. Bermuda H. is under a guardianship and protective placement. Following her annual *Watts* review,¹ she moved to vacate the order continuing the guardianship and protective placement on the grounds of ineffective assistance of counsel. She claimed her attorney should have moved to dismiss because she did not receive a copy of the examining physician's report ninety-six hours prior to the review hearing, contrary to § 880.32(2)(a)1, STATS. The trial court denied her motion and this court affirms.

¶2 Apparently, the examining physician's report was faxed to the Shawano County Courthouse on Sunday, July 19, 1998. It was filed on July 20. Bermuda's attorney received a copy on July 21. The final hearing was on July 23. Section 880.33(2)(a)1, STATS., provides, in relevant part, that "[t]he attorney or guardian ad litem for the proposed ward shall be provided with a copy of the report of the physician or psychologist at least 96 hours in advance of the hearing."

¶3 Bermuda claims her attorney was ineffective for failing to move to dismiss on the grounds that the report was not furnished to her ninety-six hours before the hearing. As Bermuda recognizes, in order to prevail she must establish both that her attorney was deficient and that she was prejudiced. *See Strickland v. Washington*, 466 U.S. 668, 687 (1984). We note, however, that her motion is devoid of any showing as to how she was prejudiced. Bermuda's only argument in her brief as to how she was prejudiced is that she was not able to secure an expert to testify on her behalf. However, she does not suggest what evidence an

¹ Section 55.06(10), STATS., entitles a ward who is protectively placed to an annual judicial review of the placement. *See State ex rel. Watts v. Combined Community Servcs.*, 122 Wis.2d 65, 84, 362 N.W.2d 104, 113 (1985).

expert would have provided. To establish prejudice, Bermuda must demonstrate that there is a reasonable probability that the results of the proceedings would have been different were it not for the deficient performance of her attorney. *See State v. Sanchez*, 201 Wis.2d 219, 236, 548 N.W.2d 69, 76 (1996). We are unable to determine that based on this record.

¶4 In a related argument, Bermuda claims that because the ninety-six-hour rule was violated, the proceedings should have been dismissed. However, Bermuda never moved to dismiss the proceedings. She only asked for a continuance. This court generally does not address issues raised for the first time on appeal. *See In re Shawn B.N.*, 173 Wis.2d 343, 360-61, 497 N.W.2d 141, 147 (Ct. App. 1992).

¶5 Failing that, Bermuda suggests that the trial court lost competency when the report was not filed within ninety-six hours of the final hearing. The two cases she cites both deal with failure to hold final hearings within the statutory time limits. *See In re N.N.*, 140 Wis.2d 64, 409 N.W.2d 388 (Ct. App. 1987); *Lockman v. Gerhardstein*, 107 Wis.2d 345, 320 N.W.2d 27 (Ct. App. 1982). Neither case stands for the broad proposition claimed by Bermuda that failure to comply with each time limit in guardianship and protective placement cases results in loss of competency. Other than citing these cases, Bermuda's argument is not developed and we do not address it further. *See State v. Flynn*, 190 Wis.2d 31, 58, 527 N.W.2d 343, 354 (Ct. App. 1994).

By the Court.—Order affirmed.

This opinion will not be published. *See* RULE 809.23(1)(b)4, STATS.

