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IN THE
SUPREME COURT OF THE UNITED STATES

Margaret Bach - PETITIONER

vs.

Circuit Court for Milwaukee County - RESPONDENTS

ON PETITION FOR A WRIT OF CERTIORARI TO

Wisconsin Supreme Court

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Can a circuit court deny a mother and her disabled child free speech?
2. Can a circuit court deny a mother and her disabled child freedom of association, depriving them of visits and phone calls for over 4 years?
3. Can a circuit court deny a mother and her disabled child due process, by limiting testimony and refusing all evidence?
4. Can a circuit court ignore judicial estoppel?
5. Can a circuit court enforce illegal orders, or must they be void?
6. Can a circuit court overrule federal law?
7. Can a disabled protectively placed party being aggrieved be denied access to the court proceedings?
8. Do the facts support an Eighth Amendment violation?
9. Should contradicting orders in a case be addressed?
10. Can A court impose a \$24,000 fee for a party to access the courts when their prior access saved a child's life?
11. Can a court retaliate against a mother for accessing the court and speaking the truth to advocate for her and her son's rights?

LIST OF PARTIES

All parties involved in this Office of Lawyer Regulation case do not appear in the caption of the case on the cover page. The parties also include:

Judge David Borowski
Life Navigators
REM Wisconsin II, Inc.

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IN THE
SUPREME COURT OF THE UNITED STATES
PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the
judgment below.

OPINIONS BELOW

The opinion of the Wisconsin Supreme Court appears at Appendix 1 to the
petition.

JURISDICTION

The date on which the Wisconsin Supreme Court decided my case was
September 11, 2017. The jurisdiction of this Court is invoked under 28
U.S.C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

First Amendment

Congress shall make no law respecting an establishment of religion, or
prohibiting the free exercise thereof; or abridging the freedom of speech, or of
the press; or the right of the people peaceably to assemble, and to petition the
government for a redress of grievances.

Eighth Amendment

Excessive bail shall not be required, nor excessive fines imposed, nor cruel
and unusual punishments inflicted.

Ninth Amendment

The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.

Fourteenth Amendment

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Americans With Disabilities Act of 1990 (ADA)

The ADA prohibits discrimination on the basis of disability in employment, State and local government, public accommodations, commercial facilities, transportation, and telecommunications.

Title II requires that State and local governments give people with disabilities an equal opportunity to benefit from all of their programs, services, and activities (e.g. public education, employment, transportation, recreation, health care, social services, courts, voting, and town meetings).

Rehabilitation Act of 1973, Section 504

The Rehabilitation Act prohibits discrimination on the basis of disability in programs conducted by Federal agencies, in programs receiving Federal financial assistance, in Federal employment, and in the employment

practices of Federal contractors. Section 504 states that "no qualified individual with a disability in the United States shall be excluded from, denied the benefits of, or be subjected to discrimination under" any program or activity that either receives Federal financial assistance or is conducted by any Executive agency or the United States Postal Service.

42 U.S.C. § 1983

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.

STATEMENT OF THE CASE

This is the case of a mother and her disabled son trying to remain safe in their home with the laws to protect them. But it shows corrupt courts willing to violate the law to isolate and abuse a disabled child to save Milwaukee County money. Numerous examples of judicial estoppel, increasing harm to the disabled child and those around him, and violation of state and federal law prove the corruption. A child's life, a family unit, the safety of the general public, and the integrity of the courts are at stake. This case will affect millions of abused disabled citizens.

Margaret Bach's son AB has a rare brain tumor, one of only 200 known cases in the world. It causes uncontrollable seizures and aggressive behavior necessitating two well-trained staff 24-7 to keep everyone safe. AB got that care for 7 years in a good placement until he turned 18, and the state child services turned him over to Milwaukee County. They refused to pay the cost of his care in the placement he had the prior 7 years and forced a group home.

The group home lasted less than a month after numerous dangers and a sexual assault, Bach brought him home to live. Milwaukee County refused to provide adequate care in their home, so Bach began litigation to enforce the laws there to protect AB.

Still, adequate care never came. AB and Bach ended up laying bleeding in the street and Bach needed numerous surgeries after AB attacked her, but the court provided no relief. The court made findings AB was unsafe as staffed in his home, Milwaukee County stipulated his home would be safe is adequately staffed, but the injury and harm continued year after year with no court willing to order Milwaukee County to pay for the care AB needed.

Bach lost guardianship because her inability to gain adequate staffing proved she was not making decisions in AB's best interests. Judge Flanagan stated he needed three staff to be safe, and assumed a corporate guardian would work more agreeably with the county to find a safe group home.

The opposite happened. They downgraded AB's care and the harm increased. On 10-7-11 the guardian came with the police at night to take AB from his home with no notice. It was a very traumatic scene with AB hugging his mother saying, "I love you; I'll see you in heaven."

The group home they took AB to that night was proven unsafe in 2-3 days and they then sent him to a mental institution where he was held against his will for the next 3 years. There was an immediate increase in harm to AB and those around him. He had a 21-fold increase in aggressive behaviors with restraints used; he sent numerous staff to the hospital, one being permanently disabled; he had numerous broken bones; he suffered pulled off fingernails and toenails, and gouged his own eyes severely; and a staff nurse even admitted he didn't belong there because they could not handle his fragile medical condition. AB was frequently denied phone calls and visits from his loved ones.

With no relief from the courts, the suffering and abuse for AB and those around him continued. In a group home tried briefly in 2013 with reduced levels of staffing, AB was able to run away missing for several hours, bite a staff in the arm, nearly suffocate after covering his nose and mouth with duck tape in the night, and finally biting his aide's ear off 7-5-13 sending him to jail and then back to the mental institution.

The guardian chosen by Milwaukee County and supported by the court, have allowed the danger and harm to continue. Since AB bit the man's ear

off in July, 2013 Bach has not been allowed to see her son. He wants to see her, and even injured himself ripping off a fingernail when denied a phone call because he said he wanted to know how old his mother was because he was afraid she would die before he was allowed to see her.

AB has half the level of staffing he had when he bit the man's ear off and is left alone regularly at a new group home 3 hours away from all family and friends. He is isolated and threatened with a return to the mental institution. He had repeated falls being left alone and understaffed to the point he could not speak or walk normally, so needed an urgent brain surgery for the first time in his life. Bach filed for a temporary restraining order to ensure AB got a consult with his expert neuro-surgeon who had saved his life before, but was then punished for doing so because it violated the 10-16-12 order.

There is no precedent for not allowing a mother to see her son for 4 years, not even before a brain surgery with a 30% risk of death. Numerous witnesses described the close, loving relationship AB had with his mother, but the corrupt courts allowed this cruel separation of a mother and child for over 4 years now.

Judge Dwyer admitted in 2008 this case was all about money, yet they spent twice the cost to keep AB locked in a mental institution for 3 years with less staff and less community integration than the 2 well-trained staff AB

had in his happy home going on daily activities he was interested in the 4 years prior.

The United States Supreme Court must address this to stop the injustice.

REASONS FOR GRANTING REVIEW

I. The Appellate Court Had A Duty To Consider Bach's Motion

A. Judicial Integrity Is At Issue

Bach motioned the circuit and appellate court under Wis. Stat. § 806.07 for relief from illegal orders the probate court in Milwaukee County made against her in hearings on 11-2-16 (Appendix 3) and 2-21-17. (Appendix 4) "A judgment or order which is void may be expunged by a court at any time. Such right to expunge a void order or judgment is not limited to statutory requirements for reopening, appealing from, or modifying orders or judgments." State ex rel. Wall v. Sovinski, 234 Wis. 336, 342, 291 N.W. 344 (1940). The courts have a "duty and inherit power to preserve the integrity of the judicial system, to ensure and if necessary to provide at public expense adequate legal representation, and to oversee the orderly and efficient administration of justice." State ex rel. Friedrich v. Circuit Court For Dane County, 192 Wis.2d 1,10, 531 N.W.2d 32 (1995).

The integrity of the judicial system is at issue in this case because Judge David Borowski issued illegal orders violating numerous state and

federal laws. Therefore, the appellate court had a duty to void the illegal orders.

The appellate court has not been consistent in their rulings on this case. They stated Bach was an interested party due certain protections in their order from 8-29-12, and called her lengthy motion “thoughtful”, but would not grant her request because they deemed no imminent danger to her son for a bad placement since Bach had the protections of Wis. Stat. § 55.15(5) and (6). “[G]iven her status as an interested person, Margaret must be provided with notice of any proposed transfer of AB’s placement, and will have the right to file a petition objecting to any such transfer.” (Appellate Decision 8-29-12, p. 3; Appendix 5) But the guardian, circuit court, guardian ad litem (“GAL”), and adversary counsel all approved of Bach not getting notice for several moves, all proven unsafe. They all knowingly violated the law of Wis. Stat. § 55.15(5) and (6), and the harm the appellate court said was unlikely has now come to pass.

Although the appellate court conceded actions against Bach did not fall under the St. Vincent’s decision, (Appellate Decision, 6-2-17; Appendix 6) they did allow the actions against Bach in the orders from 11-2-16 and 2-21-17. Their 6-2-17 order admitted orders against Bach could not be subject to any bar to access the courts also contradicts the Circuit Court Order from 10-16-12, which they previously upheld.

Contradicting orders should be clarified by higher courts.

In addition to contradicting orders by the appellate court, this case highlights examples of contradicting statements in the circuit court.

“Judicial estoppel prevents a person who states facts under oath during the course of a trial from denying those facts in a second suit, even though the parties in the second suit may not be the same as those in the first.”

Monterey Dev. Corp. v. Lawyer’s Title Ins. Corp., 4F.3d 605, 609 (8th Cir. 1993).

It cannot be disputed Attorney McGinnity representing the guardian made false statements to the court. AB was scheduled for brain surgery at 8:00 am 5-15-15. The hearing was held 5-14-15 at 1:00 pm in Green Bay and at that time there was no scheduled consult for AB with any other neuro-surgeon. If AB was not already being transported the 2-hour drive to Froedtert Hospital to see his experienced neuro-surgeon, Dr. Mueller, there was no consult planned. The logistics make it impossible.

Yet, the guardian’s attorney argued they had already planned to get AB a consult with his experienced neuro-surgeon at Froedtert. At the hearing, Attorney McGinnity testified, “Life Navigators is in active discussions with AB’s physicians. They had already given the physicians in Green Bay and the name of his neurosurgeon in Milwaukee. That was already in the works.” (R. 20, p. 10) There is no evidence to support this, and the logistics make it impossible. If they already planned a consult with Dr. Mueller, AB would have been on his way there, and there would have been no need to cancel the

next morning's surgery as his neuro-surgeon did, stating it was in AB's best interests.

The guardian looked bad for not consulting with AB's experienced neuro-surgeon, not providing AB adequate care and making medical decisions in his best interests, so they lied and said they planned to. But they agreed it is in AB's best interests to have the consult, as the Green Bay surgeon stated.

Yet months later, before the Milwaukee County court they argued Bach "put AB at risk by interfering in decisions regarding his medical care, [based on the October 2012 injunction she filed in Brown County]" Attorney McGinnity filed a motion against Bach on 11-20-15 stating, "The action she filed in Brown County delayed a medical procedure that very well could have been harmful to AB." (page 8) The testimony in Brown County from AB's GAL, who had spoken to AB's neuro-surgeon, was "number one, on AB's behalf, this is not an emergency situation so that as his treating physician, he was going to be postponing tomorrow's surgery". There was no contradicting testimony or evidence. The neuro-surgeon agreed it was in AB's best interest to get a consult from AB's long-standing, more experienced neuro-surgeon, and that a delay to get that consult was not harmful to AB.

This 11-20-15 motion to Milwaukee County compared with the 5-14-15 Brown County hearing show a clear violation of SCR 20:3.3 on candor toward the tribunal, Wis. Stat. § 802.05(2) on truthful representations to the court,

and SCR 20:8.4(c) on misconduct – engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation. Attorney McGinnity should have been sanctioned, not awarded with attorney fees in the St. Vincent’s decision.

B. No Past Order Allowed The Appellate Court To Deny Review

1. The St. Vincent’s Decision Had Not Yet Taken Affect And Only Applied To One Of The Two Orders Under The Motion.

The appellate court order gave Bach until 7-31-17 to pay the \$24,000 from the St. Vincent’s Decision in order to accept any filing of hers, (Appendix ?) but Bach supplied a new issue and order from a 2-21-17 hearing to the court on 7-28-17 and they refused to accept it. They do not abide by their own order.

2. The St. Vincent’s Decision Is Void

Illegal orders are not enforceable, and any order violating the law is void. Therefore, the St. Vincent’s decision the appellate court uses to deny any consideration of Bach’s Wis. Stat. § 806.07 Motion should not have prevented their review.

The St. Vincent’s decision is an error of law because it relies on Wis. Stat. § 809.25(3) to support an award of attorney fees for a frivolous appeal, but the statute states “this subsection does not apply to appeals or cross-appeals under s. 809.107, 809.30, or 974.05” and there can be no argument this action Bach filed to see her son and ensure he have adequate medical care before a brain surgery is a Chapter 51, and 55 case requiring it be reviewed under Wis. Stat. §809.30. All past appeals Bach had over the years

that the appellate court complained of were under Wis. Stat. §809.30 as well as countless other Chapter 51 and 55 cases. Chapter 51 appeals are governed under Wis. Stat. §809.30. In the Matter of the Mental Commitment of Thomas F.W., 2015 WI App 43, ¶ 12; Dane County v. Thomas F.W. 2015 WL 1823878. “This appeal is taken under the procedures and time limits in WIS. STAT. RULES 809.30 and 809.32, procedures that are applicable to ch. 55.” In re Guardianship and Protective Placement of Genevieve M., 2009 WI App 173, ¶ 6, 322 Wis.2d 131, 776 N.W.2d 640.

Being able to see and speak to her son, and ensure he has adequate medical care is a Chapter 51 issue: 1.) Prompt and adequate treatment appropriate for his condition. Wis. Stat. § 51.61(1)(f); 2.) Reasonable access to a telephone. Wis. Stat. § 51.61(1)(p); and 3.) Be permitted visitors each day. Wis. Stat. § 51.61(1)(t)

“The department shall establish procedures to assure protection of patients' rights guaranteed under this chapter . . . The procedures established by the department under this subsection apply to patients in private hospitals or public general hospitals.” Wis. Stat. § 51.61(5)(a). “Any patient whose rights are protected under this section may bring an action against any person, including the state or any political subdivision thereof, which willfully, knowingly and unlawfully denies or violates any of his or her rights protected under this section.” (Wis. Stat. § 51.61(7)(b)). And Wis. Stat.

§ 51.13(5) states, “any person who is aggrieved by a determination or order under this section and who is directly affected thereby may appeal.”

The St. Vincent’s decision wipes out this state law protection to Bach and her son, so it must be void.

C. No Circuit Court Can Overrule State And Federal Law

Any judge making an illegal order, such as these from Judge Carroll on 10-16-12, (Appendix 7) and Judge Borowski on 11-2-16 and 2-21-17 have lost competency and, therefore jurisdiction, so their orders are void and they cannot rule on the case. Any court order that violates a state statute is void under Wis. Stat. 813.025(1). Jurisdiction can be lost for competency. In the Interest of B.J.N., 162 Wis.2d 635, 656, 469 N.W.2d 845, 853 (1991). “A failure to comply with any statutory mandate . . . prevents [a court] from adjudicating the specific case before it.” Id. “Bias or prejudice of a judge as to the parties constitutes in the law a disability of such judge for the discharge of his duties.” Eccles v. Free High School Dist. Of City of Kaukauna, 162 Wis. 162, 155 N.W. 957, 958 (1916). “A judgement is void if the court had no jurisdiction.” Johnson v. Ventling, 132 S.W.3d 173, (Ct. App. 2004) “When a court or other judicial body acts in excess of its jurisdiction, its orders or judgments are void and may be challenged at any time.” Neylan v. Vorwald, 121 Wis.2d 481, 494, 360 N.W.2d 537 (Ct. App. 1984). The detail cited in this original motion support Judge Borowski has violated numerous state and

federal laws, so he cannot rule on this case going forward and his orders should be declared void.

1. Judge Borowski's Orders Are Void For Violating The 14th Amendment

The orders from 11-2-16 and 2-21-17 denied Bach due process not allowing her respond to the numerous false hearsay testimony of opposing counsel. "The 14th Amendment provides that no state shall deprive any person of life, liberty, or property without due process of law, nor shall it deny to any person within its jurisdiction the equal protection of the laws." Ex Parte: Edward T. Young, 209 U.S. 123, 149 (1908). "The Due Process Clauses protect civil litigants who seek recourse in the courts." Logan v. Zimmerman Brush Co., 455 U.S. 422, 429 (1982). "The Fourteenth Amendment's Due Process Clause has been interpreted as preventing the States from denying potential litigants use of established adjudicatory procedures, when such an action would be 'equivalent of denying them an opportunity to be heard upon their claimed right[s]'. Id. at 429-30, Citing Boddie v. Connecticut, 401 U.S. 371, 380, 91 S.Ct. 780, 787, 28 L.Ed.2d 113 (1971).

The St. Vincent's decision and Judge Borowski's orders wipe out these rights for Bach and AB. AB was not even allowed to attend in violation of Wis. Stat. § 54.42(5). Wisconsin law not only allows for the ward to be present, it requires the court to take affirmative steps to ensure the ward's attendance. In re Guardianship of Claus, 45 Wis.2d 179, 183, 172 NW.2d 643, 644 (1969).

Bach was not allowed to respond or present her evidence in the circuit court hearing 2-21-17. Bach had subpoenaed 2 parties to testify and brought numerous documents to defend her right to see and speak to her son, but the court would not allow her to enter and discuss her evidence or have any witnesses, whereas the guardian was allowed to present two witnesses with nothing but hearsay testimony.

“Close relatives and guardians, both of whom likely have intimate knowledge of a mentally retarded person's abilities and experiences, have valuable insights that should be considered”. Heller v. Doe, 509 U.S. 312, 329 (1993).

Because allowing guardians and immediate family members to participate as parties in commitment proceedings increases the accuracy of those proceedings and implements the State's interest in providing family members a voice in the proceedings, without undermining those interests of the individual protected by the Due Process Clause, these Kentucky statutes do not run afoul of due process.

Id. at 331-333.

Judge Borowski cut off much of Bach's testimony on 11-2-16 as well denying her “an opportunity to be heard upon her claimed rights”. Judge Borowski heard nothing but hearsay evidence from opposing counsel.

The United States Supreme Court has made it clear there is a higher standard of evidence required when a court takes away a citizens' constitutional rights like those this court denies Bach and AB: free speech

and freedom of association. See Obergefell et al. v. Hodges, 135 S.Ct. 2071 (2015); M. L. B. v. S. L. J., 519 U.S. 102 (1996); Fisher v. University of Texas, 133 S.Ct. 2411 (2013); Johnson v. California, 543 U.S. 499, 514, 125 S.Ct. 1141, 160 L.Ed.2d 949 (2005); Whole Woman's Health v. Hellerstedt, 136 S. Ct. 2292 (2016); Gonzales v. Carhart, 550 U.S. 124, (2007); Shelby County, Alabama v. Holder, 133 S.Ct. 2612 (2013).

There is no precedent to support this cruel over 4-year deprivation of a mother and child's right to see each other. Guidelines in Appendix 10.

The integrity of the family unit has found protection in the Due Process Clause of the Fourteenth Amendment, Meyer v. Nebraska, *supra*, at 399, the Equal Protection Clause of the Fourteenth Amendment, Skinner v. Oklahoma, *supra*, at 541, and the Ninth Amendment, Griswold v. Connecticut, 381 U. S. 479, 496 (1965) (Goldberg, J., concurring).

Kovacs v. Cooper, 336 U. S. 77, 95 (1949)

A father thought to be abusing his child was ordered by the court to be allowed visitation. Kristi L.M. v. Dennis E.M., 2007 WI 85, ¶ 17, 734 N.W.2d 375.

Even North Korea allowed a mother more. Kenneth Bae was arrested in North Korea in November 2012, but they recognized a mother's right to see her son, and a prisoner's right to visitors by allowing three visits in July 2013. CNN reported,

As a mother, I worry endlessly about his health," said his mother Myunghee Bae in a videotaped statement. "I want to see him, comfort him and

hold him in prison. I miss him so much. It's hard to describe the agony of the past year since my son has been imprisoned in the DPRK, she said in a released statement. I spend every day thinking about him and praying for his homecoming.

www.cnn.com/2013/10/11/world/asia/bae

Bach asks this court to show the same humanity North Korea affords their prisoners.

No government interest has been alleged; there has been no mention of the benefits the government gains, or if they are narrowly tailored and tied to the restrictions on Bach and AB's right to free speech and freedom of association. And no sufficient evidence produced to support this continued cruel deprivation. Had AB been in a North Korea prison Bach would have seen her son 3 times a year, but in a Wisconsin group home she is denied all visits for over 4 years. Something is very wrong. The United States Supreme Court must address this injustice and violation of basic civil rights.

2. Judge Borowski's Orders Are Void For Violating AB and Bach's Rights To Free Speech And Freedom Of Association

At the 2-21-17 hearing, Judge Borowski denied Bach and AB had a right to see and speak to each other by changing the facts, stating many adult children may decide not to speak to their parents. (Trans. 2-21-17, p. 17-19) Bach pointed out their facts are different for AB functions as a second grader and desperately wants to see and speak to his mother. (*Id.* at 17) There is no precedent to deny a disabled child from seeing and speaking to his mother, as this court has done for over 4 years now.

At the hearing 9-20-16, Bach asked: “ I’d like to know what the reason would be why I can’t see my son. It’s been over three years. There have been no reported incidents from any witness that I’ve ever upset him.” (Trans. 9-20-16, p. 7) Judge Borowski responded, “ The best way for this to move forward is you continue to comply with my orders; don’t trump up false narratives, don’t appeal for no reason, don’t waste the time of the Court of Appeals, don’t file 300 page briefs with this Court, comply with this Court’s Orders. The attorney for Life Navigators said that you had been complying” (Trans. 9-20-16, p. 9). This proves the court retaliated against Bach for filing a 300 page brief, which violates no local rule or statute, and appealing, which is her right under Wis. Stat. § 808.03(1), Wis. Stat. § 809.30, Wis. Stat. § 51.13(5), Wis. Stat. § 813.025(1), and Wis. Stat. § 940.285.

“Retaliation against an individual for filing a complaint violated his access to the courts, subsumed under the First Amendment right to petition the government for redress of grievances, and was actionable under 42 U.S.C. § 1983 and the First Amendment.” Soranno’s Gasco, Inc. v. Morgan, 874 F.2d 1310, 1314 (9th Cir. 1989). “Any deprivation under color of law that is likely to deter the exercise of free speech. . . is actionable.” Powers v. Summers, 226 F.3d 815, 820 (7th Cir. 2004). “[A]ccess to the courts is an entitlement or a necessity.” Logan v. Zimmerman Brush Co. at 1154. 455 U.S. 422, 429 (1982).

Our country and state place a great value on free speech. The First Amendment of the United States Constitution states bluntly: "Congress shall make no law . . . abridging the freedom of speech." State v. Mitchell, 169 Wis.2d 153, 163-64, 485 N.W.2d 807 (1992).

Bach has a constitutional right to see her son, who functions at the 2nd grade level. "The Courts of Appeals for the Seventh and Tenth Circuits have recognized the parental liberty interest." Cited in McCurdy v. Dodd, 352 F.3d 820, 825 (3rd Cir. 2003). The Due Process Clause extends to a parent's interest in the companionship of his child as long as the child does not assume that critical decision-making responsibility for himself or herself. (Id. at 829)

Wisconsin provides special protections for parents before taking their parental rights under Wis. Stat. § 48, which no guardianship proceeding can ignore. "Parents . . . require heightened legal safeguards to prevent erroneous decisions." Dane Cnty. DHS v. Mable K., 2013 WI 28, ¶ 60, 346 Wis.2d 396, 828 N.W.2d 198. "Stanley was entitled to a hearing on his fitness as a parent before his children were taken from him and that, by denying him a hearing and extending it to all other parents whose custody of their children is challenged, the State denied Stanley the equal protection of the laws guaranteed by the Fourteenth Amendment." Stanley v. Illinois, 405 U.S. 645, 649, 92 S.Ct. 1208, 31 L.Ed.2d 551 (1972)

Bach never got these protections of a jury trial, fact-finding hearings, etc. but the affect is the same – she has not been allowed to see her son for over 4 years, and very limited phone calls.

The order from 2-21-17 denied Bach her right to free speech by ordering she could not make any disparaging comments about parties like the guardian, group home, etc. This violates her right to free speech and numerous state law protections/duties.

Any court order must list what the consequence is for violating it, but this order from the 2-21-17 hearing does not. “The due process clause of the Fourteenth amendment requires at least a fair and adequate warning by court rule or notice of the imposition of the sanctions or penalties to be invoked for failure to comply with a court order.” Neylan v. Vorwald, 121 Wis.2d 481, 489-490, 360 N.W.2d 537 (Ct. App. 1984). “Judgments entered contrary to due process are void.” (Id. at 488, Citing Wengerd v. Rinehart, 114 Wis.2d 575, 587, 338 N.W.2d 861, 868 (Ct. App. 1983). Nowhere in the order from the 2-21-17 hearing does it list

a. SCR 40.15

Every attorney in Wisconsin must take an oath before being admitted to the State Bar, and no judge can overrule this law. But the court order from the 2-21-17 hearing does exactly that for the oath states: “I will never reject, from any consideration personal to myself, the cause of the defenseless or oppressed, or delay any person's cause for lucre or malice.”

The order from the 2-21-17 hearing orders Bach to not make any disparaging comments about certain parties connected to her son's care, even if "required by the justice of the cause with which I am charged" and Bach has a right to protect her son, who is "defenseless and oppressed".

b. Wis. Stat. § 51.13(5)

AB is protected by the Patient Bill of Rights in Wisconsin, which also allows protections to his loved ones affected a violation of his rights. Wis. Stat. § 51.13(5) states, "any person who is aggrieved by a determination or order under this section and who is directly affected thereby may appeal." There can be no debate Bach is aggrieved, not being able to see and speak to her son. Wisconsin's Patient Bill of Rights guarantees AB:

- Prompt and adequate treatment appropriate for his condition. Wis. Stat. § 51.61(1)(f)
- Reasonable access to a telephone. Wis. Stat. § 51.61(1)(p)
- Be permitted visitors each day. Wis. Stat. § 51.61(1)(t)
- To send and receive sealed mail. Wis. Stat. § 51.51(1)(cm)
- To be free from unnecessary or extensive medication at any time . . . medication may not be used as punishment, for the convenience of staff." Wis. Stat. § 51.61(1)(h)

Judge Borowski's orders have denied AB all of these rights, but the legislature has determined Bach has a right to appeal these violations that affect her, which no court can overrule.

c. Wis. Stat. § 813.025(1)

Any court order that violates a state statute is void under Wis. Stat.

813.025(1):

No circuit or supplemental court commissioner may issue any injunction or order suspending or restraining the enforcement or execution of any statute of the state or of any order of an administrative officer, board, department, commission or other state agency purporting to be made pursuant to the statutes of the state. If so issued, the injunction or order shall be void.

This order from the 2-21-17 hearing violates numerous state and federal laws as described in her motion, so Bach must be allowed to appeal the order, but was denied. The exact protections the state legislature meant to convey to aggrieved parties when those in power violate the law was denied to Bach by the courts. No court can overrule the state law, yet this order does, so it must be void.

d. Wis. Stat. § 940.285

Every disabled, vulnerable child/adult is protected by every citizens right under a temporary restraining order to gain a court's review using Wis. Stat. § 940.285. This is applicable because AB is a "vulnerable adult at risk" protected by Wis. Stat. § 940.285, which recognizes he is "unable to report cruel maltreatment without assistance". Therefore, in order to benefit from the protections provided in this statute, someone else must speak for him.

Nowhere in the statute does it require a guardian or GAL to report abuses, in fact it provides for actions to be taken against them. The applicable form to

file a petition for temporary restraining order and/or petition and motion for injunctive hearing states:

UNDER OATH, I PETITION THE COURT for a temporary restraining order and/or injunction against the respondent under § 813.123, Wisconsin Statutes, based on the following: I am acting on behalf of an individual at risk . . . the adult respondent has interfered with 1. An investigation of the individual at risk, 2. The delivery of protective services to the individual at risk, 3. The delivery of protective placement to the individual at risk.

Bach had invoked this on behalf of her son, under points 2 and 3 because defendants interfered with AB's protective services and protective placement as detailed throughout the original motion. Bach likely saved her son's life by accessing the courts to ensure he had adequate care for his brain surgery, so no court can deny Bach this right since it has proven to protect her vulnerable son, which our legislature saw as necessary in establishing Wis. Stat. § 940.285.

e. Wis. Stat. § 809.30

Our legislature wrote Wis. Stat. § 809.30 to provide special appeal procedures for Section 971.17 proceedings in criminal and Chapter 48, 51, 55, 938, and 980 cases. This motion and all hearings before Judge Borowski involved Chapters 51, and 55 so no court can overrule this law as the St. Vincent's decision did requiring Bach pay \$24,000 before she can access any court.

AB has a freedom of association right like every other citizen. See Griswold v. Connecticut, 381 U.S. 479, 483-84 (1965). AB is being denied daily visits and phone calls with Bach and most other family and friends. Being moved 3 hours from his home precludes visits with many loved ones, making this Oconto placement illegal. Even the 3 years AB was forced to live in the institution in Milwaukee provided more visits. Twenty-one people visited AB there, but the greater distance now prevents them from visiting. The prior guardian promised to allow AB trips to Florida to visit his brother, Nick and grandparents who live there. This guardian prevents these vital visits. The last time Nick came to Milwaukee he wanted to have a family dinner, and get pictures to bring home to the rest of his family. Bach was allowed to drive Nick to the institution to see AB, but the guardian refused to allow her to visit with them and get a family photo. No reason was ever given for this cruelty.

3. Bach Had A Right To Ask AB To Sign An Affidavit

Part of the reason Judge Borowski gave for his orders was that Bach had asked her son to sign an affidavit and he considered it the guardian's sole responsibility. But this is error, for no guardian can overrule all AB's rights and evidence proved he supported every word of the affidavit. Wis. Stat. § 54.25(2) covers the powers of guardianship:

(a) *Rights and powers of a guardian of the person.* A guardian of the person has only those rights and powers that the guardian is specifically authorized to exercise by statute, rule, or court order. Any other right or power is retained by the ward, unless the ward has been

declared incompetent to exercise the right under par. (c) or the power has been transferred to the guardian under par. (d).

(b) *Rights retained by individuals determined incompetent.* An individual determined incompetent retains the power to exercise all of the following rights, without consent of the guardian . . .

5. To petition for court review of guardianship, protective services, protective placement, or commitment orders.

6. To give or withhold a consent reserved to the individual under ch. 51. (this includes daily visits and phone calls from any one AB wishes)

7. To exercise any other rights specifically reserved to the individual by statute or the constitutions of the state or the United States, including the rights to **free speech, freedom of association**, and the free exercise of religious expression.

No guardian can overrule state law, and every group home must abide by state law regardless of what a guardian tells them to do. Free speech, and freedom of association are not wiped out for disabled patients like AB just because he was born with a rare brain tumor.

Had AB been allowed to attend as state law provides, he could have testified that he agreed to every point in the affidavit. But Bach did provide the court with the transcripts from their phone conversations proving she did not violate any guideline to deserve the additional sanctions in the court's order.

The transcripts also proved many facts contradicted by the guardian and their attorneys' testimony as well as the judge's findings:

- a. AB's rights to free speech are also violated;
- b. he is told not to tell the court or anyone when bad things happen;

- c. he wants his mother to fight for him in court;
- d. he wants to see and speak to his mother more;
- e. he is bored with few activities;
- f. he misses his family, friends, service dogs, and activities he used to enjoy at home;
- g. his staff upset him by saying Bach was breaking the law so AB was worried for his mother and a follow-up phone call (denied by court orders) calmed AB down after Bach explained the difference between a court order and a law and reassuring AB she was not breaking either just appealing the court order that violated the law – but the court orders now prevent Bach from providing AB the same assurance risking a dangerous rage, and allowing a court to file orders in violation of state law;
- h. he is in danger still being left alone in the shower and other times with a history of past harm in these circumstances;
- i. he approves of his mother writing a book about their lives with no concern for his confidentiality;

All this relevant evidence should have been considered by the court and admitted. Bach asked to be able to cite from the transcripts, but the judge would not allow it. All relevant evidence must be admitted under Wis. Stat. § 904.02. The circuit provided no rational basis for their decision to deny Bach all the evidence she submitted, and then used the lack of evidence against her in violation of Martindale v. Ripp, 2001 WI 113, ¶ 29-32, 246 Wis.2d 67, 629 N.W.2d 698.

AB has a right to his record, which the judge denies by his orders. This overrules Wis. Stat. § 55.22(1)(a), Wis. Stat. § 51.30(3)(a) and (c), Wis. Stat. § 54.75, and Wis. Stat. § 54.25(2)(b)6 and 7. Therefore, his orders must be void.

In addition to the phone transcripts, AB's prior testimony from 2-16-12 prove many of the same facts the judge and guardian contradict.

4. Bach Had Not Violated Any Past Order, But The Guardian Did

Judge Borowski stated as long as Bach followed their guidelines, she would not be penalized. (Trans. 9-20-16, p. 8-9; and Trans. 2-21-17, p. 16) Yet nothing presented to the court on 2-21-17 supported Bach violated any court order or guideline, but the judge still penalized Bach and stated she was "completely defying this Court's Orders". (Trans. 2-21-17, p. 6) Bach has a right to tell her story to any person she wishes under the First Amendment, but the judge punished Bach for speaking the truth to a volunteer from Life Navigators.

The undisputed evidence showed it was the guardian who violated the judge's order, as well as federal law. The order from the 2-21-17 hearing required the guardian to provide AB with one sports outing and one movie a month. Their status update proved they had not met this standard. Judge Borowski responded in court 2-21-17 that he considered the activities provided AB as adequate, even though they did not follow his prior order, because based on what he sees in his court, the activity level is average for a group home resident. (Trans. 2-21-17, p. 7-9)

But this is not the legal standard the court must meet. Federal law is the standard our court must provide protectively placed patients like AB. It

is not based on averages from what one judge sees, but what each patient needs, and what provides the most community integration.

It is undisputed AB had significantly more activities and community integration in his home. Bach provided several outings a day of activities AB cared about. He chose what he wanted to do when for the most part, and he needed this level of activities as several physicians testified to over the years. Dr. Mariellen Fischer cared for AB for over 20 years and testified, "AB needs activities to be safe and happy; she considers it a basic civil right." (7-29-11, p. 24-25). Dr. Stark oversaw AB's care for the 3 years he was held against his will in the mental institution, when he has a brain tumor, not a mental disorder, and he stated, "If he is bored, nothing constructive to do, that might increase the likelihood of some challenging behaviors." (Trans. 5-23-12, p. 14)

Federal Law must be adhered to. No judge can overrule the law, and it provides AB must have the most community integration in the least restrictive placement. AB does not have this. "In the Americans with Disabilities Act of 1990 (ADA), Congress described the isolation and segregation of individuals with disabilities as a serious and pervasive form of discrimination." 42 U.S.C. § 12101(a)(2), (5). Title II of the ADA, which proscribes discrimination in the provision of public services, specifies, *inter alia*, that no qualified individual with a disability shall 'by reason of such disability', be excluded from participation in, or be denied benefits of, a public entity's services, programs, or activities. § 12132. A public entity is required

to administer . . . programs . . . in the most integrated setting appropriate to the needs of qualified individuals with disabilities. 28 CFR § 35.130(d).”

Olmstead v. L.C., 138 F.3d 893, 527 U.S. 581 (1999).

AB was out in the community much more while in his home and never bit anyone’s ear off or ran away missing for hours as has happened since AB was taken from his home and had his care reduced.

Additionally, an equal protection argument under the Fourteenth Amendment can be made here, for Judge Borowski sanctioned Bach for any little infraction of his orders, but allows the guardian a free pass when they did not abide by his order for a movie and sports outing once a month.

5. Judge Borowski’s Order Is Void For Violating The U.S. Supreme Court Precedent on Picketing

The order from the 2-21-17 hearing violates U.S. Supreme Court precedent on picketing by increasing the 500 foot restriction from Judge Carroll’s 10-16-12 order to a 1000 foot restriction, when a 36-foot buffer was judged fine (Madsen v. Woman’s Health Center, 512 U.S. 753, 771 (1994), but a 300-feet buffer was judged too large by the United States Supreme Court.

(Id. at 775)

Because of the importance of "uninhibited, robust, and wide-open" debate on public issues, New York Times Co. v. Sullivan, 376 U. S. 254, 270 (1964), we have traditionally subjected restrictions on public issue picketing to careful scrutiny. See, e. g., Boos v. Barry, 485 U. S. 312, 318 (1988); United States v. Grace, 461 U. S. 171 (1983); Carey v. Brown, 447 U. S. 455 (1980).

Frisby v. Schultz, 487 U.S. 474 (1988)

Bach has not picketed in many years. Judge Borowski gave no reason why this new increased restriction was necessary. He initially stated he thought he had read something in the record that Bach made noisy picketing demonstrations just outside the 500 foot restriction, (Trans. 2-21-17, p. 20) but Bach assured him she never made any noise while picketing, that there was no such evidence in the record, and no need for further restrictions. (Id.)

There was no discussion on why it was "necessary to further a compelling governmental interest" and "narrowly tailored to that end" as required by Johnson v. California, 543 U.S. 499, 514, 125 S.Ct. 1141, 160 L.Ed.2d 949 (2005).

Bach had asked AB before if it bothered him to see her picket or know she was picketing and he said, "No". He appreciates and wants his mother to do all she can to help him come home, and that includes picketing. No circuit court judge should be able to overrule U.S. Supreme Court precedent.

6. Judge Borowski's Orders Are Void For Allowing Abuse of AB

The facts in the record prove AB is at risk of increased harm due to Judge Borowski's orders, which violates state law under Wis. Stat. § 51 and 55. Every court must make decisions in AB's best interests, but this 2-21-17 order is not in AB's best interests, so must be cancelled. "The trial court is under an obligation to make findings with regard to the best interests of the child in relation to the evidence adduced." Minguey v. Brookens, 100 Wis.2d

681, 687, 303 N.W.2d 581, 583 (1981). “As most fundamental among these [underlying principles it] must be borne in mind that the [incompetent] is always the ward of every court wherein his rights or property are brought in jeopardy, and is entitled to most jealous care that no injustice be done him.”

Richardson v. Tyson, 110 Wis.2d 572, 578, 86 N.W.2d 250 (1901).

Like all other individuals, the mentally retarded have the right to pursue happiness. Unlike other citizens, they have unique hurdles to overcome in doing so. Rather than exclude them from the pursuit of happiness, the Legislature has made an effort to include them in our civic community by providing them the special services they need to develop and grow. This public policy affirms our common humanity. Their concerns are our concerns. In this State, we do not set people adrift because they are the victims of misfortune. New Jersey Ass'n for Retarded Citizens, Inc. v. New Jersey Dept. of Human Services, 89 N.J. 234, 445 A.2d 704, 713 (1982).

In Wisconsin, the legislature has committed itself and the counties to providing protective placements that meet the standard of sec. 55.06(9)(a) and do not violate the rights guaranteed under sec. 51.61.

This order from the 2-21-17 hearing violates AB's rights under Wis. Stat. § 51.61 because it denies AB his right to see and speak to his mother daily. It also denies AB prompt and adequate treatment, as it was proven only Bach did when AB needed brain surgery but his guardian refused to get him a consult with his experienced neuro-surgeon who had saved his life before, and the inexperienced neuro-surgeon scheduled to perform the surgery agreed it was in AB's best interests to have a consult with his

experienced surgeon. So not allowing AB to see or speak to his mother puts his health at risk.

Past history supports AB is unsafe without his mother's involvement in his life being able to see and speak to him. She discovered numerous dangers no one else did and saved his life when even physicians and nurses did not understand the ramifications of AB's rare brain tumor as well as Bach did.

One example is the phone call Bach was allowed to have with AB on 2-14-17. She learned of a new danger AB only confided to her and was planning on addressing it with the court at the hearing 2-21-17, but when she asked to be able to speak, Judge Borowski told her "No, you may not". (Trans. 2-21-17, p. 34). AB told Bach he had been going swimming at a community center and his aide let him go swimming alone. This is an outrageous example of inadequate care. AB has a known history of seizures, so it is obviously unsafe to let him swim alone. AB has always enjoyed swimming and Bach was always at his side, inches away. More than once she had to rescue him and keep his head above water when he had a seizure while swimming. So this known danger repeated recently and AB told his mother how he doesn't know why, but he started to go under the water and couldn't swim. Luckily two strangers were in the pool, noticed him struggling, and pulled him out of the water.

The guardian reported AB was doing well, improving, and perfectly safe in this group home, but this pool incident proves he is still in mortal

danger. Any higher court hearing this detail has a duty to respond to ensure AB's safety.

It is undisputed AB bit an aide's ear off after the guardian reduced his staffing and prevented Bach from informing his staff of his true needs. The police report is in Appendix 8.

It is undisputed AB was allowed to go with his father driving drunk and abandoned on an unknown street, even though Bach had warned the guardian and the court on 7-25-12. The police report is in Appendix 9.

Although Judge Dwyer saw the need to ensure AB's father was sober before any visitation and included this requirement in the guardianship papers, Judge Borowski refused to address this known danger relying on hearsay testimony from the guardian, which was proven wrong before.

The record includes other known dangers going unaddressed by the court: AB being left alone in the shower after a history of a life-threatening complication after a fall in a shower; left alone in his room when he has injured himself before by pulling off fingernails and toenails, gouging his eyes, slitting his wrists, climbing on furniture to fall off, putting his fist through a window, covering his nose and mouth with duct tape, stabbing himself repeatedly, knocking over heavy furniture onto himself causing several broken bones, etc.; having inadequate medical care requiring urgent brain surgery but not consulting his experienced neuro-surgeon who had saved his life before despite his current rural, inexperienced surgeon

admitting it was in AB's best interests; and being left with one staff when the record proves AB needs 2 staff at all times. Bach had her guardianship taken away because Judge Flanagan deemed AB was unsafe with less than 3 staff and that it was all Bach's fault even though Milwaukee County limited the staffing. Even prior appellate court decisions agreed AB needed 2 staff. Yet AB is left alone with only one staff and harm has increased.

AB is at risk without his service dogs proven to save his life in violation of Wis. Stat. § 951.097(1) and (5); at risk of a taser killing him; at risk due to the sedation they force on him in violation of Wis. Stat. § 51.61(1)(h); and at risk of being harmed by his drunk father.

7. Judge Borowski's Orders Are Void For Violating The 8th Amendment

Denying all contact between Bach and AB is cruel and unusual punishment for having a brain tumor for AB, and advocating for her son for Bach. Federal law prohibits penalties that are grossly disproportionate to the offense, Weems v. United States, 217 U. S. 349, 367, as well as those that transgress today's "broad and idealistic concepts of dignity, civilized standards, humanity, and decency." Estelle v. Gamble, *supra*, at 102, quoting Jackson v. Bishop, 404 F.2d 571, 579 (CA8 1968). Everything detailed in the motion supports the guardian's past deprivation of AB and Bach's right to see each other denies dignity, civilized standards, humanity and decency. Not able to see her son before a life-threatening surgery or even give him a stuffed animal; going years without a visit or hug; thrown out of an

emergency room where AB was appreciating the comfort and love of his mother in a stressful, scary time; etc.

Judge Borowski even admitted in the hearing 2-9-16 that is was wrong Bach had not been allowed to see her son for 3 years, but this order from the 2-21-17 hearing prolonged this injustice, denying even phone calls for 6-plus months.

Judge Borowski has heard nothing but hearsay evidence against Bach, but there has been significant testimony in support of Bach the court should consider. Many others, including physicians supported Bach, and the United States Supreme Court has directed physician reports should be given “the greatest of deference”. Olmstead v. L.C., 527 U.S. 581, 597, S.Ct. 2176 (1999).

The record supports AB benefits from his mother’s contact. Dr. Mariellen Fischer, Dr. Barthel, and Dr. Paul White all supported AB should be able to maintain the close relationship with his mother. (Complaint, p. 33)

On 9-1-14 a physician in the Milwaukee County Mental Health Complex stated Bach had “suffered more than a reasonable person could endure” having her son taken from her, unable to see or speak to him, so thought it was necessary to hold her against her will to keep her from harming herself. Bach even remarked on the irony since in numerous hearings Milwaukee County attorneys never argued the harm and suffering that Bach and AB had to endure because of the County’s understaffing wasn’t bad enough to be negligent infliction of emotional distress. (NIED) But this

Milwaukee County physician had used the precise legal terms necessary to prove NIED, and used it as a reason to deny Bach her freedom, locking her up for 5 days.

AB was sexually assaulted at the first group home AB was placed in in November 2007. The agony to any parent of this type of assault is indescribable. The only reason it was discovered was because Bach had access to see AB regularly, and he told her.

Bach rarely sleeps the night waking up with nightmares of what her son is enduring, unable to share in his life at all, after a close loving relationship for 24 years. The stress has affected her physical and mental health.

CONCLUSION

Any court allowing all the abuse and harm undisputed herein, making no provision to prevent repeated dangers, is obviously corrupt. Lives are at risk. Please accept this petition, void the illegal orders, and ensure safety for my son and those around him.

Respectfully submitted,

Margaret Bach

Margaret Bach

Dated: February 10, 2018