*Guardianship of A.R.*, [99 Mass. App. Ct. 349](http://masscases.com/cases/app/99/99massappct349.html) (March 24, 2021) (Blake, J.)

Summary by Rebecca Amdemariam, CAFL Training Unit

The *Guardianship of A.R.* concerned a probate court guardianship order that went up for appeal. In its decision the Appeals Court affirmed the probate court’s order appointing a limited guardianship but vacated the order authorizing use of antipsychotic medication. In the facts of the case the Department of Mental Health had petitioned for limited guardianship of A.R. with authority to make medical treatment decisions. The probate court found A.R. to be incapacitated and entered the decree appointing a limited guardian for administration of antipsychotic medication the petition’s medical certificate and clinician’s affidavit as evidence. A.R. appealed arguing that there was insufficient evidence that he was incapable of caring for himself by reason of mental illness and not competent to make informed decisions regarding medical treatment. In large part contending that the judge improperly admitted the medical certificate and the clinician’s affidavit into evidence. A.R. also argued that the judge erred in concluding that his substituted judgment, if he were competent, would be to consent to antipsychotic medication. The Appeals Court vacated the substituted judgment order in large part after finding that these documents were improperly entered into evidence as a basis for ruling.

This case is most relevant to care and protection cases in its ruling that pleadings are not admissible as evidence. DCF affidavits which are routinely put forth by the Department are pleadings. This case supports the argument that the DCF affidavit should not be admissible as evidence and should be used for those objections going forward. The Court invoked MGL c. 231, § 87, which provides that “in any civil action pleadings shall not be evidence on the trial, but the allegations therein shall bind the party making them.” In referring to the affidavits attached to such petition, “the contested exhibits are hearsay, not subject to any exception. Although they are necessary to file a petition, the contested exhibits remain pleadings and, accordingly, absent an agreement otherwise, they are inadmissible.”