

Nos. 97-1301  
97-1302

STATE OF WISCONSIN

IN COURT OF APPEALS  
DISTRICT IV

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97-1301

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

v.

ROBERT W. GANLEY,

DEFENDANT-APPELLANT.

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97-1302

STATE OF WISCONSIN EX REL. ROBERT W. GANLEY,

PLAINTIFF-APPELLANT,

v.

DEPARTMENT OF CORRECTIONS, MICHAEL SULLIVAN,  
SECRETARY,

DEFENDANT-RESPONDENT.

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**ERRATA SHEET**

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PLEASE TAKE NOTICE that the attached page twenty is to be substituted for page twenty in the above-captioned opinion which was released on April 16, 1998.

Dated this 27th day of April, 1998.

before accepting such waivers.”<sup>1</sup> Ganley contends that Ross did not do this, and therefore failed to follow the Department’s own rules. However, the trial court found that Ganley had counsel, and credited Ross’ testimony that Ross believed Ganley had counsel. These findings are supported by the evidence and are not clearly erroneous. We therefore will not set them aside. The assessment of the credibility of the witnesses, the weight to be given evidence, and the reasonable inference from the evidence are for the finder-of-fact to decide—in this case, the trial court—not this court. *See Milbauer v. Transport Employes’ Mut. Benefit Soc’y*, 56 Wis.2d 860, 865, 203 N.W.2d 135, 138 (1973).

For the same reason, we reject Ganley’s challenge to the trial court’s finding that Ganley was competent when he signed the waiver.<sup>2</sup> The trial court’s finding is supported by the evidence and is not clearly erroneous. The trial court could properly weigh Filippiak’s opinion against the opinion of the discharging doctor and give more weight to the latter. Given Ganley’s inconsistent testimony and his ability to recall some points but not others, the trial court could credit the descriptions of others concerning Ganley’s interactions with them rather than Ganley’s brief and vague testimony that he did “not recall all that was involved.”

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<sup>1</sup> The other authority Ganley cites for the proposition that he was entitled to counsel relates to a probation revocation hearing, not to a waiver of a hearing. However, even if we were to read Ganley’s brief as arguing that Ganley’s right to due process involved the right to counsel for the waiver, we need not address that argument because, as we explain above, there are no grounds on which to reverse the trial court’s finding that Ganley had counsel to advise him on the waiver.

<sup>2</sup> In his reply brief, Ganley contends that the trial court found that the waiver was voluntary but did not find Ganley was competent when he signed it. Ganley is mistaken. The trial court expressly considered whether Ganley was “mentally capable” of signing the waiver, reviewed the pertinent evidence, and found that he was mentally capable before going on to find that the waiver was voluntary.