COURT OF APPEALS DECISION DATED AND RELEASED

JULY 10, 1996

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.

NOTICE

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

No. 96-0281

STATE OF WISCONSIN **IN COURT OF APPEALS DISTRICT II**

In the Matter of John J.V., Alleged to be Mentally Ill:

SHEBOYGAN COUNTY,

Petitioner-Respondent,

v.

JOHN J.V.,

Respondent-Appellant.

APPEAL from an order of the circuit court for Sheboygan County: GARY LANGHOFF, Judge. *Affirmed*.

ANDERSON, P.J. John J.V. appeals from an order extending his involuntary mental commitment order under ch. 51, STATS. We conclude that the trial court's offer of a continuance to allow for review of the medical report, pursuant to § 51.20(10)(b), STATS., cured any potential prejudice. We therefore affirm the trial court's order for extension.

On August 18, 1994, an original hearing was held at which time the court ordered the involuntary commitment of John through August 19, 1995. On August 2, 1995, a commitment extension petition was filed by Sheboygan County in accordance with ch. 51, STATS. The court then ordered Dr. Charles Cahill, a staff psychiatrist with Sheboygan County Human Services, to conduct an evaluation of John and to file a report forty-eight hours in advance of the August 17, 1995, hearing, pursuant to § 51.20(10)(b), STATS. Cahill's report was filed on August 16, 1995, at 3:30 p.m., 16 and 1/2 hours before the August 17 hearing.

At the August 17, 1995, hearing, John moved for dismissal of the petition due to the untimely filing of Cahill's report. John contended that 16 and 1/2 hours was insufficient time to review the report. The court offered John a continuance to either August 18 or 19, 1995.

John declined the court's offer of a continuance and instead insisted that the matter be dismissed. The court proceeded with the hearing and ultimately extended John's commitment order. John appeals.

John asserts that the trial court erred in holding an extension hearing before expiration of the 48-hour period to examine Cahill's report. *See* § 51.20(10)(b), STATS. He argues that the error violated his substantial rights. The construction of § 51.20(10)(b) is a question of law. *See* ***Tahtinen v. MSI Ins. Co.***, 122 Wis.2d 158, 166, 361 N.W.2d 673, 677 (1985). Although this court looks upon the findings of the circuit court with due respect, the standard of review in this case is de novo.

Section 51.20(10)(b), STATS., provides that "Counsel for the person to be committed shall have access to all psychiatric and other reports 48 hours in advance of the final hearing." The psychiatric reports were available to the parties 16 and 1/2 hours prior to the August 17, 1995, extension hearing—23 and 1/2 hours short of the 48-hour requirement. However, the trial court prudently offered John additional time to review the report by means of a continuance to either August 18 or 19, 1995.[1] The continuance would have provided the parties with the requisite 48 hours to review the report.[2] Only after John refused the additional time to review the report did the trial court proceed with the hearing.

Section 51.20(5), STATS., requires all proceedings to conform with the essentials of due process and fair treatment.[3] The court offered John a continuance until August 18 or 19, 1995. This additional time allowed John the opportunity to further inspect the medical report or gain access to another opinion regarding his mental condition. We conclude that the court's offer to

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[1] Subsections 51.20(13)(g)1 and 3, STATS., must be read together, since both relate to the period of commitment. *See* ***G.O.T. v. Rock County***, 151 Wis.2d 629, 633, 445 N.W.2d 697, 698 (Ct. App. 1989). The trial court must hold the extension hearing before the initial commitment expires to determine whether the defendant is, in the words of § 51.20(13)(g)3, "a proper subject for commitment." ***G.O.T.***, 151 Wis.2d at 633, 445 N.W.2d at 698; *cf.* ***Schoenwald v. M.C.***, 146 Wis.2d 377, 386, 432 N.W.2d 588, 592 (Ct. App. 1988).

[2] In this case, the extension hearing had to be held on or before August 19, 1995, the day the original commitment was scheduled to expire. Otherwise, the trial court would have lost competency to proceed. *See* § 51.20(13)(g), STATS.

[3] Statutes authorizing a party to seek relief from the judgment of a court are designed to achieve fairness in the resolution of disputes. *See* ***Schwochert v. American Family Mut. Ins. Co.,*** 166 Wis.2d 97, 102, 479 N.W.2d 190, 192 (Ct. App. 1991).

continue the hearing provided John with due process and fairness, as is required.

Under ch. 51, STATS., the court is not barred from sua sponte postponing a hearing to insure that a patient is provided fairness and due process under the law. The court's offer to postpone the hearing was a reasonable and fair solution.

In contrast, John's refusal of that offer was not reasonable considering that the hearing could have been conducted before the original commitment order had expired on August 19, 1995. The continuance would have allowed John the opportunity to seek advice, alternative opinions or other legal strategies regarding the medical report. John's approach of declining the extra time offered to him by the trial court and then insisting that the matter be dismissed frustrates the purpose of discovery and we decline to adopt his stance.

Additional support may be found under § 805.03, STATS.,[4] which provides courts with wide discretion in fashioning remedies when parties fail to comply with procedural statutes. The trial court did continue with the hearing on August 17, 1995, prior to the expiration of the 48-hour time period, but only after John refused the court's offer of a continuance. We conclude fairness was achieved through the trial court's offer.

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[4] Section 805.03, STATS., provides in pertinent part: "[If] any party [fails] to comply with the statutes governing procedure in civil actions ... the court in which the action is pending may make such orders in regard to the failure as are just ...."

John further contends that a one- or two-day continuance of the proceeding, to meet the 48-hour requirement, was in violation of his substantial rights. Section 51.20(10)(c), STATS., provides that "[t]he court shall, in every stage of an action, disregard any error or defect in the pleadings or proceedings that does not affect the substantial rights of either party." The one- or two-day continuance proposed by the court did not affect any substantial rights of John.

The case law which John relies on is clearly distinguishable. In ***Green County Dep't of Human Servs. v. H.N.***, 162 Wis.2d 635, 654, 469 N.W.2d 845, 852 (1991), the supreme court concluded that the circuit court lost its competency to consider the extension petition by failing to hold a hearing within the 30-day time limit as outlined in ch. 48, STATS. The court noted that ch. 48 is a carefully drawn legislative enactment circumscribing judicial and administrative action in juvenile matters, while guarding the constitutional rights of children. *See* ***Green County,*** 162 Wis.2d at 645-46, 469 N.W.2d at 849.

Here, John is not a juvenile, thus he does not fall under the protections of ch. 48, STATS. In addition, the legislative intent and the carefully drawn provisions within ch. 48 do not pertain to, and thus do not control, the mental health act under ch. 51, STATS. *See* § 51.001, STATS.; *but see* § 48.01, STATS. It follows that the rationale of ***Green County*** does not control here as well.

G.O.T. v. Rock County, 151 Wis.2d 629, 445 N.W.2d 697 (Ct. App. 1989), is also distinguishable. In ***G.O.T.***, the court of appeals held that the trial court had lost its competency to proceed by failing to hear and decide the petition before the commitment had expired. ***Id.*** at 635-36, 445 N.W.2d at 699.

Here, even with the proposed continuance, the initial commitment would not have expired.

Moreover, dismissing the hearing, after a reasonable amount of time to review the medical reports was offered to John, would deprive John of the treatment that this state seeks to provide to all persons that are in need of this program. Because of the willingness of the court to allow a reasonable amount of time for John to review the psychiatric report, the court did not lose competency to proceed. We therefore affirm the trial court.

By the Court.—Order affirmed.

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