COURT OF APPEALS
DECISION
DATED AND FILED

October 16, 1997

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. 97-0359

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

IN THE INTEREST OF HEATHER C.P.,
A PERSON UNDER THE AGE OF 18:
STATE OF WISCONSIN,

PETITIONER-RESPONDENT,

V.

HEATHER C.P.,

RESPONDENT-APPELLANT.

APPEAL from an order of the circuit court for Dodge County: ANDREW P. BISSONNETTE, Judge. *Affirmed.*

ROGGENSACK, J.[1] Heather C.P. appeals from a dispositional order adjudicating her delinquent for being party to operating a motor vehicle without the owner's consent. The issue on appeal is whether the juvenile court

[1] This appeal is decided by one judge pursuant to § 752.31(2)(e), STATS.

lost competency to proceed because Heather's fact finding hearing was held more than thirty days after her plea hearing. The State contends that the hearing was timely because the circuit court's adjournment had tolled the time set by statute. We agree with the State that the deadline for the fact finding hearing was tolled as a matter of law under § 48.315(1)(a), STATS., pending the disposition of Heather's other case, and that the § 48.315(2) requirement, that good cause for a continuance be shown in open court on the record, did not apply to the tolling provisions of para. (1)(a). Therefore, the dispositional order is affirmed.

BACKGROUND

On January 3, 1996, Heather took the keys of an acquaintance's car, after expressly being denied permission to use the car. As a result, the State filed the present delinquency petition against Heather on January 18, 1996, case 95 JV 98A (A)[2]. While that petition was pending, Heather was involved in another incident of operating a motor vehicle without the owner's consent, for which a petition was brought, case 95 JV 98B (B).[3]

The plea hearings for both cases were held together on February 6, 1996. Heather stood mute on both charges, and the circuit court ordered her held in secure custody on the B case, due to the substantial risk that she would run away. The court also scheduled a status conference for February 8, 1996, and fact finding by a jury on the two charges for the following Friday, February 16, 1996.

[2] This case probably bears the wrong case number as all acts occurred in 1996, but we continue the numbers used by the circuit court.

[3] See footnote number 2.

There is no transcript or documentation of the status conference in the appellate record. However, it is undisputed that the February 16th fact finding hearing dealt only with the B case. Subsequently, on February 21, 1996, the circuit court *sua sponte* issued a Notice of Hearing/Order of Appearance stating that the A case would be tried on March 21, 1996. Disposition on the B case was ordered on February 27, 1996. Heather challenges the timeliness of the fact finding on the A case.

DISCUSSION

Standard of Review.

This court will interpret the requirements of §§ 48.30 and 48.315, STATS., *de novo,* without deference to the circuit court. ***J.R. v. State***, 152 Wis.2d 598, 603, 449 N.W.2d 52, 54 (Ct. App. 1989).

Timeliness of Fact Finding.

Section 48.30(7), STATS., 1993-94,[4] required that whenever a delinquency petition is contested:

> the court shall set a date for the fact-finding hearing which allows reasonable time for the parties to prepare but is no more than 20 days from the plea hearing for a child who is held in secure custody and no more than 30 days from the plea hearing for a child who is not held in secure custody.

At the time this action was filed, no published appellate case had addressed the circumstances presented by this case, but it had been held that a court which failed to comply with a similar statutory time limit would lose its competency to exercise

[4] This statute was moved to § 938.30(7), STATS., when the Children's Code was revised. *See* 1995 Wis. Act 77, § 629, eff. July 1, 1996.

subject matter jurisdiction over the proceeding,[5] and would be required to dismiss the petition.[6] ***J.R.***, 152 Wis.2d at 604, 449 N.W.2d at 54. However, the hearing deadline could be extended under certain circumstances. Section 48.315, STATS., 1993-94,[7] provided in relevant part:

> **Delays, continuances and extensions.** (1) The following time periods shall be excluded in computing time requirements within this chapter:
>
> (a) Any period of delay resulting from other legal actions concerning the child, including an examination under s. 48.295 or a hearing related to the child's mental condition, prehearing motions, waiver motions and hearings on other matters.
>
> …
>
> (2) A continuance shall be granted by the court only upon a showing of good cause in open court or during a telephone conference under s. 807.13 on the record and only for so long as is necessary, taking into account the request or consent of the district attorney or the parties and the interest of the public in the prompt disposition of cases.

Here, the determination of whether a fact finding hearing on a delinquency petition was timely requires consideration of both sections of the statutes.

Heather claims that § 48.315(1)(a), STATS., cannot be used to justify the fact finding delay because good cause was never shown on the record as required by § 48.315(2). The State concedes that subsec. (2) was not satisfied, but contends that, because a period of delay which results from another legal action

---

[5] Section 938.315(3), STATS., also enacted by 1995 Act 77, § 629, changed the law to provide that a court does not lose competency to proceed merely because a deadline is missed.

[6] The dismissal could be without prejudice, however. ***T.H. v. La Crosse County***, 147 Wis.2d 22, 32, 433 N.W.2d 16, 20 (Ct. App. 1988). Thus, the State could re-file its petition if it could show that the "delay in the delinquency proceedings" constituted good cause for noncompliance with the deadline. *See* ***Jason B. v. State***, 176 Wis.2d 400, 407, 500 N.W.2d 384, 387 (Ct. App. 1993).

[7] Section 48.315(2), STATS., was also moved to Chapter 938.

concerning the child "*shall* be excluded in computing time requirements" for § 48.30(7), STATS., there is no need to meet the requirements of subsec. (2). Section 48.315(1) (emphasis added). In other words, the State maintains that the period of delay excluded from computation of time requirements under para. (1)(a) is merely a tolling provision, and not a "continuance" within the meaning of subsec. (2).

When we are asked to apply a statute whose meaning is in dispute, our efforts are directed at determining legislative intent. ***Truttschel v. Martin***, 208 Wis.2d 361, 365, 560 N.W.2d 315, 317 (Ct. App. 1997). In so doing, we begin with the plain meaning of the language used in the statute. ***Id***. If the language of the statute clearly and unambiguously sets forth the legislative intent, our inquiry ends, and we must apply that language to the facts of the case. However, if the language used in the statute is capable of more than one meaning, we will determine legislative intent from the words of the statute in relation to its context, subject matter, scope, history, and the object which the legislature intended to accomplish. ***Id***. We will also look to the common sense meaning of a statute to avoid unreasonable and absurd results. ***Kania v. Airborne Freight Corp.***, 99 Wis.2d 746, 766, 300 N.W.2d 63, 71 (1981) (citation omitted).

Section 48.315, STATS., is ambiguous to the extent that it fails to label any of the various periods of delay mentioned in subsec. (1) as tolling provisions. Thus, reasonable persons could disagree about whether subsec. (2) was intended to apply to all of the provisions of subsec. (1), as Heather contends, or merely to those provisions such as paras. (1)(b) and (1)(d) which specifically refer to delays caused by continuances, as the State maintains.

Heather first argues that the interpretation urged by the State is in conflict with decisions of the Wisconsin Supreme Court and Court of Appeals, which explicitly state that "the general requirements of sec. 48.315(2), Stats., control all extensions of time deadlines under the Children's Code," and "the enumerated specific circumstances of sec. 48.315(1) are governed by sec. 48.315(2)." *See* ***M.G. v. La Crosse County Human Servs. Dep't***, 150 Wis.2d 407, 418, 441 N.W.2d 227, 232 (1989); ***J.R.***, 152 Wis.2d at 604-04, 449 N.W.2d at 54-55. However, we note that the term "extensions of time" used in the case law is more consistent with the concept of continuances than with that of tolling. *See* BLACKS LAW DICTIONARY 321, 583 and 1488 (6th ed. 1990). Moreover, because both ***M.G.*** and ***J.R.*** dealt with situations in which § 48.315(2), but not subsec. (1), had been satisfied—the exact opposite of the case at bar—those cases do not answer the question whether subsec. (1), or any part thereof, can stand alone.

A closer examination of the scope and context of § 48.315, STATS., reveals that the period of delay specified in para. (1)(a) may indeed be distinguished from the continuances mentioned in para. (1)(b), for example. To begin with, each of the time periods listed in subsec. (1) begins with the term "any period of delay," but only two of them mention continuances. If the legislature had intended subsec. (2) to refer to every paragraph in subsec. (1), it could easily have referred to periods of delay or mentioned subsec. (1) by name. Section 48.315(2) merely imposes an additional procedural requirement when a delay in juvenile proceedings is caused by some reason other than one which automatically tolls the juvenile court's deadlines. This makes sense because the hearings and other legal proceedings specified in para. (1)(a) are not included in the computation of the thirty-day period, in the first instance. Therefore, the open court hearing requirement of subsec. (2) does not apply when the time period is

extended by the operation of para. (1)(a), and the circuit court did not commit error by failing to comply with subsec. (2).

Heather next argues that § 48.315(1)(a), STATS., should not be held to toll the date on which the fact finding hearing must be held until the disposition of another proceeding because the statute excludes from computation only a period of delay *resulting* from other legal actions. It does not require that all delays prior to disposition are deemed to have occurred as the result of the other action. Therefore, Heather maintains, even if good cause need not be shown under subsec. (2), the circuit court must make at least some factual determination as to how long a delay necessarily resulted from the other proceedings. However, while a finding regarding delay is one of fact, *see* ***Shawn B.N. v. State***, 173 Wis.2d 343, 358, 497 N.W.2d 141, 146 (Ct. App. 1992), and while common sense indicates that two proceedings could easily overlap in some circumstances, nothing in the plain language of the statute requires the circuit court to make such a factual finding in open court, as requested by Heather. Therefore, we conclude the time period is tolled until the disposition, at the circuit court level, of another case involving the same juvenile, which is moving through the court system.

CONCLUSION

Only continuances need to be made in open court, or during a telephonic conference, under § 48.315(2), STATS., and the delay referenced in § 48.315(1)(a) does not constitute a continuance. It is a tolling of the statutory time limit. Therefore, the circuit court did not lose competency to proceed in the delinquency proceeding, while waiting for the disposition of another case. Accordingly, the dispositional order is affirmed.

By the Court.—Order affirmed.

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