COURT OF APPEALS
DECISION
DATED AND FILED

August 3, 2005

Cornelia G. Clark
Clerk of Court of Appeals

Appeal No. 2005AP755 **Cir. Ct. No. 2000ME422**

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

IN THE MATTER OF THE MENTAL COMMITMENT OF LAURA J. M.:

COUNTY OF WAUKESHA,

PETITIONER-RESPONDENT,

V.

LAURA J. M.,

RESPONDENT-APPELLANT.

APPEAL from orders of the circuit court for Waukesha County: LINDA M. VAN DE WATER, Judge. *Affirmed.*

¶1 SNYDER, J.[1] Laura J.M. appeals from orders extending her WIS. STAT. ch. 51 civil commitment and providing for involuntary medication and treatment, and an order denying her motion for postdisposition relief. She contends that the circuit court erred in holding that a person facing ch. 51 recommitment is not entitled to be informed of the right to trial by jury before waiving the right to contest recommitment. We disagree and affirm the orders of the circuit court.

¶2 On October 4, 2004, the County of Waukesha petitioned to have Laura's commitment extended. A recommitment hearing was scheduled for October 26. When the matter was called, the County advised the court that Laura planned to waive her right to contest the extension of her commitment and the administration of involuntary medication. Laura agreed with the County but advised the court of some concerns regarding the medication dosage. She indicated that she felt the commitment helped her and that with the right medication she would improve her situation.

¶3 The circuit court then engaged in a colloquy with Laura, explaining that she had a right to a hearing at which the County could be required to prove by clear and convincing evidence that the commitment should be extended for twelve months. The court further explained that if Laura chose to have the hearing, the County would call witnesses who could then be cross-examined and that Laura could testify and present the testimony of other witnesses on her behalf. Laura

[1] This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(d) (2003-04). All references to the Wisconsin Statutes are to the 2003-04 version unless otherwise noted.

stated that she understood these rights. The circuit court ruled that Laura freely, voluntarily and intelligently waived her right to contest the matter.

¶4 Laura subsequently filed a motion for postdisposition relief, alleging that she had a right to a jury trial concerning the commitment extension, but had not been informed of that right and did not otherwise know of that right. She contended that her waiver of the right to contest extended commitment was therefore invalid. Following a hearing on February 22, 2005, the circuit court denied the motion. It concluded that, by statute, a person facing an initial commitment must be notified of the right to a jury trial; however, no comparable statutory obligation exists to notify a person facing recommitment. Laura appeals.

¶5 Laura's appellate issue concerns the obligation of a circuit court to ascertain that an individual facing extended commitment under WIS. STAT. ch. 51 is aware of the right to a jury trial. Neither party disputes that Laura received the appropriate jury notice at the initial involuntary commitment proceeding. The question presented is limited to whether she was entitled to notice again when the County petitioned to extend her commitment.

¶6 Statutory interpretation and the application of statutes to facts of record are questions of law that we review de novo. *See* ***State v. Harris***, 2004 WI 64, ¶25, 272 Wis. 2d 80, 680 N.W.2d 737. Our supreme court explained the proper method of statutory interpretation in ***State ex rel. Kalal v. Circuit Court for Dane County***, 2004 WI 58, 271 Wis. 2d 633, 681 N.W.2d 110. There, the court stated that "statutory interpretation 'begins with the language of the statute. If the meaning of the statute is plain, we ordinarily stop the inquiry.'" ***Id.***, ¶45 (citation omitted). The court should assign the words in the statute their ordinarily accepted meaning. ***Id.*** The court may also consider the context and structure of the statute.

Id., ¶46. "If this process of analysis yields a plain, clear statutory meaning, then there is no ambiguity, and the statute is applied according to this ascertainment of its meaning." ***Id.*** (citation omitted).

¶7 Laura acknowledges that although "the law explicitly provides for the same right to a jury trial at both an initial commitment and recommitment, a statutory provision mandating notice of the right to a jury trial is absent at the recommitment stage." Although the parties agree on the absence of the notice provision, they differ on the significance to be accorded this fact. As Laura explains, "To [her], the statutory framework is only the beginning of the discussion about her due process rights. To Waukesha County, it is the end of the discussion."

¶8 We begin by looking at the statutes. When an involuntary commitment for treatment is pursued, the court must review the petition to determine whether the subject should be detained. WIS. STAT. § 51.20(2)(a). If the court determines that detention is appropriate,

> a law enforcement officer shall present the subject individual with a notice of hearing, a copy of the petition and detention order and a written statement of the individual's right to an attorney, a jury trial if requested more than 48 hours prior to the final hearing, the standard upon which he or she may be committed under this section and the right to a hearing to determine probable cause ….

Sec. 51.20(2)(b). The right to a jury trial is deemed waived if it is not demanded at least forty-eight hours before the time set for the final hearing. Sec. 51.20(11)(a). If the government petitions for an extension of a commitment, the court is directed to proceed under § 51.20(10) to (13), *see* § 51.20(13)(g)3., which encompass the procedures for a hearing, jury trial, and disposition.

Notably, § 51.20(13)(g)3. does not invoke the notice requirements contained in para. (2)(b), quoted above.

¶9 Laura contends that this reflects "an unintentional omission in codifying the rights of individuals facing commitments." She contends that "the unquestioned right to a jury trial is rendered meaningless if the person does not know of its existence." Laura appeals to "common sense" and "logic" for her proposition that a person cannot make a timely demand for a jury trial if unadvised of the right to a jury trial.

¶10 The County responds that this court is not at liberty to rewrite a statute. It cites to ***State ex rel. United States Fidelity & Guaranty Co. v. Smith***, 184 Wis. 309, 316, 199 N.W. 954 (1924), for the proposition that "[i]t is not the function of the court to add language to a statute or to add exceptions because the statute may to the court seem unwise." Calling upon long-held standards of statutory interpretation, the County argues that we must apply the plain meaning of the statute if its terms are unambiguous.

¶11 Laura posits that although the statute does not provide for notice, the constitutional principle of due process does so provide. She argues that the statute does not eliminate her right to notice but merely fails to address it. She directs us to ***State v. Stenklyft***, 2005 WI 71, ¶122, ___ Wis. 2d ___, 697 N.W.2d 769 (Crooks, J., concurring in part and dissenting in part), for support of her proposition that "Wisconsin has a long history of interpreting statutes to save their constitutionality." She offers two specific examples where our supreme court "read in" procedures to avoid due process or equal protection deficiencies: ***State v. Post***, 197 Wis. 2d 279, 328-29, 541 N.W.2d 115 (1995) (holding that although WIS. STAT. ch. 980 did not provide for jury trials, the court would construe the

deficient statutes to include the right to request a jury for discharge hearings); ***State ex rel. Matalik v. Schubert***, 57 Wis. 2d 315, 326-27, 204 N.W.2d 13 (1973) (holding that WIS. STAT. § 971.14(4) did not meet due process requirements and concluding that a "meaningful hearing must be afforded all criminally accused persons alleged to be mentally incompetent to stand trial who contest the validity of a psychiatric report regarding their mental condition.").

¶12 Nonetheless, we point out that the cases cited by Laura, including those cases indirectly cited by reference to ***Stenklyft***, 697 N.W.2d 769, ¶122, were decided by our supreme court. The supreme court, unlike the court of appeals, has been designated by the constitution and the legislature as a law-declaring court. *See* ***State ex rel. La Crosse Tribune v. Circuit Court for La Crosse County***, 115 Wis. 2d 220, 230, 340 N.W.2d 460 (1983). Because the court of appeals is mainly an error-correcting court, we are duty bound to apply the law as it presently exists. ***State v. Mosley***, 102 Wis. 2d 636, 665-66, 307 N.W.2d 200 (1981). The circuit court aptly noted that "nothing specifically [states] that either the Court, Corporation Counsel, Court Commissioner, or anybody else have to readvise [Laura], if you will, or tell her again at each recommitment hearing that she has a right to jury trial. There is nothing specific in the statutes or case law." This is a correct reading of the existing law.

¶13 We decline Laura's invitation to read in additional procedural requirements and hold that the circuit court properly accepted Laura's waiver of her right to contest the extension of her involuntary commitment. Involuntary commitment extension procedures are governed by WIS. STAT. § 51.20(10) to (13), which contain no jury notice requirement. If our legislature unintentionally omitted a procedural notice requirement from WIS. STAT. ch. 51, it has the ability to correct the omission. Accordingly, we affirm the orders extending Laura's WIS.

STAT. ch. 51 civil commitment and providing for involuntary medication and treatment, and the order denying her motion for postdisposition relief.

By the Court.—Orders affirmed.

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