COURT OF APPEALS
DECISION
DATED AND FILED

November 8, 2005

Cornelia G. Clark
Clerk of Court of Appeals

Appeal No. 2005AP1087 **Cir. Ct. No. 2002TP445**

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

IN RE THE TERMINATION OF PARENTAL RIGHTS TO SHAQWAN M., A PERSON UNDER THE AGE OF 18:

STATE OF WISCONSIN,

PETITIONER-RESPONDENT,

V.

AARON E.,

RESPONDENT-APPELLANT.

APPEAL from an order of the circuit court for Milwaukee County: JOSEPH R. WALL, Judge. *Affirmed*.

¶1 CURLEY, J.[1] Aaron E. appeals the order terminating his parental rights to Shaqwan M. for abandonment under WIS. STAT. § 48.415(1) (2003-04).[2]

[1] This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2) (2003-04).

He contends that the trial court lost competency to proceed when mandatory statutory time limits were not met, which he alleges occurred because: (1) on October 18, 2002, forty-five days after Aaron's initial appearance on September 4, 2002, a trial date had not been scheduled, as mandated by statute; (2) the trial court improperly granted continuances and scheduled trial dates for January 14, 2003 and April 7, 2003; and (3) as a whole, the aggregate delay was 807 days, almost eighteen times the statutory limit. Aaron therefore argues that because the trial court lost competency to proceed, he should be entitled to a reversal of the underlying order terminating his parental rights. The trial court did not lose competency to proceed because proper continuances were granted. Therefore, the order is affirmed.

I. BACKGROUND.

¶2 Shaqwan was born on April 29, 1994, and has been in foster care since 1998. On June 25, 2002, the State filed a petition for the termination of the parental rights of Erica M., Shaqwan's mother, and Aaron, Shaqwan's adjudicated father, to Shaqwan.[3] With respect to Aaron, the petition alleged failure to assume parental responsibility under WIS. STAT. § 48.415(6) as grounds for termination. Aaron was incarcerated when Shaqwan was born in 1994, has been re-incarcerated since 1997 after he was convicted of two counts of sexual assault of a child and kidnapping in 1998, and is set to be released in 2051.

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[2] All references to the Wisconsin Statutes are to the 2003-04 version unless otherwise noted.

[3] The petition also sought to terminate Erica's parental rights to her other two children, as well as the parental rights of the fathers of those two children. Because Aaron is not the father of either of those two children, only the facts that concern Shaqwan are relevant for purposes of this appeal.

¶3 After a petition for termination of parental rights is filed, a court has thirty days from the date of the filing to conduct an initial hearing[4] to determine whether any party wishes to contest the petition. WIS. STAT. § 48.422(1). If a party contests the petition, the court must set a date for a fact-finding hearing ("trial"),[5] which must begin within forty-five days of the initial hearing on the petition. Sec. 48.422(2). If these statutory time limits cannot be met, delays may be permitted under WIS. STAT. § 48.315(1), and continuances may be granted for good cause under § 48.315(2).

¶4 On July 17, 2002, twenty-two days after the petition was filed, an initial hearing was scheduled to be held in front of a circuit court judge. Because Aaron had not yet been appointed counsel and because Erica was not present, the court adjourned the hearing, set a new date for August 8, 2002, in front of another judge, and tolled the time limits. At the August 8, 2002 hearing, Aaron and his attorney appeared. The hearing was held in front of yet another judge because the assigned judge was unable to be present. When it became known that the assigned judge had previously represented Erica, the State moved to have a new judge appointed. Pursuant to the motion, the court rescheduled the hearing for September 4, 2002, and, after finding good cause, tolled the time limits.

¶5 The case was reassigned. On September 4, 2002, Aaron's initial hearing was completed, at which time he informed the court that he contested the

[4] The trial court and the parties used both the terms "initial hearing" and "initial appearance" when referring to the hearing discussed in WIS. STAT. § 48.422(1). For purposes of consistency only the term "initial hearing" will be used.

[5] The trial court and the parties used both the terms "trial" and "fact-finding hearing" when referring to the "fact-finding hearing" discussed in Wis. Stat. § 48.422(2). For purposes of consistency only the term "trial" will be used.

petition. Erica was in court, but was unable to stay for the hearing because she had to return to work. The court scheduled a new hearing for November 12, 2002, and tolled the time limits, finding that there was a need to first complete the initial hearing with respect to Erica and to explore the potential of her voluntarily terminating her parental rights.

¶6 On November 12, 2002, Erica's initial hearing was completed when her counsel informed the court that she, too, contested the petition. Erica's counsel then said her client agreed to give up her right to a trial within the statutory forty-five-day time limit, and because Aaron told the court that he too wished to waive his right to a trial within forty-five days, a trial date outside the forty-five days was set. *See* WIS. STAT. § 48.424(4). The judge, after first expressing his frustration with the court's congested calendar, and after a discussion off the record, set a trial date for January 14, 2003. Despite the district attorney's scheduling conflict with the selected date and the district attorney's request for a different date, the judge refused to postpone the date, reiterating his dissatisfaction with delays.

¶7 On December 3, 2002, a hearing was held on Erica's attorney's motion, at which she requested a new trial date because she now had a scheduling conflict. The court granted the request because it already had two trials scheduled for January 14, 2003, so rescheduling was necessary. The court's calendar was so congested that the earliest available date was April 7, 2003. The trial was rescheduled for that date, and a final pretrial was scheduled for March 5, 2003. The court did not explicitly state on the record that it was finding good cause to toll the time limits.

¶8 Another hearing was held on February 28, 2003, at which Erica was to, but ultimately decided not to, voluntarily terminate her parental rights. The final pretrial was postponed to March 20, 2003, and the court tolled the time limits due to the "change in the status of the proceedings."

¶9 On March 20, 2003, the date on which the final pretrial was to take place, the trial was again postponed because Erica's counsel was scheduled to undergo surgery on the date of trial. The judge was unable to find a suitable date on his calendar, so the case was transferred to yet another judge, who scheduled a scheduling conference for March 27, 2003, and a trial for June 23, 2003. The time limits were tolled due to the unavailability of the parties. At the March 27, 2003, scheduling conference, June 23, 2003, was confirmed as the trial date and a final pretrial was set for June 4, 2003. The court tolled the time limits, stating calendar concerns as good cause.

¶10 On June 4, 2003, the parties appeared in court for what was to be the final pretrial. The State, however, indicated that it was planning to amend the petition as to Aaron by adding abandonment as a second ground for termination. Aaron's counsel in turn explained that he had been informed of potential new witnesses and that he needed more time to explore that possibility. The court agreed that more time was needed and, finding good cause to toll the time limits, rescheduled the trial for July 28, 2003, and the final pretrial for June 23, 2003. That day Erica, apparently having changed her mind about contesting the petition, proceeded to voluntarily terminate her parental rights to Shaqwan.[6] Two days

[6] In addition to Shaqwan, Erica voluntarily terminated her parental rights to her other two children as well.

later, the State filed the contemplated amendment to the petition, alleging abandonment, under WIS. STAT. § 48.415(1)(a)3., as a second ground for termination of Aaron's parental rights. The final pretrial was held on June 23, 2003, as scheduled.

¶11 A trial began, as scheduled, on July 28, 2003. Voir dire and jury selection were completed and the jury was sworn. After lunch, Aaron's counsel informed the court that he and Aaron had "irreconcilable differences" and that Aaron had requested that he withdraw from the case. The court held an *ex parte* hearing with only Aaron and his attorney present, and was advised that Aaron wanted his attorney to subpoena Erica to testify, to dispute the claim that termination of his parental rights is in Shaqwan's best interest and to prove that he is a good father, while his attorney felt doing so would hurt, rather than help, Aaron. The court allowed Aaron's attorney to withdraw, which forced it to declare a mistrial. A new status conference was scheduled for August 27, 2003, and the court tolled the time limits, noting that the mistrial was good cause.

¶12 The parties appeared in court on August 27, 2003, but because the Public Defender's Office had been unable to find Aaron a new attorney, the court found good cause to toll the time limits and scheduled a new status conference for October 21, 2003. On October 21, 2003, Aaron appeared with his new attorney. Finding good cause to toll the time limits, the court set a new trial date for January 21, 2004, and a final pretrial for January 8, 2004. The reason for the long delay was that Shaqwan's guardian ad litem would be on maternity leave.

¶13 On January 8, 2004, the parties appeared for the final pretrial, but because Aaron's counsel had another trial scheduled for the week of the trial and feared she would be unable to adequately prepare, the court set May 9, 2004, as a

back-up trial date. On January 21, 2004, the State and Shaqwan's guardian ad litem were ready to proceed; however, having prepared for the other trial, Aaron's counsel was not prepared for trial. As a result, the court found good cause to postpone the trial until the back-up date.

¶14 On May 19, 2004,[7] the trial was set to begin. The presiding judge was in the process of trying another case, so the case was administratively transferred to another judge. The parties were ready to begin when Aaron filed a substitution request informing the court that he wished to substitute judges. As a result, yet another judge was assigned to try the case. Shortly thereafter, Aaron's attorney notified the court that her client requested a new attorney because he insisted on a defense that she believed was neither legally recognized nor supported by the evidence. Aaron alleged that a conspiracy existed between the adoptive resources and Erica, according to which Erica would be able to continue to see her children as long as she voluntarily gave up her parental rights and did not participate in Aaron's case. Aaron's attorney explained that, despite repeated attempts, she had been unable to locate Erica. Aaron's attorney was not allowed to withdraw. The trial court determined that the best way to locate Erica would be for Aaron to use his family resources, and, as a result, the court adjourned the case to give Aaron time to find Erica. Aaron assured the court that if he did not succeed in his attempts he would voluntarily terminate his parental rights. The trial was rescheduled for September 29, 2004.

[7] It is unclear from the record when and why the trial date was changed from May 9, 2003, to May 19, 2003.

¶15 On May 21, 2004, Aaron informed the court that he had been unable to contact his family. He also apparently changed his mind about the voluntary termination, requiring an adjournment. The trial date was not changed and a final pretrial was scheduled for August 26, 2004.

¶16 On September 8, 2004, at a status conference held in yet another trial court, Aaron informed the court that he still desired a trial and September 29, 2004, was kept as the trial date.

¶17 On September 29, 2004, the trial was set to begin, when Aaron's attorney informed the court that she and Aaron had diligently tried to reach his family to locate Erica, but had been unable to find new information, and that her client now wanted a videotape in which Shaqwan would explain his desire to be adopted. She also stated that due to disagreements it had become very difficult to represent Aaron, and that he had again requested that she no longer represent him and that he now wished to represent himself. After the judge expressed his frustration with the numerous delays, Aaron told the court that he would voluntarily terminate his parental rights after all. After speaking with her client, Aaron's attorney informed the court that Aaron would stipulate to the first phase

of the termination proceeding, the grounds' phase.[8] Aaron proceeded to stipulate to the State's proof of the abandonment ground, and waived his right to a jury trial. A new hearing for the second part, the "best interest" of the child phase, which Aaron contested, was scheduled for October 26, 2004. The court found good cause and tolled the time limits.

¶18 On October 26, 2004, the proceeding had to be postponed because Aaron was ill. After trying to find an earlier date, the court ultimately postponed the proceeding until December 16, 2004, finding Aaron's health was good cause. On the December 16, 2004, the trial judge was ill, so the proceeding took place in front of another judge. Aaron objected to the new judge and the matter was adjourned. A new date was scheduled for January 6, 2005.

¶19 On January 6, 2005, the contested disposition hearing finally took place.[9] The court determined that termination of Aaron's parental rights was in

[8] Wisconsin has a two-part procedure for the involuntary termination of parental rights. ***Steven V. v. Kelley H.***, 2004 WI 47, ¶24, 271 Wis. 2d 1, 678 N.W.2d 856. In the first, or "grounds" phase of the proceeding, the petitioner must prove that one or more of the statutory grounds for termination of parental rights exist. ***Id.***; *see* WIS. STAT. § 48.31(1). There are twelve statutory grounds of unfitness for termination of parental rights under WIS. STAT. § 48.415(1)-(10), and if a petitioner proves one or more of the grounds for termination by clear and convincing evidence, "the court shall find the parent unfit." ***Steven V.***, 271 Wis. 2d 1, ¶25 (citation omitted). A finding of parental unfitness is a necessary prerequisite to termination of parental rights, but a finding of unfitness does not necessitate that parental rights be terminated. ***Id.***, ¶26. Once the court has declared a parent unfit, the proceeding moves to the second, or dispositional phase, at which the child's best interests are paramount. ***Id.*** "At the dispositional phase, the court is called upon to decide whether it is in the best interest of the child that the parent's rights be permanently extinguished." ***Id.***, ¶27.

[9] Shaqwan's foster mother testified that she has already adopted Shaqwan's sister and wanted to adopt Shaqwan. Shaqwan's guardian ad litem, testified that, a meeting between Shaqwan and Aaron had taken place, at which Shaqwan told Aaron to stop fighting the case in court and let him be adopted by his foster mother. Aaron testified that he is appealing his convictions and is hoping to get out of jail before 2051, indeed as early as 2017.

Shaqwan's best interest. *See* WIS. STAT. § 48.426(3)(a)-(f). On January 10, 2005, the circuit court issued a written order granting the involuntary termination of Aaron's parental rights to Shaqwan, concluding that Aaron was unfit to be a parent on the ground of abandonment.

¶20 On January 17, 2005, Aaron filed a notice of his intent to pursue post-dispositional relief. Aaron's appellate counsel filed a notice of appeal, setting forth Aaron's intention to appeal the order terminating his parental rights.

¶21 On June 6, 2005, Aaron's new attorney filed a no-merit report with this court. After the no-merit report was filed, the Wisconsin Supreme Court held in ***Sheboygan County Dep't of Social Servs v. Matthew S.***, 2005 WI 84, 282 Wis. 2d 250, 698 N.W.2d 631, that "a competency challenge based on the violation of the statutory time limitation of Wis. Stat. § 48.422(2) cannot be waived, even though it was not raised in the circuit court." ***Matthew S.***, 282 Wis. 2d 150, ¶1, ¶37. As a result of ***Matthew S.***, this court rejected the no-merit report, and instead, requested a brief on the merits of the case. Aaron's attorney timely filed a brief on the merits.

II. ANALYSIS.

¶22 When a petition for the termination of parental rights has been filed, WIS. STAT. § 48.422(1)[10] requires that a court conduct a hearing within thirty days

[10] WISCONSIN STAT. § 48.422(1) provides:

> The hearing on the petition to terminate parental rights shall be held within 30 days after the petition is filed. At the hearing on the petition to terminate parental rights the court shall determine whether any party wishes to contest the petition and inform the parties of their rights under sub (4) and s. 48.423.

of the date of the filing of the petition to "determine whether any party wishes to contest the petition." If a party does wish to contest the petition, the court must set a date for a fact-finding hearing, often referred to as trial, which must begin within forty-five days of the initial hearing. Sec. 48.422(2).[11] The purpose of fact-finding hearing is "to determine whether grounds exist for the termination of parental rights." WIS. STAT. § 48.424(1).

¶23 WISCONSIN STAT. § 48.315 sets forth circumstances under which delays, continuances and extensions to these statutory time limits may be permitted. Section 48.315(1) provides a list of circumstances that are excluded from the time limits altogether:

> (a) Any period of delay resulting from other legal actions concerning the child …
>
> (b) Any period of delay resulting from a continuance granted at the request of or with the consent of the child and his or her counsel …
>
> (c) Any period of delay caused by the disqualification of a judge.
>
> (d) Any period of delay resulting from a continuance granted at the request of the representative of the public under s. 48.09 …
>
> (e) Any period of delay resulting from the imposition of a consent decree.
>
> (f) Any period of delay resulting from the absence or unavailability of the child …
>
> (fm) Any period of delay resulting from the inability of the court to provide the child with notice of an extension

[11] WISCONSIN STAT. § 48.422(2) provides: "If the petition is contested the court shall set a date for a fact-finding hearing to be held within 45 days of the hearing on the petition, unless all of the necessary parties agree to commence with the hearing on the merits immediately."

> hearing under s. 48.365 due to the child having run away or otherwise having made himself or herself unavailable to receive that notice.
>
> (g) A reasonable period of delay when the child is joined in a hearing with another child as to whom the time for a hearing has not expired under this section if there is good cause for not hearing the cases separately.
>
> (h) Any period of delay resulting from the need to appoint a qualified interpreter.

¶24 Section 48.315(2) explains the circumstances under which a court may grant continuances:

> A continuance shall be granted by the court only upon a showing of good cause in open court or during a telephone conversation 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.

¶25 In ***In re J.R.***, 152 Wis. 2d 598, 449 N.W.2d 52 (Ct. App. 1989), this court interpreted WIS. STAT. § 48.315(1) and (2). This court held that "[t]he good cause requirements of sec. 48.315(2), Stats., control all extensions of time deadlines under the Children's Code" and that "the enumerated specific circumstances noted in sec. 48.315(1) do not provide the exclusive grounds for time extensions." ***Id.*** at 607 (emphasis added).

¶26 The Children's Code makes clear, however, that none of the time limits may be waived, and delays, continuances and extensions are allowed only under WIS. STAT. § 48.315. ***State v. April O.***, 2000 WI App 70, ¶5, 233 Wis. 2d 663, 607 N.W.2d 927 (citation omitted). "[F]ailure to comply with mandatory time limits under the Children's Code may result in the loss of the [trial] court's competency to proceed." ***Id.*** (citation omitted). Consequently, if a court fails to hold a trial within the WIS. STAT. § 48.422(2) time limit, and never grants a proper

extension or continuance, it loses competency to proceed. *See* ***Matthew S.***, 282 Wis. 2d 150, ¶37. Moreover, "[o]nce a court has lost competency it cannot, in a later proceeding, find good cause for a delay and thereby restore competency." ***April O.***, 233 Wis. 2d 663, ¶10. A competency challenge is not waived even if it is not made before the trial court. ***Matthew S.***, 282 Wis. 2d 150, ¶1, ¶37. A competency challenge based on a violation of the statutory time limits of § 48.422(2), is a question of law that this court reviews de novo. ***Matthew S.***, 282 Wis. 2d 150, ¶15.

A. The trial court did not lose competency to proceed on October 18, 2002, 45 days after Aaron's initial hearing

¶27 Aaron first argues that the trial court lost competency to proceed on October 18, 2002, forty-five days after his initial hearing, because under WIS. STAT. § 48.422(2) his trial should have begun within forty-five days. He reasons that on November 12, 2002, at Erica's initial hearing, when he and Erica waived the forty-five-day time limit, the trial court had already lost competency to proceed with respect to him, because the hearing took place sixty-nine days after his initial hearing. He notes that the court operated under the assumption that the forty-five-day time limit began at the end of the initial hearing for both parties, and alleges that this "was against the plain language of the statute." Citing ***April O.***, 233 Wis. 2d 663, ¶10, Aaron also maintains that the extension that the court granted on November 12, 2002, did not satisfy the requirements of WIS. STAT. § 48.315(2), because it occurred after the court had already lost competency: "[T]he court's findings on November 12, 2002, that good cause exists to set the trial date out greater than 45 days after that date, does not cure the defect that was created when the trial date was not set within 45 days from September 4, 2002." This court disagrees.

¶28 The purpose of the initial appearance is to "determine whether any *party* wishes to contest the petition and inform the *parties* of their rights." WIS. STAT. § 48.422(1) (emphasis added). This means that the initial hearing is not completed until *all* parties have been given the opportunity to appear. Section 48.422(4) explains who qualifies as a "party" when it advises that a jury trial may be requested by "a party who is necessary to the proceeding or whose rights may be affected by an order terminating parental rights." As Shaqwan's biological mother whose parental rights were in jeopardy in this action, Erica was both necessary to the proceeding and a party whose rights would be affected by an order terminating her parental rights. Indeed, the record also shows that ever since the State filed its petition for the termination of Aaron and Erica's parental rights to Shaqwan, the court treated Aaron and Erica as parties to the same case. Accordingly, Erica was a party.

¶29 On September 4, 2002, when Aaron informed the court that he contested the petition, thereby completing his initial hearing, Erica had yet to make her first appearance in court. The court found good cause to toll the time limits, in the need to complete an initial hearing for Erica and explore the possibility of her voluntarily terminating her parental rights.

¶30 Because the initial hearing for the case is not complete until all parties have been given the opportunity to appear, here the initial hearing continued until both Aaron's and Erica's hearings were finished. This means that the initial hearing continued on September 4, 2002, and was completed on November 12, 2002, when Erica informed the court that she contested the petition. Because the initial hearing continued on September 4, 2002, the time limit that on that day was extended because Erica had yet to appear in court was the thirty-day time limit in WIS. STAT. § 48.422(1), not the forty-five day time limit in

§ 48.422(2). Therefore, because the initial hearing was not completed, the court had no obligation on September 4, 2002, to schedule a trial within forty-five days.

¶31 Consequently, when on November 12, 2002 the trial court asked the parties whether they waived the forty-five-day time limit, the court was not, as Aaron asserts, trying to "cure a defect" after missing a time limit on September 4, 2002, because the forty-five days did not start until November 12, 2002, when the initial hearing was completed. Unlike ***April O.***, which involved a missed deadline and a subsequent finding of good cause that was held to be invalid, here no deadlines were missed.

¶32 In sum, the trial court did not lose competency to proceed on October 18, 2002, because when on September 4, 2002, the court did not set a trial date within forty-five days, but instead scheduled a hearing for November 12, 2002, the trial court had not yet completed the initial hearing, and thus did not violate WIS. STAT. § 48.422(2).

B. The court did not lose competency when it set trial dates for January 14, 2003 and April 7, 2003, more than 45 days from Aaron's initial hearing

¶33 Aaron next argues that regardless of whether the initial hearing was completed on September 4, 2002, or November 12, 2002, the court, nonetheless, lost competency to proceed when the trial was not scheduled to begin within forty-five days of his initial hearing because the court improperly granted continuances that postponed the trial date to January 14, 2003, and then April 7, 2003. In support of his contention, he refers to the difference between WIS. STAT. § 48.315(1) and (2). He claims § 48.315(1) allows delays, extensions and continuances only in situations that match the ones listed in the statute, and that § 48.315(2) allows *only continuances* to be granted for good cause. He maintains

that § 48.315(1) is inapplicable here because the court's reasons for scheduling the trial for January 14, 2003, and then April 7, 2003, were not among those listed in the statute. He then maintains that § 48.315(2) is also inapplicable because a continuance may be granted only if the initial trial date is within the statutory time limit, and scheduling the trial first for January 14, 2003, and then for April 7, 2003, were thus not "continuances" under § 48.315(2), since those dates were both more than forty-five days after November 12, 2002. Therefore, he concludes that no statutorily-recognized exception existed that allowed the court to first set the trial date for January 14, 2003, and then on its own initiative, adjourn that date because several trials were scheduled for that date, and set a new trial date for April 7, 2003.

¶34 In so arguing, Aaron candidly admits that this argument is contrary to the holding in ***J.R.***, according to which the circumstances listed in WIS. STAT. § 48.315(1) are not the only reasons for extensions to be granted, and that "[t]he good cause requirements of sec. 48.315(2), Stats., control all extensions of time deadlines." ***J.R.***, 152 Wis. 2d at 607. Aaron submits, however, that the court in ***J.R.*** was "overbroad" and that the "good cause" requirement should apply only to continuances. This court disagrees.

¶35 The January 14, 2003 trial date was set on November 12, 2002, the date on which Aaron waived his right to a trial within forty-five days. The date had to be scheduled for January due to the court's congested calendar. The December 3, 2002 hearing, took place on a motion by Erica's attorney who had a scheduling conflict, and led to the trial being rescheduled for April 7, 2003. The court informed the parties, however, that, irrespective of the motion, the January 14, 2003, date had to be changed because the court had two firm trials scheduled

for that date. Thus when April 7, 2003 was chosen, the reason was, again, court congestion. Accordingly, court congestion was the reason for both adjournments.

¶36 Aaron is correct in asserting that court congestion is not among the circumstances listed in WIS. STAT. § 48.315(1), and that the present situation cannot be excluded from the time limits under that provision.

¶37 With regard to WIS. STAT. § 48.315(2), however, as Aaron concedes, ***J.R.*** makes clear that § 48.315(1) is not a list of every possible reason under which time limits may be extended, and court congestion may indeed be a legitimate reason for granting a continuance under § 48.315(2). ***J.R.***, 152 Wis. 2d at 607. In fact, ***J.R.*** further explains:

> A continuance can be granted by a court to a party under sec. 48.315(2) for court congestion provided that good cause is shown and the trial court does so in a timely manner on the record. A good cause adjournment of a fact-finding hearing by a trial court sua sponte due to court congestion is a proper method to adjourn a fact-finding hearing.

Id. at 607.

¶38 On November 12, 2002, the court granted the continuance when it scheduled the trial for January 14, 2003, but did not make an explicit finding of good cause on the record. An explicit finding of good cause is, however, not always necessary to satisfy the requirement of WIS. STAT. § 48.315(2). ***State v. Quinsanna D.***, 2002 WI App 318, ¶38, 259 Wis. 2d 429, 655 N.W.2d 752.

> Where the record "contains ample evidence to support a finding of good cause" for a continuance of a termination hearing, the trial court's "incantation of statutory phrases [is] unnecessary" for this court to conclude that a continuance beyond what otherwise would have been the statutory time limits, does not deprive the trial court of competence.

Id.

¶39 In ***Quinsanna***, the fact that the court and the parties attempted to schedule the dispositional hearing within forty-five days, and located the earliest date, only one week beyond the forty-five day limit, constituted "ample evidence to support a finding of good cause." ***Id.***, ¶39 (citation omitted). Here, the court acknowledged that it is indeed a problem that "these things are taking so long," and the trial was scheduled for what seems to have been the earliest available date, a mere twelve days beyond the forty-five-day limit. As a matter of fact, despite the district attorney's steadfast attempts to convince the judge to change the date due to a scheduling conflict, reiterating his concerns about the delays, the judge refused to further postpone the trial date. These facts indicate that the court was, indeed, making an implicit finding of good cause, even though it did not specifically articulate that finding on the record. *See* ***id.***

¶40 On December 3, 2002, by contrast, when the trial court granted another continuance and rescheduled the trial for April 7, 2003, it did make an explicit finding of good cause on the record. *See* ***J.R.***, 152 Wis. 2d at 607.

¶41 The court did not lose competency to proceed when it scheduled the trial for January 14, 2003, and April 7, 2003, because the two continuances satisfy the requirements of ***J.R.*** and were thus permissible under WIS. STAT. § 48.315(2).[12]

[12] In addition, contrary to what Aaron appears to imply, this court does not have the authority to overturn our own precedent. *See* ***Cook v. Cook***, 208 Wis. 2d 166, 190, 560 N.W.2d 246 (1997) (This court "may not overrule, modify or withdraw language from a previously published decision of the court of appeals."). Hence, even if this court were to agree with Aaron that the holding in ***J.R.*** is "overbroad," this court would still be bound by it.

C. The court did not lose competency because the time between Aaron's initial hearing and the grounds phase was 807 days

¶42 Finally, Aaron contends that, as a whole, an aggregate delay of 807 days, almost eighteen times the statutory forty-five-day limit, deprived the court of competency to proceed. He points to the wording of WIS. STAT. § 48.315(2) which directs that continuances are to be granted "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," and argues that a finding of good cause does not extend indefinitely the amount of time by which a court may delay the proceeding, and that 807 days is "simply unacceptable." This court again disagrees.

¶43 It is certainly unfortunate that it took 807 days from the day Aaron's initial hearing was completed on September 4, 2002, until he stipulated to the grounds phase on September 29, 2004. While this court recognizes that the public interest in the prompt disposition of cases is particularly important in cases that involve children, the fact that the aggregate delay added up to over two years does not alone make the continuances "unacceptable." This court knows of no authority, and Aaron has provided none, that supports his argument that the aggregate length of the delays alone could lead to a loss of competency. The many continuances were properly granted after the court made findings of good cause – many were indeed granted at Aaron's request.

¶44 The 807-day aggregate delay that resulted from the many continuances did not cause the court to lose competency. Therefore, the order terminating Aaron's parental rights is affirmed.

By the Court.—Order affirmed.

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