COURT OF APPEALS
DECISION
DATED AND FILED

July 5, 2006

Cornelia G. Clark
Clerk of Court of Appeals

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* WIS. STAT. § 808.10 and RULE 809.62.

Appeal No. 2006AP834 **Cir. Ct. No. 2004TP35**

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

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

FOND DU LAC COUNTY DEPARTMENT OF SOCIAL SERVICES,

PETITIONER-RESPONDENT,

V.

WILHELMINA F.,

RESPONDENT,

TRACEY D. R.,

RESPONDENT-APPELLANT.

APPEAL from an order of the circuit court for Fond du Lac County: ROBERT J. WIRTZ, Judge. *Affirmed.*

¶1 BROWN, J.[1] Tracey D.R. appeals a circuit court ruling terminating his parental rights to his daughter, contending that the court had lost competency to proceed by the time of his dispositional hearing. He claims that his hearing was subject to WIS. STAT. § 48.424(4), which provides that if during a fact-finding hearing, the trier of fact finds grounds for termination of parental rights, the court must hold a dispositional hearing within forty-five days. We disagree. The circuit court's competency is not generally subject to time limits, and this court will not impose them where the legislature has not acted. Tracey's case presents a unique factual situation. The circuit court held a dispositional hearing, and this court remanded for a *new* hearing. Because § 48.424(4) does not contemplate situations in which the circuit court has held fact-finding and dispositional hearings prior to appeal and a remand results in an additional dispositional hearing, we hold that this second hearing was not subject to the statute's mandatory time limit. We affirm the circuit court's ruling.

¶2 The Fond du Lac County Department of Social Services filed a petition to terminate Tracey's parental rights to his daughter, Abreanna S. On January 4, 2005, following a two-day jury trial, a jury found that grounds existed for termination. The circuit court held a dispositional hearing on February 9, at which it dismissed the Department's petition.

¶3 The Department appealed. This court reversed and remanded the matter to the circuit court for a new dispositional hearing. The Department requested a judicial substitution, and the case was reassigned on October 7, 2005.

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

The substituted judge scheduled the new dispositional hearing for January 13, 2006. The hearing took place as scheduled. This time, the court ruled in favor of termination. Tracey appeals.

¶4 Tracey contends that the January 13 dispositional hearing is a legal nullity, based on WIS. STAT. § 48.424(4). Section 48.424(4) provides that "[t]he court may … set a date for a dispositional hearing no later than 45 days after the fact-finding hearing." Tracey contends that this forty-five-day clock began ticking again once the court assigned a new judge to the case. He relies on ***State v. April O.***, 2000 WI App 70, ¶¶5, 11, 233 Wis. 2d 663, 607 N.W.2d 927, and ***Sheboygan County Department of Social Services v. Matthew S.***, 2005 WI 84, ¶36, 282 Wis. 2d 150, 698 N.W.2d 631, *reconsideration denied*, 2005 WI 150, 286 Wis. 2d 104, 705 N.W.2d 664 (No. 2004AP0901), *cert. denied*, 126 S. Ct. 1579 (2006) (No. 05-882), for the proposition that the deadlines in WIS. STAT. ch. 48 are mandatory and a court loses competency to proceed when it fails to meet them. Tracey concludes that because the January 13 hearing occurred more than forty-five days after the substitution, the court lost competency over his case.

¶5 The Department counters that WIS. STAT. § 48.424(4) does not apply to this situation. According to the Department, the January 13 hearing was merely a continuation of the original February 9 dispositional hearing. The statute does not, in the Department's view, deal with the situation of a hearing spanning multiple days.

¶6 We disagree with the Department's factual premise. This court clearly remanded for a "new dispositional hearing." The circuit court held two distinct dispositional hearings, not one multiday hearing. We do agree, however, that this circumstance presents a novel factual situation and that we must examine

whether the January 13 hearing was subject to WIS. STAT. § 48.424(4) before applying the forty-five-day time limit. This task requires us to construe the statute and apply it to a set of facts, which presents legal questions we review independently of the circuit court. *See* ***State ex rel. Julie A.B. v. Circuit Court for Sheboygan County***, 2002 WI App 220, ¶6, 257 Wis. 2d 285, 650 N.W.2d 920; ***Gloria A. v. State***, 195 Wis. 2d 268, 272, 536 N.W.2d 396 (Ct. App. 1995).

¶7 When we construe a statute, we aim to give effect to the legislative intent. ***Julie A.B.***, 257 Wis. 2d 285, ¶6. In general, we discern that intent by looking to the language of the statute. ***Id.*** If the words in the statute reveal the drafters' intent, we look no further. ***Id.*** We do not, of course, read those words in a vacuum. ***State v. Toy***, 125 Wis. 2d 216, 219, 371 N.W.2d 386 (Ct. App. 1985). Rather, we read them in conjunction with surrounding provisions in order to best ascertain the plain and clear meaning of the statute. *See* ***id.***

¶8 WISCONSIN STAT. § 48.424, entitled "Fact-finding hearing," reads in relevant part:

> **(4)** If grounds for the termination of parental rights are found by the court or jury, the court shall find the parent unfit…. The court shall then proceed immediately to hear evidence and motions related to the dispositions enumerated in s. 48.427. The court may delay making the disposition and set a date for a dispositional hearing no later than 45 days after the fact-finding hearing if [statute lists two circumstances under which court may delay the disposition].

As we see it, this statute delineates the actions a circuit court may take at a fact-finding hearing with respect to the disposition of the petition to terminate parental rights. It directs the court to immediately hear evidence and motions on dispositions unless certain circumstances are met, in which case it may delay a hearing on disposition for up to forty-five days. The dispositional hearing at issue

here resulted from an appeal, not because the judge presiding over the fact-finding hearing elected to delay the disposition as opposed to hearing evidence concerning disposition immediately. By its terms, the statute appears to contemplate only the latter scenario. Indeed, the legislature entitled § 48.424 "Fact-finding hearing." That title supports our conclusion that the statute meant to address what options the court at a fact-finding hearing has with respect to disposing of the petition. The circuit court could not possibly schedule a postappeal dispositional hearing at the preappeal fact-finding hearing because it would not have the benefit of this court's decision at that time.

¶9 In addition, the statute does not appear to contemplate the possibility of multiple dispositional hearings. We have already determined that the statute only addresses the options the circuit court at a fact-finding hearing has vis-à-vis disposition. Even if the judge elected to delay disposition, it defies common sense to assume the court would schedule multiple hearings for this purpose. We also consider the language in WIS. STAT. § 48.424(5), which states that "[i]f the court delays making a permanent disposition under sub. (4), it may transfer temporary custody of the child to an agency for placement … until the dispositional hearing." We observe that § 48.424(5) refers to the dispositional hearing in the singular.

¶10 We will not expand WIS. STAT. § 48.424(4) to encompass the January 13 hearing in this case. In ***April O.***, we stated that a court will not rewrite clear statutory language. ***April O.***, 233 Wis. 2d 663, ¶12. ***Matthew S.*** reiterated this rule. *See* ***Matthew S.***, 282 Wis. 2d 150, ¶36. The supreme court in that case also noted that "[w]hen the Children's Code was first enacted, 'there were no statutorily authorized time limits for the processing of cases in juvenile court.'" ***Id.***, ¶17 (citation omitted). Taken together, ***April O.*** and ***Matthew S.*** stand for the proposition that the time limits set forth in WIS. STAT. ch. 48 are the exception

rather than the norm and where the legislature has not specifically imposed a time limit on the court's competency over an action, we will not rewrite statutory language to create one.

¶11 Tracey cites no ground for reversing the circuit court's order other than the circuit court's lack of competency to proceed. We have held that the January 13 hearing was not subject to the forty-five-day time limit in WIS. STAT. § 48.424(4). We must affirm the order terminating Tracey's parental rights.

By the Court.—Order affirmed.

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