

**COURT OF APPEALS  
DECISION  
DATED AND FILED**

March 1, 2001

Cornelia G. Clark  
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 WIS. STAT. § 808.10 and RULE 809.62.

**No. 00-3147-FT**

**STATE OF WISCONSIN**

**IN COURT OF APPEALS  
DISTRICT IV**

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**IN THE MATTER OF THE MENTAL COMMITMENT OF  
THOMAS F. W.:**

**STATE OF WISCONSIN,**

**PETITIONER-RESPONDENT,**

**v.**

**THOMAS F. W.,**

**RESPONDENT-APPELLANT.**

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APPEAL from an order of the circuit court for Marquette County:  
JAMES O. MILLER, Judge. *Affirmed.*

¶1 ROGGENSACK, J.<sup>1</sup> Thomas F.W. appeals an order extending his civil commitment for a period of one year. He claims that: (1) the circuit court erroneously exercised its discretion when it refused to grant a forty-five day extension of his recommitment hearing to allow him to obtain a different attorney; and (2) the circuit court denied him his statutory right to select one of the examining physicians. We conclude that the circuit court acted within its discretion when it denied Thomas's request for an extension and that it did not deny Thomas his right to select an examining physician under WIS. STAT. § 51.20(9). Therefore, we affirm the order of the circuit court.

### BACKGROUND

¶2 Following a jury trial, Thomas was civilly recommitted under ch. 51 for one year on May 20, 1999. On May 8, 2000, Marquette County petitioned to extend his commitment for another year. A trial date was set for May 18, 2000. On May 15, Thomas requested a jury trial and a substitution of judges, and his trial was rescheduled for May 23. On May 18, the state public defender's office appointed Charles Church as Thomas's attorney. The next day, Thomas told Church that he wanted Attorney Joseph L. Sommers to represent him at trial. Sommers was willing to represent Thomas, but he was not available for a May 23 trial. On May 22, Church moved to allow Thomas to stipulate to a forty-five day extension of his commitment so that Sommers could represent him. Church also moved to have the court exclude all testimony of one of the court-appointed

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<sup>1</sup> This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(d) (1999-2000) and expedited under WIS. STAT. RULE 809.17 (1999-2000). Additionally, all further references to the Wisconsin Statutes are to the 1999-2000 version unless otherwise noted.

examiners because Thomas had not elected one of them as he contends is provided for by WIS. STAT. § 51.20(9)(a).

¶3 The circuit court denied both motions, and a trial was held on May 25, 2000. Two doctors, a psychologist and a psychiatrist, testified as experts. One testified that Thomas suffered from a thought disorder, the other that he suffered from paranoid schizophrenia. Both testified that he was dangerous to others and that his illness was treatable. The jury found that Thomas was mentally ill, dangerous to himself or others, and a proper subject for treatment. Based on these findings, the circuit court entered an order extending Thomas's commitment for a period of one year. Thomas appeals.

## DISCUSSION

### **Standard of Review.**

¶4 We examine the circuit court's decision about whether to grant a request to substitute appointed counsel for an indigent defendant under the erroneous exercise of discretion standard. *Peters v. State*, 50 Wis. 2d 682, 687, 184 N.W.2d 826, 829 (1971). We will uphold the circuit court's discretionary decision if it examined the relevant facts of record, applied the correct legal standard to them, and reached a conclusion that a reasonable judge could reach. *State v. Edmunds*, 229 Wis. 2d 67, 74, 598 N.W.2d 290, 294 (Ct. App. 1999). Interpretation of statutory language under the facts of a particular case is a question of law that we review without deference to the circuit court's decision. *Downey, Inc. v. Bradley Ctr. Corp.*, 188 Wis. 2d 435, 448, 524 N.W.2d 915, 922 (Ct. App. 1994).

## Right to Counsel.

¶5 Thomas first argues that the circuit court denied him his right to counsel of his choice when it refused to grant his motion for a forty-five day extension of his commitment so that Sommers could participate on his behalf. The subject of a ch. 51 involuntary civil commitment proceeding has a statutory right to be represented by counsel. WISCONSIN STAT. § 51.20(3). However, that right has been construed to encompass only the right to effective counsel. *A.S. v. State*, 168 Wis. 2d 995, 1002, 485 N.W.2d 52, 54 (1992).<sup>2</sup>

¶6 A circuit court conducting a hearing to extend a commitment under ch. 51 is held to a strict timetable. Usually, the extension hearing must be held before the existing commitment expires. *G.O.T. v. Rock County*, 151 Wis. 2d 629, 633, 445 N.W.2d 697, 698 (Ct. App. 1989). Once a subject individual requests a jury trial, however, the circuit court has fourteen days to hold it. WISCONSIN STAT. § 51.20. Therefore, the circuit court may extend the existing commitment for up to fourteen days to accommodate the demand for a jury trial. *G.O.T.*, 151 Wis. 2d at 634, 445 N.W.2d at 698. The court loses its competency to proceed if it orders a further extension of the commitment beyond what is prescribed by statute.<sup>3</sup> *Id.* at 635, 445 N.W.2d at 699.

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<sup>2</sup> Thomas argues that *State v. Kaye*, 106 Wis. 2d 1, 315 N.W.2d 337 (1982) holds that he has a qualified right to representation by counsel of his choice under the Sixth Amendment. *Kaye* is not on point here because the right to counsel in a ch. 51 proceeding is a statutory right, not a Sixth Amendment right.

<sup>3</sup> Thomas also asserts that the circuit court erred in declining to apply the provisions of WIS. STAT. § 51.20(8)(bg) because it erroneously believed that the paragraph did not apply to recommitment hearings. Section 51.20(8)(bg) provides in relevant part:

The subject individual ... may waive the time periods under ... this section for the ... final hearing ... for a period not to exceed 90 days from the date of the waiver, if the individual and [the

(continued)

¶7 In this case, the circuit court recognized that granting Thomas's request for a forty-five day extension of his commitment would have deprived it of competency to conduct the recommitment hearing. It concluded:

[Thomas's] right to this hearing is within 14 days. It's an absolute right. The court can lose its jurisdiction if it is not properly complied with, and to me that's a paramount situation. All of the cases reference that [Thomas] or anyone in his position do not have a right to manipulate the court or the proceedings.

And, lastly, the request is a specific request for a 45-day extension. And as long as I'm the judge assigned to this case I can't hear it within the time limits requested; therefore, I cannot grant the motion because I do not have the time to do it. So that's the end of that.

The circuit court made a specific finding that Church was competent to represent Thomas in a ch. 51 hearing and refused to reschedule the trial. The circuit court was concerned that it lacked the power to extend Thomas's commitment for the forty-five day period he had requested, and it also found that, based on its experience with Church, that he was competent to represent him.<sup>4</sup> Therefore, we

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corporation counsel] agree at any time after the commencement of the proceedings that the individual shall obtain treatment under a settlement agreement.

Thomas's assertion misstates the record. The circuit court never stated that § 51.20(8)(bg) did not apply to recommitment hearings. Instead, the court concluded that it did not apply because no settlement agreement existed between Thomas and Marquette County.

Thomas also argues that the circuit court could have extended his commitment for forty-five days under WIS. STAT. § 51.20(13)(g)1., which states in relevant part: "[A]ll subsequent consecutive orders of commitment of the individual may be for a period not to exceed one year." Thomas's brief does not explain how this provision gives the circuit court the authority to extend his commitment for forty-five days without a hearing. "[W]e do not decide issues that are not adequately developed by the parties in their briefs." *Truttschel v. Martin*, 208 Wis. 2d 361, 369, 560 N.W.2d 315, 319 (Ct. App. 1997).

<sup>4</sup> Thomas has not raised ineffective assistance of counsel as an issue on this appeal.

conclude that the circuit court did not erroneously exercise its discretion in denying Thomas's request to substitute counsel.

### **Expert Witnesses.**

¶8 Thomas also argues that the circuit court erroneously interpreted WIS. STAT. § 51.20(9)(a).<sup>5</sup> He contends that the circuit court should have granted his motion to strike the testimony of one of the examiners because, by granting that motion, Thomas would have been effectively choosing the remaining examiner as he has the right to do under the statute. We disagree.

¶9 When we are asked to apply a statute whose meaning is in dispute, our efforts are directed at determining legislative intent. *Michael T. v. Briggs*, 204 Wis. 2d 401, 407, 555 N.W.2d 651, 654 (Ct. App. 1996). In attempting to determine the intent of the legislature, 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

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<sup>5</sup> WISCONSIN STAT. § 51.20(9)(a) provides:

1. If the court finds after the hearing that there is probable cause to believe the allegations ... it shall appoint 2 licensed physicians specializing in psychiatry, or one licensed physician and one licensed psychologist, or 2 licensed physicians one of whom shall have specialized training in psychiatry, if available, or 2 physicians, to personally examine the subject individual. The examiners shall have the specialized knowledge determined by the court to be appropriate to the needs of the subject individual. The examiners may not be related to the subject individual by blood or marriage [or adoption] and may not have any interest in his or her property.

2. One of the examiners appointed under subd. 1. may be selected by the subject individual if the subject individual makes his or her selection known to the court within 24 hours after completion of the hearing to determine probable cause for commitment. The court may deny the subject individual's selection if the examiner does not meet the requirements of subd. 1. or the subject individual's selection is not available.

legislative intent, our inquiry ends, and this court must apply that language to the facts of the case. *Truttschel v. Martin*, 208 Wis. 2d 361, 365, 560 N.W.2d 315, 317 (Ct. App. 1997).

¶10 WISCONSIN STAT. § 51.20(9) gives the subject of a ch. 51 commitment proceeding the right to timely request the court to appoint an expert of his choosing to examine him. The statute provides:

One of the examiners appointed under subd. 1. may be selected by the subject individual if the subject individual makes his or her selection known to the court within 24 hours after completion of the hearing to determine probable cause for commitment.

It is undisputed that Thomas did not request the appointment of an examiner within the time stated, nor does the record reflect that he ever requested such an appointment. The statute is unambiguous. The plain meaning of the words chosen by the legislature requires Thomas to timely make a request to appoint an examiner; it does not give Thomas the right to strike an examiner appointed by the court in lieu of making such a choice. Therefore, we conclude that the circuit court correctly interpreted the statute, and we affirm its refusal to strike the testimony of one of the experts.

## CONCLUSION

¶11 Because we conclude that the circuit court acted within its discretion when it denied Thomas's request for an extension and that it did not erroneously deny Thomas his right to select an examining physician under WIS. STAT. § 51.20(9), we affirm the order of the circuit court.

*By the Court.*—Order affirmed.

This opinion will not be published. WISCONSIN STAT. RULE  
809.23(1)(b)4.



