

**COURT OF APPEALS
DECISION
DATED AND FILED**

December 5, 2008

David R. Schanker
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. 2008AP2218

Cir. Ct. No. 2007TP4

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

**IN RE THE TERMINATION OF PARENTAL RIGHTS TO DAKOTA J. D.-L., A PERSON
UNDER THE AGE OF 18:**

JAMIE L. L.,

PETITIONER-RESPONDENT,

v.

ERICA M. D.,

RESPONDENT-APPELLANT.

APPEAL from an order of the circuit court for Crawford County:
GEORGE S. CURRY, Judge. *Reversed.*

¶1 BRIDGE, J.¹ Erica D. appeals an order of the circuit court terminating her parental rights to Dakota D.-L. She argues that the court lost

¹ This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(e) (2005-06). All references to the Wisconsin Statutes are to the 2005-06 version unless otherwise noted.

competency by failing to rule on the disposition within ten days of the dispositional hearing, as required by WIS. STAT. § 48.427(1).² We agree and reverse the court's order.

BACKGROUND

¶2 The material facts of this case are undisputed. Jamie L. petitioned for the termination of Erica's parental rights to their then nine-year-old child, Dakota. At a fact-finding hearing held on July 25, 2007, the jury found, as Jamie had alleged, that Erica had abandoned Dakota within the meaning of WIS. STAT. § 48.415(1)(a)3.

¶3 On September 21, 2007, the circuit held the first of a number of dispositional hearings to determine whether Erica's parental rights should be terminated.³ Evidence was received by the court at this hearing. However, because the time allotted was insufficient, the hearing was not able to be completed. The dispositional hearing was therefore continued to October 11.

¶4 On October 8, 2007, Erica moved the court to continue the October 11 hearing to a later date because complications with her late-term pregnancy prevented her from attending the hearing. When the dispositional hearing reconvened on October 11, Erica was not physically present at the hearing,

² WISCONSIN STAT. § 48.427(1) provides, "Any party may present evidence relevant to the issue of disposition, including expert testimony, and may make alternative dispositional recommendations to the court. After receiving any evidence related to the disposition, the court shall enter one of the dispositions specified under subs. (2) to (4) within 10 days."

³ The fact that this hearing was held more than forty-five days after the fact-finding hearing, contrary to WIS. STAT. § 48.424(4), is not at issue here. The parties stipulated to the hearing date and the court found good cause under WIS. STAT. § 48.315 to hold the hearing more than forty-five days after the fact-finding hearing.

but did appear by telephone. In light of the recommendation of Dakota's guardian ad litem that continuing the hearing would be in Dakota's best interest, and the court's own concerns regarding Erica's due process rights, the court granted Erica's request for a continuance. The court stated, "So I'll find good cause for continuing [the hearing] ... past this date because of [Erica's] situation of not being able to travel due to her pregnancy." The earliest date at which the hearing could be rescheduled in a primary position that would accommodate the parties' and the court's schedules was December 7.

¶5 On December 7, 2007, the dispositional hearing reconvened. Although the dispositional hearing was scheduled to begin at 1:00 p.m., it did not commence until later in the day because court matters earlier in the day had run longer than anticipated. At this hearing, the court received additional evidence. However, because of the late start in the day, there was not enough time to complete the hearing. The court advised the parties that the hearing would therefore need to reconvene at the next available time.

¶6 The dispositional hearing reconvened again on January 8, 2008. More evidence was received by the court at this hearing. As the hearing drew to a close, the court noted that there was insufficient time for completing the matter. The court advised the parties that the hearing would need to be rescheduled for a later date when additional witnesses could be called, the parties could make final arguments, and a decision could be made.

¶7 The dispositional hearing reconvened for a final time on March 27, 2008, and additional evidence was received by the court. At the conclusion of the hearing, after the parties had made their closing arguments, the court stated, "I will make a decision. I will try to announce the decision orally at 1:30 on April—

May 8 at 1 o'clock.” The court also advised the parties that if they wished to supplement anything they said, they could do so by letter.

¶8 On May 8, 2008, the parties met for the court’s oral ruling on the matter. The court announced that to facilitate a more stable and permanent family life, it was in Dakota’s best interest to have Erica’s parental rights terminated. The court concluded that Erica’s parental rights were thereby terminated. A dispositional order terminating Erica’s parental rights based on abandonment was subsequently entered on June 2, 2008. Erica appeals.

DISCUSSION

¶9 WISCONSIN STAT. § 48.427(1) requires that the circuit enter a disposition specified in that chapter within ten days of receiving any evidence related to the disposition. The time limits prescribed in WIS. STAT. ch. 48 are mandatory. *See Sheboygan County Dep’t of Social Servs. v. Matthew S.*, 2005 WI 84, ¶18, 282 Wis. 2d 150, 698 N.W.2d 631. Absent an applicable exception, a failure to comply with these time limits results in the circuit court’s loss of competency, or power to adjudicate the controversy before it, and requires the dismissal of the petition for termination of parental rights. *See State v. April O.*, 2000 WI App 70, ¶5, 233 Wis. 2d 663, 607 N.W.2d 927; *Green County Dep’t of Human Servs. v. H.N.*, 162 Wis. 2d 635, 656 n.17, 469 N.W.2d 845 (1991). Erica contends that the circuit court lost competency to enter the dispositional order terminating her parental rights because the court’s oral ruling terminating those rights was made more than ten days after the first dispositional hearing was held. Whether a circuit court has complied with the time limits prescribed in WIS. STAT. § 48.427(1) presents a question of law which we review de novo. *See April O.*, 233 Wis. 2d 663, ¶6.

¶10 Although the time provisions in WIS. STAT. ch. 48 are mandatory, the failure to comply with them will not always result in a court's loss of competency. *Mathew S.*, 282 Wis. 2d 150, ¶18. The strictness of the general rule is tempered by WIS. STAT. § 48.315, which permits delays, continuances, and extensions of the time limits under ch. 48. *See id.* Section 48.315(1) lists specific circumstances that toll the running of the time limits under ch. 48.⁴ *See In re*

⁴ WISCONSIN STAT. § 48.315(1) provides:

(1) The following time periods shall be excluded in computing time periods under this chapter:

(a) Any period of delay resulting from other legal actions concerning the child or the unborn child and the unborn child's expectant mother, including an examination under s. 48.295 or a hearing related to the mental condition of the child, the child's parent, guardian or legal custodian or the expectant mother, pre-hearing motions, waiver motions and hearings on other matters.

(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 or of the unborn child by the unborn child's guardian ad litem.

(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 if the continuance is granted because of the unavailability of evidence material to the case when he or she has exercised due diligence to obtain the evidence and there are reasonable grounds to believe that the evidence will be available at the later date, or to allow him or her additional time to prepare the case and additional time is justified because of the exceptional circumstances of the case.

(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 or expectant mother.

(continued)

G.H., 150 Wis. 2d 407, 417, 441 N.W.2d 227 (1989). In addition, § 48.315(2) authorizes a court to grant a continuance under that subsection, but only upon a showing of good cause either in open court or during a telephone conference.⁵ See *id.* at 418.

¶11 The circumstances set forth in WIS. STAT. § 48.315(1) are not applicable in this case. Thus, for the court to have retained competency to enter the dispositional order terminating Erica’s parental rights outside the limit set forth in WIS. STAT. § 48.427(1), the delay between the hearings and the court’s decision must satisfy the requirements of § 48.315(2). Whether a failure to comply with a time limit prescribed in ch. 48 is excused under § 48.315 presents another question of law reviewed de novo by this court. See *April O.*, 233 Wis. 2d 663, ¶6.

¶12 Jamie asserts that good cause existed in this case for the continuances between the various dispositional hearings because of scheduling complications among the parties and the court. He further asserts that good cause

(fm) Any period of delay resulting from the inability of the court to provide the child with notice of an extension 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.

⁵ WISCONSIN STAT. § 48.315(2) provides:

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.

existed for the delay between the conclusion of the dispositional hearing on March 27, 2008, the last hearing at which evidence was received, and the issuance of the court's decision on May 8 because the delay afforded the parties additional time to submit further arguments and provided the court with an opportunity to review notes and transcripts from the hearings.⁶

¶13 The court did not explain the reason why an additional forty-one days was needed after the conclusion of the March 27, 2008 hearing for the court to issue its decision. There was no showing of good cause in open court which would excuse the court's failure to issue its ruling within ten days as it was required to do by WIS. STAT. § 48.427(1). Thus, even assuming that the continuances between the various dispositional hearings were supported by a showing of good cause, there was no such showing that accounted for the delay between the conclusion of the hearings and the court's decision.⁷ Because the mandatory time provision of § 48.427(1) was not complied with, and compliance with that time provision was not excused under WIS. STAT. § 48.315(1) or (2), the court did not have competency to terminate Erica's parental rights. As we have stated in prior similar situations, this result is, to say the least, unfortunate. *See April O.*, 233 Wis. 2d 663, ¶12. However, we may not rewrite clear statutory language, and precedent compels reversal. *See Cook v. Cook*, 208 Wis. 2d 166,

⁶ Jamie also points out that no objection was made to the date set by the court for issuing its decision. However, a competency challenge based on court's failure to act within mandatory statutory time periods cannot be waived. *State v. April O.*, 2000 WI App 70, ¶5, 233 Wis. 2d 663, 607 N.W.2d 927.

⁷ Because we have determined that the delay between the final dispositional hearing on March 27, 2008, and the court's ruling on May 8 was not excused under WIS. STAT. § 48.315, we do not address whether the delays between the various dispositional hearings were excused under §§ 48.315(1) or (2). *See Sweet v. Berge*, 113 Wis. 2d 61, 67, 334 N.W.2d 559 (Ct. App. 1983) (if a decision on one point disposes of the appeal, the court will not decide other issues raised).

189, 560 N.W.2d 246 (1997). We therefore reverse the circuit court's dispositional order.

By the Court.—Order reversed.

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

