

**COURT OF APPEALS  
DECISION  
DATED AND FILED**

**April 30, 2002**

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. 02-0430**

**Cir. Ct. No. 01TP283**

**STATE OF WISCONSIN**

**IN COURT OF APPEALS  
DISTRICT I**

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**IN RE THE TERMINATION OF PARENTAL RIGHTS TO  
MARIA D.C.M., A PERSON UNDER THE AGE OF 18:**

**STATE OF WISCONSIN,**

**PETITIONER-RESPONDENT,**

**v.**

**LAZARO M.,**

**RESPONDENT-APPELLANT.**

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

¶1 CURLEY, J.<sup>1</sup> Lazaro M. appeals from the trial court's order terminating his parental rights to Maria D.C.M. pursuant to WIS. STAT. § 48.43

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<sup>1</sup> This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2).

(1999-2000).<sup>2</sup> Lazaro M. argues that after the trial court issued its oral decision from the bench at the close of the dispositional hearing, it lost competency to sign and file the written order because it did not reduce the oral order to writing and file it within ten days of the dispositional hearing in accordance with WIS. STAT. § 48.427(1). We conclude that, for the purposes of WIS. STAT. § 48.427(1), the dispositional order is entered the day it is orally issued from the bench. Because the order terminating Lazaro M.'s parental rights was timely, the trial court is affirmed.

### I. BACKGROUND.

¶2 A petition for termination of parental rights (TPR) was filed on behalf of Maria D.C.M. on July 16, 2001. Both biological parents were properly given notice, but the child's mother, Linda C., failed to appear at the hearing on the petition, failed to participate in the proceedings, and has not appealed the order terminating her parental rights. At the hearing on the petition, held on August 14, 2001, Lazaro M., the child's father, requested a jury trial pursuant to WIS. STAT. § 48.422(2).<sup>3</sup> The trial was set for September 20, 2001.

¶3 The jury trial proceeded as scheduled on September 20, 2001, and continued through the following day. The jury returned unanimous verdicts, finding that Lazaro M. had failed to assume parental responsibility and had

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<sup>2</sup> All references to the Wisconsin Statutes are to the 1999-2000 version unless otherwise noted.

<sup>3</sup> WIS. STAT. § 48.422(2) provides that "[i]f 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."

abandoned Maria D.C.M. The court granted the State's motion for judgment on the verdicts and the case was set for a dispositional hearing on November 2, 2001.

¶4 Lazaro M. did not personally appear at the November 2, 2001, dispositional hearing, but his attorney was present and participated in the proceedings.<sup>4</sup> After the court heard the testimony of Bureau of Milwaukee Child Welfare worker Livy Ludowise, and Lazaro M.'s attorney had an opportunity to cross examine her, the court issued an oral order terminating the parental rights of Lazaro M. and Linda C. The signed order was filed with the clerk of courts on November 19, 2001.

## II. ANALYSIS.

¶5 Lazaro M. argues that, pursuant to WIS. STAT. § 48.427, the trial court was required to sign and file a final order with the clerk within ten days of the dispositional hearing.<sup>5</sup> Lazaro M. argues that because the order was filed with the clerk one day late, on November 19, 2001, the court lost competency to proceed to a final disposition of the matter.<sup>6</sup>

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<sup>4</sup> Although Lazaro M. did not appear at the dispositional hearing, a party's failure to object to the trial court's loss of competency before the court loses competency does not waive the party's right to later object to an order entered after the court lost competency. See *Green County Dep't of Human Servs. v. H.N.*, 162 Wis. 2d 635, 658, 469 N.W.2d 845 (1991).

<sup>5</sup> The dispositional hearing took place November 2, 2001. WISCONSIN STAT. § 801.15(1)(b) provides that if the prescribed time period within which something must be done is ten days or less, only business days count in determining the due date. November 2, 2001, was a Friday; therefore, beginning with the following Monday, ten business days from November 2, 2001, was Friday November 16, 2001.

<sup>6</sup> Competency in this context means the court's power to adjudicate the specific type of controversy before it, and the court loses competency when it fails to comply with the requirements necessary for the valid exercise of that power. See *Green County*, 161 Wis. 2d at 656.

¶6 The meaning of WIS. STAT. § 48.427(1) is a question of statutory interpretation. Statutory interpretation presents a question of law that this court reviews *de novo*. *Schmidt v. Wisconsin Employe Trust Funds Bd.*, 153 Wis. 2d 35, 41, 449 N.W.2d 268 (1990). “On any question of statutory construction the initial inquiry is to the plain meaning of the statute.” *Id.* “If the statute is unambiguous, resort to judicial rules of interpretation and construction is not permitted, and the words of the statute must be given their obvious and intended meaning.” *Id.* “[O]nly if the language of the statute does not clearly or unambiguously set forth the legislative intent, however, will this court construe the statute so as to ascertain and carry out the legislative intent.” *Jungbluth v. Hometown, Inc.*, 201 Wis. 2d 320, 327, 548 N.W.2d 519 (1996). In construing the statute, we are further guided by the principle that the “court will not adopt statutory constructions which would lead to absurd or unreasonable results.” *Peters v. Menard, Inc.*, 224 Wis. 2d 174, 189, 589 N.W.2d 395 (1999).

¶7 WISCONSIN STAT. § 48.427(1) provides, in relevant part:

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.

(Emphasis added). Subsections (2) through (4) set forth potential dispositions, including termination of parental rights.

¶8 WISCONSIN STAT. § 48.427(1) is susceptible to alternate, yet reasonable, interpretations. First, this court must resolve whether the ten-day time period begins to run when the court receives the first evidence related to the disposition, or when it has received all of the evidence related to the disposition.

Second, this court must determine whether the dispositional order is “entered” by oral proclamation at the conclusion of the dispositional hearing, or whether the order must be reduced to writing, signed and filed with the clerk to satisfy WIS. STAT. § 48.427(1). Because reasonable minds could differ as to the meaning of the terms “any evidence” and “enter” as used in § 48.427(1), this court further examines the scope, history, context, subject matter, and purpose of WIS. STAT. § 48.427(1) to determine the meaning of these terms. See *State v. Piddington*, 2000 WI 24, ¶14, 241 Wis. 2d 754, 623 N.W.2d 528 (citations omitted).

¶9 First, this court concludes that “any evidence,” as used in WIS. STAT. § 48.427(1), means that the trial court must enter a dispositional order within ten days of receiving the first evidence related to the disposition.<sup>7</sup> This court’s conclusion that “any evidence” means “the first evidence received” comports with the legislature’s intent of ensuring the “speedy adjudication of juvenile matters.” *T.H. v. La Crosse County*, 147 Wis. 2d 22, 28-29, 433 N.W.2d 16 (Ct. App. 1988).

¶10 Second, this court concludes that “enter,” as used in WIS. STAT. § 48.427(1), means either: (1) an oral order entered at the conclusion of the dispositional hearing; or (2) a written order signed by the court and filed with the clerk of courts where an oral dispositional order was not entered in the case. In the case of *Comstock v. Boyle*, 134 Wis. 613, 617, 114 N.W. 1110 (1908), the supreme court declared:

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<sup>7</sup> “Any” is defined as “one, some, every or all without specification.” AMERICAN HERITAGE DICTIONARY OF THE ENGLISH LANGUAGE 83 (3rd ed. 1992).

The principal is ... well settled in this state that if the court pronounces judgment from the bench, and all that remains to be done is the clerical duty of reducing the judgment to writing or entering the same, or both, the judicial act is complete. So far as the court is concerned, judgment has been rendered notwithstanding the fact that the clerical acts necessary to preserve the evidence of the judgment have not been performed.

¶11 If the statute were read to mean that the trial court must commence and conclude a dispositional hearing within ten days, including hearing all witnesses and evidence relating to the disposition, as well as the drafting and filing of a written order, it is likely that a trial court would often lose competency to enter a final disposition in a TPR proceedings as a result of allowing all interested parties a fair opportunity to present evidence relative to the disposition. We find this result absurd and contrary to the legislative intent. Additionally, under Lazaro M.'s interpretation, a trial court would have little control over expiration of the ten-day limitation because one of the parties, not the court, usually prepares the final dispositional order by reducing the trial court's oral disposition to writing and presenting this written order to the trial court for its approval and signature. Thus, Lazaro M.'s interpretation of WIS. STAT. § 48.427(1) would hold the trial court responsible for duties it must allocate to the parties to ensure administrative efficiency.

¶12 This court reads the statute as empowering the trial court to protect the best interests of the child by terminating the parental rights of a party by issuing an oral order from the bench at the close of the dispositional hearing, but within ten days of the first day of the dispositional hearing. This conclusion is consistent with the stated legislative purpose of Chapter 48: "In construing this chapter, the best interest of the child ... shall always be of paramount consideration." WIS. STAT. § 48.01(1). Therefore, where, as here, the trial court

issues an oral dispositional order within ten days of the first day of the dispositional hearing, the disposition is “entered” for the purposes of WIS. STAT. § 48.427(1).

¶13 Based upon the foregoing reasons, the trial court is affirmed.

*By the Court.*—Order affirmed.

This opinion will not be published. See RULE 809.23(1)(b)4, STATS.

