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DISTRICT III

April 25, 2023

To:

Hon. Rian Radtke
Circuit Court Judge
Electronic Notice

Sarah Matheny
Juvenile Clerk
Trempealeau County Courthouse
Electronic Notice

Micabil Diaz-Martinez
Electronic Notice

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You are hereby notified that the Court has entered the following opinion and order:

2021AP536 State of Wisconsin v. S. C. M. (L. C. No. 2004JV7)

Before Hruz, J.[1]

Summary disposition orders may not be cited in any court of this state as precedent or authority, except for the limited purposes specified in WIS. STAT. RULE 809.23(3).

Seth,[2] pro se, appeals from an order denying his postdispositional motion to vacate a 2004 juvenile dispositional order. Based upon our review of the briefs and record, we conclude that this case is appropriate for summary disposition, and we affirm. *See* WIS. STAT. RULE 809.21.

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[1] This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2) (2021-22). All references to the Wisconsin Statutes are to the 2021-22 version unless otherwise noted.

[2] For ease of reading, we refer to the appellant in this confidential appeal using a pseudonym, rather than his initials.

In June 2004, Seth, then fourteen years old, was charged in a juvenile petition with first-degree sexual assault of a child under the age of thirteen, in violation of WIS. STAT. § 948.02(1) (2003-04). In September 2004, an initial fact-finding hearing was held during which three witnesses testified, including the victim. In October, the hearing was continued, after which the circuit court found Seth to be "delinquent to the allegation in the petition of first-degree sexual assault." In November 2004, a dispositional hearing was scheduled, but it was adjourned to allow the State to receive evidence of a clinical assessment of Seth before the State formulated its dispositional recommendation.

On December 21, 2004, a dispositional hearing was held, and the circuit court ordered that Seth "be placed with the Serious Juvenile Offender Program … to commence immediately."[3] Early in the hearing, the district attorney had stated that this placement would be at the Lincoln Hills facility. Thereafter, the court transferred custody of Seth to the Department of Corrections and ordered that his placement be for five years. On January 7, 2005, Seth, via counsel, filed a notice of intent to pursue postjudgment relief, but no notice of appeal was ever filed.[4]

In February 2021, Seth filed a motion with the circuit court seeking to vacate the December 2004 dispositional order on the grounds that it was void. In his motion, Seth stated, "I believe the original adjudication finding is valid and I concede to that point…. I only take issue

[3] The Honorable John Damon presided over the December dispositional proceedings.

[4] Seth concedes in his reply brief that no notice of appeal was ever filed in this case. This fact is further supported by evidence in the appellate record showing that Seth filed a "Motion to Enlarge Time Pursuant to WIS. STAT. § 809.82" in August 2015, asking this court to extend the deadline for filing a notice of intent in this case. We denied that motion in September 2015.

with the disposition." Seth challenged the disposition for three reasons: (1) "[a] parent's right to rear, care for and nurture a child is inherent"; (2) "[t]he court should have to make multiple findings before invoking Serious Juvenile Program Placement and failed to"; and (3) "[t]he Lack of competent jurisdiction nullifies and voids the disposition."

In March 2021, the circuit court denied Seth's motion to vacate the December 2004 dispositional order.[5] The court said it "agree[d] with [the] State's argument and conclusion that [Seth] failed to abide by the appeal timeline regarding a post disposition matter and that [Seth] forfeited or waived any challenge to the court's competency by failing to timely raise such issue." Seth now appeals the order denying his motion to vacate.[6]

On appeal, Seth renews two of the arguments from his February 2021 motion.[7] Most notably—given the great delay in his bringing claims regarding the merits of his 2004 dispositional order, including the fact that he is no longer in custody pursuant to that order—Seth

[5] The Honorable Rian Radtke presided over the proceedings concerning Seth's motion to vacate the order.

[6] The State's briefing includes various facts that we cannot verify from the record. Specifically, the State mentions a separate dispositional order entered regarding Seth in November 2006 and an associated Writ of Error Coram Norbis stemming from that order. While we do not dispute these facts, they are absent from the record, and it is clear Seth is solely challenging the dispositional order entered in 2004, a fact he reasserts in his reply brief. Given that the 2006 dispositional order has no impact on this appeal, we do not address it further. *See* ***Austin v. Ford Motor Co.***, 86 Wis. 2d 628, 641, 273 N.W.2d 233 (1979) (scope of review on appeal is confined to the record before the appellate court).

[7] While Seth also raised concerns in his initial brief over the dispositional order's alleged effect on his parents' rights, he appears to acknowledge in his reply brief that he is "simply bringing to light that [his] parent's [sic] rights were stripped from them." We believe Seth misunderstands the impact the order had on his parents' parental rights. Regardless, we construe this concern as an attempt to provide context or background information—or, alternatively, as an undeveloped argument—and we decline to address the issue further. *See* ***M.C.I., Inc. v. Elbin***, 146 Wis. 2d 239, 244-45, 430 N.W.2d 366 (Ct. App. 1988). In any event, for the reasons otherwise stated in this order, Seth has no valid claim to raise on any such issues in this appeal.

attempts to overcome the lateness of his challenge by arguing that this court should vacate the order under WIS. STAT. § 806.07(1)(d) because it is void. Seth acknowledges that § 806.07(2) states that a motion for relief from a judgment or order "shall be made within a reasonable time," but he argues that our supreme court in ***Neylan v. Vorwald***, 124 Wis. 2d 85, 100, 368 N.W.2d 648 (1985), has held that such a motion to vacate a void judgment or order under § 806.07(1)(d) can be brought at any time.

While we agree that a motion to vacate a void judgment or order generally can be brought at any time, Seth fails to explain why the order entered against him in 2004 is void. In fact, Seth never explains why any of the issues he attempts to raise—and, in particular, those issues that only developed after the order was entered and his placement at Lincoln Hills began—cause the dispositional order to be void. Rather, his arguments regarding the propriety of his placement in the Serious Juvenile Offender Program are merely claims that the circuit court erred in 2004, but not in any manner that would make the dispositional order void as a matter of law.

Indeed, we note that in his motion to vacate filed in the circuit court, Seth conceded that "the original adjudication finding is valid" and that he takes "issue" only with the disposition. This concession further reinforces that the underlying delinquency finding and dispositional order were not part of a void judgment. *See* ***State v. James P.***, 180 Wis. 2d 677, 682, 510 N.W.2d 730 (Ct. App. 1993) (stating that the "[d]isposition of a child's delinquency adjudication lies in the sound discretion of the [circuit] court").

Seth briefly argues that the circuit court lacked competent jurisdiction to enter the dispositional order, seemingly as a means to suggest the order was "void." Any such argument fails for two reasons. First, Wisconsin law is clear that a judgment or order rendered where

competency is lacking is not void for lack of subject matter jurisdiction and therefore cannot be challenged "at any time" via WIS. STAT. § 806.07(1)(d). ***Village of Trempealeau v. Mikrut***, 2004 WI 79, ¶¶27, 34, 273 Wis. 2d 76, 681 N.W.2d 190.[8] Second, while a "circuit court may lose competency to enter judgment in a particular case if statutory requirements are not met," "[e]ven when a court lacks competency to proceed to judgment, a challenge to court competency can be forfeited if not timely raised in the circuit court." ***City of Eau Claire v. Booth***, 2016 WI 65, ¶21, 370 Wis. 2d 595, 882 N.W.2d 738. Here, Seth failed to timely raise any issue of competency by waiting seventeen years to make such a challenge, thereby forfeiting that claim. *See* ***id.***, ¶25 (declining to address a challenge that the defendant forfeited and then waited twenty-two years to raise). In short, there is no basis on which to conclude that the challenged 2004 order is void, such that it can be challenged at this late date.

For completeness, we note that Seth also failed to file a timely notice of appeal from the 2004 dispositional order, as required by WIS. STAT. RULE 809.10(1)(a).[9] Even if we liberally construe Seth's motion to vacate the order as a notice of appeal, that notice was filed far too

[8] "Although cases sometimes use the words 'forfeiture' and 'waiver' interchangeably, the two words embody very different legal concepts." ***State v. Ndina***, 2009 WI 21, ¶29, 315 Wis. 2d 653, 761 N.W.2d 612. "[F]orfeiture is the failure to make the timely assertion of a right" whereas "waiver is the intentional relinquishment or abandonment of a known right." ***Id.*** Accordingly, our supreme court has noted that while ***Village of Trempealeau v. Mikrut***, 2004 WI 79, 273 Wis. 2d 76, 681 N.W.2d 190, used the term "'waiver[,]' it means 'forfeiture.'" ***City of Eau Claire v. Booth***, 2016 WI 65, ¶11 n.5, 370 Wis. 2d 595, 882 N.W.2d 738.

[9] WISCONSIN STAT. RULE 809.30(2)(h) requires a notice of appeal to be filed "within 60 days after the later of the service of the transcript or circuit court case record."

The State contends that Seth failed to file a notice of intent to pursue postdispositional relief within twenty days, so as to comply with WIS. STAT. RULE 809.30(2)(b). However, Seth did file a notice of intent to pursue dispositional relief with the circuit court clerk on January 7, 2005, which was within the twenty-day deadline.

late—approximately seventeen years so. Seth's failure to timely file a notice of appeal of his 2004 dispositional order means that this court lacks jurisdiction over any challenges to the merits of that order.[10]

Therefore,

IT IS ORDERED that the order is summarily affirmed. WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that this summary disposition order will not published.

Sheila T. Reiff
Clerk of Court of Appeals

[10] Due to Seth's great delay in appealing the 2004 dispositional order, the State is correct that there are significant mootness concerns. Seth concedes in his reply brief that he "already served the time" and was "discharged from custody." Most of the impact of the dispositional order for Seth cannot be altered and, due to the delay in appealing, it appears that resolution of the issues that Seth presents would not "have any practical effect upon an existing controversy." *See* ***State v. Leitner***, 2002 WI 77, ¶13, 253 Wis. 2d 449, 646 N.W.2d 341. While Seth lists in his reply brief lingering collateral effects from the dispositional order (mostly related to other criminal proceedings in which he is involved), we need not address these issues further because, as noted, we find the issue of timeliness to be dispositive as to our jurisdiction to address any claim beyond Seth's assertion that the dispositional order is void. *See* ***Turner v. Taylor***, 2003 WI App 256, ¶1 n.1, 268 Wis. 2d 628, 673 N.W.2d 716.