

**COURT OF APPEALS
DECISION
DATED AND FILED**

April 24, 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.

Nos. 01-0313, 01-0314

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT III**

No. 01-0313

**IN RE THE TERMINATION OF PARENTAL RIGHTS TO
ALEJANDRO P., A PERSON UNDER THE AGE OF 18:**

OUTAGAMIE COUNTY DEPARTMENT OF HUMAN SERVICES,

PETITIONER-RESPONDENT,

V.

ISMAEL P.,

RESPONDENT-APPELLANT.

No. 01-0314

**IN RE THE TERMINATION OF PARENTAL RIGHTS TO
DALLAS P., A PERSON UNDER THE AGE OF 18:**

OUTAGAMIE COUNTY DEPARTMENT OF HUMAN SERVICES,

PETITIONER-RESPONDENT,

V.

ISMAEL P.,

RESPONDENT-APPELLANT.

APPEALS from orders of the circuit court for Outagamie County:
DEE R. DYER, Judge. *Affirmed.*

¶1 PETERSON, J.¹ Ismael P. appeals orders terminating his parental rights. He argues the trial court lost competency to proceed when it: (1) failed to hold the plea hearing within thirty days of the petition's filing, contrary to WIS. STAT. § 48.422(1); and (2) failed to hold the dispositional hearing within forty-five days of the fact-finding hearing, contrary to WIS. STAT. § 48.424(4). Ismael contends that the trial court did not find good cause to extend the time limits pursuant to WIS. STAT. § 48.315(2). We disagree and affirm the orders.

BACKGROUND

¶2 The Outagamie County Department of Human Services petitioned for termination of Ismael's parental rights on May 4, 2000. Ismael had two children subject to the petition: Alejandro and Dallas.

¶3 The initial appearance began on June 1, 2000. At the hearing, Ismael indicated that he wanted to contest the petition and that he also wanted a lawyer. However, Ismael stated that he had not yet looked for a lawyer. In addition, there was a question whether the guardian ad litem would be able to continue to represent the children. The court told Ismael to contact the public

¹ This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(e). All references to the Wisconsin Statutes are to the 1999-2000 version unless otherwise noted.

defender's office and continued the initial appearance to June 9, 2000. All parties agreed to the continuance.

¶4 The case proceeded to the fact-finding hearing on September 13, 2000. At the close of evidence, the jury found that grounds existed for terminating Ismael's parental rights.

¶5 Following the jury's finding, Ismael moved for judgment notwithstanding the verdict. The trial court stated that the motion would have to wait for the dispositional hearing which the court then scheduled for October 11. Ismael indicated to the court that he was ready to proceed immediately to the dispositional hearing. However, Ismael did not object to the delay.

¶6 At the dispositional hearing, the court found that it was in the best interests of the children to terminate Ismael's parental rights. This appeal followed.

STANDARD OF REVIEW

¶7 Whether the circuit court complied with the requisite time limits and granted a continuance pursuant to WIS. STAT. § 48.315(2), under the undisputed facts of this case, presents a legal question of statutory interpretation. ***Jason B. v. State***, 176 Wis. 2d 400, 407, 500 N.W.2d 384 (Ct. App. 1993). We review questions of law independently. ***Green County Dep't of Human Servs. v. H.N.***, 162 Wis. 2d 635, 645, 469 N.W.2d 845 (1991).

DISCUSSION

¶8 WISCONSIN STAT. § 48.422(1) establishes a mandatory time limit for holding the initial hearing. WISCONSIN STAT. § 48.424(4) establishes a mandatory

time limit for holding the dispositional hearing. A trial court's failure to comply with the mandatory time limits deprives it of competency to proceed. *State v. April O.*, 2000 WI App 70, ¶5, 233 Wis. 2d 663, 607 N.W.2d 927. The Children's Code, WIS. STAT. Ch. 48, "contains no provision for the waiver of time limits, and the only provisions for delays, continuances and extensions are set forth in § 48.315, STATS." *Waukesha County v. Darlene R.*, 201 Wis. 2d 633, 640, 549 N.W.2d 489 (Ct. App. 1996).

¶9 Under WIS. STAT. § 48.315(2), a continuance beyond the thirty-day time limit may be granted based upon a showing of good cause. The general requirements of § 48.315(2) "control all extensions of time deadlines under the Children's Code." *J.R. v. State*, 152 Wis. 2d 598, 607, 449 N.W.2d 52 (Ct. App. 1989). The statute's requirements must be satisfied before a court may grant any continuance. *Id.*

I. INITIAL HEARING

¶10 Ismael argues that the trial court lost competency to proceed because it did not hold his initial hearing within thirty days after the filing of the petition, as required by WIS. STAT. § 48.422(1). Ismael's continued initial hearing was held on June 9, 2000, more than thirty days after the petition was filed. He contends that the trial court did not comply with the provisions for extending the deadlines set forth in WIS. STAT. § 48.315(2) when it rescheduled the initial hearing at the June 1 hearing.

¶11 The County contends that the time limit was properly extended. We agree and conclude that good cause existed to continue the initial hearing beyond the thirty-day time limit.

¶12 The first initial hearing started twenty-eight days after the petition was filed. At this hearing, Ismael indicated his desire to fight the petition and to have a lawyer. There was also confusion regarding the guardian ad litem's representation. As a result, the trial court granted an eight-day continuance to give Ismael an opportunity to find counsel and to resolve the guardian ad litem issue.

¶13 Although the trial court did not make specific findings, the circumstances are self-evident from the record that good cause existed to reschedule the initial hearing after the thirty days. In addition, all parties consented to the continuance. In fact, Ismael requested the continuance. Therefore, we conclude that the requirements of WIS. STAT. § 48.315(2) were met.²

II. DISPOSITIONAL HEARING

¶14 Ismael next argues that the trial court lost competency to proceed with the dispositional hearing. Ismael contends that although the dispositional hearing was held within forty-five days after the fact-finding hearing, the trial court did not comply with WIS. STAT. § 48.424(4), which requires the dispositional hearing to be held immediately following the fact finding hearing unless certain conditions are satisfied. Section 48.424(4) provides:

If grounds for the termination of parental rights are found by the court or jury, the court shall find the parent unfit. A finding of unfitness shall not preclude a dismissal of a petition under s. 48.427(2). 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

² Ismael does not argue that the delay was longer than necessary.

hearing no later than 45 days after the fact-finding hearing if:

- (a) All parties to the proceeding agree; or
- (b) The court has not yet received a report to the court on the history of the child as provided in s. 48.425 from an agency enumerated in s. 48.069(1) or (2) and the court now directs the agency to prepare this report to be considered before the court makes the disposition on the petition.

¶15 Under WIS. STAT. § 48.424(4)(a), the court may delay the dispositional hearing for no more than forty-five days if all the parties agree. Ismael argues he did not agree to the delay. The record establishes that after the jury was excused, the trial court set a date for the dispositional hearing. Ismael stated that he was ready to proceed immediately to the dispositional hearing. However, he did not object to the delay.

¶16 Simply stating that he was prepared to move immediately to the dispositional phase was not an objection to the delay. We conclude the record establishes that Ismael implicitly agreed to the delay. Accordingly, WIS. STAT. § 48.315(2) did not apply because all parties agreed to the delay and the hearing was held within forty-five days of the fact-finding hearing.

By the Court.—Orders affirmed.

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

