COURT OF APPEALS
DECISION
DATED AND FILED

November 4, 2026

Samuel A. Christensen
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. 2026AP1754-FT **Cir. Ct. No. 2024ME108**

STATE OF WISCONSIN **IN COURT OF APPEALS**
DISTRICT II

IN THE MATTER OF THE MENTAL COMMITMENT OF C.B.:

WINNEBAGO COUNTY,

PETITIONER-RESPONDENT,

V.

C.B.,

RESPONDENT-APPELLANT.

APPEAL from orders of the circuit court for Winnebago County: MICHAEL D. RUST, Judge. *Affirmed.*

¶1 GROGAN, J.[1] C.B. appeals from WIS. STAT. ch. 51 recommitment and involuntary medication orders. He also appeals from the order denying his postdisposition motion. C.B. contends the circuit court violated his right to counsel when it determined he "made [the] choice" to proceed in the recommitment hearing without counsel. He argues that he did not forfeit his right to counsel and therefore was deprived of his right to counsel. Because the Record shows that C.B. forfeited his right to counsel, this court affirms.

BACKGROUND

¶2 In December 2025, Winnebago County petitioned for the recommitment of C.B. The public defenders office did not appoint C.B. counsel until December 23, 2025, a week before C.B.'s recommitment hearing. The circuit court held the hearing as scheduled on December 30, 2025. At the hearing, C.B. requested substitute counsel and a seven-day extension under WIS. STAT. § 51.20(10)(e). He based his request on his dissatisfaction that his attorney did not meet with him until the hearing date, and he felt this was "not enough time for me to have a defense." The court granted both requests and adjourned the hearing for seven days but warned C.B. of the possible ramifications of his decision:

> I understand that you've requested new counsel and I have granted you that request. And now the public defenders office has to find you a new attorney and I don't know how long that's going to take, especially with the holidays and weekends that we're up against between now and the hearing. So I can't guarantee you that somebody is going to be able to meet with you multiple days in advance of this because this is your request to adjourn this hearing.

[1] This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(d) (2023-24). All references to the Wisconsin Statutes are to the 2023-24 version unless otherwise noted.

¶3 At the January 6, 2026 recommitment hearing, the public defenders office had not yet appointed C.B. another lawyer. C.B.'s prior commitment order expired after January 6, 2026. This resulted in the circuit court offering C.B. two options: (1) move forward without counsel, or (2) stipulate to a short-term extension of his commitment until the public defenders office could provide him an attorney. C.B. stated he would not agree to an extension, and argued with the court about the law, after which C.B. chose to proceed without an attorney:

> [C.B.]: I'm not agreeing to an extension.
>
> THE COURT: … [T]hen we're going to have the trial today and you're going to do it without an attorney. You are the one who asked for a change of attorney at the last minute.
>
> [C.B.]: That -- but that -- No. I didn't -- I didn't understand. I didn't even meet my attorney. I didn't even know I had one that's appointed to me until the day of. And that should not -- something I should have known beforehand. So that's not my problem. That's the [c]ourt's problem.
>
> THE COURT: It is -- it is your choice that you made and now you have to live with the consequences of the choices you made.
>
> [C.B.]: So you're saying I don't have a right to a counsel when they supposed to appoint me a new one?
>
> THE COURT: You are here for a hearing and you don't have counsel based off of a choice you made.
>
> [C.B.]: That's not [a] lawful choice I made.
>
> THE COURT: It is. You made the choice to request new counsel.
>
> [C.B.]: That's correct, because I had ineffective assistance of counsel.
>
> THE COURT: Well, that's your opinion, that's not a legal determination.

> [C.B.]: Well, I would like to proceed. And -- and I want a -- I want this on the record.

The court informed C.B. that he had two competing rights: the right to have a timely hearing, and the right to an attorney. In response, C.B. confirmed that he was "enforcing [his] right to have [his case] heard in a timely fashion"; therefore, the hearing commenced with C.B. proceeding without an attorney.

¶4 At the January 6th recommitment hearing, a psychiatrist, who had met and examined C.B., testified to his condition, his need for involuntary commitment, and his need for involuntary medication. C.B. cross-examined the psychiatrist; however, during the cross-examination, C.B. began testifying instead of asking questions. The circuit court informed C.B. he could not testify during cross-examination but could testify after the psychiatrist finished testifying. This prompted C.B. to tell the court that he felt it "ha[d] some type of bias against me" and that he was "ready to go." The court informed him that if he left, it would continue the hearing without him. C.B. responded, "That's cool. I have to go" and left the hearing. After the conclusion of the testimony, the court determined the County had satisfied its burden and entered recommitment and involuntary medication orders.

¶5 In June 2026, about six months after the recommitment order was entered, C.B. filed a postdisposition motion, in which he argued the circuit court erred when it forced C.B. to proceed without counsel and that he neither waived nor forfeited his right to counsel. After a July 2026 hearing on C.B.'s motion, the court denied it, finding that C.B. "was unequivocal that he wanted to move forward that day[,]" and that he "was trying to play games." The court stated:

> [C.B.] knew that not agreeing to any extensions was going to be the waiver of counsel. I made that clear to him. I told him that he could agree to an -- a short extension to allow

> the public defenders office to find him [a] new attorney. He said no. And so he made the decision. That -- whether you want to call that a forfeiture, whether you want to call that a waiver, the outcome is the same, that [C.B.] made the decision to move forward with the trial on that date without counsel. He made that decision. … Now, I also think that [C.B.] was trying to play games. And part of being a trial court judge is making those kinds of determinations based off of the facts that are actually in front of me and not based off of a sanitized record. He was playing games. He thought he had tried to find a loophole that he was going to force the [c]ourt into a bad situation. …
>
> ….
>
> … [I]n terms of the postdisposition motion, I am denying the motion. [C.B.] was unequivocal when he made his statements that he was demanding that the trial move forward that day. And so whether that's a forfeiture of his right to an attorney or waiver of his right to an attorney, the outcome is the same, and I deny the motion.

C.B. now appeals.

DISCUSSION

¶6 "Whether [C.B.] forfeited his constitutional right to counsel is a question of constitutional fact, which presents a 'mixed question of law and fact.'" ***State v. Suriano***, 2017 WI 42, ¶20, 374 Wis. 2d 683, 893 N.W.2d 543 (citation omitted). "We review historical and evidentiary facts under a clearly erroneous standard, but the ultimate determination as to whether a constitutional right was violated is a question of law we review independently." ***Id.***

¶7 This case involves the extension of an involuntary mental commitment. "'[C]ivil commitment for any purpose constitutes a significant deprivation of liberty that requires due process protection.'" ***Langlade County v. D.J.W.***, 2020 WI 41, ¶42, 391 Wis. 2d 231, 942 N.W.2d 277 (quoting ***Addington v. Texas***, 441 U.S. 418, 425 (1979)). Accordingly, C.B. has the right to counsel

based on a due process liberty interest via the Fourteenth Amendment.[2] *See* ***Heryford v. Parker***, 396 F.2d 393, 396 (10th Cir. 1968) ("[The State] has the inescapable duty to vouchsafe due process, and this necessarily includes the duty to see that a subject of an involuntary commitment proceedings is afforded the opportunity to the guiding hand of legal counsel at every step of the proceedings, unless effectively waived by one authorized to act in his behalf."); *see also* ***Lessard v. Schmidt***, 349 F. Supp. 1078, 1097 (E.D. Wis. 1972), *vacated on other grounds*, 414 U.S. 473 (1974) ("There seems to be little doubt that a person detained on grounds of mental illness has a right to counsel, and to appointed counsel if the individual is indigent.").

¶8 The constitutional forfeiture framework laid out in ***Suriano*** is instructive here.[3] The ***Suriano*** court held that an individual who acts "in a voluntary and deliberate way that frustrates 'the orderly and efficient progression of the case' forfeits his right to counsel." ***Suriano***, 374 Wis. 2d 683, ¶21 (citation omitted). Forfeiture can occur in "a variety of scenarios" when an individual's conduct leads to the "involuntary loss of counsel by operation of law." ***Id.***, ¶24. It is triggered when the order and progression of the case is frustrated. ***Id.*** The ***Suriano*** court listed possible scenarios triggering forfeiture:

> (1) a defendant's manipulative and disruptive behavior; (2) withdrawal of multiple attorneys based on a defendant's consistent refusal to cooperate with any of them and

[2] C.B. also has a statutory right to counsel under WIS. STAT. § 51.20(3) and (5)(a).

[3] Although ***Suriano*** involved a criminal matter and the Sixth Amendment right to counsel, *see* ***State v. Suriano***, 2017 WI 42, ¶21, 374 Wis. 2d 683, 893 N.W.2d 543, the general principles regarding the right to counsel and forfeiture of this right set forth there apply in this context as well. *See generally* ***S.Y. v. Eau Claire County***, 162 Wis. 2d 320, 333, 469 N.W.2d 836 (1991) ("[A]s a matter of federal law as well as of state law, there may be waiver of counsel in a mental commitment proceeding.").

> constant complaints about the attorneys' performance; (3) a defendant whose attitude is defiant and whose choices repeatedly result in delay, interfering with the process of justice[;] and (4) physical or verbal abuse directed at counsel or the court.

Id. (citations omitted).

¶9 This court is tasked with determining whether the circuit court erred in allowing C.B. to proceed without counsel. That decision includes a determination of whether the court erred in finding that C.B. was playing games and whether he forfeited his right to counsel. This court cannot conclude the circuit court erred under the facts and circumstances presented here.

¶10 First, the circuit court honored C.B.'s request for a different lawyer at the first scheduled hearing based on C.B.'s concern that his first counsel would not be able to "have a defense" because the lawyer just met with C.B. that day. The court warned C.B. that firing his first lawyer given the statutory time requirements could lead to problems. C.B. still wanted a new lawyer. The court granted a seven-day adjournment of the hearing, which is the extension permitted by statute. *See* WIS. STAT. § 51.20(10)(e).

¶11 Second, when a subsequent lawyer had not been appointed by the time the adjourned hearing was to take place, the circuit court offered C.B. the option of voluntarily agreeing to a short-term recommitment extension so that an attorney could be secured to assist C.B. at his recommitment hearing. C.B. emphatically rejected this option—insisting he would not consent to an extension and wanted to proceed with the January 6th hearing on his own. C.B.'s behavior and actions should also be noted: he informed the court that his lack of counsel was "the [c]ourt's problem" and not his, he disrupted and delayed the January 6th

proceeding multiple times, and he removed himself from the hearing even after the court warned C.B. of the consequences for leaving.

¶12 C.B.'s conduct—though certainly not as egregious as some criminal defendant forfeitures—demonstrated forfeiture of counsel. It included "manipulative and disruptive behavior[,]" an "attitude [that was] defiant and [accompanied by] choices [that] repeatedly result[ed] in delay, interfering with the process of justice," and "verbal abuse directed at … the court." *See* ***Suriano***, 374 Wis. 2d 683, ¶24. C.B. intentionally sought to frustrate the "'orderly and efficient progression of the case'" and thus he forfeited his right to counsel. *See* ***id.*** (citation omitted).

¶13 ***Milwaukee County v. Edward S.***, 2001 WI App 169, 247 Wis. 2d 87, 633 N.W.2d 241, provides support for the circuit court's decision. The ***Edward S.*** court held that a committed individual's liberty interest was not violated because the alleged violation occurred only because of *his own actions*. ***Id.***, ¶¶7-9. There, on July 30, 1999, Edward S. was on an emergency detention petition—temporarily committed pending a final hearing. ***Id.***, ¶2. According to statute, the hearing had to be scheduled within 14 days of the detention, and thus a hearing was timely scheduled for August 13, 1999. ***Id.*** On August 12, 1999, Edward S. fired his counsel. ***Id.***, ¶3. Before representation ended, the attorney stipulated to adjourn the final hearing until August 27, 1999. ***Id.*** Represented by new counsel, the circuit court held the final hearing on August 27, 1999, and committed Edward S. for six months. ***Id.*** On February 18, 2000, the court extended Edward S.'s commitment for one year. ***Id.***, ¶4. Edward S. filed postcommitment motions arguing that the court did not hold the hearing within the 14-day statutory requirement of his commitment, and the court thus lost "competency to proceed." ***Id.*** The ***Edward S.*** court disagreed, holding that the

only reason "the hearing was adjourned and the fourteen-day time limit was modified because of Edward S.'s unilateral action of firing his lawyer the day before the fourteen-day time limit, which made it impossible to obtain new counsel to effectively represent Edward S. by the next day." ***Id.***, ¶7. Thus, Edward S. could not claim the delay deprived him of his liberty because it was caused by his *own actions*. ***Id.***, ¶8. The ***Edward S.*** court also noted the public policy concerns that such game playing could have on ch. 51 cases: "If we were to accept Edward S.'s argument, a detained subject could fire his attorney on the fourteenth day in order to secure dismissal of the commitment action and, in effect, gain release without any further proceedings." ***Id.***

¶14 The same principle in ***Edward S.*** applies here. C.B. fired his first attorney, leading to a permitted seven-day extension.[4] But the circuit court had to hold the recommitment hearing on January 6th, or it would have lost competency to hear the petition. C.B. rejected the only other option: agreeing to a short-term recommitment extension. Like ***Edward S.***, C.B.'s own choices could be seen as game playing—or manipulation of the system—to secure dismissal from commitment and release without any further proceedings. When offered a short-term extension, C.B. refused and proceeded without an attorney, even though his whole reason for seeking an adjournment of the proceedings in the first place was to acquire counsel and strategize his defenses. The circuit court did not err in

[4] This court notes that C.B. could have instead chosen to use the seven-day adjournment to work with the first attorney on his "defense."

finding C.B. was "playing games" and trying to "find a loophole that he was going to force the [c]ourt into a bad situation."[5]

¶15 The Record supports the circuit court's ruling, and this court cannot identify any reversible error. This court concludes that C.B.'s lack of counsel here was "in fact, caused by [C.B.'s own] action." *See* ***Edward S.***, 247 Wis. 2d 87, ¶8. Accordingly, C.B. forfeited his right to counsel, and this court affirms the recommitment, involuntary medication, and postdisposition orders.[6]

By the Court.—Orders affirmed.

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

[5] C.B. asserts that he was not playing games, but he was simply "an indigent and mentally ill person trying to do the best he can in our legal system[.]" Though this court is sympathetic to C.B.'s position, the circuit court is in a better position to assess credibility in these matters. *See* ***Cogswell v. Robertshaw Controls Co.***, 87 Wis. 2d 243, 250, 274 N.W.2d 647 (1979) ("[T]he trial judge is the ultimate arbiter of the credibility of the witnesses."). This court must as a result defer to the circuit court's assessment. ***Id.***

[6] This was not an easy case. No one facing involuntary commitment should have to proceed without counsel. But C.B.'s choices, plus the timing due to the holiday season, together with the strict statutory deadlines, created a Catch-22—no good option. There were only a few other possibilities: (1) denying C.B.'s motion to fire his first attorney; (2) C.B. agreeing to a short-term extension of the commitment; or (3) letting the commitment order expire and starting over. This may be something the legislature needs to address.