COURT OF APPEALS
DECISION
DATED AND FILED

October 8, 1997

Marilyn L. Graves
Clerk, Court of Appeals
of Wisconsin

No. 97-0872

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

IN THE INTEREST OF ELIZABETH M.P., ALLEGED MENTALLY ILL:

FOND DU LAC COUNTY,

PETITIONER-RESPONDENT,

V.

ELIZABETH M.P.,

RESPONDENT-APPELLANT.

APPEAL from orders of the circuit court for Fond du Lac County: PETER L. GRIMM, Judge. *Affirmed.*

NETTESHEIM, J. Elizabeth M.P. appeals from trial court orders extending her involuntary civil commitment and ordering involuntary medication and treatment. Elizabeth contends that the trial court lost competency to exercise its jurisdiction when it failed to hold a jury trial within fourteen days of

her jury demand pursuant to § 51.20(11)(a), STATS.[1] Because Elizabeth's jury demand was also accompanied by her request for a postponement of the final hearing pursuant to § 51.20(10)(e), we conclude that the final hearing was timely conducted. Therefore, we affirm the recommitment and related orders.

FACTS

Elizabeth was originally involuntarily committed to the Fond du Lac County Department of Community Programs on May 2, 1996. This period of involuntary commitment was due to expire on November 1, 1996. *See* § 51.20(13)(g)1, STATS. On October 9, 1996, Fond du Lac County filed a petition for an extension of Elizabeth's commitment pursuant to § 51.20(13)(g)3. The trial court scheduled a hearing on the petition for October 31, 1996. However, on October 22, Elizabeth filed a request for a jury trial pursuant to § 51.20(11), and a concurrent motion to postpone the hearing for up to seven calendar days pursuant to § 51.20(10)(e). The trial court rescheduled the final hearing for a jury trial which was held on November 8, 1996. The jury found Elizabeth to be mentally ill, dangerous to herself and a proper subject for treatment.

Based on the jury's findings, the trial court entered an order for Elizabeth's recommitment. The court also entered an order for involuntary medication and treatment for Elizabeth. Elizabeth appeals.

DISCUSSION

On a threshold basis, the County argues that Elizabeth has waived her right to challenge the trial court's competency because she failed to raise the issue before the trial court. However, our supreme court has consistently ruled

[1] Section 51.20, STATS., has undergone extensive revisions subsequent to the proceedings in this case. These changes do not affect our analysis.

that "a court's loss of power due to the failure to act within statutory time periods cannot be stipulated to nor waived." *See* ***Green County Dep't of Human Servs. v. H.N.***, 162 Wis.2d 635, 657, 469 N.W.2d 845, 854 (1991). Thus, Elizabeth's failure to raise the issue does not constitute a waiver. We therefore reject the County's waiver argument.

This case involves the interpretation and application of § 51.20(10)(e), STATS., governing a postponement of a final hearing, and § 51.20(11)(a), governing a jury trial demand. This issue presents a question of statutory construction, which we review de novo. *See* ***GTE North, Inc. v. PSC***, 176 Wis.2d 559, 564, 500 N.W.2d 284, 286 (1993). When interpreting a statute we properly consider the language of the entire section at issue, and also that of related sections. *See* ***State v. Barnes***, 127 Wis.2d 34, 37, 377 N.W.2d 624, 625 (Ct. App. 1985).

Section 51.20(10)(e), STATS., states:

> At the request of the subject individual or his or her counsel the final hearing under par. (c) may be postponed, but in no case may the postponement exceed 7 calendar days from the date established by the court under this subsection for the final hearing.

Section 51.20(11)(a) provides for a jury trial in a commitment proceeding. It states in relevant part:

> A jury trial is deemed waived unless demanded at least 48 hours in advance of the time set for final hearing, if notice of that time has been previously provided to the subject individual …. If a jury trial demand is filed within 5 days of detention, the final hearing shall be held within 14 days of detention. If a jury trial demand is filed later than 5 days

> after detention, the final hearing shall be held within 14 days of the date of demand.[2]

An individual has a right to a jury trial under § 51.20(11), STATS., in a recommitment proceeding. *See* ***G.O.T. v. Rock County***, 151 Wis.2d 629, 635, 445 N.W.2d 697, 699 (Ct. App. 1989). Both parties agree that under § 51.20(11)(a), Elizabeth's jury trial demand required the trial court to schedule the final hearing within fourteen days of that demand. However, the parties differ as to the effect of Elizabeth's concurrent request for a postponement of up to seven calendar days under § 51.20(10)(e).

Section 51.20(13)(g)3, STATS., provides that "[u]pon application for extension of a commitment by the department … having custody of the subject, the [trial] court shall proceed under subs. (10) to (13)." Under § 51.20(10)(a), the court must provide the subject of the proceeding and his or her counsel with notice of a final hearing date within a reasonable time prior to the final hearing. Here, the County requested an extension of Elizabeth's commitment on October 9, 1996. On that same day, the court notified Elizabeth that the County had filed an application for extension of commitment and that a hearing to determine the need for extension would be held on October 31.

However, on October 22, 1996, before the scheduled final hearing, Elizabeth requested a jury trial under § 51.20(11)(a), STATS. In addition, she requested that her trial be postponed under § 51.20(10)(e). Based on these requests, the trial court rescheduled the final hearing from the October 31 date to November 8, 1996.

---

[2] In this case, Elizabeth concedes that the scheduling of the final hearing is properly measured from the date of her jury demand—not the date of her detention.

Elizabeth contends that her request for a postponement pursuant to § 51.20(10)(e), STATS., was aimed solely at the existing final hearing date, not any new date which the trial court might schedule based on her jury demand. Thus, Elizabeth reasons that her postponement request did not alter the trial court's obligation to hold the final hearing within fourteen days of her jury demand under § 51.20(11)(a). By Elizabeth's calculation, the court was therefore required to hold the final hearing on or before November 5, 1996. Since the hearing was not held until November 8, she contends that the trial court lost competency to exercise its jurisdiction.

The County argues that Elizabeth's request for a postponement under § 51.20(10)(e), STATS., "[b]y implication … extended the competency of the court to hear the matter for another seven days beyond the period authorized under the statute governing jury demands." By the County's calculation, the trial court was required to hold the final hearing on or before November 12, 1996. Since the hearing was held on November 8, the County contends that the court did not lose competency to exercise its jurisdiction.

As we have already noted, the recommitment process invokes the procedures of § 51.20(10) to (13), STATS., which govern an original commitment proceeding. *See* § 51.20(13)(g)3. Therefore, we begin our discussion by addressing these subsections in an original commitment context since it forms the basis for our later analysis in a recommitment context.

Section 51.20(10)(e), STATS., speaks of a postponement of the final hearing "under this subsection." The scheduling of the subsec. (10) final hearing is governed, in turn, by para. (7)(c) which requires a final hearing within fourteen

days of detention following a probable cause determination.[3] This deadline, however, can be extended for up to seven calendar days if the individual requests a postponement under para. (10)(e). This deadline can also be extended for up to fourteen days if the individual requests a jury trial under para. (11)(a). We see nothing in this statutory interplay which precludes an individual from requesting both a postponement and a jury trial. It stands to reason then that when both requests are interposed, the delays contemplated by each subsection and paragraph are permitted.

Elizabeth's analysis would change all of this in a recommitment proceeding. We read her argument to contend that the fourteen-day deadline set out in § 51.20(11)(a), STATS., is absolute in all instances or, at a minimum, in all instances where the jury demand and the postponement request are filed simultaneously.[4] But we are to read statutes to reach a commonsense meaning and to avoid unreasonable results. *See* ***State v. Britzke***, 108 Wis.2d 675, 681, 324 N.W.2d 289, 291 (Ct. App. 1982). We see no reason to construe these statutes differently in a recommitment setting, particularly since the procedures which govern an original commitment proceeding also apply in a recommitment proceeding. Nor do we see any reason to construe these statutes differently simply because the two requests are simultaneously made.

Elizabeth also relies on the statement in ***G.O.T.*** that the "final hearing … [is] held within fourteen days of the demand." **G.O.T.,** 151 Wis.2d at

[3] We recognize that there is no probable cause hearing in a recommitment procedure.

[4] The only limitation placed on the statutory deadline in a recommitment case is the rule announced in ***G.O.T. v. Rock County,*** 151 Wis.2d 629, 633, 445 N.W.2d 697, 698 (Ct. App. 1989). There, the court held that in a nonjury situation, the final hearing must be held before the original commitment expires.

634, 445 N.W.2d at 698. Elizabeth's reliance on this statement is misplaced. In ***G.O.T.***, the individual had not interposed a postponement request. In fact, the court of appeals expressly stated that its decision did not address the effect of such a request. *See* ***id***. at 635, 445 N.W.2d at 699. Therefore, ***G.O.T.*** does not govern this case.

We hold that when both a jury demand and a postponement request are interposed, § 51.20(10)(e) and (11)(a), STATS., work hand in glove, allowing the trial court to postpone the final hearing by the time periods permitted under each subsection.

By the Court.—Orders affirmed.

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