

**COURT OF APPEALS  
DECISION  
DATED AND FILED**

September 29, 1998

Marilyn L. Graves  
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 § 808.10 and RULE 809.62, STATS.

**No. 98-1448**

**STATE OF WISCONSIN**

**IN COURT OF APPEALS  
DISTRICT III**

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**IN THE MATTER OF THE  
MENTAL COMMITMENT OF JULIE L.:**

**CHIPPEWA COUNTY,**

**PETITIONER-RESPONDENT,**

**v.**

**JULIE L.,**

**RESPONDENT-APPELLANT.**

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APPEAL from an order of the circuit court for Chippewa County:  
THOMAS J. SAZAMA, Judge. *Affirmed.*

HOOVER, J. Julie L. appeals an order denying her motion to dismiss this mental commitment action. She contends that the trial court erred when it permitted a second ch. 51, STATS., mental commitment emergency detention statement to be filed after failing to hold a timely probable cause hearing after the first detention statement was filed. The trial court held that the first

detention statement had lapsed and the second statement instituted a new proceeding. Julie asserts that the petition did not lapse but, rather, caused her to be detained without a probable cause hearing for over the seventy-two-hour time limit for holding such a hearing. She claims that the proper remedy for failure to observe ch. 51 time limits is dismissal.<sup>1</sup>

Wisconsin law permits the successive filing of mental commitment petitions so long as such filing does not abuse the commitment process. This court concludes that the civil commitment process was not abused by proceeding to a final determination on the second emergency detention petition. The trial court's order denying Julie's motion to dismiss is therefore affirmed.

On February 8, 1998, a police officer, responding to a report of an overdose, found Julie comatose on the floor of her home. One of Julie's daughters gave the officer four empty medicine bottles and a suicide note Julie apparently wrote and advised the officer that Julie had taken all of the medication in the bottles. Julie was hospitalized in Sacred Heart Hospital's critical care unit pursuant to a Statement of Emergency Detention the police officer filed. The emergency detention statement was filed with the court on February 9, 1998. No probable cause hearing was held under this emergency detention statement because Julie remained comatose through and beyond the seventy-two-hour statutory time limit for holding a probable cause hearing. *See* §§ 51.15(4)(b) and 51.20(7)(a), STATS.

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<sup>1</sup> Julie L. also argues that the primary issue is not moot, even though she may be released from commitment by the time this court is in a position to issue an opinion. The County does not address the issue, and this court is unaware of facts in the record demonstrating that the matter is in fact moot. Therefore this court will address the merits.

On February 13, a psychiatrist, Dr. Charles Van Der Heide, examined Julie in the critical care unit and completed a new emergency detention statement, which in addition to relying on the original allegations, referred to Julie's coma and medical treatment in the critical care unit. When Julie came out of the coma Van Der Heide filed the February 13 emergency detention statement. A probable cause hearing was held on the date of filing, February 17. The trial that led to Julie's commitment was held on February 25, 1998. On that date, the trial court considered Julie's motion to dismiss the proceedings upon the court's failure to complete a probable cause hearing within seventy-two hours of the first emergency detention statement was filed.

The trial court held that the first proceedings lapsed and the court lost jurisdiction to act when a probable cause hearing was not held within the seventy-two-hour time limit. In this regard, the court also ruled that the statute does not require that a patient must be formally discharged from a commitment proceeding in any particular manner before a second action may be instituted.

Julie argues that the time limitations in ch. 51, STATS., are mandatory and must be strictly followed. See *In re Louise M.*, 205 Wis.2d 162, 171-72, 555 N.W.2d 807, 810 (1996). They are jurisdictional and failure to observe them causes the court to lose competency to proceed. *Id.* at 172, 555 N.W.2d at 810. This last proposition notwithstanding, Julie observes that ch. 51 does not provide a remedy when a probable cause hearing is not held within the seventy-two-hour time limit. She contends that the proper remedy is dismissal because her due process rights were violated by her detention beyond seventy-two hours. Julie also asserts that filing a second petition could not cure the violation because the initial petition was never dismissed and a probable cause determination in connection with the first filing was never made.

Julie’s due process argument relies upon her contention that she was detained in the hospital pursuant to the emergency detention statement after the time limit for holding a probable cause hearing had been violated and jurisdiction thereby forfeited. To the extent this contention rests upon a finding of fact, it is contrary to that found by the trial court: Upon the lapse of the seventy-two-hour time limit, Julie was no longer being detained under ch. 51, STATS., but was receiving such medical treatment for her condition as the hospital had a duty of care to provide. Julie does not attempt to demonstrate why this finding is clearly erroneous<sup>2</sup> and, indeed, the record supports the trial court’s finding. It is undisputed that Julie was still in a coma when the time limit expired. She conceded at the motion hearing that she continued to be hospitalized because “[s]he’s being treated medically too.” Finally, the filing of a second emergency detention statement once Julie regained consciousness belies the contention that Julie was detained under the original statement since there would be no need for a second statement if the original had any remaining legal effect.

While it is not clear, Julie’s contention more probably rests upon statutory interpretation. She argues that, a time limit violation notwithstanding, a person subject to a commitment proceeding remains detained until formally discharged in some manner. The trial court rejected this construction, concluding that the statute’s time limits being jurisdictional, the proceeding “lapses,” that is, is terminated by operation of law, once jurisdiction is lost. While review of the trial

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<sup>2</sup> The trial court’s factual findings are reviewed under a clearly erroneous standard. Section 805.17(2), STATS. Such factual findings will be upheld as long as they are supported by any credible evidence or reasonable inferences that can be drawn therefrom. *In re Estate of Cavanaugh*, 202 Wis.2d 290, 306, 550 N.W.2d 103, 110 (1996).

court's statutory construction is de novo,<sup>3</sup> this court agrees with the trial court's interpretation. Nothing in ch. 51, STATS., suggests that a person continues to be detained once the time limit has been violated, whereas case law establishes that the violation is jurisdictional, an absolute impediment to the trial court's authority to act. The apparent import of this characterization is to render the initial filing a nullity after a time limit has been violated.

Julie further argues that filing a second emergency detention statement did not cure the failure to hold a probable cause hearing within seventy-two hours of detention. She acknowledges that there are circumstances under which this court has affirmed the propriety of proceeding on a subsequent mental commitment petition, so long as the second action does not constitute an abuse of the commitment process. See *State ex rel. B.S.L. v. Lee*, 115 Wis.2d 615, 621-22, 340 N.W.2d 568, 571 (Ct. App. 1983). Julie, however, views her detention after the time limit expiration as an abuse of the commitment process.

Julie's "abuse of the commitment process" argument rests upon her view that she was still formally detained after the seventy-two-hour probable cause hearing time limit expired, a proposition this court has rejected. There simply was nothing to "cure" by filing a second commitment action. Aside from Julie's misperception that she was detained past the time limit, she offers no other reason for this court to conclude that the commitment process was in any way abused. Indeed, the findings cited above (in connection with the fact issue whether Julie was detained after the time limits expired) are equally and independently inconsistent with a conclusion that the process was abused. In

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<sup>3</sup> We determine questions of law, including interpretation of statutes, de novo. *Kettner v. Wausau Ins. Co.*, 191 Wis.2d 723, 732, 530 N.W.2d 399, 402 (Ct. App. 1995).

addition, Julie was not transferred from the open critical care unit to the psychiatric unit until after Van Der Heide had filed the second petition that contained allegations relating to the original incident and the course of treatment after admission to the hospital.<sup>4</sup> This court therefore concludes that mental commitment proceedings were properly instituted against Julie and the trial court's order denying her motion to dismiss is affirmed.

*By the Court.*—Order affirmed.

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

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<sup>4</sup> Julie contends that *State ex rel. B.S.L. v. Lee*, 115 Wis.2d 615, 340 N.W.2d 568 (Ct. App. 1983), is distinguishable because in that case a second petition was filed immediately upon dismissal of the first, whereas here the first detention statement was not dismissed and there was a several-day delay between the time limit violation and filing the second statement. This court has held that no formalities were necessary to accomplish dismissal; the original detention statement was dismissed by operation of law. Further, there is no support in *B.S.L.* for the proposition that a second proceeding must instantaneously follow the first action. The test under *B.S.L.* is concerned with an abuse of the commitment proceeding, and it appears evident that timing is only one factor that may be relevant, depending upon the total circumstances. Julie L. also contends that the most significant distinguishing feature between this case and *B.S.L.* is the filing of Van Der Heide's detention statement under the original case number. During the motion hearing, however, Julie L. conceded it was immaterial that the second statement was not filed in a discreet file. Therefore this argument need not be addressed on appeal.

