2020 WI App 20

COURT OF APPEALS OF WISCONSIN
PUBLISHED OPINION

Case No.: 2018AP1037

†Petition for Review filed

Complete Title of Case:

IN THE MATTER OF THE MENTAL COMMITMENT OF R. J. O.:

MARATHON COUNTY,

PETITIONER-APPELLANT-CROSS-RESPONDENT,

V.

R. J. O.,

†RESPONDENT-RESPONDENT-CROSS-APPELLANT.

Opinion Filed:	April 14, 2020
Submitted on Briefs:	January30, 2020
Oral Argument:	

JUDGES:	Stark, P.J., Hruz and Seidl, JJ.
Concurred:	
Dissented:	

Appellant ATTORNEYS:	On behalf of the petitioner-appellant-cross-respondent, the cause was submitted on the briefs of *Michael Puerner*, corporation counsel.
Respondent ATTORNEYS:	On behalf of the respondent-respondent-cross-appellant, the cause was submitted on the briefs of *Melissa Petersen* of *Petersen Law Firm, L.L.C.*, Ellsworth.

2020 WI App 20

COURT OF APPEALS
DECISION
DATED AND FILED

April 14, 2020

Sheila T. Reiff
Clerk of Court of Appeals

NOTICE

Appeal No. 2018AP1037 **Cir. Ct. No. 2016ME107**

STATE OF WISCONSIN **IN COURT OF APPEALS**

IN THE MATTER OF THE MENTAL COMMITMENT OF R. J. O.:

MARATHON COUNTY,

PETITIONER-APPELLANT-CROSS-RESPONDENT,

V.

R. J. O.,

RESPONDENT-RESPONDENT-CROSS-APPELLANT.

APPEAL and CROSS-APPEAL from an order of the circuit court for Marathon County: MICHAEL K. MORAN, Judge. *Reversed*.

Before Stark, P.J., Hruz and Seidl, JJ.

¶1 STARK, P.J. R.J.O. was involuntarily committed under WIS. STAT. § 51.20 (2017-18), and her commitment was later extended.[1] However, the circuit court subsequently granted R.J.O.'s postdisposition motion to dismiss her commitment. The court agreed with R.J.O. that it had lost competency to consider Marathon County's petition to extend her commitment when it failed to hold a recommitment hearing before the initial commitment expired.[2]

¶2 The County now appeals, arguing the circuit court erred by granting R.J.O.'s postdisposition motion because the time for holding a recommitment hearing was extended when the court issued an order for R.J.O.'s detention under WIS. STAT. § 51.20(10)(d). R.J.O. cross-appeals, arguing the court erred by holding that she received proper notice of the originally scheduled recommitment hearing. R.J.O. also argues her trial attorney was ineffective by advising her not to appear at that hearing. In addition, R.J.O. argues the court incorrectly determined that she did not timely demand a jury trial. In the alternative, she argues that if the court's conclusion in that regard was correct, her trial attorney was ineffective by failing to timely file a jury trial demand.

¶3 Based on our supreme court's recent decision in ***Waukesha County v. S.L.L.***, 2019 WI 66, 387 Wis. 2d 333, 929 N.W.2d 140, we agree with the circuit court that R.J.O. received proper notice of the recommitment hearing because the requisite notice was provided to her attorney. Moreover, it is undisputed in this case

[1] This appeal was converted from a one-judge appeal to a three-judge appeal by the February 27, 2020 order of the chief judge of the court of appeals. *See* WIS. STAT. RULE 809.41(3) (2017-18). All references to the Wisconsin Statutes are to the 2017-18 version unless otherwise noted.

[2] As our supreme court has previously noted, WIS. STAT. § 51.20 uses the terms "recommitment" and "extension of a commitment" interchangeably. *See* ***Portage Cty. v. J.W.K.***, 2019 WI 54, ¶1 n.1, 386 Wis. 2d 672, 927 N.W.2d 509. We therefore do the same.

that R.J.O.'s attorney provided her with actual notice of the recommitment hearing, which the subject individual in ***S.L.L.*** did not receive.

¶4 Although we agree with the circuit court that R.J.O. received proper notice of the recommitment hearing, we reject the court's conclusion that it lost competency to consider the County's petition to extend R.J.O.'s commitment when it failed to hold a recommitment hearing before the original commitment expired. We instead agree with the County that the time to hold a recommitment hearing was extended when R.J.O. failed to appear at the originally scheduled recommitment hearing and the court therefore issued an order for detention. We reject the remaining arguments raised in R.J.O.'s cross-appeal. Accordingly, we reverse the order granting R.J.O.'s postdisposition motion to dismiss her commitment.[3]

BACKGROUND

¶5 In April 2016, R.J.O. was involuntarily committed under WIS. STAT. § 51.20 for a period of 120 days. Her commitment was scheduled to expire on

[3] Had the circuit court not granted R.J.O.'s postdisposition motion to dismiss her commitment, the extension of her commitment would have expired on June 8, 2018. We therefore question whether the County's argument that the court erred by granting R.J.O.'s postdisposition motion is moot. However, neither party has raised any argument on appeal regarding mootness, and we therefore decline to address that issue.

In any event, we may exercise our discretion to address a moot issue when the issue: (1) is of great public importance; (2) occurs so frequently that a definitive decision is necessary to guide circuit courts; (3) is likely to arise again and a decision of the court would alleviate uncertainty; or (4) will likely be repeated, but evades appellate review because the appellate review process cannot be completed or even undertaken in time to have a practical effect on the parties. ***Outagamie Cty. v. Melanie L.***, 2013 WI 67, ¶80, 349 Wis. 2d 148, 833 N.W.2d 607. Here, whether the circuit court properly granted R.J.O.'s postdisposition motion presents an issue of great public importance that is likely to arise again in future cases—specifically, whether the issuance of a detention order extends the time for a court to hold a recommitment hearing. Moreover, this issue is likely to evade appellate review because in many cases a commitment order will have expired before an appeal is completed. Thus, even if the County's appeal of the order granting postdisposition relief could be characterized as moot, we would nevertheless exercise our discretion to address it.

August 11, 2016. On July 20, 2016, the County petitioned to extend R.J.O.'s commitment, pursuant to WIS. STAT. § 51.20(13)(g). A recommitment hearing was scheduled for 11:00 a.m. on August 10, 2016.

¶6 R.J.O. was not served with notice of the recommitment hearing. The record contains a "Certificate of Service" from the Marathon County Sheriff's Department that states: "There were no attempts made to serve [R.J.O.] as she is homeless and Deputies had no further information to locate her." It is undisputed, however, that R.J.O.'s attorney received notice of the recommitment hearing. At a hearing in February 2018, counsel testified that he and R.J.O. discussed the recommitment hearing during a phone conversation before August 10, 2016. R.J.O. was aware at the time of that conversation that she was under a commitment, and she understood that her commitment was about to expire. When counsel learned that R.J.O. had not been personally served with notice of the recommitment hearing, he advised her not to attend that hearing. Counsel explained, "I told her that I didn't believe that the County had service on her and that they couldn't extend her commitment until they served her, and I told her that she didn't have to show up for the hearing and I would show up on her behalf."

¶7 Consistent with counsel's advice, R.J.O. did not appear at the August 10, 2016 recommitment hearing. The circuit court therefore issued an order for detention, pursuant to WIS. STAT. § 51.20(10)(d). The court considered finding R.J.O. in default for her failure to appear, but it declined to do so after R.J.O.'s attorney objected to a default and after the County affirmatively indicated that it was instead seeking an order for detention. The order for detention provided that law enforcement officers "shall take [R.J.O.] into protective custody and transport [her] to" a designated treatment facility. The order further provided that a recommitment hearing would be scheduled within seven days of R.J.O.'s detention. The order also

stated R.J.O. would "remain committed to the custody of [the County]" pending the outcome of the recommitment hearing.

¶8 On August 11, 2016, R.J.O.'s attorney filed a motion to vacate the detention order and to dismiss the County's petition to extend R.J.O.'s commitment. In support of that motion, counsel argued the County had failed to personally serve R.J.O. with notice of the recommitment hearing, thus excusing her failure to appear. Counsel also argued the court's authority over R.J.O. with respect to the commitment proceedings ended when R.J.O.'s commitment expired at 11:59 p.m. on August 11, and the court could not extend the commitment by issuing a detention order.

¶9 On August 12, 2016, R.J.O.'s attorney filed a demand for a jury trial on the County's petition to extend R.J.O.'s commitment. On the same day, the circuit court held a review/motion hearing regarding R.J.O.'s case. R.J.O. did not appear at that hearing. Her attorney told the court he had been "hoping that [R.J.O.] would show up" for the hearing, but she had decided not to. After hearing the parties' arguments, the court denied R.J.O.'s motion to vacate the detention order and to dismiss the County's petition to extend her commitment. The court reasoned that the County properly notified R.J.O. of the August 10, 2016 recommitment hearing by providing notice to her attorney. The court further concluded that R.J.O.'s failure to appear at that hearing "gave [the court] the authority to issue the detention order, which, in effect, tolls the time limits" for holding a recommitment hearing.

¶10 R.J.O. was not located and detained until June 2, 2017—nearly ten months after her commitment was originally scheduled to expire. Four days later, on June 6, 2017, R.J.O.'s attorney filed a second demand for a jury trial. Counsel

also filed another motion to dismiss the County's petition to extend R.J.O.'s commitment, again arguing that R.J.O. did not receive proper notice of the August 10, 2016 recommitment hearing and that the court lacked authority to extend her commitment because no recommitment hearing was held before her original commitment expired.

¶11 The circuit court held a recommitment hearing on June 9, 2017. At the beginning of the hearing, the court denied R.J.O.'s motion to dismiss. The court also held that R.J.O.'s demand for a jury trial was untimely. After hearing the testimony of two witnesses in support of the County's petition to extend R.J.O.'s commitment, the court granted the County's petition and extended the commitment for a period of one year.

¶12 R.J.O., represented by new counsel, subsequently filed a motion for postdisposition relief, asking the circuit court to dismiss her commitment. As grounds for that motion, R.J.O. again asserted that the County "failed to serve proper notice to R.J.O." of the August 10, 2016 recommitment hearing. In the alternative, R.J.O. argued that if "notice of service was proper by notifying the mandatory appointed counsel, counsel was ineffective for telling R.J.O. that she need not attend her hearing." R.J.O. also asserted that the court "erred in ordering [her] detention and extending her commitment beyond the August 11, 2016 expiration date." She further argued the court erred by determining that her demands for a jury trial were untimely. Alternatively, she asserted her trial attorney was ineffective by not timely filing a jury trial demand.

¶13 The circuit court held a hearing on R.J.O.'s postdisposition motion, at which R.J.O.'s trial attorney testified. After considering additional briefs filed by the parties, the court granted R.J.O.'s motion in an oral ruling on May 9, 2018. The

court agreed with the County that R.J.O. was properly notified of the August 10, 2016 recommitment hearing by virtue of the notice provided to her attorney. The court concluded, however, that it had lost competency to consider the County's petition to extend R.J.O.'s commitment because no recommitment hearing was held before the original commitment expired. The court rejected the County's argument that the issuance of the detention order extended the time to hold a recommitment hearing, noting there were "no cases" that directly supported that proposition. The court stated that instead of issuing a detention order when R.J.O. failed to appear at the recommitment hearing, it should have simply held the hearing in R.J.O.'s absence.

¶14 Because the circuit court had already granted R.J.O.'s postdisposition motion on other grounds, it declined to fully address her ineffective assistance claims. The court stated, however, that it would have been difficult for R.J.O. to prevail on those claims "given there was no prejudice." As for R.J.O.'s argument regarding her entitlement to a jury trial, the court reiterated its prior ruling that R.J.O. did not timely file a jury trial demand. The court subsequently entered a written order granting R.J.O.'s postdisposition motion and dismissing her commitment. The County now appeals, and R.J.O. cross-appeals.

DISCUSSION

I. Notice of the recommitment hearing

¶15 It is undisputed that the County provided R.J.O.'s attorney with notice of the August 10, 2016 recommitment hearing. It is further undisputed that counsel discussed the recommitment hearing with R.J.O. before the scheduled hearing date. Nevertheless, R.J.O. argues she was not properly notified of the recommitment hearing because the County failed to personally serve her with notice of that hearing.

She argues personal service of the notice was required under WIS. STAT. § 51.20(2)(b).[4] She further argues that without such personal service, the circuit court lacked personal jurisdiction over her.

¶16 Our supreme court recently addressed and rejected identical arguments in ***S.L.L.*** In that case, Waukesha County provided notice of a hearing to extend S.L.L.'s commitment by mailing a notice of the hearing to S.L.L.'s last known address and to her appointed attorney. ***S.L.L.***, 387 Wis. 2d 333, ¶6. S.L.L. failed to appear at the hearing, but her attorney was present. ***Id.***, ¶7. The circuit

[4] WISCONSIN STAT. § 51.20(2)(b) provides:

> If the subject individual is to be detained, a law enforcement officer shall present the subject individual with a notice of hearing, a copy of the petition and detention order and a written statement of the individual's right to an attorney, a jury trial if requested more than 48 hours prior to the final hearing, the standard upon which he or she may be committed under this section and the right to a hearing to determine probable cause for commitment within 72 hours after the individual is taken into custody under s. 51.15, excluding Saturdays, Sundays and legal holidays. The officer shall orally inform the individual that he or she is being detained as the result of a petition and detention order issued under this chapter. If the individual is not to be detained, the law enforcement officer shall serve these documents on the subject individual and shall also orally inform the individual of these rights. The individual who is the subject of the petition, his or her counsel and, if the individual is a minor, his or her parent or guardian, if known, shall receive notice of all proceedings under this section. The court may also designate other persons to receive notices of hearings and rights under this chapter. Any such notice may be given by telephone. The person giving telephone notice shall place in the case file a signed statement of the time notice was given and the person to whom he or she spoke. *The notice of time and place of a hearing shall be served personally on the subject of the petition, and his or her attorney, within a reasonable time prior to the hearing to determine probable cause for commitment.*

(Emphasis added.)

court found S.L.L. in default and extended her commitment based on physician reports and the County's extension petition. ***Id.***

¶17 On appeal, S.L.L. argued the circuit court "lost jurisdiction over her sometime before the Extension Hearing, and that service of a new petition … was necessary before it could regain that jurisdiction." ***Id.***, ¶17. Our supreme court rejected that argument, concluding that "for purposes of personal jurisdiction, an extension hearing is 'a continuation of the original commitment proceeding and previous recommitment hearings.'" ***Id.***, ¶21 (quoting ***State ex rel. Serocki v. Circuit Court For Clark Cty.***, 163 Wis. 2d 152, 160, 471 N.W.2d 49 (1991)). Accordingly, the circuit court "still had jurisdiction over [S.L.L.] when it conducted the Extension Hearing and entered the Extension Order." ***Id.***

¶18 The ***S.L.L.*** court further concluded that the County was not otherwise required to personally serve S.L.L. with notice of the recommitment hearing. *See* ***id.***, ¶¶27-30. Like R.J.O., S.L.L. argued personal service was required under WIS. STAT. § 51.20(2)(b). The court concluded, however, that § 51.20(2)(b) was inapplicable because "the procedures governing commitment extensions are located in WIS. STAT. § 51.20(10)-(13), not § 51.20(2)." ***S.L.L.***, 387 Wis. 2d 333, ¶27. The court then observed that § 51.20(10)(c) incorporates the rules of civil procedure, to the extent they do not conflict with WIS. STAT. ch. 51. ***S.L.L.***, 387 Wis. 2d 333, ¶27.

¶19 Turning to the rules of civil procedure, the court noted that under WIS. STAT. § 801.14(2), service on a party represented by an attorney may be accomplished by serving the attorney. ***S.L.L.***, 387 Wis. 2d 333, ¶27. Accordingly, the court held that the County had provided S.L.L. with sufficient notice of the recommitment hearing by mailing the notice to her attorney. ***Id.***, ¶28. The court

further rejected S.L.L.'s argument that "the County's chosen method of service was constitutionally defective," noting that argument was based on S.L.L.'s erroneous belief that "the Extension hearing is a new proceeding for which the County must serve a jurisdiction-conferring document." ***Id.***, ¶29. Ultimately, the court held, "Because the County employed a proper method of service, and [S.L.L.'s] counsel actually did receive notice of the Extension Hearing, we conclude there was no statutory or constitutional infirmity in service of the notice." ***Id.***, ¶30.

¶20 ***S.L.L.*** is on all fours with this case and compels us to reject R.J.O.'s arguments that the County was required to personally serve her with notice of the August 10, 2016 recommitment hearing and that without such personal service, the circuit court lacked personal jurisdiction over her. Instead, under ***S.L.L.***, the County properly served R.J.O. with notice of the recommitment hearing by providing the requisite notice to her attorney. "Because the County employed a proper method of service, and [R.J.O.'s] counsel actually did receive notice of the [recommitment hearing], there was no statutory or constitutional infirmity in service of the notice."[5] *See* ***id.*** Moreover, in this case, unlike in ***S.L.L.***, it is undisputed that R.J.O.'s attorney provided her with actual notice of the recommitment hearing. Under these circumstances, R.J.O.'s arguments regarding defective notice are even less persuasive than those advanced by S.L.L.

II. Competency to extend R.J.O.'s commitment

[5] R.J.O. asserts that our supreme court's decision in ***Waukesha County v. S.L.L.***, 2019 WI 66, 387 Wis. 2d 333, 929 N.W.2d 140, is "absurd and needs to be reconsidered." R.J.O. therefore asks us to certify this appeal to the supreme court. We decline to do so. We are bound by the supreme court's decision in ***S.L.L.***, which was issued less than one year ago. Although R.J.O. argues ***S.L.L.*** was wrongly decided, she does not point to any circumstances that have changed since the court issued its decision in ***S.L.L.*** that might now cause the court to reconsider its holding.

¶21 As noted above, the circuit court granted R.J.O.'s postdisposition motion to dismiss her commitment on the grounds that the court lost competency to consider the County's petition to extend the commitment when it failed to hold a recommitment hearing before the commitment expired on August 11, 2016. Whether a circuit court has lost competency is a question of law that we review independently. ***Village of Trempealeau v. Mikrut***, 2004 WI 79, ¶7, 273 Wis. 2d 76, 681 N.W.2d 190. To the extent this determination requires us to interpret and apply various provisions of WIS. STAT. ch. 51, statutory interpretation presents a question of law for our independent review. *See* ***McNeil v. Hansen***, 2007 WI 56, ¶7, 300 Wis. 2d 358, 731 N.W.2d 273.

¶22 In this case, the parties agree that a circuit court generally loses competency in a commitment case if it fails to hold a recommitment hearing before the subject individual's initial commitment expires. *See* ***G.O.T. v. Rock Cty.***, 151 Wis. 2d 629, 633, 445 N.W.2d 697 (Ct. App. 1989). The County argues, however, that when a subject individual fails to appear at a recommitment hearing, the court's issuance of a detention order extends the time to hold the hearing.

¶23 The County relies on WIS. STAT. § 51.20(10)(d), which provides: "In the event that the subject individual is not detained and fails to appear for the final hearing the court may issue an order for the subject individual's detention and shall hold the final commitment hearing within 7 days from the time of detention." Based on this statute, the County argues the issuance of an order for detention necessarily extends the deadline for holding a recommitment hearing until seven days after the subject individual is detained. The County argues this interpretation is consistent with ***S.L.L.***, in which our supreme court recognized that a court has two options when a subject individual fails to appear at a recommitment hearing: (1) the entry

of a default judgment under WIS. STAT. § 806.02(5); or (2) the issuance of a detention order under § 51.20(10)(d). *See* ***S.L.L.***, 387 Wis. 2d 333, ¶¶36, 38.

¶24 In response, R.J.O. argues nothing in the plain language of WIS. STAT. § 51.20(10)(d) provides for the extension of a subject individual's commitment beyond its expiration date when a detention order is issued. In addition, R.J.O. correctly observes that ***S.L.L.*** did not directly address that issue. R.J.O. further argues that one of the purposes of WIS. STAT. ch. 51 is to protect the personal liberties of committed individuals. *See* WIS. STAT. § 51.001(2). She contends that permitting a commitment to be extended for an indefinite period of time until a subject individual can be located and detained would be inconsistent with that purpose.

¶25 For the following reasons, we agree with the County that the issuance of a detention order under WIS. STAT. § 51.20(10)(d) extends the time to hold a recommitment hearing until seven days after the subject individual is detained. First, ***S.L.L.*** recognized that the issuance of a detention order is one option available to a circuit court when a subject individual fails to appear for a recommitment hearing. *See* ***S.L.L.***, 387 Wis. 2d 333, ¶36. However, the compressed time frame in which petitions to extend commitment must be filed and heard means that, in many cases, a detention order will not be an effective tool unless its issuance extends the time to hold a recommitment hearing.

¶26 To explain, a petition to extend an individual's commitment can be filed as few as twenty-one days before the original commitment expires. WIS. STAT. § 51.20(13)(g)2r. Once the petition is filed, a recommitment hearing must generally be held before the original commitment's expiration date. *See* ***G.O.T.***, 151 Wis. 2d at 633. If the subject individual fails to appear at the recommitment hearing,

§ 51.20(10)(d) gives the circuit court the option to issue a detention order, but it provides that a recommitment hearing must be held within seven days from the time the individual is detained. In many cases, however, it may be impossible to detain the individual and hold a recommitment hearing before the original commitment expires, depending on how far in advance of the expiration date the original recommitment hearing was scheduled and how long it takes to locate and detain the subject individual.

¶27 Consequently, in order for a detention order to be an effective option in many cases in which a subject individual fails to appear for a recommitment hearing, the issuance of the order must necessarily extend the time to hold a recommitment hearing until seven days after the individual is detained, regardless of whether that date is after the date the original commitment would have otherwise expired. It makes no sense that the legislature would have permitted a court to issue a detention order with the requirement to hold a recommitment hearing within seven days after the subject individual is detained if, given the compressed time frame inherent in recommitment proceedings, that option could rarely be used.

¶28 Second, while ***S.L.L.*** did not directly address whether the issuance of a detention order can extend the time for holding a recommitment hearing until after the original commitment has expired, our supreme court recognized in ***S.L.L.*** that the issuance of a detention order was one option available to the circuit court when S.L.L. failed to appear at the recommitment hearing. *See* ***S.L.L.***, 387 Wis. 2d 333, ¶36. Notably, S.L.L. was originally committed on August 30, 2016, for a period of six months. *See* ***id.***, ¶¶4-5. Thus, S.L.L.'s commitment would have expired on February 28, 2017, the same day on which the recommitment hearing at which S.L.L. failed to appear took place. *See* ***id.***, ¶¶6-7. Accordingly, had the court issued a detention order based on S.L.L.'s failure to appear, any recommitment hearing

held after S.L.L. was detained would necessarily have taken place after the expiration of the original commitment.

¶29 Third, we have previously recognized that a circuit court's failure to hold a recommitment hearing before the original commitment expires does not cause the court to lose competency in all circumstances. *See* ***G.O.T.***, 151 Wis. 2d 629. In ***G.O.T.***, the subject individual's commitment was set to expire on May 4, 1988. ***Id.*** at 632. Rock County petitioned to extend the commitment on April 25, 1988. ***Id.*** The circuit court scheduled a hearing on the extension petition for April 28. ***Id.*** On April 27, G.O.T. demanded a jury trial. ***Id.*** The court therefore extended G.O.T.'s commitment until May 10 in order to address G.O.T.'s jury trial demand. ***Id.***

¶30 On appeal, we acknowledged that when read together, WIS. STAT. § 51.20(13)(g)1. and 3. require a circuit court to hold a recommitment hearing before the subject individual's initial commitment expires. ***Id.*** at 633. We concluded, however, that G.O.T.'s jury trial demand "authorized the [circuit] court to temporarily extend the commitment to accommodate that demand." ***Id.*** We relied on WIS. STAT. § 51.20(11)(a), which provides: "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." We held that subsec. (11)(a) "necessarily implies that a commitment is extended to accommodate a demand for a jury trial, as long as the final hearing and jury trial are held within fourteen days of the demand." ***G.O.T.***, 151 Wis. 2d at 634. We explained, "Without the implied extension, the demand for a jury frequently could not be accommodated. To construe the statute as allowing the committed person to terminate his or her commitment by timing a jury demand would work an absurd result." ***Id.***

¶31 To summarize, in ***G.O.T.*** we harmonized the statutory requirement that a recommitment hearing be held before the expiration of the initial commitment with the statutory provision allowing a subject individual to demand a jury trial. We did so by holding that a circuit court may temporarily extend an individual's commitment to accommodate his or her jury trial demand.

¶32 Similarly, in this case the statutory requirement that a recommitment hearing be held before the expiration of the initial commitment must be harmonized with WIS. STAT. § 51.20(10)(d), which permits the circuit court to issue an order for detention if the subject individual fails to appear at a recommitment hearing. As in ***G.O.T.***, we hold the latter provision "necessarily implies" that the time to hold a recommitment hearing is extended upon the issuance of a detention order. *See* ***G.O.T.***, 151 Wis. 2d at 634. To hold otherwise would permit a subject individual to terminate his or her commitment by failing to appear at a recommitment hearing and by then evading detention until the original commitment expires. As in ***G.O.T.***, we conclude that interpreting the relevant statutes in that manner would "work an absurd result." ***Id.***

¶33 Our decision in ***County of Milwaukee v. Edward S.***, 2001 WI App 169, 247 Wis. 2d 87, 633 N.W.2d 241, is also instructive. In that case, Edward S. claimed the circuit court lost competency to commit him because it failed to hold a final commitment hearing within fourteen days after his initial detention, as required by WIS. STAT. § 51.20(7)(c). ***Edward S.***, 247 Wis. 2d 87, ¶1. In response, Milwaukee County argued the fourteen-day deadline "cannot be strictly enforced when a detained subject manipulates the system in some fashion to prevent the hearing from taking place within the required time period." ***Id.***, ¶6. The County observed that Edward S.'s commitment hearing "was scheduled timely and would

have taken place, but for the fact that he fired his lawyer the day before the hearing, which was also the day before the fourteen-day deadline expired." ***Id.***

¶34 We agreed with the County and concluded a "reasonable extension" of the fourteen-day deadline for holding a commitment hearing was permissible "in the limited circumstance where the extension is caused solely by the conduct and manipulation of the detained subject." ***Id.***, ¶9. We explained:

> [T]o find otherwise would permit detained subjects to manipulate the system in some fashion to prevent the hearing from taking place within the required time period. Public policy prohibits a detained subject's manipulation of the system by firing his attorney a day before the final hearing. 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. The mandatory fourteen-day deadline … cannot be interpreted in such a fashion. Such an interpretation would defy common sense and create an absurdity, which we are unwilling to do.

Id., ¶8. In this case, we are similarly unwilling to interpret WIS. STAT. § 51.20(10)(d) in such a way as to allow a subject individual to terminate his or her commitment by failing to appear at a scheduled recommitment hearing and by then evading detention until his or her commitment expires.

¶35 The fact that a circuit court has discretion to find a subject individual in default for failing to appear at a recommitment hearing instead of issuing an order for detention does not change our conclusion. Again, ***S.L.L.*** makes it clear that both of those options are available to a court in its discretion when a subject individual fails to appear. However, as explained above, in many cases the issuance of a detention order would not be an effective option unless it extended the time for the court to hold a recommitment hearing. Moreover, it may not be possible to enter a default judgment in every case in which the subject individual fails to appear,

particularly if the individual was not evaluated for a significant period of time before the scheduled recommitment hearing because he or she absconded from treatment.

¶36 We acknowledge R.J.O.'s concern that a detention order may exist for some time before a subject individual is detained and therefore may extend the individual's commitment long beyond its original expiration date, as occurred in this case. We disagree with R.J.O., however, that such a result is more detrimental to a subject individual's rights than the entry of a default judgment. If the circuit court issues a detention order, the individual is entitled to a recommitment hearing within seven days of his or her subsequent detention. *See* WIS. STAT. § 51.20(10)(d). Notably, the individual will be present at, and able to participate in, that hearing. In contrast, if the court enters a default judgment following an individual's failure to appear, the court simply extends the individual's commitment without his or her participation in, or presence at, a recommitment hearing. Furthermore, once the individual is ultimately detained, he or she will not receive a hearing regarding his or her continued commitment within seven days of the detention.

¶37 For all of the foregoing reasons, we agree with the County that the issuance of a detention order under WIS. STAT. § 51.20(10)(d) extends the deadline for a circuit court to hold a recommitment hearing until seven days after the subject individual is detained. In this case, the court issued an order for detention on August 10, 2016, and R.J.O. was detained on June 2, 2017. The recommitment hearing then took place on June 9—within seven days after R.J.O.'s detention. On these facts, the court erred by concluding it had lost competency to extend R.J.O.'s commitment. We therefore reverse the order granting R.J.O.'s postdisposition motion to dismiss.

III. Timeliness of R.J.O.'s jury trial demands

¶38 In her cross-appeal, R.J.O. argues the circuit court erred by concluding that her demands for a jury trial were untimely. Resolution of this issue requires us to interpret and apply WIS. STAT. § 51.20(11)(a), which presents a question of law for our independent review. *See* ***McNeil***, 300 Wis. 2d 358, ¶7.

¶39 As relevant here, WIS. STAT. § 51.20(11)(a) provides that 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 or his or her counsel." In this case, the "time set for final hearing" was 11:00 a.m. on August 10, 2016. It is undisputed that R.J.O.'s trial attorney had notice of that time. Nonetheless, counsel did not file a jury trial demand at any point before the time set for the recommitment hearing. As such, we agree with the circuit court that R.J.O. did not timely file a jury trial demand and therefore waived her right to a jury trial.

¶40 R.J.O. notes that her attorney filed jury trial demands on August 12, 2016, and June 6, 2017. She asserts that both of those demands were timely because they were filed more than forty-eight hours before the June 9, 2017 recommitment hearing.

¶41 We disagree. WISCONSIN STAT. § 51.20(11)(a) requires a subject individual to request a jury trial at least forty-eight hours before "the time set for final hearing," not at least forty-eight hours before the final hearing actually occurs. Here, the recommitment hearing was scheduled for 11:00 a.m. on August 10, 2016, and R.J.O. failed to demand a jury trial at least forty-eight hours before that time. Accordingly, the circuit court properly concluded that the jury trial demands R.J.O.

later filed were untimely and that R.J.O. had therefore waived her right to a jury trial.

IV. Ineffective assistance of counsel

¶42 R.J.O. also argues in her cross-appeal that her trial attorney provided ineffective assistance in two ways. First, she argues that if the County properly notified her of the August 10, 2016 recommitment hearing, counsel was ineffective by advising her not to appear at that hearing. Second, she argues that if the circuit court correctly determined her jury trial demands were not timely filed, counsel was ineffective by failing to timely demand a jury trial.

¶43 Whether an attorney rendered ineffective assistance is a mixed question of fact and law. ***State v. Nielsen***, 2001 WI App 192, ¶14, 247 Wis. 2d 466, 634 N.W.2d 325. We will uphold the circuit court's findings of fact unless they are clearly erroneous. ***Id.*** However, whether the claimant's proof is sufficient to establish ineffective assistance is a question of law that we review independently. ***Id.*** To prevail on an ineffective assistance claim, a claimant must show both that counsel's performance was deficient and that the deficient performance prejudiced the claimant's case. *See* ***Strickland v. Washington***, 466 U.S. 668, 687 (1984). If a claimant fails to make a sufficient showing on one prong of the ***Strickland*** test, we need not address the other. ***Id.*** at 697.

¶44 In this case, we assume without deciding that R.J.O.'s trial attorney performed deficiently in both of the ways that R.J.O. alleges. We conclude, however, that R.J.O. has failed to establish prejudice. To demonstrate prejudice, a party alleging ineffective assistance must show there is "a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have

been different. A reasonable probability is a probability sufficient to undermine confidence in the outcome." ***Id.*** at 694.

¶45 Here, while R.J.O. argues her trial attorney was ineffective by advising her not to appear at the August 10, 2016 recommitment hearing, she does not explain why it is reasonably probable the result of this case would have been different had she appeared at that hearing. Notably, the circuit court did not enter a default judgment against R.J.O. based on her failure to appear at the August 10 hearing. Instead, the court issued an order for detention, and after R.J.O. was detained it held a recommitment hearing on June 9, 2017, at which R.J.O. was present. As a result of that recommitment hearing, R.J.O.'s commitment was extended for one year. R.J.O. does not assert the result of the recommitment hearing would have been any different had it been held in August 2016 as opposed to June 2017.

¶46 To the extent R.J.O. claims she was prejudiced by the nearly ten-month delay in holding the recommitment hearing, we observe that after advising R.J.O. not to appear at the August 10 recommitment hearing, her trial attorney attempted to secure her presence at a review/motion hearing on August 12. However, R.J.O. failed to appear at that hearing. R.J.O. then continued to evade detention until June 2, 2017. On these facts, the nearly ten-month delay in holding the recommitment hearing was due largely to R.J.O.'s own conduct, rather than to her attorney's advice not to appear at the August 10 hearing.

¶47 Turning to R.J.O.'s argument that her attorney was ineffective by failing to timely demand a jury trial, we again observe that R.J.O. does not explain why she believes the result of this case would have been different had counsel timely filed a jury trial demand. She does not assert it is reasonably probable that her

commitment would not have been extended had her recommitment hearing been held in front of a jury, rather than the circuit court. As such, R.J.O. has failed to demonstrate that she was prejudiced by her trial attorney's failure to timely demand a jury trial.

By the Court.—Order reversed.