

**COURT OF APPEALS
DECISION
DATED AND FILED**

April 10, 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. 00-3459, 00-3460, 00-3461

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT III**

No. 00-3459

**IN RE THE TERMINATION OF PARENTAL RIGHTS TO
BRANDON R.O., A PERSON UNDER THE AGE OF 18:**

BROWN COUNTY,

PETITIONER-RESPONDENT,

V.

APRIL O.,

RESPONDENT-APPELLANT.

STEVEN L. P.,

RESPONDENT-CO-APPELLANT.

No. 00-3460

**IN RE THE TERMINATION OF PARENTAL RIGHTS TO
TAYLOR J.O., A PERSON UNDER THE AGE OF 18:**

BROWN COUNTY,

PETITIONER-RESPONDENT,

V.

APRIL O.,

RESPONDENT-APPELLANT.

NO. 00-3461

**IN RE THE TERMINATION OF PARENTAL RIGHTS TO
EVERETT W.O., A PERSON UNDER THE AGE OF 18:**

BROWN COUNTY,

PETITIONER-RESPONDENT,

V.

APRIL O.,

RESPONDENT-APPELLANT.

APPEALS from orders of the circuit court for Brown County: J. D.
MCKAY, Judge. *Reversed.*

¶1 PETERSON, J.¹ April O. and Steven L. P. appeal orders terminating their parental rights. They argue the trial court lost competency to proceed when it failed to hold the fact-finding hearing within the mandatory time limits. WISCONSIN STAT. § 48.315(2) allows the court to extend those time limits, but only upon a showing of good cause and only for so long as is necessary. The issue

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

is whether the court lost competency when it declared a mistrial and rescheduled the trial to commence seventy-two days later. We hold that the trial court did lose competency to proceed and therefore reverse the orders.

BACKGROUND

¶2 The Brown County Human Services Department petitioned for termination of April's and Steve's parental rights. April had three children subject to the petition: Everett, Taylor and Brandon. Steven is Brandon's father. The initial hearing was held on April 10. The matter then proceeded to trial on May 22, 2000.

¶3 After the trial began, the court became aware that one of the jurors knew April and her family. The court conducted a voir dire of the juror and determined that the juror could not be fair. It declared a mistrial.

¶4 The court then scheduled a new trial. The court indicated it was available the following day. April's counsel stated that he was unavailable. The court then scheduled the trial for August 2, 2000, which was seventy-two days after it declared a mistrial.

¶5 The new trial commenced on August 2. At the close of evidence, the jury found that grounds existed for terminating April's and Steven's parental rights. The disposition hearing was held on September 15. The court concluded that it was in the best interests of the children to terminate April's and Steven's parental rights and entered judgment accordingly. This appeal followed.

STANDARD OF REVIEW

¶6 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

¶7 April and Steven argue that the trial court lost competency to proceed when it failed to hold the fact-finding hearing within forty-five days of the initial hearing. They contend that the trial court, after declaring a mistrial, scheduled the trial to commence on August 2, without a showing of good cause. In the alternative, they argue that the court lost competency to proceed when it did not hold a new trial or grant a continuance within forty-five days of declaring a mistrial.²

¶8 WISCONSIN STAT. § 48.422(2) provides that “[i]f the petition is contested the court shall set a date for a fact-finding hearing to be held within forty-five days of the hearing on the petition, unless all of the necessary parties agree to commence with the hearing on the merits immediately.” The forty-five-day time limit may be extended “only upon a showing of good cause in open court

² Steven additionally argues that the trial court erred by failing to make any record regarding its decision to disallow Steven to be present and testify by telephone. He also argues that his constitutional and statutory rights were violated when the circuit court refused to allow him to appear by telephone. We do not discuss these issues because our resolution of the time limit argument is dispositive. See *Sweet v. Berge*, 113 Wis. 2d 61, 67, 334 N.W.2d 559 (Ct. App. 1983).

... and only for so long as is necessary, taking into account the request or consent of the district attorney or the parties and the interest of the public in the prompt disposition of cases.” WIS. STAT. § 48.315(2).

¶9 Wisconsin appellate courts have held that failure to comply with mandatory time limits under the Children's Code results in the loss of the circuit court's 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 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).

¶10 Under WIS. STAT. § 48.315(2), a continuance beyond the forty-five-day time limit may only be granted: (1) based upon a showing of good cause, and (2) for only so long as is necessary. The general requirements of § 48.315(2) control all extensions of time deadlines under the Children's Code. See *M.G. v. La Crosse County Human Servs. Dep't*, 150 Wis. 2d 407, 418, 441 N.W.2d 227 (1989). The statute's requirements must be satisfied before a court may grant any continuance. *Id.*

¶11 The County contends that the time limit was properly extended. We disagree. In this case, the fact-finding hearing was held beyond the mandatory time limit established in WIS. STAT. § 48.422(2). We conclude that the circuit court did not state why the length of the delay was necessary, thus failing to satisfy the second requirement of WIS. STAT. § 48.315(2).

I. Good Cause Finding

¶12 We have little trouble concluding that good cause existed to continue the fact-finding hearing beyond the forty-five day limit. The first trial started forty-two days after the initial hearing. When a mistrial was declared, the court only had three days left before the forty-five day time limit expired. Although the court did not make findings, the circumstances are self-evident that good cause existed to reschedule the trial after the forty-five days.

II. Long as Necessary Finding

¶13 However, WIS. STAT. § 48.315(2) requires a continuance be granted “only for so long as is necessary.” The date between the mistrial and the trial was seventy-two days. An examination of the record fails to reveal any reason for a continuance of this length.

¶14 The County argues that the length of the delay was necessary because the court’s calendar did not permit the hearing to be held any sooner. The County contends that once good cause was shown, the circuit court possessed the ability to re-schedule the trial apparently at will. A continuance can be granted for court congestion provided good cause is shown and the circuit court does so in a timely manner. *J.R. v. State*, 152 Wis. 2d 598, 607, 449 N.W.2d 52 (Ct. App. 1989).

¶15 However, a finding of good cause to grant a continuance does not extend indefinitely the amount of time a court may delay the proceeding without losing competency. The problem here is that the circuit court never explained why the delay would be so lengthy. The record shows that, after the court was unable to reschedule the trial the day after declaring the mistrial, the trial was scheduled

for August 2. Scheduling a trial months into the future does not explain why the length of the delay was necessary. We cannot presume that the delay was due to court calendar congestion. Under WIS. STAT. § 48.315(2), the record must reveal the reasons for the length of the delay.

¶16 The object of the Children's Code is to protect the best interests of the children. We also recognize that, until this appeal, neither parent objected to the delay resulting from the mistrial. We acknowledge that this may not be a good result for the children. However, we may not rewrite clear statutory language, and precedent compels reversal. *See Cook v. Cook*, 208 Wis. 2d 166, 189, 560 N.W.2d 246 (1997).

By the Court.—Orders reversed.

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

