COURT OF APPEALS
DECISION
DATED AND FILED

October 25, 2001

Cornelia G. Clark
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.

Nos. 01-2009
01-2010

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

01-2009
IN RE THE TERMINATION OF PARENTAL RIGHTS TO ETERNITY E.,
A PERSON UNDER THE AGE OF 18:

DANE COUNTY DEPARTMENT OF HUMAN SERVICES,

PETITIONER-RESPONDENT,

V.

ANTJUAN E.,

RESPONDENT-APPELLANT.

01-2010
IN RE THE TERMINATION OF PARENTAL RIGHTS TO SIERRA E.,
A PERSON UNDER THE AGE OF 18:

DANE COUNTY DEPARTMENT OF HUMAN SERVICES,

PETITIONER-RESPONDENT,

V.

ANTJUAN E.,

RESPONDENT-APPELLANT.

APPEALS from an order of the circuit court for Dane County: MICHAEL N. NOWAKOWSKI, Judge. *Affirmed*.

¶1 VERGERONT, P.J.[1] Antjuan E. appeals the order terminating his parental rights to Eternity E. and Sierra E. On appeal, Antjuan contends that, after the trial court made its oral decision at the close of the dispositional hearing, it lost competency to sign and file a written order memorializing that decision when it did not do so within ten days. For the reasons explained below, we affirm.

BACKGROUND

¶2 On February 10, 1998, Eternity (DOB December 3, 1994) and Sierra (DOB July 11, 1996) were adjudged children in need of protection or services (CHIPS). On January 22, 2001, the Dane County Department of Human Services (department) filed an amended petition to involuntarily terminate Antjuan's parental rights to Eternity and Sierra on the grounds the children were in continuing need of protection or services under WIS. STAT. § 48.415(2).[2] On February 22, 2001, a jury found that grounds existed to terminate Antjuan's parental rights to Eternity and Sierra.

¶3 The trial court held a dispositional hearing on May 2, 2001.[3] At the conclusion of the dispositional hearing the court stated:

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

[2] The department sought, at the same time, to terminate the parental rights of Eternity's and Sierra's mother, Dana E.

[3] The court made a finding of good cause in open court and on the record to hold the hearing more than forty-five days past the fact-finding hearing.

> So I do find that it is in the best interests of the children to terminate the parental rights of … Antjuan to each of them. I do find that each of the birth parents is unfit …. I do therefore order that the parental rights be terminated, that guardianship be transferred to the State Department of Health and Family Services for purposes of adoptive placement.
>
> ….
>
> I'll ask [Dane County Corporation Counsel] … to prepare an appropriate order, submit it to all counsel with a period of ten days within which to file objections if anyone has them, ten days from the date of your letter. And for our purposes today we'll be adjourned.

A written order terminating Antjuan's parental rights was filed in the office of the clerk of court on May 21, 2001, thirteen business days after the dispositional hearing. At no time prior to the filing of the written order did Antjuan object to the period the court set for the preparation of the written order.

DISCUSSION

¶4 On appeal, Antjuan contends that the court lost competency because the written order was not entered within ten days of the dispositional hearing, as required by WIS. STAT. § 48.427(1). That statute provides in part: "After receiving any evidence related to the disposition, the court shall enter one of the dispositions specified under subs. (2) to (4) within 10 days."[4] Antjuan argues that "enter" has the meaning given it in WIS. STAT. § 807.11(2), which provides that "[a]n order is entered when it is filed in the office of the clerk of court." He then relies on ***State v. April O.***, 2000 WI App 70, 233 Wis. 2d 663, 607 N.W.2d 927, as support for his argument that the court's failure to follow the time limit in

[4] Under WIS. STAT. § 48.427(3), "[t]he court may enter an order terminating the parental rights of one or both parents." An order is entered when it is filed in the office of the clerk of courts. WIS. STAT. § 807.11(2). Because the time period of WIS. STAT. § 48.427(1) is less than eleven days, weekends and any holidays are excluded in computing the applicable deadline. WIS. STAT. § 801.15(1)(b).

§ 48.427(1) deprived it of competency to take any further action, including signing and filing the written order, and requires dismissal of the petition.

¶5 The department responds that a court "enters a disposition" under WIS. STAT. § 48.427(1) when it announces a disposition in court and therefore the court did comply with the time limit. The department also argues that Antjuan waived the right to object to the timeliness of the written order and is judicially estopped from doing so.

¶6 We consider first whether the court lost competency. Whether a trial court has lost competency to act presents a question of law, which we review de novo. ***State v. Kywanda F.,*** 200 Wis. 2d 26, 32, 546 N.W.2d 440 (1996). Competency in this context means the court's power to adjudicate the specific type of controversy before it, and the court loses competency when it fails to comply with the requirements necessary for the valid exercise of that power. ***Green County Dep't of Human Servs. v. H.N.,*** 162 Wis. 2d 635, 656 & n.17, 469 N.W.2d 845 (1991). A party's failure to object to the trial court's loss of competency before the court loses competency does not waive the party's right to later object to an order entered after the court lost competency. ***Id.*** at 658.

¶7 In ***April O.***, we held that the trial court's failure to comply with the time limits for holding the initial hearing under WIS. STAT. § 48.422(1) and to obtain a continuance as provided in WIS. STAT. § 48.315(2) before the expiration of that time limit deprived the court of competency to proceed. ***April O.***, 2000 WI App 70 at ¶10. We came to the same conclusion with respect to the failure to comply with the time limits for holding the dispositional hearing under WIS. STAT. § 48.424(1). ***Id.*** at ¶12.

¶8 However, the ***April O.*** and ***H.N.*** cases, and the other cases they discuss in which the trial court lost competency to proceed because of failure to comply with a time limit in Chapter 48, address neither the time limit in WIS. STAT. § 48.427(1) nor the circumstance we have here—in which the court had already held the hearing within the time limit applicable for that, made its decision, and rendered the decision orally. We consider this distinction significant because here the court had already exercised its power and fully adjudicated the dispute: the only acts left for the court were to sign and file the written order memorializing its decision after the order was drafted by one party and approved by the others. We have difficulty applying the concept of loss of competency in this particular context, and Antjuan's argument does not explain either why it is logical to do so or why it is required by precedent. We therefore conclude that, even if Antjuan's construction of the statute is correct, the trial court's failure to sign the written order memorializing its oral decision and file it with the clerk of court did not result in the trial court's loss of competency to take those steps.

¶9 Of course, even though the court did not lose competency, it may still have failed to follow the time limit in WIS. STAT. § 48.427(1)—depending on the proper construction of the statute—and, if it did, the question would then arise of the appropriate relief. However, we need reach neither of those issues because we conclude that Antjuan has waived the right to raise the statutory violation.

¶10 Since we have concluded that the court did not lose competency, there is no bar to applying the waiver rule in this case. Neither Antjuan nor his counsel objected at the dispositional hearing to the court's proposed time period for drafting the order and for objections. In addition, the record does not show that either objected after the dispositional hearing or took any steps to expedite the filing of the written order.

¶11 We generally will not review an issue raised for the first time on appeal. ***Wirth v. Ehly***, 93 Wis. 2d 433, 443, 287 N.W.2d 140 (1980), *superseded on other grounds by* WIS. STAT. § 895.52. Waiver is based on the principle that "[c]ontemporaneous objection gives the trial court the opportunity to correct its own errors and thereby avoids unnecessary delays through appeals, reversals, and new trials." ***Christensen v. Equity Co-op Livestock Sale Ass'n***, 134 Wis. 2d 300, 306, 396 N.W.2d 762 (Ct. App. 1986). Although the waiver rule does not preclude us from choosing to decide an issue, ***Wirth***, 93 Wis. 2d at 443-44, we see no reason to do so in this case. Antjuan is not challenging the dispositional order on any substantive grounds, and he does not suggest that he was prejudiced in any way because the written order was not filed three business days sooner.

By the Court.—Order affirmed.

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