WISCONSIN SUPREME COURT
CALENDAR AND CASE SYNOPSES
FEBRUARY 2023

The cases listed below will be heard in the Supreme Court Hearing Room, 231 East, State Capitol. The cases listed below originated in the following counties:

Dane
Kenosha
Walworth
Waukesha

MONDAY, FEBRUARY 20, 2023

9:45 a.m.	22AP140-FT	Walworth County v. M.R.M.
11 a.m.	21AP69-FT	Greenwald Family Limited Partnership v. Village of Mukwonago

THURSDAY, FEBRUARY 23, 2023

9:45 a.m.	21AP809-CR	State v. Junior L. Williams-Holmes
11 a.m.	21AP1054	Femala Fleming v. Amateur Athletic Union of the U.S., Inc.

Note: The Supreme Court calendar may change between the time you receive it and when a case is heard. It is suggested that you confirm the time and date of any case you are interested in by calling the Clerk of the Supreme Court at (608) 266-1880. If your news organization is interested in providing any type of camera coverage of Supreme Court oral argument, you must contact media coordinator Logan Rude at WISC-TV, (608) 271-4321. The synopses provided are not complete analyses of the issues presented.

WISCONSIN SUPREME COURT
February 20, 2023
9:45 a.m.

2022AP140-FT Walworth County v. M.R.M.

The Wisconsin Court of Appeals, District II (headquartered in Waukesha) certified this case, which originated in Walworth County Circuit Court, Judge Kristine E. Drettwan, presiding, to the Wisconsin Supreme Court to decide whether this court's decision in Waukesha County v. E.J.W.[1] *has retroactive application or only prospective application.*

In January of 2021, M.R.M. was found carrying a gun and making suicidal/homicidal statements and was placed in emergency detention. The Walworth County Circuit Court held a commitment hearing and entered an order committing M.R.M. for six months. Walworth County filed a recommitment petition. On July 21, 2021, the circuit court issued notice that the final hearing on the recommitment petition would be held on July 28, 2021. The notice stated that all jury demands must be filed at least 48 hours prior to the final hearing.

At the final hearing on July 28, M.R.M.'s appointed counsel requested an adjournment until August 12 so that M.R.M. could receive new, private counsel, which the court granted. On August 10, 2021, M.R.M. filed a jury demand. At the adjourned final hearing on August 12, the circuit court denied M.R.M.'s jury finding it was waived because the demand was not made at least 48 hours before the original hearing date. The circuit court proceeded to hold a court trial on August 12, 2021. Based on testimony of a psychiatrist hired by the County to evaluate M.R.M., the circuit court concluded recommitment and involuntary medical/treatment was appropriate and issued an order extending M.R.M.'s recommitment for one year.

On September 2, 2021, M.R.M. filed a motion for reconsideration based on a statement by the circuit court that "there's a substantial risk, a substantial likelihood that [M.R.M.] would again become a proper subject for treatment." The court clarified it misstated and meant "proper subject for commitment," and denied the motion for reconsideration.

On November 21, 2021, this court issued its decision in in Waukesha County v. E.J.W., which overruled Marathon County v. R.J.O., 2020 WI App 20, 392 Wis. 2d 157, 943 N.W.2d 878. Marathon County v. R.J.O. held that a committee waives their right to a jury trial by failing to demand one at least 48 hours before the originally scheduled final hearing date, even if the hearing is adjourned and a jury demand is made at least 48 hours before the final hearing actually takes place. This court's decision in E.J.W. overruled that holding in R.J.O. concluding that so long as the jury demand is made at least 48 hours before the recommitment hearing actually takes place, the jury demand is valid and the committee is entitled to a jury for the final hearing.

On Jan. 27, 2022, M.R.M. filed a notice of appeal. The Court of Appeals certified this case to this court. While the decision in E.J.W. resolves the issue of whether M.R.M.'s jury trial demand was timely, other issues have been raised as to whether the court's holding in E.J.W. applies prospectively or retroactively, and whether the circuit court loses competency to act on a recommitment petition when the original commitment order expired.

[1] Waukesha County v. E.J.W., 2021 WI 85, 399 Wis. 2d 471, 966 N.W.2d 733

WISCONSIN SUPREME COURT
February 20, 2023
11:00 a.m.

2021AP69-FT Greenwald Family Limited Partnership v. Village of Mukwonago

This is a review of a decision of the Wisconsin Court of Appeals, District II (headquartered in Waukesha) that summarily affirmed the Waukesha County Circuit Court order, Judge Lloyd Carter presiding, dismissing Greenwald Family Limited Partnership's challenge to a special assessment action.

On December 18, 2019, the Village of Mukwonago finalized a resolution adopting a special assessment affecting two properties owned by Greenwald Family Limited Partnership. The assessment sought to recoup costs from developing a roadway and utility improvements along the assessed properties. On January 16, 2020, the Village provided the notice required by statute by mailing a certified copy of the resolution to Greenwald. On March 17, 2020, Greenwald filed a summons and complaint in the Waukesha County circuit court challenging the special assessment.

On March 18, 2020, Greenwald's attorney sent a letter to the Village's attorney asking if the Village's attorney could "accept service for the Village." The Village attorney responded on March 20 stating, "Yes we will admit service, please forward that to me at this point." On March 23, Greenwald's attorney sent the Village's attorney an email with the summons, complaint, and an "admit of service template." He also asked for the Village attorney's state bar number and address in the signature block. The Village attorney executed the admission of service, which included the following language: "I am counsel for the Defendant Village of Mukwonago in this action and have received and admit service of an authenticated copy of the summons and complaint on behalf of the Defendant as of March 23, 2020."

On April 8, 2020, Greenwald's attorney executed a "Notice of Appeal of Special Assessment," drafted a cover letter to the Village's attorney, enclosing a copy of the notice "to be provided to the Clerk of the Village in accordance with Wis. Stats. § 66.0703(12)" and a check in the amount of $150. The cover letter stated, "You have already admitted service of the actual court filing and so I gather that the Clerk has actual notice of appeal of the special assessment. Please let me know if the Village has any objection to this filing. Or requires further action by Plaintiff to be in compliance with the bond requirement." Greenwald's attorney sent these both through email and regular mail.

The deadline to appeal the special assessment to the circuit court was April 16, 2020. On May 6, 2020, the Village filed a motion to dismiss based on Greenwald's failure to serve the Village clerk within 90 days of receiving notice of the special assessment. The circuit court granted the Village's motion and Greenwald filed an appeal. On February 16, 2022, the Court of Appeals summarily affirmed the circuit court's dismissal.

Greenwald filed a petition for review with this Court. The issue before this Court:

> Did the service of the Notice of Appeal required by Wis. Stat. § 66.0703(12) on the attorney of record for the Village, who had previously admitted service of the underlying summons and complaint in the case, satisfy the requirement to serve written notice of appeal on the Village clerk?

WISCONSIN SUPREME COURT
February 23, 2023
9:45 a.m.

2021AP809-CR State v. Junior L. Williams-Holmes

This is a review of a decision of the Wisconsin Court of Appeals, District II (headquartered in Waukesha) that affirmed the Kenosha County Circuit Court, Judge Bruce E. Schroeder presiding, judgment convicting Williams-Holmes, upon his guilty plea, of two counts of battery, one count of false imprisonment, and one count of bail jumping, and the order denying Williams-Holmes' post-conviction motion challenging the conditions of his probation and extended supervision.

While on probation for a previous battery conviction, Williams-Holmes violently assaulted his cohabitating girlfriend. On September 23, 2019, Williams-Holmes pled guilty to two counts of battery, one count of false imprisonment, and one count of bail jumping, all as a repeater. On November 25, 2019, the circuit court sentenced Williams-Holmes on the two counts of battery to 2 years confinement and 2 years of extended supervision to be served concurrently.[2] As a condition of the extended supervision, the circuit court required that Williams-Holmes "not . . . reside with any member of the opposite sex without the permission of the court, nor reside with any child who is not related to [him] by blood without the permission of the Court."

On December 16, 2020, Williams-Holmes filed a post-conviction motion seeking to amend the judgment of conviction relating to the condition of extended supervision. Williams-Holmes argued that the permission to live with women or children not related to him should come from the Department of Corrections, not the court. On March 16, 2021, the circuit court denied the motion, explaining that it believed it had the authority "to impose conditions and regulate the behavior" of probationers. The circuit court also expressed misgivings about Department of Corrections' practices relating to residential placements of offenders, citing an example in which the Department asked the circuit court for permission to place a probationer with a woman and her 8-year-old child in a case where a pre-sentence investigation had not yet been filed.

Williams-Holmes filed an appeal with the Court of Appeals on May 6, 2021, challenging the conditions of the supervision ordered by the circuit court and the denial of his postconviction motion. On June 15, 2022, the Court of Appeals affirmed the circuit court, but modified the condition, holding that "permission" had to be obtained through the statutory processes for modifying terms of probation or extended supervision.

Williams-Holmes petitioned this court to review the Court of Appeals' decision, arguing that the Department of Corrections has exclusive authority to administer probation and extended supervision, and that the circuit court cannot use its authority to modify conditions of supervision to circumvent the statutes and invade the Department's role. The State argues that circuit courts have broad discretion in imposing and modifying supervision conditions and the Department is charged with enforcing those conditions.

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[2] Sentencing was withheld and 3 years probation ordered on the bail-jumping and false imprisonment counts.

The issue before this Court is:

Can a circuit court use its statutory authority to modify conditions of probation and extended supervision to regulate the day-to-day affairs of individuals on supervision, contrary to statutes conferring on the Department of Corrections the exclusive authority to administer probation?

WISCONSIN SUPREME COURT
February 23, 2023
11:00 a.m.

2021AP809-CR Femala Fleming v. Amateur Athletic Union of the United States

This is a review of a decision of the Wisconsin Court of Appeals, District IV (headquartered in Madison) that reversed the Dane County Circuit Court order, Judge Rhonda L. Lanford presiding, which dismissed Femala Fleming's negligence action as untimely.

From 1997 to 2000, Femala Fleming was a member of a youth basketball club affiliated with the Amateur Athletic Union of the United States ("AAU"). At the time, she was between the ages of 13 and 16. Her coach, Shelton Kingcade, who was also an AAU member, repeatedly sexually assaulted Fleming while traveling for AAU-sanctioned competitions. In March of 2016, Kingcade was found guilty by a jury of repeated sexual assault of the same child in violation of Wis. Stat. § 948.025(1), and second-degree sexual assault of a child in violation of Wis. Stat. § 948.02(2).

On November 1, 2019, Fleming sued AAU and other parties in the Western District of Wisconsin based on the past assaults. Doe v. Amateur Athletic Union of the U.S., Inc., W.D. Wis. 19-cv-901-jdp. Fleming was 34 years old at the time. On August 11, 2020, the Western District of Wisconsin dismissed Fleming's suit for lack of personal jurisdiction.

On August 31, 2020, Fleming, now 35 years old (DOB: 11/4/84), filed this lawsuit in the Dane County circuit court, alleging AAU negligently hired and supervised Kingcade. AAU filed a motion to dismiss, arguing that the action was untimely under the three-year statute of limitations period in Wis. Stat. § 893.54(1m)(a). Fleming argued that the extended statute of limitations period under Wis. Stat. § 893.587 applied, but AAU stated that the extended period of limitation in § 893.587 was inapplicable because it allows a person injured by certain acts of sexual assault to file a civil suit before the person reaches the age of 35 only against the person's abuser, and AAU was not Fleming's abuser. On April 30, 2021, the circuit court granted AAU's motion to dismiss.

Fleming filed a notice of appeal and on July 14, 2022, the Court of Appeals reversed the circuit court and remanded to the circuit court for further proceedings. In so doing, the Court of Appeals concluded that the three-year statute of limitations pursuant to Wis. Stat. § 893.54(1m)(a) does not apply to this case; that under the plain reading of Wis. Stat. § 893.587, the statute of limitations depends solely on whether the injury-causing act would constitute a violation of the criminal statute; and that the focus is on the act, not the specific theory of liability. Finally, the Court of Appeals concluded that the tolling provisions in Wis. Stat. § 893.13 apply to § 893.587, regardless of whether § 893.587 is a statute of repose or a statute of limitations.

AAU filed a petition with the Wisconsin Supreme Court seeking this court's review of the Court of Appeals' decision.

The issues this court must decide are:

(1) Do claims for negligent hiring and negligent supervision of the sexual abuser of a child constitute violations of Wis. Stat. § 948.02 or Wis. Stat. § 948.025 such that an injured party may file such claims against a non-abuser at any time before reaching the age of 35 years under Wis. Stat. § 893.587?

(2) Are claims for negligent hiring and negligent supervision of a sexual abuser subject to the three-year limitations period in Wis. Stat. § 893.54?

(3) If Wis. Stat. § 893.587 applies to Fleming's claims against a non-abuser, does § 893.587 operate as a statute of repose to which no tolling provision applies, thus barring any claims brought after the injured party turns 35 years old, or as a statute of limitations, such that the tolling provisions in Wis. Stat. § 893.13 apply to extend the time within which Fleming may file her action under § 893.587?