COURT OF APPEALS
DECISION
DATED AND RELEASED

October 22, 1996

No. 96-1970

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

IN THE INTEREST OF MIYA L.A.,
A PERSON UNDER THE AGE OF 18:

STATE OF WISCONSIN,

Plaintiff-Respondent,

v.

MIYA L.A.,

Defendant-Appellant.

APPEAL from an order of the circuit court for Milwaukee County: MEL FLANAGAN, Judge. *Affirmed*.

FINE, J. Miya L.A. appeals from a dispositional order entered by the circuit court assigned to hear cases arising under Chapter 48 of the Wisconsin Statutes.[1] Miya is a juvenile who was born on May 7, 1983. The

[1] Chapter 48 of the Wisconsin Statutes has been substantially revised by the Juvenile Justice Code, 1995 Wis. Act 77, generally effective July 1, 1996. *See* 1995 Wis. Act 77 § 9400. Miya does not contend that any of the provisions with earlier effective dates apply to this appeal. *See also*

dispositional order was entered February 22, 1996, and, upon a finding that Miya violated the provisions of §§ 947.01 and 939.63, STATS., disorderly conduct while armed, found her to be delinquent, placed her on probation, and ordered that she be placed at the Sunburst Residential Treatment Center. *See* § 48.02(3m), STATS. (with exceptions not here relevant, a child who is twelve or older but under the age of eighteen is a "delinquent" if he or she "has violated any state or federal criminal law"); § 48.12(1), STATS. (with exceptions not here relevant, circuit court assigned jurisdiction under Chapter 48 "exclusive jurisdiction" over child alleged to be delinquent); § 48.34(2) & (3)(d), STATS. (child adjudged delinquent may be put on probation and placed at a residential treatment center). Miya argues that the dispositional hearing was not timely, and, therefore, that the circuit court lost competency to enter the dispositional order. She also argues that the circuit court did not make the requisite written findings to support her placement outside of her home. We affirm.

(..continued)
1995 Wis. Act 275, which concerns neglected and abused children and termination of parental rights. All statutory provisions cited or referred to in this decision are to the 1993–1994 edition of the Wisconsin Statutes.

1. *Timeliness of dispositional order*.

Section 48.30(6), STATS., provides, as relevant here, that a dispositional hearing is to be held "no more than 30 days from the plea hearing," if the delinquency petition is not contested. This time limit is mandatory, and the circuit court loses competency to exercise jurisdiction over the child unless the deadline is met. ***In Interest of R.H.***, 147 Wis.2d 22, 35, 433 N.W.2d 16, 22 (Ct. App. 1988), *aff'd by an equally divided court*, 150 Wis.2d 432, 441 N.W.2d 233 (1989); ***In Matter of J.R.***, 152 Wis.2d 598, 603–604, 449 N.W.2d 52, 54 (Ct. App. 1989). Nevertheless, the time limit in § 48.30(6) is not wholly procrustean. Section 48.315, STATS., provides, as material here:

> **48.315 Delays, continuances and extensions. (1)** The following time periods shall be excluded in computing time requirements within this chapter:
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> (a) Any period of delay resulting from other legal actions concerning the child, including an examination under s. 48.295 or a hearing related to the child's mental condition, prehearing motions, waiver motions and hearings on other matters.
>
> (b) Any period of delay resulting from a continuance granted at the request of or with the consent of the child and counsel.
>
> ....
>
> (d) Any period of delay resulting from a continuance granted at the request of the representative of the public under s. 48.09 if the continuance is granted because of the unavailability of evidence material to the case when he or she has exercised due diligence to obtain the evidence and there are reasonable grounds to believe that the evidence will be available at the later date, or to allow him or her additional time to prepare the case and additional time is justified because of the exceptional circumstances of the case.

> ....
>
> (f) Any period of delay resulting from the absence or unavailability of the child.
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> ....
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> **(2)** A continuance shall be granted by the court only upon a showing of good cause in open court or during a telephone conference under s. 807.13 on the record 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.

"[T]he enumerated specific circumstances noted in sec. 48.315(1) do not provide the exclusive grounds for time extensions." ***In Matter of J.R.***, 152 Wis.2d at 607, 449 N.W.2d at 56. Rather, "[a] continuance may be granted directly under sec. 48.315(2), Stats." ***In Interest of G.H.***, 150 Wis.2d 407, 418, 441 N.W.2d 227, 232 (1989). Interpretation of this statute is a question of law subject to *de novo* review on appeal, ***In Matter of J.R.***, 152 Wis.2d at 603, 449 N.W.2d at 54, as is what constitutes "good cause" for a continuance, ***In Interest of Jason B.***, 176 Wis.2d 400, 407, 500 N.W.2d 384, 387 (Ct. App. 1993).

The plea hearing in this case was held on November 16, 1995. Miya did not contest the petition, and the circuit court adjudged her to be delinquent. A dispositional hearing thus had to be held no later than December 18, 1995.[2] The dispositional hearing was scheduled for December 12, 1995. On November 24, 1995, Miya absconded from the non-secure facility at which she had been placed. According to the judgment roll, there was a "capias return" on November 29, 1995, and the proceedings indicate that Miya was arrested at her home after Miya's mother contacted the social worker. At the next court

[2] Thirty days from November 16, 1995, is December 16, 1995, a Saturday. *See* § 990.001(4)(a), STATS. (first day of calculation is excluded; last day of calculation is included). Section 990.001(4)(c), STATS., provides that Saturdays are excluded from the calculation when the governmental office does not have office hours on a Saturday; in such a case, "the proceeding may be had ... on the next succeeding day that is not a Sunday or a legal holiday."

date, December 1, 1995, Miya was placed in secure detention, which shortened the time limit imposed by § 48.30(6), STATS., to ten days, or to December 11, 1995. As permitted by § 48.315(1)(b), STATS., Miya's counsel agreed to the dispositional hearing remaining on December 12, 1995.

On December 12, 1995, the circuit court directed the social welfare worker to seek a residential-treatment facility for Miya, and directed that, in the interim, Miya be placed in a non-secure facility. The dispositional hearing was adjourned to determine what facilities would be appropriate for Miya and whether they would accept her. The social worker indicated in response to a question from the circuit court that she did not "know how long" the process would take, but that she would seek to have the answers "as soon as possible." The adjourned hearing was set for December 28, 1995, for the convenience of Miya's lawyer, who indicated that he would be at the Children's Court Center on that date.

On December 28, 1995, the social worker told the circuit court that the plan to be recommended to the court was that Miya be placed in a group home and that, pending final arrangements, Miya should "stay in a group home until that placement occurs." The circuit court agreed, and rejected the suggestion by Miya's attorney that she be sent home in the interim. The matter was set for further review on March 4, 1996.

On January 25, 1996, Miya's case returned to court. The facility at which Miya was to be placed pursuant to the circuit court's oral order for probation refused to accept her. In light of the need for further arrangements to find an appropriate residential treatment center for Miya, the case was adjourned until February 22, 1996. As permitted by § 48.315(1)(b), STATS., Miya's lawyer consented to the adjournment.

Miya argues that the circuit court lost competency to act in the case on December 15, 1995.[3] As we have seen, however, the trial court held a dispositional hearing on December 12, 1995. The subsequent dates were

[3] But see footnote number 1, *supra*. Moreover, Miya's calculation does not account for the time during which Miya was in absconder status. *See* § 48.315(1)(f), STATS.

adjournments for further and necessary proceedings. Each of the adjournments was necessary to effectuate the dispositional program outlined by the trial court. The reason for each of the adjournments was explicated "in open court" and "on the record." *See* § 48.315(2), STATS. It is irrelevant that the circuit court never used the magic words "good cause" in explaining why the adjournments were needed. *See* ***Waukesha County v. Darlene R.***, 201 Wis.2d 633, 643, 549 N.W.2d 489, 493 (Ct. App. 1996). Moreover, each of the adjournments was made with at least Miya's tacit consent. *See* § 48.315(1)(b), STATS. On our *de novo* review, each of the adjournments was for "good cause." *See* § 48.315(2).

2. *Miya's placement outside of her home*.

Miya argues that the circuit court did not comply with § 48.355(2), STATS., which specifies what the dispositional order must contain:

> CONTENT OF ORDER; COPY TO PARENT. (a) In addition to the order, the judge shall make written findings of fact and conclusions of law based on the evidence presented to the judge to support the disposition ordered, including findings as to the child's condition and need for special treatment or care if an examination or assessment was conducted under s. 48.295. A finding may not include a finding that a child is in need of psychotropic medications.
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> (b) The court order shall be in writing and shall contain:
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> ....
>
> 6. If the child is placed outside the home, the court's finding as to whether a county department which provides social services or the agency primarily responsible for the provision of services under a court order has made reasonable efforts to prevent the removal of the child from the home or, if applicable, that the agency primarily responsible for the provision of services under a court order has

> made reasonable efforts to make it possible for the child to return to his or her home.

Miya does not contend, however, that her placement at the residential treatment center is not supported by the evidence. This is how her reply brief in this court frames her argument: "Appellant has not argued that the record does not support an out-of-home placement for Miya, but rather that the court has failed to comply with the mandatory requirement that its written order include a finding that the county department `has made reasonable efforts to prevent removal of the child from the home.'"

The circuit court's findings made on the record, both on December 12, 1995, and on February 22, 1996, fully satisfy the requirements of § 48.355(2)(b)6, STATS.:

December 12, 1995:

Perhaps we could consider some in-home treatment services, but I

> don't see that as a possibility at least initially and I -- it's only with great reluctance that I consider an out-of-home placement for someone as young as Miya and with a lack of background that she has, but we have, during the course of this review of this disorderly conduct while armed, tried a number of in-home services that have all failed. We tried In-house, we placed her in shelter, she did not follow the in-house order, she ran from shelter, she -- Miya has not shown that she can really buckle down and follow rules yet.
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> ....
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> ... And she continues to engage in behavior which is indicated in the psychological and the AODA assessment that's clearly very dangerous for her, and she does appear to have some very significant treatment needs....

February 22, 1996:

> [The psychological] report is extremely compelling, and I can't imagine a much more compelling argument for residential treatment than ... in that report, and it's one that convinces the Court that we need to take that step. As drastic as that may be to the family situation, the hope is that we get her home as soon as possible and maybe in some outpatient counseling once she gets home, and then she can go home and stay home.
>
> The success of her going home now would be extremely risky to impossible, and I don't think that there's any chance that that would be in her best interest, so I am going to order that she be placed in residential treatment and that she successfully complete the residential treatment program, including educational and counseling components, that she have no AWOLs or disruptive behavior, and that her successful completion be determined by the treatment staff and the probation staff jointly, and that she will have a concurrent period of one year probation, and she will follow the regular rules of probation, including keeping in contact with the probation agent....

It is true that these findings, reduced to writing in the circuit court's written verbatim transcript, were not repeated on the formal dispositional order entered on February 22, 1996. There was, however, no need to do so. *See* ***Gumz v. Chickering***, 19 Wis.2d 625, 636, 121 N.W.2d 279, 285 (1963) (trial court's "oral determination" on the record is, when "reduced to writing," equivalent to a "`memorandum decision'" required by the rules). Moreover, Miya merely seeks a remand so the circuit court can "consider whether specific findings required by sec. 48.355(2)(b) can be made." The circuit court has already made that determination, and physical attachment of the written transcripts to the formal dispositional order would satisfy even the most crabbed reading of the statute. Miya's substantial rights were not affected by the way the circuit court

reified its carefully reasoned and well-supported findings. *See* RULE 805.18, STATS. (any error or defect to be disregarded unless substantial right affected).[4]

By the Court.—Order affirmed.

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

[4] RULE 801.01, STATS., provides that chapters 801 through 847 govern all "civil actions and special proceedings," unless superseded by another statute or rule. An action under chapter 48 is a "special proceeding." ***Lueptow v. Schraeder***, 226 Wis. 437, 444, 277 N.W. 124, 127 (1938).