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October 18, 2022

Sheila T. Reiff
Clerk, Wisconsin Supreme Court
110 East Main Street, Suite 215
P.O. Box 1688
Madison, Wisconsin 53701-1688

RE: Petitioner-Respondent's Response to P.D.G.'s Petition for Review
In the Matter of the Mental Commitment of P.D.G.
Winnebago County v. P.D.G.
Appeal No. 2022AP606
Winnebago County Case Number: 2021ME497

Dear Clerk Reiff,

The purpose of this letter is to move the Court to deny P.D.G.'s Petition for Review because this Court's primary function is to clarify or interpret the law, not review facts, review issues forfeited at trial or review discretionary acts of the court.

"Supreme court review is a matter of judicial discretion, not of right, and will be granted only when special and important reasons are presented." Wis. Stat. § 809.62(1r). No such reasons have been presented by P.D.G.. Nor have the criteria in Wis. Stat. § 809.62(1r) been met.

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P.D.G. raises two issues for this court to consider: first, whether the trial court properly denied P.D.G.'s second request for an adjournment of his final hearing, and second, whether there was sufficient evidence for the court to conclude that the doctor had given a reasonable explanation to P.D.G. of the advantages, disadvantages and alternatives to accepting medication or treatment. This court should deny P.D.G.'s petition for review for the following reasons.

The denial of P.D.G.'s second adjournment request.

First, as the court of appeals correctly points out, this issue was forfeited by trial counsel when he failed to make the argument to the court that the case could be adjourned more than twice and more than seven days. Issues forfeited at trial should not make their way to the highest court of the state. See *Brooks v. Hayes*, 133 Wis. 2d 228, 241, 395 N.W.2d 167 (1986) ("The general rule is that this court will not consider arguments raised for the first time on appeal or review."). On appeal, and as pointed out by the court of appeals in footnote 3, P.D.G "develops no argument in support of his assertion" that a second adjournment could be granted. Arguments not developed on appeal, should not be accepted by this court for review.

Next, P.D.G. does not bring an issue to this court that will help develop, clarify or harmonize the law. The decision whether to grant or deny an adjournment request is well within the court's discretion. *Waukesha County v. E.J.W.*, 2021 WI 85 P 34, 399 Wis.2d 471, 966 N.W.2d 590. Factors the court can consider when exercising its discretion to grant or deny an adjournment request are found in *State v. Wollman,* 86 Wis. 2d 459, 273 N.W.2d 225 (1979). As pointed out by the court of appeals, consideration of these factors does not weigh in P.D.G.'s favor. The record is clear that P.D.G.'s counsel made the first request the day before the hearing because he had not yet spoken to his client and needed time to advise him of his rights. The trial court not only granted his request, but he also provided a meeting room for the attorney-client conference to take place. When it denied the second request, the court noted that the court's calendar could not accommodate such request within the statutory time allowed. The court's discretion to control its docket is a well settled principle in law and the facts of this case and application of time limits in Wis. Stats. § 51.20(10)(e), do not demand clarification. See *Hefty v. Strickhouser*, 2008 WI 96, p 31, 312 Wis. 2d 530, 752 N.W.2d 820. Litigants' cases must negotiate both time limits and the court's calendar.

Thirdly, this issue is highly factual. The trial court made it clear its calendar could not accommodate another adjournment within the strict time limits, which are clear in the statute. As pointed out by P.D.G. this is not an issue that is reviewed by the court of appeals very often, if ever. Unlike general civil litigation, litigants in Chapter 51 cases

must be ready for trial within a short time period. The public defender's office must appoint counsel promptly and, if they feel it necessary, counsel must demand discovery early

The sufficiency of the evidence.

First, a decision by this Court will not help develop, clarify, or harmonize the law. The law in this area is clearly spelled out in Wis. Stat. § 51.61(1)(g)4. and by this Court only nine years ago in *Outagamie County v. Melanie L.*, 2013 WI 67, 349 Wis. 2d 148, 833 N.W. 607. This Court observed that the language of the particular portion of the statute P.D.G. focuses on "is largely self-explanatory." *Id.* at ¶ 67. "A person subject to a possible mental commitment or a possible involuntary medication order is entitled to receive from one or more medical professionals a reasonable explanation of proposed medication." *Id.* This court arrived at this holding after applying legal principles of statutory interpretation that begins with evaluating the language of the statute and ended with an understanding that avoids unreasonable or absurd results. Adopting P.D.G.'s literal interpretation of this statute would ignore established principles of statutory interpretation and would produce unreasonable and absurd dictates to lower courts.

Fourth, the court of appeals' decision is not in conflict with any controlling opinions of the United States Supreme Court, this Court, or the court of appeals. As the court of appeals points out in its decision, P.D.G. cites no controlling case law for his position. In his petition to this court, he cites a few unpublished cases. These cases do not demonstrate a serious conflict within the courts that needs attention by this Court because they are all factually unique and involve the application of a reasonableness standard to each individual case. Naturally, applying a reasonableness standard to different facts produces different outcomes.

Furthermore, P.D.G.'s case is factual in nature and concerns the unique duty of the trial court to exercise its discretion when it evaluates the credibility of the evidence presented and applies a reasonableness standard to the doctor's explanation of the advantages, disadvantages and alternatives to a particular medication. In P.D.G.'s case, the court considered the uncontroverted testimony of one expert and the testimony of P.D.G. who will not take medication voluntarily to treat his schizophrenia because he rejects western medicine, and determined that the legal standard was met by applying the facts to the law.

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For these reasons, the County respectfully requests that this Court deny P.D.G.'s Petition. The County's letter response is being filed within 14 days after service of P.D.G.'s Petition which the County received on October 6, 2022. Wis. Stats. § 809.62(3).

Sincerely,

Catherine B. Scherer

Catherine B. Scherer
Assistant Corporation Counsel for
Winnebago County

cc: Attorney Colleen Ball, Assistant State Public Defender
file

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