IN THE
ARIZONA COURT OF APPEALS
DIVISION ONE

STATE OF ARIZONA, *Petitioner*,

v.

THE HONORABLE JAY POLK, Judge of the SUPERIOR COURT OF THE STATE OF ARIZONA, in and for the County of MARICOPA,
Respondent Judge,

TOMAS JORGE SILVAS, *Real Party in Interest*.

No. 1 CA-SA 22-0108
FILED 1-24-2023

Petition for Special Action from the Superior Court in Maricopa County
No. MS2021-000003
The Honorable Jay M. Polk, Judge

JURISDICTION ACCEPTED;
RELIEF GRANTED IN PART AND DENIED IN PART

COUNSEL

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By Quinton S. Gregory
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OPINION

Presiding Judge Brian Y. Furuya delivered the opinion of the Court, in which Judge Jennifer B. Campbell and Judge David D. Weinzweig joined.

F U R U Y A, Judge:

¶1 The State petitions for special action relief from a disclosure order ("Order") entered by the superior court in this civil commitment proceeding under the Sexually Violent Persons Act. *See* A.R.S. §§ 36-3701 to -3717 (the "Act"). For the following reasons, we accept special action jurisdiction and grant the relief requested in part and deny in part.

FACTS AND PROCEDURAL HISTORY

¶2 In 1977, when Silvas was 18 years old, he was convicted of armed rape and sentenced to prison. In 1990—while serving a prison sentence for another offense—he was convicted of kidnapping a detention officer and was sentenced to an additional prison sentence to end in 2021.

¶3 Before Silvas' release, the Arizona Department of Corrections had an expert conduct a screening evaluation, pursuant to A.R.S. § 36-3702(C), and determined Silvas was a sexually violent person under the Act. The State then filed a petition under A.R.S. § 36-3704 seeking his continued detention after his release from prison.[1] The superior court found that Silvas' armed rape could qualify as a sexually violent offense under A.R.S. § 36-3701(6) and that probable cause exists for a trial to determine if he should be civilly committed.

¶4 The court ordered the State to examine Silvas and disclose any expert report under A.R.S. § 36-3701(2), so Silvas could then decide whether to retain his own mental health expert witness. The court interpreted the simultaneous-evaluation requirement of A.R.S. § 36-3703(A) to favor the defendants, specifically for defendants to choose whether an evaluation is necessary. The State petitioned for special action relief.

[1] After his release from prison, Silvas has been detained in the maximum-security wing of the Arizona State Hospital—the Arizona Community Protection and Treatment Center—pursuant to A.R.S. § 36-3705 until the resolution of the State's petition.

¶5 We accept special action jurisdiction because the State has no "equally plain, speedy, and adequate remedy by appeal," Ariz. R. P. Spec. Actions 1(a), and the petition presents a purely legal question of statewide importance, which is likely to recur, *Jordan v. Rea*, 221 Ariz. 581, 586 ¶ 8 (App. 2009).

DISCUSSION

I. The Act and Applicable Standards of Review.

¶6 This special action requires us to clarify requirements for conducting professional psychiatric or psychological evaluations of alleged sexually violent persons under the Act. The Act permits courts to civilly commit individuals who the State can prove beyond a reasonable doubt have previously committed a sexually violent offense and have a mental disorder that "predisposes the person to commit sexual acts to such a degree that he or she is dangerous to others," making it "highly probable" they will commit sexual violence. *In re Leon G.*, 204 Ariz. 15, 23 ¶ 28 (2002); A.R.S. § 36-3701(7).

¶7 To protect against unwarranted detentions, the Act requires that the court appoint mental health experts to examine and evaluate potentially sexually violent persons. A.R.S. § 36-3705(G). Each party may hire their own expert, if they so choose. A.R.S. § 36-3703(A). The parties must disclose the identity of each expert for the court's approval before any evaluation. *See* A.R.S. § 36-3701(2); -3705(G). The experts must "share access to all relevant medical and psychological records, test data, test results and reports," and must disclose a written report of their evaluations at least ten days before trial if the parties intend to call them as witnesses. A.R.S. § 36-3703(C), (D).

¶8 We review issues of statutory interpretation de novo. *See Pima Cnty. v. Pima Cnty. Law Enf't Merit Sys. Council*, 211 Ariz. 224, 227 ¶ 13 (2005). When interpreting a statute, we seek to give effect to legislative intent, looking "first to the statute's plain language as the best indicator of legislative intent, giving the statute's words their ordinary meaning, and applying a sensible construction to avoid absurd results." *Mountainside MAR, LLC v. City of Flagstaff*, 253 Ariz. 448, 450 ¶ 9 (App. 2022) (citations omitted). If the statute is clear and unambiguous, we do not resort to other statutory construction principles. *Id.*

II. The Act's Requirement of "Simultaneous Evaluations" Means They Must Be as Temporally Proximate as Practicable.

¶9 We begin with the evaluation and disclosure requirements in A.R.S. § 36-3703(A) and (D), which read:

> A. If a person is subject to an examination under this article, each party may select a competent professional to perform simultaneous evaluations of the person. The parties may stipulate to an evaluation by only one competent professional.
>
> . . . .
>
> D. A competent professional who is retained by a party or who is appointed by the court is not permitted to give testimony unless the competent professional exchanges information as required by this section and, at least ten days before trial, submits to the court and all of the parties a written report of the competent professional's evaluation of the person.

¶10 We previously addressed A.R.S. § 36-3703(A)'s "simultaneous evaluations" requirement in *Walter v. Wilkinson*, 198 Ariz. 431, 434 ¶ 15 (App. 2000). In *Walter*, the court confirmed appointment of three mental health experts to evaluate the petitioner as a potentially sexually violent person. *Id.* at 432 ¶ 2. The petitioner requested that all three experts be present at, and perform, one unitary evaluation, citing A.R.S. § 36-3703(A)'s requirement that such evaluations must be simultaneous. *Id.* We agreed with the State, however, that the statute permits independent, non-concurrent examinations of a sexually violent person if they "occur in close temporal proximity to one another." *Id.* at 434 ¶ 15. This construction of the "simultaneous evaluations" requirement is not an exact adherence to the standard meaning of "simultaneous." *See id.* at 433 ¶ 9. However, we so held because requiring experts to conduct multiple examinations in the same session would significantly impair the ability of the experts to evaluate the defendant, an absurd result inconsistent with the Legislature's intentions for these statutes. *Id.* at 433–34 ¶¶ 13–15; *see Bustos v. W.M. Grace Dev.*, 192 Ariz. 396, 398 (App. 1997) (explaining statutory interpretations should not lead to absurd results).

¶11 Here, the court ordered the parties to undertake sequential evaluations, enabling Silvas to review the State's expert's report before having his own evaluation. This procedure would require the State to disclose its expert's identity, perform the evaluation and create a report,

and then disclose that report, all before Silvas would need to decide whether to have an evaluation of his own. That could result in the expert evaluations occurring days—or perhaps weeks or months—apart. The superior court relied on *Walter*'s interpretation of "simultaneous evaluations" as the basis for requiring this process. The State argues that such delay between evaluations is too long to satisfy the requirement of "simultaneous evaluations." Silvas counters that although the Order commands serial evaluations, it complies with the statute because the evaluations will occur within a "short time frame." We disagree.

¶12 To preserve A.R.S. § 36-3703(A)'s intent and purpose, we confirm our holding in *Walter,* that multiple mental health evaluations need not be conducted within a single session to qualify as "simultaneous." *Walter*, 198 Ariz. at 434 ¶ 15. Nevertheless, we cannot ignore the significance of the Legislature's choice to use the word "simultaneous" to describe when evaluations should be conducted. A.R.S. § 36-3703(A); *see Mountainside MAR, LLC*, 253 Ariz. at 450 ¶ 9. "Simultaneous" indicates the circumstance of two events or occurrences happening at the identical time, an especially close temporal relationship. *See Walter*, 198 Ariz. at 433 ¶ 9. Acknowledging *Walter*, we clarify that while multiple evaluations need not occur within the same session, they must still occur as close in time as practicable to each other. How close in time will depend on the context of each case, but usually the same day, if possible. Undoubtedly, circumstances may require evaluations to be done on different days, such as where multiple evaluations would take too long to complete on a single day. In such an event, the court might order the evaluations to occur on separate days, if the circumstances of the case make such delayed scheduling necessary. However, conducting evaluations separated by any more time than what is necessary would not comply with the requirement to perform "simultaneous evaluations." A.R.S. § 36-3703(A).

¶13 In this case, therefore, the Order permitting Silvas to delay disclosure of his chosen expert's identity and that expert's examination of Silvas until after the State discloses its expert report does not comply with A.R.S. § 36-3703(A) and was error as a matter of law. Accordingly, we vacate this portion of the Order and direct the court on remand to require Silvas to disclose the identity of any testifying expert he retains simultaneously with the State. The court must further instruct Silvas that any expert witness he intends to retain must evaluate him within "close temporal proximity" to the evaluation conducted by the State's expert, meaning the evaluations must occur on the same day, or on different days separated by only such time as necessity demands. *Walter*, 198 Ariz. at 434 ¶ 15.

¶14 Because we grant relief regarding the issue of simultaneous evaluations, we need not discuss the State's other arguments regarding that issue. *See Pima Cnty. Hum. Rts. Comm. v. Ariz. Dep't of Health Servs.*, 232 Ariz. 177, 182 ¶ 17 n.5 (App. 2013) (explaining the Court of Appeals declines to decide issues not required to dispose of appeal).

III. Simultaneous Report Disclosure is Not Required.

¶15 The State also argues the parties must disclose their experts' reports simultaneously, and that A.R.S. § 36-3703(D) does not permit a court to order sequential disclosure of expert reports. *See* A.R.S. § 36-3703(D). But § 36-3703(D) does not prohibit sequential disclosure of expert reports, either. It only requires the experts to share information and disclose a written report of their evaluations at least ten days before trial if they are to testify. *Id.* Nothing in the statute prohibits a court from setting disclosure deadlines greater than ten days before trial or from setting separate disclosure deadlines for each of the parties, so long as they remain compliant with the statute. *See id.* Therefore, the portion of the Order requiring the State to disclose its report before Silvas discloses his own expert's report was not error.

¶16 We therefore deny the State's request for relief regarding the Order's requirement that the State disclose its expert's report before Silvas' expert's report. However, to avoid confusion, we clarify that regardless of the timing of Silvas' disclosure of his own expert's report, if Silvas' expert's evaluation does not occur in close temporal proximity to the State's expert's evaluation as clarified herein, or if Silvas' expert did not share information with the State's expert, Silvas cannot call such expert to testify on his behalf or introduce such expert's report as evidence.

CONCLUSION

¶17 Accepting special action jurisdiction, we grant relief, in part, by vacating the portion of the Order mandating sequential evaluations, and we deny relief, in part, as to the question of simultaneous report disclosures, and we remand for further proceedings consistent with this opinion.