

**COURT OF APPEALS  
DECISION  
DATED AND RELEASED**

July 25, 1996

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See § 808.10 and RULE 809.62, STATS.

**NOTICE**

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

**No. 96-0234**

**STATE OF WISCONSIN**

**IN COURT OF APPEALS  
DISTRICT IV**

**IN THE INTEREST OF THORNON T.,  
A CHILD UNDER THE AGE OF 18:**

**STATE OF WISCONSIN,**

**Petitioner-Respondent,**

**v.**

**THORNON T.,**

**Respondent-Appellant.**

APPEAL from an order of the circuit court for Dane County: ROBERT PEKOWSKY, Judge. *Reversed and cause remanded.*

DYKMAN, J. This appeal is decided by one judge pursuant to § 752.31(2)(e), STATS. Thornon T. appeals from an order extending his delinquency disposition for a one-year period. Thornon argues that: (1) he was deprived of due process because he received inadequate notice and (2) the court invalidly ordered the extension without the inquiries, information and findings required by statute. We conclude that he received proper notice. We also conclude that the court's order did not contain the findings necessary under

§ 48.355, STATS. We therefore reverse the order and remand to the court to make the findings mandated by statute.

## BACKGROUND

Thornon T. was found delinquent several times from 1989 to 1992. On September 8, 1992, the juvenile court entered a dispositional order under which Thornon was placed under delinquency supervision at the Norris Adolescent Center for a one-year period ending September 7, 1993. On November 13, 1992, after a hearing on a petition for a change of placement, the juvenile court found that he was a danger to the community in his current state and ordered that he be transferred to Ethan Allen School for Boys. The juvenile court extended the dispositional order on both August 27, 1993 and August 23, 1994.

On December 23, 1994, Thornon was released from Ethan Allen to the home of his grandmother, who served as his guardian. On February 23, 1995, Thornon's release was revoked and he was transferred back to Ethan Allen because he committed three violations of his juvenile supervision and aftercare conditions. Thornon remained at Ethan Allen except for a six-week period during which he was evaluated at Mendota Mental Health Institution.

On July 17, 1995, Beth Remitz, a social worker at Ethan Allen, filed a petition for extension of the dispositional order. After a hearing on August 10, 1995, at which Remitz, Thornon, and Thornon's grandmother testified, the court ordered Thornon's dispositional order extended until August 9, 1996. Thornon appeals.

## NOTICE

Thornon argues that he was denied due process because the State did not disclose in advance the specific basis of its request for an extension. During Thornon's extension hearing, Remitz testified from a report prepared by

Ann Gielau, Thornon's probation and parole agent.<sup>1</sup> Thornon argues that he did not have proper notice that the State would rely on this report during the hearing.

It is not disputed that a juvenile has due process rights during an extension hearing. The parties disagree, however, as to what notice will satisfy Thornon's due process rights.

When the state seeks to extend a dispositional order, the juvenile's liberty interest is implicated. *In Interest of S.D.R.*, 109 Wis.2d 567, 572, 326 N.W.2d 762, 765 (1982). When government action deprives a person of liberty, the procedural guarantees of the due process clause apply. *Id.* at 572-73, 326 N.W.2d at 765. The Wisconsin Supreme Court, after reviewing the juvenile process provided for in Chapter 48, STATS., concluded that juveniles are entitled to "full procedural due process protections" on at least a yearly basis. *Id.* at 575, 326 N.W.2d at 766.

In *In re Gault*, 387 U.S. 1 (1967), the United States Supreme Court discussed the notice necessary to satisfy due process when a juvenile is charged with being delinquent. The Court stated: "Due process of law ... does not allow a hearing to be held in which a youth's freedom and his parents' right to his custody are at stake without giving them notice, in advance of the hearing, of the specific issues that they must meet." *Id.* at 33-34. Thus, the State needed to give Thornon notice of the specific issues that he must meet at the extension hearing.

We conclude that Thornon had adequate notice of the issues he needed to face at the extension hearing. Under § 48.365(2g)(a), STATS., "the person or agency primarily responsible for providing services to the child shall file with the court a written report stating to what extent the dispositional order has been meeting the objectives of the plan for the child's rehabilitation or care and treatment." Remitz filed a report with the court pursuant to this statute. The report stated:

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<sup>1</sup> Thornon characterizes the reading of this report as the introduction of "double hearsay." Thornon does not explain, however, how the introduction of hearsay implicates his due process rights.

It is well documented in the Field Services Supplementary Report presented by probation and parole agent, Ann Gielau, that Thornon had three rule violations while on aftercare and a decision was made to return him to Ethan Allen School as a consequence to those rule violations.

The report also itemized the three rule violations:

Thornon T[.] was revoked for having failed to attend his scheduled counseling appointments at Soport on 02/23/95. Thornon also refused to sign the new aftercare conditions which were added to his rules of supervision. Thornon was also involved in new illegal behavior, specifically entering a dwelling without permission and taking items that did not belong to him.... After Thornon discussed his current situation with his agent, Ann Gielau, and with his social worker, Beth Remitz, he came to understand that he had three total rules violations.

From this report, it should have been clear to Thornon that the State sought to extend his disposition in part because of the fact that he committed three rule violations during his aftercare. The report makes it clear that information pertaining to the rules violations is contained in the records of Ann Gielau. These records were in Thornon's case file at Ethan Allen, and Thornon had access to the case file. We conclude that the notice provided to Thornon satisfied due process requirements.

#### FINDINGS REQUIRED UNDER STATUTE

Thornon argues that the court's order extending the disposition order did not satisfy the requirements of §§ 48.355 and 48.365, STATS. The court's order extending Thornon's disposition reads in pertinent part:

Based on all the records, files, and proceedings herein and heretofore in the above entitled matter, the Court finds as follows:

A report has been filed with the Court pursuant to sec. 48.365(2g), Wis. Stats., which together with the testimony and evidence presented, shall serve as the factual basis of this order.

The delinquency finding is affirmed and the Petition for Extension is granted. Legal custody is continued with the Dane County Department of Human Services for a period of one (1) year through midnight August 9, 1996. Supervision is transferred to the State Department of Health and Social Services, Division of Youth Services with placement at Ethan Allen School for Boys.

An extension order can be entered only after compliance with § 48.365, STATS., which includes a requirement that the court issue an order under § 48.355, STATS. *See* § 48.365(2m)(a), STATS. Section 48.355(2)(b) provides that the court order "shall be in writing and shall contain" certain specific information. In addition, § 48.355(2)(a) provides that "[i]n 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."

The court's order does not meet the requirements of § 48.355, STATS. Specifically, the court order does not contain "[t]he specific services or continuum of services to be provided to the child and family"<sup>2</sup> or "the court's finding as to whether ... 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."<sup>3</sup>

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<sup>2</sup> *See* § 48.355(2)(b)1, STATS.

<sup>3</sup> *See* § 48.355(2)(b)6, STATS. In addition, § 48.355(2c)(b) provides as follows:

When a court makes a finding under sub. (2)(b)6. as to whether the agency primarily responsible for providing services to the

The State argues that the court, by ordering that Thornon be placed under supervision of the State Division of Youth Services for placement at Ethan Allen, specified the services to be provided to Thornon and his family. The court's obligation to make a placement decision, however, is separate from its obligation to specify services to be provided to the child and family. Section 48.355(2)(b)2, STATS., provides that the court order shall contain the name of the place or facility where the child shall be cared for or treated if the child is placed outside the home. Section 48.355(2)(b)1 separately provides that the order shall contain the specific services to be provided to the child and family. Thus, the order did not satisfy the requirement that the court specify services by providing that Thornon would be placed at Ethan Allen.

(..continued)

child under a court order has made reasonable efforts to make it possible for the child to return to his or her home, the court's consideration of reasonable efforts shall include, but not be limited to, the considerations listed under par. (a) 1. to 5. and whether visitation schedules between the child and his or her parents were implemented, unless visitation was denied or limited by the court.

Section 48.355(2c)(a) states that the court's consideration of reasonable efforts shall include whether:

1. A comprehensive assessment of the family's situation was completed, including a determination of the likelihood of protecting the child's welfare effectively in the home.
2. Financial assistance, if applicable, was provided to the family.
3. Services were offered or provided to the family, if applicable, and whether any assistance was provided to the family to enable the family to utilize the services....
4. Monitoring of client progress and client participation in services was provided.
5. A consideration of alternative ways of addressing the family's needs was provided, if services did not exist or existing services were not available to the family.

The court's order does not make any of these findings.

The State also argues that the court specifically based its factual findings upon the social worker's court report, which provided the specific services to be given to the child and his family, a statement of conditions with which Thornon must comply, and information as to whether reasonable efforts had been made to make it possible for Thornon to return home. However, the fact that the report, along with the testimony and evidence presented, served as the factual basis of the court's order does not extinguish the requirement of § 48.355(2)(b)1, STATS., that the services to be provided to the child and family be specified in writing by a court order.

The court also did not make written findings of fact and conclusions of law based on the evidence presented to support the disposition ordered, as required by § 48.355(2)(a), STATS. The court stated that the report, evidence and testimony shall serve as the factual basis for the order without making any specific findings of fact.

The purpose of Chapter 48, STATS., is in part to "provide judicial and other procedures through which children and all other interested parties are assured fair hearings and their constitutional and other legal rights are recognized and enforced, while protecting public safety." Section 48.01(1)(a), STATS. The procedural requirements of § 48.355, STATS., are a legislative mandate and help protect a juvenile's constitutional right to due process.

In addition, section 48.355(1), STATS., states in pertinent part:

The disposition shall employ those means necessary to maintain and protect the child's well-being which are the least restrictive of the rights of the parent or child and which assure the care, treatment or rehabilitation of the child and the family, consistent with the protection of the public.

The requirements of § 48.355 that the court's order be in writing and contain specific findings and that the court make written findings of fact and conclusions of law to support the disposition ordered help to ensure that the judge's decision is consistent with the legislative intent set forth in § 48.355(1). Because the court's order does not satisfy the requirements of § 48.355, we

reverse and remand the proceeding so that the trial court can make findings consistent with the requirements of § 48.355.<sup>4</sup>

*By the Court.* – Order reversed and cause remanded.

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

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<sup>4</sup> The juvenile court ordered the one-year extension of Thornon's dispositional order on August 11, 1995. Thornon's appellate counsel did not file a notice of appeal until January 22, 1996. On April 12, 1996, this court notified counsel that his brief in this matter was delinquent. On April 16, 1996, counsel moved the court for an order extending the time for filing the initial brief until April 30, 1996. The motion was granted, and the brief was finally filed on April 30, 1996. On May 23, 1996, counsel moved the court for an order extending the time for filing his reply brief until June 30, 1996. We regret that we granted this extension which added about two weeks to the time this appeal was pending. Appellant's reply brief was filed on July 1, 1996, and the clerk sent all briefs to this court on July 3, 1996.

Almost eleven months passed between Thornon's extended dispositional order and Thornon's final brief. By the time this court could consider the merits of Thornon's appeal, the issue was almost moot. When we release this opinion, it will be impossible for the trial court to comply with this court's mandate by August 10, 1996, because remittitur will not occur for thirty-one days. RULE 809.26(1), STATS. The result is that this appeal is a total waste of time and money.