

**COURT OF APPEALS
DECISION
DATED AND RELEASED**

June 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(1), 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. 96-0844

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT III**

**IN THE INTEREST OF ROBERT F.,
A PERSON UNDER THE AGE OF
EIGHTEEN:**

STATE OF WISCONSIN,

Petitioner-Respondent,

v.

ROBERT F.,

Respondent-Appellant.

APPEAL from an order of the circuit court for Douglas County:
JOSEPH A. McDONALD, Judge. *Affirmed.*

MYSE, J. Robert F. appeals an order waiving juvenile jurisdiction over him.¹ Robert contends that the circuit court erroneously exercised its discretion because it failed to consider and make specific findings regarding the adequacy and suitability of services within the juvenile system. Because the circuit court specifically considered retaining Robert in the juvenile

¹ Leave to appeal this nonfinal order was granted on March 25, 1996.

system as an alternative and found the alternative to be inappropriate, the order is affirmed.

On March 6, 1996, the State filed a juvenile petition alleging that Robert had committed two counts of substantial battery and one count of robbery. The State also filed a petition requesting the circuit court to waive its juvenile jurisdiction over Robert. At the time of the hearing on the waiver petition, Robert was sixteen years and seven months of age.

At the waiver hearing, Patricia Schanen, the chief juvenile court intake worker for Douglas County, testified that she had been Robert's juvenile case worker for his previous contacts with the juvenile court system. She testified that Robert is enrolled in the tenth grade at Northwoods School. Robert has received favorable reports from his principal and is scheduled to graduate with his class. There is, however, a concern by school officials that Robert may be "a time bomb ready to go off." At the request of the school, Robert received psychiatric testing, which showed that he had a conduct disorder, an average IQ, poor impulse control and a tendency to blame other people. Robert also participated in counseling, and the counselor told Schanen that Robert was not amenable to treatment because he did not see any problems in his behavior and had no desire to change.

Robert's previous juvenile record includes a consent decree on a weapons charge in January 1995, an adjudication on a burglary in June 1995, and adjudications on burglary and battery in February 1996. According to Schanen, Robert complied with the dispositional orders, finished his community service, and made full restitution for his previous juvenile cases.

Schanen also testified regarding the serious nature of the crimes alleged, Robert's seeming lack of remorse for his actions, and the fact that the new offenses occurred shortly after Robert had appeared for a dispositional hearing on the previous burglary and battery. Schanen contacted two child care institutions to determine if Robert's placement with the institutions would be appropriate. In each case, the institution indicated that Robert was not eligible for placement based upon his past behavior as described by Schanen. Schanen concluded that placement outside secured detention, such as Lincoln Hills, would not adequately meet Robert's needs. Because Schanen believed the adult system would be more appropriate for addressing Robert's needs, Schanen

recommended waiver of Robert into adult court. The circuit court followed the recommendation and waived juvenile jurisdiction over Robert.

The decision whether to waive juvenile jurisdiction is addressed to the sound discretion of the circuit court. *In re J.A.L.*, 162 Wis.2d 940, 960, 471 N.W.2d 493, 501 (1991). The circuit court's decision must be based on the criteria listed in § 48.18(5), STATS., and the record must show that the court examined these criteria and set forth its reasons for waiver with sufficient specificity for meaningful review. *In re C.D.M.*, 125 Wis.2d 170, 176, 370 N.W.2d 287, 290 (Ct. App. 1985). This court will look for reasons to sustain the circuit court's discretionary decision and will not find an erroneous exercise of discretion as long as there is a reasonable basis for the court's determination. *J.A.L.*, 162 Wis.2d at 961, 471 N.W.2d at 501; *In re G.B.K.*, 126 Wis.2d 253, 259, 376 N.W.2d 385, 389 (Ct. App. 1985).

Section 48.18(5), STATS., sets forth the factors the circuit court must consider and provides in relevant part:

If prosecutive merit is found, the judge, after taking relevant testimony which the district attorney shall present and considering other relevant evidence, shall base its decision whether to waive jurisdiction on the following criteria:

- (a) The personality and prior record of the child, including whether the child is mentally ill or developmentally disabled, ... the child's motives and attitudes, the child's physical and mental maturity, the child's pattern of living, prior offenses, prior treatment history and apparent potential for responding to future treatment.
- (b) The type and seriousness of the offense, including whether it was against persons or property, the extent to which it was committed in a violent, aggressive, premeditated or wilful manner, and its prosecutive merit.
- (c) The adequacy and suitability of facilities, services and procedures available for treatment of the child and protection of the public within the juvenile justice system, and, where applicable, the mental health

system and the suitability of the child for placement in the youthful offender program under s. 48.537 or the adult intensive sanctions program under s. 301.048.²

Robert contends that the circuit court failed to consider and make specific findings concerning the adequacy and suitability of services in the juvenile system under § 48.18(5)(c), STATS.³ This court rejects Robert's argument because the record reflects that the circuit court considered and made a finding regarding this criteria.

Section 48.18(6), STATS., "does no more than direct the juvenile court to state on the record its findings with respect to the criteria actually considered." *G.B.K.*, 126 Wis.2d at 256, 376 N.W.2d at 388. The circuit court met this requirement as it stated its findings with respect to the criteria in § 48.18(5)(c), STATS. In its decision, the court stated:

The activities that he's charged with are serious and shows no remorse, pursuant to the petitions, which is contrary to what he does.

....

He is mature in regards to chronological age and his physical appearance. And the only possibility of treatment in the juvenile system would be Lincoln Hills under the circumstances. There—the juvenile system is not adequate to provide the treatment, and it is in the best—his best interest and society's best interest that the waiver petition be granted.

The court specifically made a finding that the juvenile system is not adequate to provide treatment for Robert. The court heard testimony from Schanen that the two child care institutions she contacted would not take Robert

² See 1993 Wis. Act 377.

³ Robert does not challenge the finding of prosecutive merit or the circuit court's consideration of the other criteria in § 48.18(5), STATS. Therefore, this court only addresses the claim that the circuit court did not make a specific finding regarding the criteria of § 48.18(5)(c).

based on his history and that Robert's previous counselor told her that Robert was not amenable to treatment. Further, Schanen testified that the adult system would be more appropriate for Robert than Lincoln Hills. The circuit court found that based on Schanen's testimony and the circumstances in this case including the seriousness of the offense and Robert's lack of remorse, the juvenile system was inadequate for Robert's needs. Based on the court's findings and Schanen's testimony, this court is satisfied that the circuit court properly considered and made a specific finding regarding the adequacy and suitability of services in the juvenile system. The court's finding was made with sufficient specificity and a reasonable basis existed for the court's finding. *See G.B.K.*, 126 Wis.2d at 259, 376 N.W.2d at 388.

Robert also argues that the circuit court erroneously exercised its discretion because it did not specify the reasons for rejecting Lincoln Hills as an alternative. Because the record reflects a reasonable basis for the court's rejection of Lincoln Hills as an alternative, this court rejects Robert's argument. *See id.* The record shows that Robert has a conduct disorder, poor impulse control and a tendency to blame other people. A counselor also indicated that Robert was not amenable to treatment because he did not see any problems in his behavior and had no desire to change. Further, the seriousness of the offense, his lack of remorse and his age support the court's determination not to employ Lincoln Hills as an alternative. As an adult, the court may employ many sentencing options such as confinement in the community, intensive sanctions, or participation in psychological treatment programs as a condition of probation. Any or all of these options may be more suitable to Robert's needs than confinement in a secured detention facility, such as Lincoln Hills, in an area removed from his family and community. Accordingly, this court concludes that there was a reasonable basis for the circuit court's rejection of Lincoln Hills as an alternative.

Finally, Robert suggests that because Schanen contacted the two child care institutions the day before the waiver hearing and their placement refusal was based solely upon Schanen's description of Robert rather than a personal interview, the circuit court erred in its conclusion that placement in a child care facility was not available. This court disagrees. Schanen made inquiries to the institutions regarding Robert's suitability for placement and the institutions indicated Robert was not eligible for placement with them. The suggestion that the inquiry was not made in good faith is conclusory and is not supported by evidence in the record. If Robert felt placement in a child care

institution was appropriate, he was free to propose institutions willing to accept him and describe the type of program available. Robert made no such showing. This court concludes that Schanen's testimony regarding her inquiry as to Robert's suitability to two child care institutions is sufficient to support the circuit court's determination that placement in such a facility was not available in this case.

Because the circuit court considered the adequacy of and suitability of the services within the juvenile system and made a specific finding that the juvenile system would be inadequate for Robert's needs, this court affirms the order.

By the Court. – Order affirmed.

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