

**COURT OF APPEALS  
DECISION  
DATED AND RELEASED**

February 11, 1997

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. 96-2411**

**STATE OF WISCONSIN**

**IN COURT OF APPEALS  
DISTRICT I**

**IN THE INTEREST OF CREASIE F.,  
a person under the age of 18:**

**STATE OF WISCONSIN,**

**Petitioner-Respondent,**

**v.**

**CREASIE F.,**

**Respondent-Appellant.**

APPEAL from an order of the circuit court for Milwaukee County:  
THOMAS P. DONEGAN, Judge. *Affirmed.*

CURLEY, J. Creasie F., the subject of a Child in Need of Protection or Services (CHIPS) petition, appeals from an order entered by the juvenile court on February 23, 1996. Creasie challenges the juvenile court's decision dismissing Milwaukee County's petition to extend the dispositional order placing her in her grandmother's home. Creasie claims the juvenile court erroneously exercised its discretion in determining that the County had not proved by clear and convincing evidence a basis to extend the dispositional

order. She contends that the juvenile court's determination was not a proper exercise of discretion because her mother had not met two of the conditions of her return established earlier by the juvenile court and she claims the court failed to make findings of fact and conclusions of law as mandated by § 48.365(2m)(a), STATS. Because the record reveals that the juvenile court made the required findings and that the findings reflect a proper exercise of discretion, the order is affirmed.<sup>1</sup>

### I. BACKGROUND.

Creasie and her three brothers were found to be children in need of protection or services on November 2, 1993. At the dispositional hearing held later, Creasie was placed outside of her mother's home with the juvenile court setting conditions of return that had to be met by Tammie F., Creasie's mother. These conditions consisted of: (1) cooperating with the Milwaukee County Department of Human Services; (2) requiring follow-through with the recommendations made in a June 1993 psychologist's evaluation report; and (3) participating in family therapy if requested by the children's counselors and/or therapists. In 1994, the juvenile court extended the order and set several new conditions for Creasie's return. One of the new conditions was a mutual desire on the part of Creasie and her mother to live together, and the other condition was a requirement that Creasie's mother undergo a psychological re-evaluation and follow through with any recommendations. While this order was accomplished by stipulation of the parties, Tammie F. was not present at this hearing and the juvenile court found her in default.

In October 1995, another petition for extension and revision of the dispositional order was filed with the court. After the petition for extension was filed, Tammie F. filed a motion seeking Creasie's return to her care. Following Tammie F.'s motion, the County changed its position and informed the juvenile court and the parties that it intended to withdraw the petition because it no longer believed it could prove by clear and convincing evidence that Creasie was a child in need of protection or services. Creasie then filed her own petition for extension which the court dismissed as being untimely filed. The juvenile

---

<sup>1</sup> This opinion will not be published. See RULE 809.23(1)(b), STATS.

court also refused to allow the County to withdraw its petition and held a contested hearing on January 3, 1996.<sup>2</sup>

At the conclusion of the hearing, the juvenile court determined the County had not met its burden of proof and dismissed the petition for extension. The court also dismissed Tammie F.'s motion for change of placement, concluding it was moot.

## II. STANDARD OF REVIEW.

The decision whether to extend a child in need of protection or services dispositional order is within the juvenile court's discretion and is to be based upon the evidence presented. *R.E.H. v. State*, 101 Wis.2d 647, 653, 305 N.W.2d 162, 166 (Ct. App. 1981). The purpose of the hearing to extend the dispositional order is to evaluate the child's progress and to determine whether continued control is necessary. *Id.* at 652-53, 305 N.W.2d at 166.

## III. ANALYSIS.

The juvenile court was presented with an unusual set of alliances in this case. The County, which originally filed the petition for extension and unsuccessfully sought to dismiss it, sided with Tammie F. in her quest to have her daughter's placement returned to her. Creasie and her father, who is currently incarcerated, desired the extension of the underlying dispositional order permitting Creasie to continue living with her maternal grandmother.

Creasie argues that the juvenile court erroneously exercised its discretion because her mother failed to meet two previously set conditions for her return. Creasie posits that the juvenile court's paramount concern in deciding this case should have been Creasie's best interest. She points to her mother's failure to meet the conditions of return, coupled with her personal preference to live with her grandmother as evidence that the best interest test

---

<sup>2</sup> Creasie's three brothers live with Tammie F. and were not involved in this proceeding.

was not met. She argues that had the juvenile court applied the correct test, the court would have extended the dispositional order. Thus, she concludes the juvenile court erroneously exercised its discretion.

The statutory language of the Children's Code does not, however, support her contentions. Section 48.365, STATS., provides for the extension of a juvenile dispositional order, but any order of extension must comply with § 48.355, STATS. Section 48.355(1) provides in relevant 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." Further, "[w]henever possible ... the family unit shall be preserved and there shall be a policy of transferring custody from the parent only where there is no less drastic alternative." *Id.*

Clearly, the statute demands that the juvenile court consider factors other than the child's best interest when it is deciding to extend a dispositional order. It is also apparent that tantamount to the court's decision-making is the policy of keeping families united whenever possible.

At the hearing, the juvenile court heard evidence from several witnesses. The position of the Department of Social Services was conveyed to the juvenile court through its representative, who opined: "[The Department's decision is] a complicated one, but it's that the child be returned to the mother." The representative went on to explain that further intervention was not necessary because the Department had nothing more to offer in the way of services, Creasie had no special psychiatric needs, and she was attending school regularly. Further, the juvenile court heard that the other children had been returned to their mother's care and that there was no evidence suggesting the mother was currently unfit or that her care and home were substandard. It was also revealed that the placement with the grandmother was not problem free because Creasie had been a disciplinary problem for the grandmother in the past.

Additionally, the County's witnesses, while conceding that the current relationship between mother and daughter was strained, told the court that the problems between Creasie and her mother were essentially emotional

in nature. With the exception of Creasie and her father, all the witnesses and parties agreed that no harm would come to Creasie if she returned to her mother's home.

Several of the witnesses addressed the issue of the unmet conditions of return. The juvenile court heard testimony that Tammie F. had tried unsuccessfully to partake in family therapy with Creasie, which was the recommendation of her psychologist following Tammie F.'s re-evaluation, but that Creasie and her grandmother resisted this therapy and viewed it as a waste of time. With respect to the other unmet condition—that is, a mutual desire by Creasie and her mother to live together—the juvenile court was advised that Creasie, again, was the “stumbling block” because she vigorously resisted her mother's attempt to secure her return.

Given the impossibility of Tammie F. totally meeting these conditions without securing Creasie's cooperation, the juvenile court found that Tammie F. had “materially” and “substantially” complied with the conditions. Relying on the expert testimony of the treating physician, the juvenile court adopted the physician's belief that teenage children do not always like their parents and that this fact does not indicate that they are bad parents. Later, the juvenile court addressed this issue with Creasie, and stated:

I have never met a child in their teens who was always happy with their mother. Never. And I can guarantee you that my children are not always happy with me, but, you start out trying to work things out in the home, and that's the vision of this State's legislation. It's the law of this State; the law of this land, and I think it's appropriate now to enforce that.

Implicit in the juvenile court's decision is the belief that the best interests of the child are not always the same as the child's wishes. In light of the testimony adduced and the unique family dynamics present in this case, the juvenile court's decision was a proper exercise of discretion because there was a reasonable basis in the record for the decision.

Finally, Creasie argues that the juvenile court failed to make findings of fact and conclusions of law based upon the evidence as mandated by § 48.365(2m)(a), STATS. This court's review of the record, however, does not support this contention. The juvenile court's oral decision, although brief, advised the parties it was considering the testimony of not only all of the witnesses, but also the entire file that the court re-read prior to rendering its decision. The juvenile court then went on to explain the history of the case, the stated purpose of the law, and the issue it had to decide. The court remarked that the conditions no longer existed to extend the order and that the State had not met its burden of proof. The juvenile court also addressed Creasie and personally explained its decision to her. It is evident that the trial court followed the dictates of the statute and made appropriate findings and conclusions. Accordingly, we affirm the order.

*By the Court.* – Order affirmed.

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