

**COURT OF APPEALS  
DECISION  
DATED AND RELEASED**

July 15, 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. 97-0602**

**STATE OF WISCONSIN**

**IN COURT OF APPEALS  
DISTRICT III**

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**IN THE INTEREST OF DAVID T.O.,**

**A PERSON UNDER THE AGE OF 18:**

**STATE OF WISCONSIN,**

**PETITIONER-RESPONDENT,**

**v.**

**DAVID T. O.,**

**RESPONDENT-APPELLANT.**

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APPEAL from an order of the circuit court for Oconto County:  
LARRY JESKE, Judge. *Affirmed.*

CANE, P.J. David T.O. appeals the trial court's order<sup>1</sup> waiving him into adult court because he had turned eighteen years of age prior to an

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<sup>1</sup> Petition for leave to appeal was granted February 25, 1997.

adjudication. He contends that the doctrine of claim or issue preclusion bars the court from reconsidering the waiver issue. This court rejects his argument and affirms the order.

The facts are undisputed. On February 20, 1996, the State filed a juvenile delinquency petition charging David T.O. (d.o.b. 9/25/78) as a party to a crime with one count of recklessly endangering the safety of another, contrary to § 941.30(2), STATS., and nineteen counts of criminal damage to property, contrary to § 943.01(2)(a), STATS. Essentially, the State alleged that David had cut or aided in cutting the brake lines of twenty school buses. The State also filed a petition for waiver of juvenile court jurisdiction.

At the waiver hearing on April 11, 1996, the court declined to waive its juvenile court jurisdiction. The State then filed an interlocutory appeal, and the juvenile court granted the State's request to stay the proceedings pending the appeal. On appeal, this court affirmed the court's decision to decline waiver into adult court. Shortly after we remitted the matter back to the juvenile court, David turned eighteen on September 25, 1996.

At David's appearance before the juvenile court on October 29, 1996, the State requested the court to apply § 48.12(2), STATS., 1993-94,<sup>2</sup> in that David was now eighteen years old. The court set the matter for trial and also took the State's request under consideration with briefs from both sides.

In a memorandum decision, the juvenile court concluded that because David was eighteen years old, it had three options under § 48.12(2), STATS., 1993-94. It could dismiss the action with prejudice, waive its jurisdiction or enter into a consent decree. The parties would not agree to a consent decree, and the trial court resolved that a dismissal would be inappropriate due to the seriousness of the charges. It concluded that the best interests of David and the community would be to waive its juvenile jurisdiction to the adult court.

On appeal, David claims that claim or issue preclusion bars the application of § 48.12(2), STATS, 1993-94. This court disagrees. Under the doctrine of claim preclusion, a final judgment between the parties is conclusive for all subsequent actions between the parties as to all matters that could have been or were litigated. *Amber J.F. v. Richard B.*, 205 Wis.2d 505, 511, 557 N.W.2d 84, 86 (Ct. App. 1996). Here, the State argues correctly that following the first waiver

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<sup>2</sup> Section 48.12(2) , STATS., 1993-94, provides:

(2) If a court proceeding has been commenced under this section before a child is 18 years of age, but the child becomes 18 years of age before admitting the facts of the petition at the plea hearing or if the child denies the facts, before an adjudication, the court retains jurisdiction over the case to dismiss the action with prejudice, to waive its jurisdiction under s. 48.18, or to enter into a consent decree. If the court finds that the child has failed to fulfill the express terms and conditions of the consent decree or the child objects to the continuation of the consent decree, the court may waive its jurisdiction.

hearing, neither a fact finding hearing nor a dispositional hearing was held and no final order or judgment was ordered.

Under the doctrine of issue preclusion, the litigants are protected from the burden of relitigating an identical issue. *Id.* at 512, 557 N.W.2d at 87. However, as the State notes, the second waiver decision was made in the context of one juvenile action. Section 48.12(2), STATS., 1993-94, specifically provided for a situation such as this where initially the juvenile was under the age of eighteen, but becomes eighteen years of age before admitting the facts of the petition or the court's adjudication of the facts. It should be noted that this court has previously held that where the juvenile turns eighteen during the pendency of the juvenile proceedings, filing of a waiver petition is not required for waiver of juvenile jurisdiction. *In re K.A.P.*, 159 Wis.2d 384, 390-91, 464 N.W.2d 106, 108 (Ct. App. 1990).

This court agrees with the State that issue preclusion should not be applied to estop the juvenile court from applying § 48.12(2), STATS., 1993-94, where the circumstances of David's age has changed substantially since the court's first decision on waiver and the legislature has explicitly recognized the importance of this change. Here, this court views the juvenile court's decision to waive David into adult court as a reasonable exercise of discretion. The court indicated its concern about the nature of the alleged acts and a need to have the matter resolved for the interests of both the community and David to clear his name or be held accountable for the commission of these criminal acts.

Finally, there is no suggestion of prosecutorial abuse or a manipulative intent on the part of the State to avoid juvenile court jurisdiction and,

therefore, this court need not address that issue. Accordingly, the court's order waiving David from juvenile court to adult court is affirmed.

*By the Court.*—Order affirmed.

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

