

**COURT OF APPEALS  
DECISION  
DATED AND FILED**

**AUGUST 27, 1997**

Marilyn L. Graves  
Clerk, Court of Appeals  
of Wisconsin

**NOTICE**

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

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.

**No. 97-1601-FT**

**STATE OF WISCONSIN**

**IN COURT OF APPEALS  
DISTRICT II**

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**IN THE INTEREST OF MICHAEL G., A PERSON UNDER  
THE AGE OF 18:**

**STATE OF WISCONSIN,**

**PETITIONER-RESPONDENT,**

**v.**

**MICHAEL G.,**

**RESPONDENT-APPELLANT.**

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APPEAL from orders of the circuit court for Kenosha County: S. MICHAEL WILK, Judge. *Reversed and cause remanded with directions.*

ANDERSON, J. Michael G. appeals from an extension of his original 1995 dispositional order and an order denying his postdisposition motion to vacate the extension. Michael contends that the juvenile court lost competence to extend its dispositional order when that order expired, and no request to extend the order had been filed prior to the November 17, 1996

expiration date. Because we agree that the juvenile court no longer had personal jurisdiction over Michael to act on the tardy motion to extend the dispositional order, we reverse and remand to the trial court for an order vacating the dispositional order.

The following facts are relevant to the resolution of this appeal.<sup>1</sup> On November 17, 1995, a one-year dispositional order was entered placing Michael in a treatment center, later designated as St. Charles Residential Treatment Center, for his participation in an incident in which he, and other boys broke into a used car lot, stole and damaged an automobile. On October 31, 1996, Michael absconded from St. Charles.

On November 13, 1996, a *capias* was issued based on Michael's absconder status. On December 2, 1996, the State filed a request for an extension of the November 17, 1995 dispositional order which expired on November 17, 1996. On December 3, 1996, Michael was apprehended. A hearing was held on December 6, 1996, at which time the court extended the November 17, 1995 dispositional order for thirty days. On December 23, 1996, the dispositional order was extended until November 17, 1997, and Michael's placement was changed to

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<sup>1</sup> The State's brief highlights Michael's alleged poor adjustment while in residential placement. Michael's adjustment to residential placement is wholly irrelevant to the timeliness of the motion to extend the dispositional order. The State's attempt to divert attention from the sole issue in this case is transparent and puerile. We also caution counsel that recitation of "facts" without citation to the record are not those upon which an appellate decision can be based. *See Keplin v. Hardware Mut. Cas. Co.*, 24 Wis.2d 319, 326, 129 N.W.2d 321, 324 (1964). In the future, counsel is to limit herself to evidence and arguments material to the issue(s) on appeal. *See* § 809.19(1)(d), STATS. (statement of the case must include "a statement of facts relevant to the issues presented for review, with appropriate references to the record").

the Ethan Allen School for Boys, a department of corrections program.<sup>2</sup> Michael filed a motion for postdispositional relief which was denied. Michael appeals.

Michael questions the juvenile court's competency to extend the November 17, 1995 dispositional order. Michael argues that because a request for an extension of the dispositional order was not filed before November 17, 1996, the court lost its competency to take action in the case after that date, including the temporary thirty-day extension.

The issue before us concerns time limits under the juvenile code. As a preliminary matter, we must first determine whether to apply ch. 48, STATS., 1993-94, the old Children's Code,<sup>3</sup> or ch. 938, STATS., 1995-96, the revised juvenile code. The new juvenile code first applies to *violations* committed on or after July 1, 1996, and the new time limit provisions under the juvenile code, §§ 938.315(1)(c) and (3) and 938.365(6), STATS., first apply to time periods *beginning on* July 1, 1996, the effective date of this act. *See* 1995 Wis. Act 77, §§ 9300, 9310(10) and 9400. Here, the violation occurred in 1995 and the original dispositional order commenced on November 17, 1995, prior to the effective date of July 1, 1996. Accordingly, we must apply the provisions of ch. 48 and applicable case law.

Michael argues that the juvenile court lost its competency to extend its dispositional order under § 48.365(6), STATS., when that order expired on November 17, 1996, and no request to extend the order had been filed. This involves a question of statutory interpretation which we review *de novo*. *See State*

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<sup>2</sup> Two previous hearings on December 12 and December 18, 1996, were continued.

<sup>3</sup> All references to ch. 48, STATS., are to the 1993-94 version of the statutes.

*v. Dawn M.*, 189 Wis.2d 480, 484, 526 N.W.2d 275, 276 (Ct. App. 1994). If the statute is clear on its face, this court will not look beyond the statute in applying it. *See id.* at 484, 526 N.W.2d at 276-77.

The Children's Code provides that all dispositional "orders ... shall terminate at the end of one year unless the judge specifies a shorter period of time." Section 48.355(4), STATS. A dispositional order may be extended by motion of any agency bound by the order, the district attorney or the court on its own motion. *See* § 48.365(1m), STATS. However, "no order under s. 48.355 may be extended except as provided in [§ 48.365]." Section 48.365(1m). Section 48.365(6) provides that "the court may extend the order for a period of not more than 30 days" when a hearing is not held prior to the expiration of an order. The thirty-day extension must be requested prior to the order's expiration. *See Green County Dep't of Human Servs. v. H.N.*, 162 Wis.2d 635, 647 n.9, 469 N.W.2d 845, 849 (1991).

Of course, subject matter jurisdiction is conferred by art. VII, § 8 of the Wisconsin Constitution. Competency is a narrower concept than subject matter jurisdiction and is grounded in the court's power to exercise its subject matter jurisdiction. *See Kohler Co. v. Wixen*, 204 Wis.2d 327, 336, 555 N.W.2d 640, 644 (Ct. App. 1996). Personal jurisdiction allows a court with the requisite power to exercise its subject matter jurisdiction. *See id.* In juvenile matters, it is the filing of a petition that confers personal jurisdiction upon the juvenile court and competency to enter a dispositional order against a juvenile. *See State v. Jermaine T.J.*, 181 Wis.2d 82, 90, 91, 510 N.W.2d 735, 738 (Ct. App. 1993).

Accordingly, the juvenile court acquired personal jurisdiction over Michael when the delinquency petition was filed in 1995. The dispositional order

memorialized the court's exercise of its adjudication of all the issues raised by the petition. However, the dispositional order was only valid for one year unless a motion to extend was filed prior to the termination date. *See H.N.*, 162 Wis.2d at 647 n.9, 469 N.W.2d at 849. When the dispositional order expired on November 17, 1996, without a timely filed motion to extend, the court's personal jurisdiction over Michael expired as well. Because the court no longer had personal jurisdiction, it could not act on the tardy motion to extend the dispositional order.<sup>4</sup>

The State's argument that § 48.315(1)(f), STATS.,<sup>5</sup> tolls the expiration date of the dispositional order is without merit. Our supreme court has already held that § 48.315 cannot be used to expand the duration of a thirty-day extension of a dispositional order pursuant to § 48.365(6), STATS. *See H.N.*, 162 Wis.2d at 648, 469 N.W.2d at 850. It follows then that § 48.315 cannot be used to expand the time limits of the one-year dispositional order either.

The legislative changes to the juvenile code did not alter these limitations. In fact, § 938.355(4), STATS., still provides that "all [dispositional] orders ... shall terminate at the end of one year unless the court specifies a shorter

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<sup>4</sup> An analogous case is *State v. Dawn M.*, 189 Wis.2d 480, 526 N.W.2d 275 (Ct. App. 1994). In *Dawn M.*, a consent decree expired before the juvenile court made a finding that it had been violated. *See id.* at 483, 526 N.W.2d at 276. This court determined that the expiration of the consent decree resulted in the automatic dismissal of the underlying CHIPS petition and the concurrent revocation of the authority of the juvenile court. *See id.* at 485-86, 526 N.W.2d at 277. Similarly, it is the original delinquency petition that confers competency upon the juvenile court, and when the original delinquency petition expired, the court was deprived of competency. *See id.* at 485, 526 N.W.2d at 277; *cf. State v. Jermaine T.J.*, 181 Wis.2d 82, 90, 91, 510 N.W.2d 735, 738 (Ct. App. 1993) (petition confers personal jurisdiction upon juvenile court).

<sup>5</sup> Section 48.315(1)(f), STATS., excludes "[a]ny period of delay resulting from the absence or unavailability of the child" when computing time requirements for delays, continuances and extensions.

period of time.” And § 938.365(1), STATS., still precludes the extension of a § 938.355 dispositional order except as provided in § 938.365.

Moreover, our supreme court has concluded that the length of time a dispositional order can remain in effect is not a time requirement or deadline subject to the tolling statute; rather, it represents the length of time an order stays in effect. *See H.N.*, 162 Wis.2d at 651, 469 N.W.2d at 851. It is presumed that the legislature knows about the previous statutes and about the impact that case law had upon it. *See Carol J.R. v. County of Milwaukee*, 196 Wis.2d 882, 888, 540 N.W.2d 233, 235 (Ct. App. 1995). Where a legislative act has been construed by this court, the legislature is presumed to know that in the absence of the legislature explicitly changing the law, the court’s construction will remain unchanged. *See Reiter v. Dyken*, 95 Wis.2d 461, 471, 290 N.W.2d 510, 515 (1980). Because the legislature has not explicitly stated that dispositional orders, or an extension thereto, are subject to the tolling statute, we decline to apply the tolling statutes, either § 48.315, STATS., or § 938.315, STATS., to Michael’s dispositional order.

The State’s public policy argument—finding in favor of Michael will be rewarding him and others like him for willfully defying the trial court’s orders—is equally unavailing. First, Michael’s absconder status is irrelevant. The juvenile’s whereabouts are not of any concern to the State when it makes the decision to seek an extension of a dispositional order—as evidenced by the State filing the extension on December 2, 1996, when Michael was still in absconder status.

Moreover, the only reason this appeal is before this court is because of the State’s failure to timely file a motion to extend the dispositional order. The

State had 365 days in which to evaluate Michael's progress, or lack thereof, and to decide whether to file a motion to extend or not. The State's failure to make good use of this time is not the fault of the court system *or the juvenile*.

*By the Court.*—Orders reversed and cause remanded with directions.

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

