

**COURT OF APPEALS
DECISION
DATED AND FILED**

December 19, 2006

Cornelia G. Clark
Clerk of Court of Appeals

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 WIS. STAT. § 808.10 and RULE 809.62.

Appeal No. 2006AP2046

Cir. Ct. No. 2006JV8

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT III**

IN THE INTEREST OF JEREMY L. L., A PERSON UNDER THE AGE OF 17:

VILAS COUNTY DEPARTMENT OF SOCIAL SERVICES,

PETITIONER-RESPONDENT,

v.

JEREMY L. L.,

RESPONDENT-APPELLANT.

APPEAL from an order of the circuit court for Vilas County:
NEAL A. NIELSEN III, Judge. *Affirmed.*

¶1 CANE, C.J.¹ Jeremy L.L. appeals an order finding him in need of protection or services due to habitual truancy and placing him in the Prentice House Group Home. Jeremy argues the evidence was insufficient for the court to find by clear and convincing evidence that he was habitually truant from school under WIS. STAT. § 938.13(6). We disagree and affirm the order.

BACKGROUND

¶2 On March 16, 2006, the Vilas County Department of Social Services filed a petition with the juvenile court to find Jeremy in need of protection or services due to habitual truancy. The Department attached Jeremy's attendance record to this petition. The Department filed a dispositional report with the court on April 12, detailing the history of Jeremy's case. The court held a fact-finding hearing on April 13. At the time of the hearing, Jeremy was subject to another truancy dispositional order. The court took judicial notice of that order as well as a dispositional order from 2005. Jeremy did not object to the court taking judicial notice of the dispositional orders.

¶3 Pat Sullivan, principal of Jeremy's high school, testified he understood the requirements of WIS. STAT. §118.16² and told the court how the school met those requirements. He testified that due to Jeremy's ongoing trancies, the school set up a day treatment program in Rhinelander, but there was no follow-through by Jeremy or his mother. Sullivan also testified the high

¹ This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2). All references to the Wisconsin Statutes are to the 2003-04 version unless otherwise noted.¹

² WISCONSIN STAT. §118.16(5) lists the requirements a school must meet before a petition for habitual truancy may be brought.

school's psychologist had meetings with Jeremy to determine if Jeremy had any social problems.

¶4 Laura Rozga, Vilas County Social Services Children's Social Worker, testified she had been Jeremy's social worker since February 2005. She stated Dr. Sarah Kortencamp had conducted a psychological evaluation of Jeremy and did not note any learning disabilities, mental health issues, or anything that contributed to the truancy. Rozga also testified the Department did in-home therapy with Jeremy from June 2005 to January 2006 to address alcohol and other drug abuse (AODA) issues and his truancy.

¶5 The court then stated it had read the Department's dispositional report and found there had been efforts undertaken by the school and the Department. Based on the testimony, the petition, the dispositional report and the truancy dispositional order that remained in effect, the court found Jeremy was a juvenile in need of protection or services under WIS. STAT. § 938.13(6), based on habitual truancy. A dispositional hearing followed the fact-finding hearing and the court placed Jeremy on a dispositional order under WIS. STAT. § 938.345 for one year, with initial placement at the Prentice House Group Home in Ashland.

DISCUSSION

¶6 Jeremy argues the evidence was insufficient for the court to find that he was habitually truant from school under WIS. STAT. § 938.13(6). The sufficiency of the evidence standard gives deference to the trial court's better position to determine the credibility of witnesses and ability to evaluate the evidence. *State v. Brown*, 2005 WI 29, ¶40, 279 Wis. 2d 102, 693 N.W.2d 715. We therefore review a sufficiency of the evidence question using an erroneous exercise of discretion standard. *Peplinski v. Fobe's Roofing, Inc.*, 193 Wis. 2d 6,

20, 531 N.W.2d 597 (1995). “While the basis for an exercise of discretion should be set forth in the record, it will be upheld if the appellate court can find facts of record which would support the circuit court’s decision.” *Id.*

¶7 Jeremy first argues the Department failed to establish that Jeremy was habitually truant because the Department did not produce evidence establishing that he “had failed to attend school during all or part of five days during a specific semester.” WISCONSIN STAT. § 118.16(1)(a) provides a pupil is habitually truant if the pupil “is absent from school without an acceptable excuse ... for part or all of 5 or more days on which school is held during a school semester.” It is clear from reviewing the testimony that Jeremy rarely attended school. At the fact-finding hearing, Sullivan testified in regards to Jeremy’s schooling, “there is no participation from him when he comes.” This indicates Jeremy often did not attend school. Sullivan further testified Jeremy was not “attending school at this time.” The evidence is additionally supported by the dispositional report which the court indicated it had reviewed. The dispositional report recommended out of home placement for Jeremy “due to continued truancy” and stated Jeremy’s mother was “ineffective in getting Jeremy to attend school.” The transcript clearly shows Jeremy was not attending school and had been asked to leave due to continued absences. Therefore, there is sufficient evidence on the record to support the trial court’s finding that Jeremy was habitually truant.

¶8 Jeremy next argues the evidence did not support a finding of habitual truancy because there was no evidence that the school complied with requirements of WIS. STAT. § 118.16(5). Jeremy states Sullivan and Rozga were not authorized to testify that the school complied with the requirements because § 118.16(5) requires the proof be provided by a “school attendance officer.” Jeremy states the

Department offered no proof that Sullivan and Rozga were school attendance officers. WISCONSIN STAT. § 118.16(1)(b) states a school attendance officer is “an employee designated by the school board to deal with matters relating to school attendance and truancy.” Jeremy waived this argument by failing to object to Sullivan and Rozga’s testimony at trial. See *State v. Davis*, 199 Wis. 2d 513, 517, 545 N.W.2d 244 (Ct. App. 1996) (holding that failing to bring a contemporaneous objection to testimony waives the right to challenge that testimony). The waiver rule exists to give both parties as well as the court notice of the disputed issues and an opportunity to address the issue in a way that best uses judicial resources. *State v. Erickson*, 227 Wis. 2d 758, 766, 596 N.W.2d 749 (1999). “[J]udicial resources, not to mention the resources of the parties, are not best used to correct errors on appeal that could have been addressed during the trial.” *Id.*

¶9 Finally, Jeremy argues the Department failed to show the activities required by WIS. STAT. § 118.16(5) were performed during the appropriate time frame. Section 118.16(5) states:

[T]he school attendance officer shall provide evidence that appropriate school personnel in the school or school district in which the child is enrolled have, within the school year during which the truancy occurred, done all of the following:

(a) Met with the child’s parent or guardian to discuss the child’s truancy or attempted to meet with the child’s parent or guardian and received no response or were refused.

(b) Provided an opportunity for educational counseling to the child to determine whether a change in the child’s curriculum would resolve the child’s truancy and have considered curriculum modifications under s. 118.15(1)(d).

(c) Evaluated the child to determine whether learning problems may be a cause of the child’s truancy and, if so, have taken steps to overcome the learning problems, except that the child need not be evaluated if tests administered to

the child within the previous year indicate that the child is performing at his or her grade level.

(d) Conducted an evaluation to determine whether social problems may be a cause of the child's truancy and, if so, have taken appropriate action or made appropriate referrals.

Jeremy admits there is evidence in the record that a psychological evaluation occurred during October 2005, the appropriate school year, and that “[a]n inference can also be drawn from [the] testimony that Jeremy’s opportunity to participate in the At Risk Program and counseling occurred thereafter.” When reviewing sufficiency of the evidence, if more than one reasonable inference can be drawn from the evidence, we will adopt the inference that supports the trial court’s finding. *Brown*, 279 Wis. 2d 102, ¶40.

¶10 Testimony regarding the psychological evaluation indicates that Jeremy was evaluated and no learning disabilities or mental health issues had contributed to his truancy. Therefore, the requirements of WIS. STAT. § 118.16(5)(c) were met. Further, Sullivan testified the school provided Jeremy with educational counseling. In addition, the record shows Jeremy was placed in the At Risk Program, an alternative curriculum, and in November 2005 was offered additional options including home schooling and the school’s Phoenix program.³ Therefore the requirements of § 118.16(5)(b) were met.

¶11 However, Jeremy contends there was no evidence that a meeting with Jeremy’s parent occurred during the school year. This argument ignores the information the Department provided to the court in the dispositional report, which is contained in the record. The court indicated it had reviewed the dispositional

³ This information is contained in the dispositional report to the court. The court indicated it had reviewed the report.

report. The report indicates that Sullivan and an employee from the Department met with Jeremy's mother to discuss Jeremy's truancy problems on December 5, 2005. Therefore, the requirements of WIS. STAT. § 118.16(5)(a) were met.

¶12 Finally, Jeremy argues there was no evidence that an evaluation as to whether social problems may have caused Jeremy's truancy was conducted during the school year. Rozga testified that the psychological evaluation of Jeremy may have addressed social issues. She further testified that she was aware of social problems due to an in-home AODA evaluation and the truancy. Rozga also testified the Department did in-home therapy with Jeremy from June 2005 to January 2006 to address AODA issues and his truancy.

¶13 The dispositional report provided to the court also indicates the October 26 psychological report discovered "environmental issues" that could have contributed to Jeremy's truancy. The dispositional report shows the Department and the school made numerous attempts to address Jeremy's social problems. On December 5, the school and the Department recommended to Jeremy's mother that he attend Impact Counseling Day Treatment Program. On January 31, 2006, the court ordered Jeremy to attend the impact program. Rozga made four unannounced home visits to attempt to follow up with Jeremy's mother regarding her progress with completing the paperwork for the impact program. On February 10, Rozga spoke with Jeremy regarding the need to fill out the paperwork. On February 17, Rozga sent a certified letter to Jeremy's mother reiterating the need to complete the paperwork. On February 23, Rozga sent a copy of the same letter by standard mail. Rozga also contacted the program and learned the paperwork had not been completed. The court held a review hearing on February 28; however, Jeremy's mother did not attend. This evidence is

sufficient for the court to have found that the school met the requirements of WIS. STAT. § 118.16(5)(d).

By the Court.— Order affirmed.

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

