COURT OF APPEALS
DECISION
DATED AND FILED

December 19, 2006

Cornelia G. Clark
Clerk of Court of Appeals

Appeal No. 2006AP1911 **Cir. Ct. No. 2005JV421A**

STATE OF WISCONSIN **IN COURT OF APPEALS**
DISTRICT I

IN THE INTEREST OF BRITTNEY H.,
A PERSON UNDER THE AGE OF 17:

STATE OF WISCONSIN,

PETITIONER-RESPONDENT,

V.

BRITTNEY H.,

RESPONDENT-APPELLANT.

APPEAL from an order of the circuit court for Milwaukee County: RUSSELL W. STAMPER, Reserve Judge. *Affirmed.*

¶1 FINE, J. Brittney H. appeals the trial court's order lifting the stay of a previously imposed disposition that placed her in a juvenile correctional facility under the supervision of the Department of Corrections. *See* WIS. STAT.

§§ 938.34(4m), 938.34(16) (trial court may lift stay of dispositional order if it "finds by a preponderance of the evidence that the juvenile has violated a condition of his or her dispositional order"). She contends that the evidence was insufficient to support the trial court's lifting of the stay. We affirm.

I.

¶2 As material to this appeal, Brittney, then just recently turned thirteen, was charged with disorderly conduct while armed for threatening her mother with a twelve-inch knife and saying that she would kill her mother in her sleep. *See* WIS. STAT. §§ 947.01, 939.63. The case was plea-bargained with another case where she was accused of taking the car of a man in his seventies after first beating him up.[1] Brittney also admitted the disorderly-conduct-while-armed charge involving her mother. As noted, the trial court stayed a placement at a juvenile correctional facility. Under the stay, Brittney was ultimately placed at a group home subject to the written order's conditions that she "[o]bey [the] rules of placement" and also that she "[c]ommit no law violations arising to the level of probable cause finding." The trial court also explained orally that if Brittney did anything that "violates or fails to perform adequately, violates the rules, conditions of her placement; if she's a danger to the community in need of restrictive custodial treatment, off she should go to the girls' school."

[1] The assistant district attorney at the plea hearing described the charges: "Judge, this is very serious, what she did to [the man]. [The man] is seventy-six years old. She beat him up and took his car, and then made up a story that she was having sex with [him] for money, and that's why she would take his car." Under the plea bargain, Brittney admitted to taking the car, but the more serious battery charge was dismissed.

¶3 The trial court's stay order was entered on December 15, 2005. One week later, on December 22, 2005, the Milwaukee County Juvenile Probation Department sought an order lifting the stay, alleging that Brittney was absent from the group home without leave, that she threatened the group home staff, that she used illegal drugs, and that she possessed illegal drugs.

II.

¶4 WISCONSIN STAT. § 938.34(16) reads:

> After ordering a disposition under this section, [the trial court may] enter an additional order staying the execution of the dispositional order contingent on the juvenile's satisfactory compliance with any conditions that are specified in the dispositional order and explained to the juvenile by the court. If the juvenile violates a condition of his or her dispositional order, the agency supervising the juvenile or the district attorney or corporation counsel in the county in which the dispositional order was entered shall notify the court and the court shall hold a hearing within 30 days after the filing of the notice to determine whether the original dispositional order should be imposed, unless the juvenile signs a written waiver of any objections to imposing the original dispositional order and the court approves the waiver. If a hearing is held, the court shall notify the parent, juvenile, guardian, and legal custodian, all parties bound by the original dispositional order, and the district attorney or corporation counsel in the county in which the dispositional order was entered of the time and place of the hearing at least 3 days before the hearing. If all parties consent, the court may proceed immediately with the hearing. The court may not impose the original dispositional order unless the court finds by a preponderance of the evidence that the juvenile has violated a condition of his or her dispositional order.

The trial court held an evidentiary hearing. The only evidence presented in connection with the absent-without-leave allegations was the testimony of the juvenile probation officer that he was told that by staff at the group home, and that he took contemporaneous notes when they called him. The juvenile probation

officer also said that as for the illegal-drug allegations, he, too, had no independent knowledge, but was relaying what the staff at the group home had told him. He also testified that a group-home staff member told him that on December 17, 2005, Brittney returned to the group home intoxicated.

¶5 The State also presented testimony by a witness who was present when Brittney threatened the group home staff, and that witness testified that Brittney told the staff after they explained that it would be thirty days before she could get a pass to leave the facility and that she would have to attend school and accept her responsibilities: "'You don't know me, I'm new on the block. I will fuck you all up. This is bull.'" When asked by the trial court what rules Brittney refused to follow, the witness replied: "We were going to get her an after-school program, either with the YMCA or Boys and Girls Club. And she wasn't interested in doing those things." On cross-examination by Brittney's lawyer, the witness agreed with the lawyer's characterization that Brittney "was demonstrating her frustration with the fact they were clamping down pretty tight on her."

¶6 As noted, the trial court lifted the stay. Its oral decision is worth quoting:

> The whole System deals with young people, whether in Detention or Secured Custody or Girls' Schools or Group Homes, R-T-C's [*sic*].[2] That's a given. We understand that. Some of them need more restrictive treatment than others. But, they're all young people. That's a given. … Everyone in these institutions, I've indicated, is in need of treatment. … If the child interferes with the treatment, how can you logically provide it?

[2] The trial court's use of the acronym "R-T-C" apparently refers to residential treatment centers.

(Capitalization as in transcript; footnote added.) The trial court found that the drug-allegations were not proven, but that Brittney had a pattern of being absent without leave from her placements and that this interfered with the system's attempt to help her. It also found that the charge that Brittney threatened the staff of the group home was proven as well, and described Brittney's outburst as "clearly threatening."

III.

¶7 Whether the State has proved under WIS. STAT. § 938.34(16) that a stay should be lifted is in the trial court's discretion. ***State v. Andrew J. K.***, 2006 WI App 126, ¶13, ___ Wis. 2d ___, ___, 718 N.W.2d 229, 233. "We will sustain a discretionary decision if the trial court examined the relevant facts, applied a proper standard of law, and used a rational process to reach a reasonable conclusion." ***Ibid.*** Further, "when we review a trial court's discretionary decisions, we may independently search the record to uphold its ruling." ***State v. Eugenio***, 210 Wis. 2d 347, 363 n.5, 565 N.W.2d 798, 805 n.5 (Ct. App. 1997). As the parties here recognize, the rules of evidence, other than the rules relating to privilege, do not apply to "a dispositional hearing, or any postdispositional hearing" under WIS. STAT. ch. 938, and hearsay may be admitted if the hearsay testimony has "demonstrable circumstantial guarantees of trustworthiness." WIS. STAT. § 938.299(4)(b).

¶8 Brittney argues on appeal that the hearsay testimony by the juvenile probation officer that she was absent without leave from the group home was not admissible, and, also, that the trial court improperly looked to Brittney's pattern of being absent without leave by referencing a series of placements that antedated the dispositional order entered on December 15, 2005. We disagree.

¶9 First, the trial court has broad discretion in determining whether evidence is admissible. ***State v. Rodriguez***, 2006 WI App 163, ¶31, ___ Wis. 2d ___, ___, 722 N.W.2d 136, 149. Here, the trial court apparently viewed the contemporaneous notes by the juvenile probation officer as corroborating reports the officer received from the group home that Brittney was absent without leave after entry of the December 15, 2005, dispositional order and stay. The group home's reports to the juvenile probation officer about Brittney's compliance with the group home's rules, and his recordation of those reports, had "circumstantial guarantees of trustworthiness" akin to the trustworthiness the rules of evidence give to records of regularly conducted activities. *See* WIS. STAT. RULE 908.03(6). Further, patterns of activity also give corroboration, and, although WIS. STAT. RULE 904.04(2) prevents the receipt of other acts to show that the actor "acted in conformity therewith," under WIS. STAT. § 938.299(4)(b) this limitation does not apply to the postdispositional hearing. A pattern of activity *is* relevant to prove conduct that conforms to that pattern. The trial court thus did not erroneously exercise its discretion in admitting the testimony of the juvenile probation officer to show that Brittney was absent without leave from the group home after entry of the dispositional order on December 15, 2005.

¶10 Second, the trial court also acted well within its discretion in determining that Brittney's outburst was "clearly threatening" and violated the trial court's specific warning that its December 15 stay order was conditioned on Brittney "perform[ing] adequately" at the group home and not being "a danger to the community in need of restrictive custodial treatment." Further, the outburst meets the "probable cause" threshold of disorderly conduct in violation of WIS. STAT. § 947.01 ("Whoever, in a public or private place, engages in violent, abusive, indecent, profane, boisterous, unreasonably loud or otherwise disorderly

conduct under circumstances in which the conduct tends to cause or provoke a disturbance is guilty of a Class B misdemeanor."), *see, e.g.*, ***Lane v. Collins***, 29 Wis. 2d 66, 71–72, 138 N.W.2d 264, 267 (1965), and thus violated the written order's condition that Brittney "[c]ommit no law violations arising to the level of probable cause finding."

¶11 We affirm.

By the Court.—Order affirmed.

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