

**COURT OF APPEALS  
DECISION  
DATED AND FILED**

January 17, 2001

Cornelia G. Clark  
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 WIS. STAT. § 808.10 and RULE 809.62.

**No. 00-2110**

**STATE OF WISCONSIN**

**IN COURT OF APPEALS  
DISTRICT II**

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**IN THE INTEREST OF ERICA S.,  
A PERSON UNDER THE  
AGE OF 18:**

**STATE OF WISCONSIN,**

**PLAINTIFF-RESPONDENT,**

**v.**

**ERICA S.**

**DEFENDANT-APPELLANT.**

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APPEAL from an order of the circuit court for Racine County:  
STEPHEN SIMANEK, Judge. *Affirmed.*

¶1 BROWN, P.J.<sup>1</sup> The issue in this case is whether a time deadline of reasonableness should be read into WIS. STAT. § 938.065(4). This subsection states that a judge shall review a juvenile court commissioner's decision if requested, but states no time frame for when review must be requested. Erica S. waited seven weeks after a court commissioner denied an oral motion she made at the plea hearing before she requested that a judge review the commissioner's decision. The trial court read a reasonableness time requirement into § 938.065(4) and found that waiting seven weeks was not reasonable. We agree with the trial court that a reasonableness time requirement should be read into § 938.065(4) and that Erica acted unreasonably by waiting seven weeks to seek review of the court commissioner's decision. We affirm the order.

¶2 Erica, a juvenile, was allegedly involved in a fight at school and was facing charges related to this incident. On December 16, 1999, at a plea hearing in front of a juvenile court commissioner, Erica orally moved to dismiss the case. She asserted that the intake worker did not comply with the forty-day time limit to refer the case to the district attorney pursuant to WIS. STAT. § 938.24(5). The juvenile court commissioner denied the motion. On February 4, 2000, Erica filed a written motion to the circuit court seeking review of the court commissioner's decision. The circuit court, while noting that WIS. STAT. § 938.065(4) does not contain a time deadline, read a reasonableness time requirement into the statute and denied Erica's motion as untimely.

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<sup>1</sup> This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(e) (1997-98). All references to the Wisconsin Statutes are to the 1997-98 version.

¶3 Erica’s oral motion at the plea hearing protesting the timeliness of the referral was made pursuant to WIS. STAT. § 938.297(2).<sup>2</sup> The State first appears to argue that § 938.297(2) requires that motions be in writing. So, according to the State, Erica’s oral motion was invalid and she was required to file another *written* motion not later than ten days after the plea hearing. To support its argument, the State cites the portion of WIS. STAT. § 971.30 that states that motions must be in writing. We disagree.

¶4 The State neglects to note that WIS. STAT. § 971.30(2)(a) states, “[u]nless otherwise provided or ordered by the court, all motions shall ... [b]e in writing.” *Id.* (emphasis added). We see no reason why a second written motion was required in this case when the court commissioner obviously considered the oral motion and ruled on it. If the State disagreed with the fact that the motion was oral, it could have objected at the time, but it did not. If Erica was unhappy with the court commissioner’s ruling on the motion, her next course of action was to have the ruling reviewed pursuant to WIS. STAT. § 938.065(4), not to file another motion under WIS. STAT. § 938.297(2).

¶5 The State argues in the alternative that even if Erica was not required to file a written motion not later than ten days after the plea hearing, the trial court properly concluded that a reasonableness time requirement should be read into WIS. STAT. § 938.065(4). We agree. Section 938.065(4) states, “When acting

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<sup>2</sup> WISCONSIN STAT. § 938.297(2) states:

Defenses and objections based on defects in the institution of proceedings, lack of probable cause on the face of the petition or citation, insufficiency of the petition or citation or invalidity in whole or in part of the statute on which the petition or citation is founded shall be raised not later than 10 days after the plea hearing or be deemed waived. Other motions capable of determination without trial may be brought any time before trial.

officially, the juvenile court commissioner shall sit at the courthouse or the usual court facility for juvenile delinquency matters. Any decision of the juvenile court commissioner shall be reviewed by the judge upon the request of any interested party.” As we have already stated, § 938.065(4) contains no explicit time deadline for requesting review; nevertheless, we agree with the trial court that a reasonableness requirement should be read into the statute.

¶6 As discussed by the trial court, the juvenile code contains numerous short, stringent time deadlines. *See* WIS. STAT. § 938.30 (plea hearing shall be conducted within thirty days after filing a petition for a juvenile who is not in secure custody and within ten days for a juvenile who is in secure custody); *Interest of Joshua M.W.*, 179 Wis. 2d 335, 344, 507 N.W.2d 141 (Ct. App. 1993) (concluding that a delay by a newly-assigned judge conducting the plea hearing beyond ten or thirty days is unreasonable as a matter of law). Our supreme court has stated that one of the objectives of the juvenile justice system is to provide “speedy” adjudication. *See State v. Hezzie R.*, 219 Wis. 2d 848, 896, 580 N.W.2d 660 (1998) (“The juvenile system is premised on the concept that a more informal, simple, and *speedy* judicial setting will best serve the needs and welfare of juvenile defendants.”) (emphasis added). This indicates that open-ended time deadlines in the juvenile code should be interpreted so as to be in harmony with the purpose of the code.

¶7 Moreover, this court has read time deadlines into other statutes that do not contain explicit timing requirements. For example, this court has read a time requirement into WIS. STAT. § 802.05(1)(a), discussing motions for sanctions, that motions must be filed prior to judgment despite the fact that the statute contains no explicit requirement for when motions must be filed. *See Northwest Wholesale Lumber v. Anderson*, 191 Wis. 2d 278, 292-93, 528

N.W.2d 502 (Ct. App. 1994). In that case, the court did so to avoid an absurd result. According to the court, if no timing requirement were implemented, motions for sanctions could be filed years after judgment, which would be absurd. *See id.*

¶8 A similar absurd result would occur under WIS. STAT. § 938.065(4) if no timing requirement were read into the statute. For example, this case could have been adjudicated on the merits and *then* Erica could have protested the court commissioner's ruling in front of a judge. If the trial court reversed the court commissioner's ruling, judicial resources would have been wasted adjudicating it.

¶9 Erica's motion to the trial court is approximately one-half of a page long and contains no complicated facts or legal analysis. In light of the short, stringent deadlines in the juvenile code and the simplicity of the motion, we agree with the trial court that a seven-week delay in filing this motion was unreasonably long.

*By the Court.*—Order affirmed.

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

