

**COURT OF APPEALS
DECISION
DATED AND FILED**

February 21, 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. 00-2859-FT

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT II**

**IN THE INTEREST OF BETSY H.,
A PERSON UNDER THE AGE OF 18:**

STATE OF WISCONSIN,

PETITIONER-RESPONDENT,

v.

BETSY H.,

RESPONDENT-APPELLANT.

APPEAL from an order of the circuit court for Fond du Lac County:
DALE L. ENGLISH, Judge. *Affirmed.*

¶1 SNYDER, J.¹ Juvenile Betsy H. appeals from a delinquency dispositional order finding her a danger to the public and placing her in a secure correctional facility pursuant to WIS. STAT. § 938.34(4m). Betsy argues that she is not a “danger to the public” within the meaning of § 938.34(4m). We affirm the juvenile court’s order.

FACTS

¶2 A delinquency petition filed on April 17, 2000, alleged that Betsy had obstructed an officer in violation of WIS. STAT. § 946.41(1). On March 23, 2000, a police officer stopped Betsy as a possible runaway, but Betsy fled the officer. The officer pursued and caught Betsy, and returned her to the squad car. At the squad car, Betsy unsuccessfully tried to pull away from two police officers who were holding her by her arms. Betsy kept trying to “pull away” from the officers as they attempted to place her in the squad car, and “she didn’t want to put her arms behind her back.” Betsy was then forced to the ground and handcuffed, all while she continually resisted the officers.

¶3 After a trial to the court, Betsy was adjudicated delinquent for obstructing an officer. At the disposition hearing, the juvenile court found Betsy delinquent of an act which if committed by an adult would be punishable by a sentence of six months or more and that she was in need of restrictive custodial treatment. In addition, the juvenile court found that Betsy was a danger to the public and placed her at Southern Oaks Girls School, a secure correctional

¹ This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(c) (1999-2000). All references to the Wisconsin Statutes are to the 1999-2000 version unless otherwise noted.

institution. Betsy appeals the juvenile court's finding that she is a danger to the public and her placement at Southern Oaks.

DISCUSSION

¶4 Disposition of a juvenile's delinquency adjudication lies within the sound discretion of the juvenile court. *State v. James P.*, 180 Wis. 2d 677, 682, 510 N.W.2d 730 (Ct. App. 1993). The exercise of discretion requires the court to apply the relevant law to the facts of record to reach a rational conclusion. *Id.* at 683.

¶5 Under WIS. STAT. § 938.34(4m), the court must make three findings before placing a juvenile in a secure correctional facility. First, the juvenile must have been found delinquent of an act which if committed by an adult would be punishable by a sentence of six months or more. Section 938.34(4m)(a). Next, the court must determine whether the juvenile is a danger to the public. Section 938.34(4m)(b). Finally, the court must find that the juvenile is in need of restrictive custodial treatment. *Id.* The meaning of the "danger to the public" requirement of § 938.34(4m)(b) is central to this appeal.

¶6 Betsy claims that she was committed to a secure correctional institution because she ran away from treatment. She argues that the definition of "danger to the public" in WIS. STAT. § 938.34(4m)(b) does not encompass a child who is only a danger to himself or herself. We disagree; Betsy's behavior demonstrates not only a danger to herself, but also to the public.

¶7 WISCONSIN STAT. § 990.01(1) provides: "All words and phrases shall be construed according to common and approved usage; but technical words and phrases and others that have a peculiar meaning in the law shall be construed according to such meaning." The common and approved meaning of a word can

be established by reference to a recognized dictionary. *B.M. v. State*, 101 Wis. 2d 12, 18, 303 N.W.2d 601 (1981).

¶8 Webster's Third New International Dictionary defines "danger" as: "the state of being exposed to harm: liability to injury, pain or loss" WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY 573 (3d ed. 1993). Therefore, "danger to the public" refers to a person who exposes the public to harm, injury, pain or loss. *B.M.*, 101 Wis. 2d at 18. While "injury" and "pain" are customarily limited to physical harm, "loss" is defined in terms of property. *Id.*

¶9 The language of WIS. STAT. § 938.34(4m)² allows a finding that a delinquent child is a danger to the public when he or she presents a threat to property as opposed to a physical threat to persons. *B.M.*, 101 Wis. 2d at 20. A juvenile who presents a threat to the property of others may in proper circumstances be found to be a danger to the public. *Id.* at 21.

¶10 On March 31, 1999, Betsy's mother filed papers with juvenile intake alleging Betsy's uncontrollability, stating that Betsy had been sexually active, using drugs and alcohol, and a chronic school truant since 1996. On April 11, 1999, Betsy reported that her mother's boyfriend had physically abused her; however, after a considerable amount of investigation by the Fond du Lac County Sheriff's Department and after the boyfriend spent a weekend in the county jail, Betsy admitted that she made up the story about the abuse. Betsy then was charged with obstructing an officer.

² 1995 Wis. Act 77 repealed WIS. STAT. § 48.34(4m) and created WIS. STAT. § 938.34(4m) in its stead.

¶11 On April 15, 1999, an intake inquiry was held regarding the uncontrollability referral. Betsy failed to appear for this inquiry and a runaway report was filed. After being apprehended, Betsy was placed in nonsecure custody.

¶12 On April 16, 1999, Betsy ran away from nonsecure custody. She was apprehended on April 23, 1999, and placed in secure detention. On April 26, 1999, Betsy was released from secure detention and placed in the home of her paternal aunt.

¶13 While at her aunt's home, Betsy violated curfew. On July 19, 1999, Betsy ran away from her aunt's home, taking with her a bottle of vodka, prescription pills for dizziness, allergy pills, and a bottle of Tylenol. In addition, Betsy left spray paint on the carpeting, and her uncle found spray paint and paint thinner in Betsy's bedroom.

¶14 Betsy was apprehended on July 20, 1999, and placed in secure detention. On August 4, 1999, a disposition hearing was held on the obstruction charge. Betsy was placed on formal supervision for one year. On August 7, 1999, Betsy ran from secure detention and was apprehended on August 10, 1999. She was again placed in secure detention.

¶15 On September 8, 1999, Betsy was placed at her mother's home on electronic monitoring. On September 13, 1999, Betsy violated the terms of her nonsecure custody order by drinking alcohol during the school day and was placed in secure detention.

¶16 On September 28, 1999, Betsy was released from secure detention to nonsecure custody at the Winnebago Mental Health Institution for entry into the

Anchorage Program, an intensive, inpatient alcohol and drug treatment program. While at Winnebago, Betsy punched her fist into a wall two separate times and became aggressive towards staff and herself. Betsy was discharged and released from Winnebago on January 20, 2000, to a treatment foster home. On January 28, 2000, Betsy ran away from this foster home; her foster mother reported that \$100 was missing from her purse after Betsy left. Betsy was apprehended and placed in secure detention on February 17, 2000. On February 18, 2000, while in secure detention, Betsy's urine tested positive for THC.

¶17 On March 8, 2000, Betsy was placed at a group home. On March 14, 2000, Betsy ran away from that group home, but returned the following morning. On March 23, 2000, Betsy again ran away from the group home. She was arrested and placed in secure detention on March 24, 2000; it is this arrest that forms the basis for this delinquency petition. On March 27, 2000, Betsy was released to the group home.

¶18 On April 3, 2000, Betsy ran away from the group home again; she was returned to the group home by police that evening, but then ran away again the following day. After being returned to the group home, Betsy ran away again on April 9, 2000, but was apprehended and returned to the group home on April 11, 2000. She ran away again a few hours later and was apprehended on April 13, 2000, and placed in secure detention.

¶19 Betsy's social worker, Gail Barter, wrote that Betsy is highly manipulative and quick to anger, with limited impulse control. Betsy does not like following rules that other people establish for her and does not feel that there should be any consequences for her failure to follow others' rules. Betsy did not express any interest in therapy or in changing her behavior.

¶20 At the disposition hearing, Barter testified that Betsy had engaged in aggressive behaviors both in and out of secure detention. Barter testified that while at home with her mother, there were aggressive behaviors between Betsy and her younger sister, such as Betsy continuously kicking and punching her. In addition, Betsy displayed aggressive tendencies while at Winnebago; on one occasion, Barter testified, workers had to physically restrain her because she was flailing and hitting them and hitting walls.

¶21 The juvenile court concluded that there was some danger to the public by virtue of Betsy's property crimes, such as the theft and vandalism of her aunt's home. The court noted Betsy's combativeness when taken into custody by the police on the obstruction charge and her history of aggressive behavior. Furthermore, the court noted that Betsy's false accusations of abuse against her mother's boyfriend indicated that she was a danger to the public. The juvenile court concluded that the property crimes, in conjunction with Betsy's aggressive behavior and her "attitude as far as the rules does more than satisfy the criteria of danger to the public." We agree.

CONCLUSION

¶22 The juvenile court did not erroneously exercise its discretion when it found that Betsy is a danger to the public and placed her in a secure correctional facility pursuant to WIS. STAT. § 938.34(4m). The order of the juvenile court is affirmed.

By the Court.—Order affirmed.

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

