

**COURT OF APPEALS
DECISION
DATED AND FILED**

February 19, 2008

David R. Schanker
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. 2007AP2218

Cir. Ct. No. 2006JV549

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT III**

IN THE INTEREST OF CHRISTENA M. D., A PERSON UNDER THE AGE OF 17:

STATE OF WISCONSIN,

PETITIONER-RESPONDENT,

v.

CHRISTENA M. D.,

RESPONDENT-APPELLANT.

APPEAL from an order of the circuit court for Outagamie County:

DEE R. DYER, Judge. *Affirmed.*

¶1 BRUNNER, J.¹ Christena M.D. appeals an order changing her placement from an in-home placement to an out-of-home placement. She argues the court did not follow the proper statutory procedures to change her placement. Because this issue is moot, we affirm.

BACKGROUND

¶2 On January 30, 2007, Christena entered an admission to disorderly conduct, and was adjudicated delinquent. The court entered an order for in-home placement, placed Christena on supervision, ordered that she spend one and one-half hours a night on academic work, and ordered that she participate in a “Baby Think It Over” program. Additionally, the court imposed and stayed a condition of thirty days in non-secure or secure custody and stated, “I will implement [this condition] if there are problems when we come back for our review hearing.” The court scheduled the review hearing for March 26, 2007.

¶3 At the review hearing, the County expressed concerns with Christena’s home life. Addressing Christena’s mother, the court stated

it is contrary to Christena’s welfare to remain in your home. I find that the Department of Human Services has made every reasonable effort to keep Christena in your home, but you have not responded to those efforts. Christena hasn’t responded to those efforts, and it has continued to be the exact same or yet a worst situation than it was last time; and frankly, Christena cannot afford any

¹ This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2). Because this case was decided based on the application of established precedent, it does not meet the criteria for publication set forth in WIS. STAT. RULE 809.23(1). Therefore, we recommended that the Chief Judge deny the appellant’s motion for a three-judge panel.

All references to the Wisconsin Statutes are to the 2005-06 version unless otherwise noted.

more time, and therefore, a foster home placement will be ordered.

Christena will be placed at Shelter Care in the interim until foster placement can be found.

¶4 The court entered an “Order for Change of Placement,” stating “a request for change of placement had been filed” and “the allegations of the request are proven.” However, no request for change of placement or revision of the dispositional order had been filed. Christena filed a motion for reconsideration, arguing the court’s sua sponte order violated her due process rights and violated the procedures of the children’s code pursuant to WIS. STAT. § 938.357(1). On April 2, the court denied her motion by written order, stating:

First, the Court finds that all parties had constructive notice that changes and revisions to the Dispositional Order were available to the Court sua sponte at the review hearing as that is the very reason review hearings are scheduled and held.

....

Secondly, the Juvenile Court always has the option of taking a child into Temporary Physical Custody and placing the child outside of the parents’ home if a child is not safe in their house.

DISCUSSION

¶5 The County contends Christena’s argument that the court violated the law by changing her placement at a review hearing is moot because the court returned Christena to her home prior to this appeal. An issue is moot if it has “no practical effect on the underlying controversy.” *State ex rel. Olson v. Litscher*, 2000 WI App 61, ¶3, 233 Wis. 2d 685, 608 N.W.2d 425. However, we have the discretion to address a moot issue if it is of great public importance, or there is a need to guide the trial courts, or it is likely to recur. *Id.*

¶6 Though Christena is still under the supervision of the court, Christena has been returned home, and we see no evidence that addressing this issue will have any practical effect on her case. Additionally, it appears the trial court operated under the mistaken belief that an order for change of placement had been filed. There is no evidence that the court has changed the placement of any other juveniles without proper notice.

¶7 We note that Christena is correct in her assertion that the court may not change placement at a review hearing with only “constructive” notice. WISCONSIN STAT. § 938.357 details the procedure for a change in placement. The court may propose a change in placement on its own motion. WIS. STAT. § 938.357(2m)(a). However, the statute requires a request which contains certain detailed information. Specifically, the request “shall state [t]hat new information is available that affects the advisability of the current placement.” *Id.* If the request contains new information regarding the advisability of the placement and the placement will be changed from in-home placement to placement outside the home, then the court must schedule a hearing and notify the juvenile three days prior to the hearing. WIS. STAT. § 938.357(2m)(b). The statutes simply do not authorize a sua sponte change in placement without following the procedures listed in WIS. STAT. § 938.357(2m).²

By the Court.—Order affirmed.

² Additionally, we note that while the court was correct in asserting that it has authority to take a child into temporary physical custody, there are specific statutory guidelines that must be met in order to take a child into custody. The court must hold a custody hearing within twenty-four hours and file a delinquency petition. WIS. STAT. § 938.21(1)(a).

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

