

**COURT OF APPEALS
DECISION
DATED AND FILED**

September 17, 2002

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 Nos. 02-0743
02-0744
02-0745**

**Cir. Ct. Nos. 97-JV-78
98-JV-97
99-JV-24**

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT III**

IN THE INTEREST OF STEVEN C.:

STATE OF WISCONSIN,

PETITIONER-RESPONDENT,

V.

STEVEN C.,

RESPONDENT-APPELLANT.

APPEALS from an order of the circuit court for Barron County:
JAMES C. EATON, Judge. *Affirmed.*

¶1 HOOVER, P.J.¹ Steven C. appeals an order transferring his juvenile records to a psychologist at the Department of Corrections (DOC). He argues that the request was insufficient under WIS. STAT. § 938.78 and that the court therefore erred by releasing his records. However, the DOC was not required to seek court permission and this court therefore affirms the order.

Facts

¶2 The facts of this case are undisputed. Steven was found delinquent on three counts as a juvenile: fourth-degree sexual assault in 1997 when he was fourteen, sexual contact with a person under sixteen in 1998, and an attempted sexual contact with a person under sixteen in 1999. With the third adjudication, Steven was sent to Mendota Mental Health Center for sex offender treatment. While there, he turned seventeen—an adult for purposes of the criminal code—and was convicted of battery to an inmate. He was then sentenced to three years at the Racine Youthful Offender Facility.²

¶3 While Steven was incarcerated in Racine, his treating psychologist sent a request to the Barron County court seeking to review Steven’s juvenile records, including files at the Barron County Department of Human Services (BCDHS). The psychologist was attempting to treat Steven as a sex offender but felt Steven was minimizing his prior offenses. She requested the files to confront Steven and to provide appropriate care.

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

² This institution is considered an adult facility.

¶4 Steven objected, alleging violations of public policy and physician-patient privilege. He also argued that the request was a backdoor approach for reevaluation under WIS. STAT. ch. 980, even though the State had already concluded Steven did not meet the ch. 980 criteria.³

¶5 Following oral argument to the trial court, the court granted the DOC's request, finding the need to protect the public greater than Steven's claimed privacy interest. This appeal followed.

Standard of Review

¶6 This case involves the application of a statute to undisputed facts and thus presents a question of law reviewed without deference to the trial court. *Sauer v. Reliance Ins. Co.*, 152 Wis. 2d 234, 240, 448 N.W.2d 256 (Ct. App. 1989).

Discussion

¶7 WISCONSIN STAT. ch. 938, the Juvenile Justice Code, governs the maintenance of Steven's juvenile record. WISCONSIN STAT. § 938.396 provides that law enforcement officers' records of juveniles shall be kept separate from the records of adults and generally forbids the inspection or disclosure of juvenile records. *See* WIS. STAT. § 938.396(1). However, the subsection specifically does not apply to "the confidential exchange of information between the police and ...

³ WISCONSIN STAT. ch. 980 provides procedures for the commitment of a sexually violent person.

other law enforcement or social welfare agencies” *Id.* Thus, police records may be transferred to a county department such as BCDHS.

¶8 WISCONSIN STAT. § 938.78 addresses confidentiality of juvenile records in the possession of agencies such as BCDHS. The agency may not disclose the contents except under specific statutory exception or court order. *See* WIS. STAT. § 938.78(2)(a). However, the requirements of para. (2)(a) do not apply to the confidential exchange of information between listed agencies. *See* WIS. STAT. § 938.78(2)(b)1.⁴ Section 938.78(1) defines “agency” as “the department, a county department, or a licensed child welfare agency.” Under § 938.02(4), “department” means the DOC for ch. 938. This is sufficient authority

⁴ WISCONSIN STAT. § 938.78(2)(b)1 states:

Paragraph (a) does not apply to the confidential exchange of information between an agency and another social welfare agency, a law enforcement agency, the victim-witness coordinator, a fire investigator under s. 165.55 (15), a public school district or a private school regarding an individual in the care or legal custody of the agency. A social welfare agency that obtains information under this paragraph shall keep the information confidential as required under this section and s. 48.78. A law enforcement agency that obtains information under this paragraph shall keep the information confidential as required under ss. 48.396 (1) and 938.396 (1). A public school that obtains information under this paragraph shall keep the information confidential as required under s. 118.125 and a private school that obtains information under this paragraph shall keep the information confidential in the same manner as is required of a public school under s. 118.125. (Emphasis added.)

for the DOC to have requested Steven's records from the court and BCDHS without petitioning the court for permission.⁵

Other Arguments

¶9 While the foregoing discussion is dispositive, Steven raises four other arguments this court chooses to address. First, he claims that WIS. STAT. § 938.396(5)(c) requires the court to review the juvenile record and determine if the petitioner's need for the information outweighs society's interest in maintaining the confidentiality. However, this section only applies to individuals who are denied access under other sections of the statute, including § 938.396(1). Because subsec. (1) allows the BCDHS to access the records and transmit them to the DOC under § 938.78(2)(b), § 938.396(5)(c) does not apply to this case.

¶10 Second, Steven claims that WIS. STAT. § 938.396 provides certain privacy protections that WIS. STAT. § 938.78 takes away. However, § 938.396 provides many opportunities for the records to be distributed to others. Schools may obtain the information, parents or guardians may grant permission to release the files, and the media can obtain the information. There is no overarching privacy interest established through § 938.396.

¶11 Steven also contends that the psychologist was not the appropriate DOC representative to request the files. The DOC, however, must act through

⁵ Additionally, WIS. STAT. § 938.78(2)(d) states that subsec. (2)(a) does not prohibit a county department such as the BCDHS from disclosing to the DOC information about an individual the county department previously supervised if the individual is under sentence to the Wisconsin prisons.

individuals, and in this case there is no person more appropriate to request the particular files in question than a health care professional within the DOC.

¶12 Finally, Steven contends that a broad request such as the one submitted by the psychologist cannot “kick in the requirements of the statute” and that the files should not be released absent a showing of need. Steven cites no authority for this proposition, however, and we would thus ordinarily not address this argument. *See State v. Shaffer*, 96 Wis. 2d 531, 545-46, 292 N.W.2d 370 (Ct. App. 1980). Nonetheless, this court addresses it long enough to point out that the legislature has not conditioned the transfer of files between departments and agencies on any criteria, least of all a showing of need.

Summary

¶13 This case is governed by WIS. STAT. § 938.78, which allows interagency transfer of juvenile files, even without a court order. Thus, the order in this case is affirmed.

By the Court.—Order affirmed.

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

