

**COURT OF APPEALS
DECISION
DATED AND FILED**

March 31, 2004

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 No. 03-2707

Cir. Ct. No. 03JV000597

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT II**

**IN THE INTEREST OF MARK W.Q.,
A PERSON UNDER THE AGE OF 17:**

STATE OF WISCONSIN,

PETITIONER-RESPONDENT,

v.

MARK W.Q.,

RESPONDENT-APPELLANT.

APPEAL from a nonfinal order of the circuit court for Racine County: EMMANUEL VUVUNAS, Judge. *Affirmed.*

¶1 ANDERSON, P.J.¹ Mark W.Q. appeals from a nonfinal order of the juvenile court waiving him into adult court under WIS. STAT. § 938.18. He argues

¹ This opinion is decided by one judge pursuant to WIS. STAT. § 752.31(2)(e) (2001-02). All references to the Wisconsin Statutes are to the 2001-02 version unless otherwise noted.

that the testimony and the evidence do not support the findings of the court. Additionally, he argues that the findings of the court do not demonstrate a clearly articulated mental process resulting from a rational consideration of fact and law and resulting in a reasoned determination to order waiver of juvenile jurisdiction. We are not persuaded by Mark's arguments and therefore affirm the juvenile court's order.

¶2 At the waiver hearing, the court heard testimony from Michelle Rainey, Mark's case manager from the Human Services Department. She recommended that Mark be transferred into the adult system. She stated that she prepared a waiver study taking into account the criteria contained in the waiver statute, WIS. STAT. § 938.18(5). She then outlined the primary reasons why the Human Services Department believed it would be appropriate for the juvenile court to waive jurisdiction in Mark's case:

- Mark has previously been adjudicated delinquent on two occasions. He is currently in corrections on the most recent adjudication.
- The services offered through the juvenile system have been exhausted. While in many of his placements, Mark received the services of many different types of counseling programs, such as alcohol and drug groups, social skills group, anger management group, independent living skill group.
- Mark has been put in detention for violations of a court order—on many occasions on seventy-two hour holds.
- Mark has had evaluations by doctors and counselors.
- In July of 2001, there was a battery charge against Mark that placed him in Carmelite School for Boys for an extended period of time.
- Mark was placed in the Gang Crime Diversion program.

- Mark was referred to the Juvenile Intensive Supervision program.
- Mark was in Family Strengths, an in-home program.
- Mark was at Lydia Group Home 1.
- Mark was at Lydia Group Home 2.
- Mark is currently in corrections and he is having some of the same problems that he was having in the other programs he was placed in: disobeying orders, talking when not supposed to, disruptive, defiant, disrespectful, not following rules and not thinking the rules apply to him.

¶3 In addition to the reasons given above for waiver, Rainey testified that on September 12, 2003, Mark was charged with disorderly conduct. This incident occurred seventeen days prior to the waiver hearing. She explained that the Human Services Department would have been looking at waiver if a waiver petition was attached to the last disposition, but it was not, and therefore at that time, the department recommended corrections. She stated:

We were concerned at that time that because of [Mark's] lack of progress in any treatment program that we had sent him to, that the same kind of things would happen while at corrections. We did feel better that it was a locked facility ... but we did not believe that he would probably do well, and we are seeing that the case progress notes state that he is having some of the same problems that he had ... in the other programs we put him in.

¶4 Rainey related her determination that Mark has the personality of a habitual offender based on the fact that he continues to have contact with the court system and with law enforcement even after he has been placed on supervision. She said she believed that Mark's potential to respond to future treatment is guarded, at best. She further testified she did not believe that the services in the

juvenile justice system have a reasonable chance of success in terms of changing Mark's behavior at this point in his life.

¶5 With regard to whether Mark suffers from mental illness, Rainey testified that she does not consider Mark to be suffering from any mental illnesses or defects. She stated that previously Mark had had some psychology evaluations that presented that he had certain problems, but those have not been raised for a "number of years." She said that Mark has been in court and that for the most recent "number of years," neither the judges nor his attorneys have raised Mark's competency. She testified that "[e]very one" at those hearings determined that Mark was competent and understood the proceedings and understood what was going on. She said that currently at corrections, "they are not finding any difficulties in those areas. They have not prescribed meds for him, and he is monitored on a daily basis there."

¶6 Rainey testified that she believes that Mark is at least of average, if not higher, intelligence. She stated that she does not believe that Mark is developmentally disabled. When asked whether any of Mark's adjudications were based on behavior that caused serious bodily injury, Rainey stated that in July 2001, Mark was charged with battery and, as a result, he was placed at the Carmelite School for Boys.

¶7 On cross-examination, Rainey was asked to explain her basis for making the statement that she did not believe that the services at Lincoln Hills School will change Mark's behavior. She answered stating:

Based on [Mark's] past performance with services and his progress after services [are] completed, it does not stop his behavior, not changed his behavior, it has not slowed his behavior. He continues to have contact with law

enforcement, and his charges have become increasingly more serious.

¶8 On redirect, Rainey testified that she had interviewed Mark in preparation for the waiver study and Mark had told her that he wanted to be waived into adult court, stating he thought that he would be given a better deal.

¶9 Social worker Renee Kapellusch from Lincoln Hills School was then called to testify for the defense. She explained the available services at Lincoln Hills School and discussed what Mark would be doing if he were allowed to stay there. She testified that she knew Mark because he was assigned to live in the “regular cottage” she supervised at the School. She stated that in the time he has been in the regular cottage, he has been “compliant and cooperative.” She admitted that she had limited exposure to Mark because it was only twenty days prior to the hearing that he had been assigned to the regular cottage and because, during that time, Mark was off grounds approximately fifteen of the twenty days for court hearings. When prodded by the court to give a more exact amount of time she had spent with Mark, Kapellusch calculated that, including her one-hour assessment, she had only spent a total of two and one-half to three hours with Mark since she had met him.

¶10 Finally, Mark’s mom, Deborah, testified. Deborah reiterated the problems with the Human Services Department programs that Mark had been placed in. She stated that none of the programs provided adequate supervision. She rated the effectiveness of the services provided by the Human Services Department to be “very poor.” She then testified that she believed that the programming at Lincoln Hills School would provide the structure Mark needs. She said she believed that Mark was an immature juvenile and he thinks that “he

can get away with all of this” and she believed that “the system has let him get away with it.” She then opined:

[W]hen you let a kid get away with it and keep getting away with it, they’re not going to stop until they get caught, and now they want to waive him as an adult?

¶11 The court asked Deborah why she believed that Lincoln Hills School was a good idea now when she had told the court it was not a good idea the last time she was before the court. The court reminded Deborah that at that time she had asked the court not to put Mark in Lincoln Hills School. After this reminder, the following exchange occurred:

[Deborah] No, I didn’t.

[The Court] Well, do you want me to get the transcript of the hearing, ma’am?... I heard from all kinds of people why putting him in the boys school wasn’t a good thing to do at this time, correct?

[Deborah] No. I don’t think that’s correct. I think that I asked for him to be put in Rawhide.

[The Court] Ma’am are you dealing with reality here today?... [Y]ou don’t remember me listening to all this stuff about all these other, about Rawhide and all this other stuff?

[Deborah] The reason I asked for him to be sent to Rawhide is because the information that I had looked up showed that it was a boot camp and very structured for kids with behavioral problems. I did not know that Lincoln Hills provided a boot camp within their program.

[The Court] Now ma’am, on these dozens of contacts [Mark has] had with the police ... you indicated these were happening in the daytime, right?

[Deborah] A lot of them were, yes.

[The Court] These 3 burglaries are accused of happening in ... wee hours of the morning. And he was at your home. Who was supervising him at that time?

[Deborah] This was at night, and this was just the last charges. Any of the other charges I believe were during the day or at school.

[The Court] I got all kinds of curfew violations here, ma'am, which are after 11 o'clock in the evening.

[Deborah] I'm usually in bed by 10 o'clock.

[The Court] So then you don't know, you don't pay attention?

[Deborah] I pay attention. If the child sneaks out of my house, what am I supposed to do?

[The Court] So it's all right, you agree that you can't control this young man; is that right?

[Deborah] I have said that I couldn't control him. That's why I'm the one that originally filed the JIPS petition when Human Services wouldn't do anything and they said we're sorry ... we can't do anything until your son does something criminal. Now he's done something criminal, and you want to put him off as an adult.

[The Court] All right, ma'am. Thank you very much. You may step down.

¶12 No other witnesses were called. The court then heard arguments and made its determination to waive jurisdiction to adult court. The court listed the myriad of Mark's police contacts and Mark's continuing failure to change his behavior despite the many services he has received in the juvenile system:

He's been involved in disorderly conduct. Placed on deferred prosecution agreement. Disorderly conduct, obstructing, CHIPS, criminal damage, and disorderly conduct. That was in the year 2000. That's when he was found to be competent and was placed on a JIPS order for a period of 9 months. He had a theft prosecution was declined. Battery to a school district employee, prosecution was declined. Disorderly conduct, counseled and released

And then in July 9 of 2001, battery, resisting, disorderly conduct. He was placed on a one year order and was placed at Carmelite School for Boys residential treatment. That order has been extended.

While on the order, he was placed at Lydia Group Home, both in Sturtevant and in Silver Lake. He was convicted of criminal damage to property, still on the prior order when convicted of these crimes, criminal damage to property criminal damage to property. Take and carry, drove mother's vehicle. He pled to two of the counts. The other two were dismissed and read in.

He was placed in the boys school. Disorderly conduct, which is not being charged. This is while he's been in the detention center since he's come back. He's had an evaluation with [a doctor] in 2002. That's where he had this diagnosis of a bipolar affect disorder, oppositional defiant disorder, and possibly attention deficit disorder.... These ... kinds of things ... perfectly describe ninety percent of the inmates in the penitentiary. People who don't get along with people. People who refuse to do what they are supposed to do, and defy everybody and every occasion....

Mark was placed at Carmelite School for Boys. He was in residential on grounds treatment and he was placed, attended Cradwell School, and his parents—and his mother have made some yeoman efforts here to try to keep him straight and placed him at this school at some great expense.

He was placed in Gang Crime Diversion program twice and never followed any of the rules. His behavior was atrocious, and he never completed any of those. Juvenile supervision, he was on that program also. He was placed in the Family Strength program. He did not complete that program. He was unsuccessful. He was at Lydia School out in Sturtevant and in Silver Lake, and then he was returned home when all these crimes have been committed. And since August 7, he's been at the Lincoln Hill School for Boys.

This young man has never been previously waived. His personality is awful. He absolutely listens to no one. His record in the institution since he's been there is just appalling. This young man apparently won't cut anybody a break. He's in this institution and absolutely picks up a ticket every day. He's never previously been waived, and none of the prior convictions of this juvenile involve the infliction of serious bodily harm.

¶13 The court continued:

His motives and attitudes, his motives are he wants to be a thief. He wants to be a crook. He has a very adult lifestyle. His parents can't control him. He's out at all times of the day. He's got a rap sheet ... where he's, he gets picked up on almost a weekly occasion, maybe even more than a weekly occasion.... He's mentioned as a perpetrator of dozens and dozens of offenses, but the amazing amount of contacts just show that this young man is out and about and living a very adult type of living.

....

His prior history, obviously he's been treated and nothing has been successful.... I don't see potential for him responding to future treatment....

These are very, very serious offenses. 3 counts of burglary, each punishable by 12 and a half years. They were done in an aggressive, premeditated willful manner. Prosecutive merit is very, very high....

This is a young man who will have to have reins put on him for substantial period of time, whether it's actual incarceration or probation or ... [e]xtended supervision. There's all kinds of things in adult court that are not available in the juvenile court ... and I think this young man needs a much greater length of potential treatment.

¶14 After this thorough review, the court made its finding:

I find that this record is established by clear and convincing evidence that it would be contrary to the best interests of the juvenile and especially to the best interests of the public to have this case heard in juvenile court, and this Court shall enter an order waiving this young man into adult court.

¶15 Mark appeals the order waiving juvenile court jurisdiction to adult court. Mark argues that the testimony and the evidence do not support the findings of the court. Additionally, he argues that the findings of the court do not demonstrate a clearly articulated mental process resulting from a rational consideration of fact and law and resulting in a reasoned determination to order waiver of juvenile jurisdiction.

¶16 A juvenile court's decision to waive jurisdiction to adult court is a discretionary decision for the juvenile court. *In re J.A.L.*, 162 Wis. 2d 940, 960, 471 N.W.2d 493 (1991). WISCONSIN STAT. § 938.18(5) provides four criteria upon which the court must base its decision whether to waive jurisdiction. These criteria include the personality and prior record of the juvenile; the type and seriousness of the offense; the adequacy and suitability of facilities, services and procedures available within the juvenile system; and the desirability of consolidating the case with a pending proceeding of another person in criminal court. Sec. 938.18(5).

¶17 This court recently summarized the standards of review governing appeals from waivers of juvenile jurisdiction:

Waiver of juvenile jurisdiction under § 938.18, STATS., is within the sound discretion of the circuit court. *See In re B.B.*, 166 Wis. 2d 202, 207, 479 N.W.2d 205, 206-07 (Ct. App. 1991). We review the circuit court's decision for misuse of discretion. *Id.* at 207, 479 N.W.2d at 207. We first look to the record to see whether discretion was in fact exercised. *In re J.A.L.*, 162 Wis. 2d 940, 961, 471 N.W.2d 493, 501 (1991). If discretion was exercised, we will look for any reason to sustain the court's discretionary decision. *Id.* We will "reverse a juvenile court's waiver determination if and only if the record does not reflect a reasonable basis for the determination or a statement of the relevant facts or reasons motivating the determination is not carefully delineated in the record." *Id.*

State v. Elmer J.K., III, 224 Wis. 2d 372, 383-84, 591 N.W.2d 176 (Ct. App. 1999).

¶18 To conclude that waiver is appropriate, a juvenile court need not determine that each and every statutory criterion supports waiver. *See B.B. v. State*, 166 Wis. 2d 202, 209, 479 N.W.2d 205 (Ct. App. 1991) ("We have held that WIS. STAT. § 48.18 does not require a finding against the juvenile on every

criterion before waiver is warranted.”). And the current Juvenile Justice Code does not direct the juvenile court to give the child’s best interests prevailing consideration over the public’s best interests. *See* WIS. STAT. §§ 938.01(2)(a), (b); 938.18(6).

¶19 We dispose of Mark’s arguments easily. First, his argument that the testimony and the evidence do not support the findings of the court is unpersuasive. The juvenile court’s decision is approximately six to seven pages long and while it is not an illustration of an exemplary contemporaneous ruling, it is satisfactory. We do not require a court to speak from a checklist and to make sure that it covers every point in the same order that points are laid out in the statute. After our review of the law and the court’s bench decision, we are satisfied that it is supported by the entire record.

¶20 Additionally, Mark argues that the findings of the court do not demonstrate a clearly articulated mental process resulting from a rational consideration of fact and law and resulting in a reasoned determination to order waiver of juvenile jurisdiction. Again, we are not persuaded. Here, the court, weighing the criteria, reasonably assigned great significance to the fact that despite the “yeoman” efforts made by Mark’s mother, the strong family support Mark has had, and the myriad of treatment programs and services he’s been privy to, he still shows no progress and in fact still engages in crime after crime. While its conclusion may have been a close call, the circuit court’s careful consideration of the testimony, accurate application of the statutory criteria, and reasonable exercise of discretion are evident in the record. Thus, this court concludes that the circuit court did not erroneously exercise discretion in waiving juvenile court jurisdiction.

By the Court.—Order affirmed.

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

