COURT OF APPEALS
DECISION
DATED AND RELEASED

October 12, 1995

No. 95-1318

STATE OF WISCONSIN **IN COURT OF APPEALS**
DISTRICT IV

IN THE INTEREST OF KENNETH M. W.,
A PERSON UNDER THE AGE OF 18:

STATE OF WISCONSIN,

Petitioner-Respondent,

v.

KENNETH M. W.,

Respondent-Appellant.

APPEAL from an order of the circuit court for Green County: DAVID G. DEININGER, Judge. *Affirmed*.

EICH, C.J.[1] Kenneth M. W. appeals from an order revoking a consent decree in a juvenile prosecution. The issue is whether the trial court erred in applying a preponderance-of-the-evidence burden of proof to the state's motion to revoke the decree. We see no error and affirm the order.

[1] This appeal is decided by one judge pursuant to § 752.31(2)(e), STATS.

Kenneth M. W. and the state entered into a consent decree in a delinquency case in 1994. The decree stated, as a condition, that "Kenneth will commit no further delinquent or criminal acts." In March 1995, the state moved to revoke the decree based on delinquent acts alleged to have been committed by Kenneth M. W. A question arose at the hearing on the motion as to the appropriate burden of proof the state must carry to establish the violation, and the trial court ruled that the preponderance-of-the-evidence standard applied. Kenneth M. W. disagrees, arguing that a higher burden applies.[2] It is a question of law which we review de novo, owing no deference to the trial court's decision.

Section 48.32(1), STATS., authorizes the petitioner and the child (together with his or her parent, guardian or legal custodian) to enter into consent decrees at any time prior to the entry of judgment in a juvenile case. The statute does not specify the standard of proof to be applied in proceedings to revoke such agreements, and Kenneth M. W.'s argument for reversal of the trial court's order is two-fold. He maintains that: (1) because the law does not enforce contracts made by juveniles, it is inappropriate to permit the state to revoke a consent decree under a burden of proof that is also applicable in civil contract cases; and (2) because § 48.18(6), STATS., sets a clear-and-convincing-evidence standard for waiver of juveniles into adult criminal court, the same standard should apply to consent-decree revocation proceedings. The arguments are brief and may briefly be disposed of.

It may be the general rule that civil contracts made by persons under the age of 18 are not enforceable in court, but the statutes, in the juvenile code and elsewhere, plainly contemplate the execution of enforceable agreements by minors in certain specific situations. Sections 103.67, 103.78 and 103.79, STATS., for example, set minimum ages and restrictions for minors in several types of employment contracts, while other statutes permit minors to hold shares in thrift institutions, § 215.43(2)(b), STATS., and to contract (with

[2] Oddly, Kenneth M. W. does not say which of the two "higher" burdens should apply--the "clear-and-convincing-evidence" standard employed in certain civil and forfeiture cases, or the "beyond-a-reasonable-doubt" criminal standard. He argues only that "[s]ince the Court found only a preponderance of the evidence, and did not find clear and convincing evidence or evidence beyond a reasonable doubt, the Court erred in revoking [the] consent decree. The matter should be remanded to the trial court to correct this error."

parental consent) for the purchase of a motor vehicle, § 218.01(7b), STATS. The juvenile code authorizes children to enter into informal disposition agreements prior to the filing of petitions, § 48.245, STATS., in addition to the consent decrees authorized by the statutes under discussion on this appeal.

Since the legislature has expressly authorized minors to agree to the entry of such decrees--with the concurrence of the child's parent, guardian or legal custodian--we see no reason why the standard of proof for breach of the underlying agreement should be any greater than that applicable to such agreements generally.

Finally, we agree with Kenneth M. W. that the statutes providing for waiver of alleged juvenile offenders into adult criminal court impose a middle-burden standard of proof on the state. We also agree that while the juvenile court is to consider a variety of interests--those of the parent and the public--the "paramount consideration" of the code is the child's best interest. *See* § 48.01(2), STATS. But Kenneth M. W.'s argument that "[t]here is no ... reason to believe that a lesser burden [than that applicable to waivers] was intended by the legislature for revocation of a consent decree" begs the question. In simplest terms, Kenneth M. W. has failed to persuade us that when the legislature expressly authorized juveniles--with the concurrence of parents, guardians or legal custodians--to enter into consent agreements, it intended a higher standard of proof than that applicable to such agreements generally to apply in proceedings asserting their breach.

By the Court.—Order affirmed.

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