

**COURT OF APPEALS
DECISION
DATED AND RELEASED**

September 21, 1995

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See § 808.10 and RULE 809.62, STATS.

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

No. 95-1713

STATE OF WISCONSIN

IN COURT OF APPEALS
DISTRICT IV

IN THE INTEREST OF SALLY S.
A CHILD UNDER THE AGE OF 18:

STATE OF WISCONSIN,

Petitioner-Respondent,

v.

SALLY S.,

Respondent-Appellant.

APPEAL from an order of the circuit court for Grant County: JOHN R. WAGNER, Judge. *Affirmed.*

DYKMAN, J. This is a single-judge appeal decided pursuant to § 752.31(2)(e), STATS. We granted Sally S.'s petition for leave to appeal a trial court's order waiving juvenile jurisdiction. Section 808.03(2), STATS. Sally argues that the trial court erroneously exercised its discretion because insufficient evidence supports the court's determination that waiver of juvenile jurisdiction is in the best interests of Sally. We disagree and therefore affirm.

BACKGROUND

A Grant County sheriff filed a delinquency petition in April 1995 alleging that Sally, then a seventeen-year-old juvenile, had committed burglary, contrary to §§ 943.10(1)(a), 939.50(3)(c) and 48.12(1), STATS., forgery, contrary to §§ 943.38(2), 939.50(3)(c), and 48.12(1), STATS., and extortion, contrary to §§ 943.30(1), 939.50(3)(d), and 48.12(1), STATS. The prosecutor filed a petition asking that the trial court waive juvenile jurisdiction and, after a hearing on the matter, the court ordered that juvenile jurisdiction be waived. Sally appeals.

WAIVER

The decision to waive juvenile jurisdiction rests within the sound discretion of the trial court. *In re J.A.L.*, 162 Wis.2d 940, 960, 471 N.W.2d 493, 501 (1991). We will only reverse if the record does not reflect a reasonable basis for the determination, or a statement of the relevant facts or reasons supporting the decision cannot be found in the record. *Id.* at 961, 471 N.W.2d at 501.

Section 48.18(5), STATS., sets forth the factors the trial court must consider in making the waiver determination and provides:

If prosecutive merit is found, the judge, after taking relevant testimony which the district attorney shall present and considering other relevant evidence, shall base its decision whether to waive jurisdiction on the following criteria:

(a) The personality and prior record of the child, including whether the child is mentally ill or developmentally disabled, whether the court has previously waived its jurisdiction over the child, whether the child has been previously convicted following a waiver of the court's jurisdiction or has been previously found delinquent, whether such conviction or delinquency involved the infliction of serious bodily injury, the child's motives and

attitudes, the child's physical and mental maturity, the child's pattern of living, prior offenses, prior treatment history and apparent potential for responding to future treatment.

(b) The type and seriousness of the offense, including whether it was against persons or property, the extent to which it was committed in a violent, aggressive, premeditated or wilful manner, and its prosecutive merit.

(c) The adequacy and suitability of facilities, services and procedures available for treatment of the child and protection of the public within the juvenile justice system, and, where applicable, the mental health system.

(d) The desirability of trial and disposition of the entire offense in one court if the juvenile was allegedly associated in the offense with persons who will be charged with a crime in circuit court.

The trial court must state its findings with respect to these factors on the record, and, if the court determines that clear and convincing evidence establishes that it would be contrary to the best interests of the child or of the public for the court to hear the case, the court may enter an order waiving juvenile jurisdiction. Section 48.18(6), STATS.;¹ *J.A.L.*, 162 Wis.2d at 960, 471

¹ Section 48.18(6), STATS, provides:

After considering the criteria under sub. (5), the judge shall state his or her finding with respect to the criteria on the record, and, if the judge determines on the record that it is established by clear and convincing evidence that it would be contrary to the best interests of the child or of the public to hear the case, the judge shall enter an order waiving jurisdiction and referring the matter to the district attorney for appropriate criminal proceedings in the circuit court, and the circuit court thereafter has exclusive jurisdiction. In the absence of evidence to the contrary, the judge shall presume that it would be contrary to the best interests of the child and of the public to hear the case if the child is alleged to have

N.W.2d at 501. The court need not make a finding against the juvenile on every factor before waiving jurisdiction. *In re B.B.*, 166 Wis.2d 202, 209, 479 N.W.2d 205, 207-08 (Ct. App. 1991). And, the weight given to each of those factors is left to the trial court. *J.A.L.*, 162 Wis.2d at 960, 471 N.W.2d at 501. When making the waiver determination, the trial court must regard the best interests of the child as being the paramount consideration. *Id.*

Sally argues that the trial court erroneously exercised its discretion because the State presented insufficient evidence to support the court's waiver determination. According to Sally, in order to establish that there is clear and convincing evidence that it would be contrary to the best interests of the child or the public for the juvenile court to hear the case, the state must be required to provide evidence pertaining to each factor set forth in § 48.18(5), STATS., thereby providing the court with a reasonable basis for its decision. We disagree.

We have stated that the language of § 48.18(6), STATS., does not require the state to present evidence as to each factor set forth in § 48.18(5). *In re G.B.K.*, 126 Wis.2d 253, 256, 376 N.W.2d 385, 388 (1985). Instead, § 48.18(6) directs the trial court to state on the record its findings with respect to the factors actually considered. *Id.* Furthermore, the plain language of § 48.18(5) directs courts to consider testimony offered by the state as well as other relevant evidence. Consequently, we may examine the entire transcript of the waiver hearing to determine if there is sufficient evidence to support the trial court's decision.

Our review of the record shows that there was sufficient evidence presented at the waiver hearing to support the trial court's order. The court heard testimony regarding Sally's age, personality, prior record, and the services that could be made available to her in the juvenile system. Darin Smith, a juvenile court intake worker for Grant County, testified that Sally would turn eighteen on August 29, 1995. He stated that when he attempted to contact her about this case, she refused to accept a letter that he had sent to her about the matter. He told the court that Sally and her parents failed to appear for the initial appearance and that she was the subject of another juvenile case pending in Juneau County in which she had also failed to appear. Smith
(..continued)

violated any state criminal law on or after the child's 16th birthday and if the court has waived its jurisdiction over the child for a previous violation.

testified that based upon the facts that she was residing alone, was responsible for herself, and the seriousness of the offenses, he believed that she should be waived into adult court. He admitted that he did not know how long she had been living on her own and that he had had no personal contact with her.

Susan Doll, a Richland County Department of Social Services social worker and supervisor, testified on behalf of Sally and stated that Sally was estranged from her family, had been living on her own since about age 13 or 14, moves from place to place, and had not maintained a long-term residential relationship with either parent. Doll testified that Sally had not attended school during the 1994-95 school year and that there had been a formal adjudication of truancy in Richland County. She added, however, that Richland County had closed Sally's case when Sally moved to Juneau County. Doll testified that Richland County had placed her in foster care for a short period of time and had attempted to help her find a permanent living situation. Doll described the juvenile treatment services that the counties or the juvenile division of the Department of Corrections could make available to her. Doll conceded that once Sally turned eighteen, which she is now, there was not much that could be done to enforce any juvenile court order.

The trial court also properly exercised its discretion when it ordered juvenile jurisdiction waived. After hearing the evidence, the court found prosecutive merit. It next considered Sally's personality, noting that Sally was from a broken or dysfunctional family. It noted that there was no evidence of mental illness nor evidence that she was developmentally disabled. To the court's knowledge, Sally had not been waived before into adult court.

The trial court stated that the crimes alleged to have been committed did not involve any physical injury but it indicated that it considered burglary to be one of the more serious property crimes. It also remarked that extortion was a crime against a person and it commented on the potential penalties posed by those crimes.

The trial court explained that secure juvenile detention facilities would restrict Sally's freedom and would keep her with people who were the same age but more serious offenders. The court stated that it was not convinced that it would be in her or the public's best interests to put her in a secure detention facility but that it was not "impressed" with other juvenile services,

noting that she and her parents had not, to date, availed themselves of those services.

The trial court concluded that waiver of juvenile jurisdiction was appropriate, stating:

[These crimes] are serious enough I am concerned that she would use what would be a tragic situation, that this girl in extorting money from an individual in order to provide funds for whatever it is she wanted to do; I am concerned if she's brave enough to walk into the home of an individual and steal checks; and I am concerned that she expresses little concern for her own future with her lack of attendance in school; and I am concerned there is no indication of her ability to settle down; and I am concerned that the juvenile justice system lacks the appropriate services which she so sorely needs, and I feel it would be in the best interest of her and the general public that the Court waive juvenile court jurisdiction

The record reflects that the trial court identified each of the statutory factors applicable in this case,² evaluated the factors based upon the relevant evidence before it, and reached a reasonable conclusion that waiver was appropriate. Accordingly, we affirm.

By the Court. – Order affirmed.

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

² The trial court did not mention § 48.18(5)(d), STATS., apparently because no other persons were involved with this case.