

**COURT OF APPEALS  
DECISION  
DATED AND RELEASED**

January 18, 1996

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**

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**No. 95-2881-FT**

**STATE OF WISCONSIN**

**IN COURT OF APPEALS  
DISTRICT IV**

**IN THE INTEREST OF  
JEDD T.M.:**

**STATE OF WISCONSIN,**

**Plaintiff-Respondent,**

**v.**

**JEDD T.M.,**

**Respondent-Appellant.**

APPEAL from an order of the circuit court for La Crosse County:  
JOHN J. PERLICH, Judge. *Reversed and cause remanded with directions.*

GARTZKE, P.J. Jedd T.M., born November 11, 1979, appeals from a dispositional order entered by the La Crosse County Circuit Court in three cases, 92-JV-223-B, C, and D. The issue is whether the juvenile court complied with the time limits in § 48.30(6), STATS., for setting a date for a dispositional

hearing.<sup>1</sup> We conclude that the court did not comply. We therefore reverse and direct that the petitions be dismissed.<sup>2</sup>

On June 6, 1995, Jedd was adjudicated delinquent on the three uncontested petitions and held in secure custody. At the dispositional hearing on June 14, 1995, he requested a continuance to obtain a psychiatric evaluation. The court granted the continuance and directed that all reports be completed by June 23, 1995, the scheduled date of the continued hearing, and released Jedd from non-secure custody. On June 14 Jedd ran from non-secure custody. On June 28 Jedd was picked up on a *capias*. A new delinquency petition in 92-JV-223-E issued, resulting from his resisting the police officers when he was retaken. On June 29, a custody hearing was held on the fourth petition and the court ordered secure custody. On July 5 the psychiatric evaluation was completed, and on July 17, the La Crosse County Human Services Department received it.

By August 4, 1995, no dispositional hearing had been held on the three petitions, and that day Jedd moved to dismiss for failure to comply with the scheduling requirement in § 48.30(6), STATS. On August 8, the juvenile court denied Jedd's motion to dismiss. The court held a dispositional hearing later that day and ordered that Jedd be placed in a treatment foster home. On August 23, 1995, a written dispositional order to that effect was entered.

The relevant statutes are §§ 48.30(6) and 48.315, STATS. Section 48.30(6) provides in pertinent part:

If a petition is not contested, the court shall set a date for the dispositional hearing which allows reasonable time

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<sup>1</sup> This appeal is decided by one judge pursuant to § 752.31(2)(e), STATS. This is an expedited appeal under RULE 809.17, STATS.

<sup>2</sup> Jedd's brief refers to his appeal as being from the dispositional order and from an order denying his postconviction motion for relief. The latter motion was for release from secure custody and a stay of the dispositional order pending appeal. On November 27, 1995, we granted that relief. No further review of the order denying postconviction relief is necessary.

for the parties to prepare but is no more than 10 days from the plea hearing for the child who is held in secure custody and no more than 30 days from the plea hearing for a child who is not held in secure custody.

Section 48.315, STATS., provides in pertinent part:

- (1) The following time periods shall be excluded in computing time requirements within this chapter:
  - (a) Any period of delay resulting from other legal actions concerning the child, including an examination under s. 48.295 or a hearing related to the child's mental condition, prehearing motions, waiver motions and hearings on other matters.
  - (b) Any period of delay resulting from a continuance granted at the request of or with the consent of the child and counsel.
  - ...
  - (f) Any period of delay resulting from the absence or unavailability of the child.

The application of §§ 48.30(6) and 48.315, STATS., to the undisputed facts raises a question of law which we resolve independently of the trial court's decision. *In Interest of Joshua M.W.*, 179 Wis.2d 335, 340, 507 N.W.2d 141, 143 (Ct. App. 1993). The juvenile court loses competency to act if it fails to comply with the scheduling requirements in § 48.30(6), and the delinquency petitions before it must be dismissed. *In Interest of R.H.*, 147 Wis.2d 22, 24, 433 N.W.2d 16, 17 (Ct. App. 1988).

Eight days elapsed between June 6, when Jedd was adjudicated delinquent, and June 14, when the dispositional hearing was scheduled, and he was in secure custody during that period. By August 4, when Jedd moved to dismiss the three petitions, various events had occurred which we briefly

review. However, Jedd concedes in his brief that June 14 to July 16 is excluded when computing the time period in § 48.30(6), STATS. We review that period to cull the facts significant to our analysis. On June 29, another branch of the juvenile court, the Honorable Michael Mulroy, presiding, heard a fourth delinquency petition arising out of Jedd's activities from the time he ran to the time he was retaken. Jedd having run from non-secure custody, Judge Mulroy found that he would not appear at future proceedings unless he was securely detained, and Judge Mulroy therefore ordered secure custody. Because Jedd was held in secure custody as the result of Judge Mulroy's order in the fourth delinquency proceeding, Jedd was also held in secure custody for purposes of establishing the applicable time limit in § 48.30(6) for a dispositional hearing on the three earlier petitions. It makes no sense to conclude otherwise. Held in secure custody on one petition, he was in secure custody on all petitions. From June 29 through August 4, Jedd remained in secure custody insofar as we can determine from the record.

Consequently, for purposes of our analysis, between June 6 and July 17 Jedd spent eight days in secure custody. Therefore, § 48.30(6), STATS., required that the dispositional hearing in 92-JV-223-B, C and D be held no later than July 19, 1995. But by August 4, the hearing had not been held, and nothing had occurred in the meantime to exclude any part of that period under § 48.315, STATS., for purposes of computing the ten-day time limit in § 48.30(6).

In its oral decision, the juvenile court noted that it had released Jedd to a non-secure detention on June 14, but the court omits the fact that on June 29 another branch of the same court had ordered secure custody. And as we have said, from and after that date, through the date of Jedd's motion, he was in secure custody.

The juvenile court found that the period relating to Jedd's psychiatric examination and the county's receipt of the psychiatric report, July 5 to July 17, was not an unreasonable delay. We need not review that finding. Jedd concedes that the period between June 14 and July 17 is excluded from the time computation.

The trial court eluded in its analysis that the delinquency petition 92-JV-223-E was heard on June 29. That, of course, was another "legal action concerning" Jedd but no "delay" resulted from it. No other legal actions

occurred concerning Jedd between June 29 and August 4 except his motion to dismiss. For that reason, we deduct nothing as a consequence of the exclusion in § 48.315(1)(a), STATS., for any "delay resulting from other legal actions concerning the child."

We cannot accept the State's position that Jedd has appealed to the court of appeals "for a remedy based upon his manipulation of the juvenile court system." Jedd is entitled to enforcement of the ten-day limit in § 48.30(6), STATS. The State asserts, "A critical determination in this appeal is whether or not [Jedd] should be allowed to benefit from his own wrongdoing." Wrongdoing in the court is not a factor to be taken into account when computing the ten-day time limit. Section 48.315(1), STATS., makes no reference to exclusion for "wrongdoing."

The State asserts that Jedd and his attorney had a duty to schedule the dispositional hearing when they knew the psychiatric evaluation had been completed. The State is wrong. It is the petitioning, and not the objecting, party which has the primary obligation to move the case along in a timely fashion to get to that hearing. *In Interest of B.J.N.*, 162 Wis.2d 635, 653, 469 N.W.2d 845, 852 (1991).

Because the juvenile court lost competency to act on the petitions in 92-JV-223-B, C and D, those petitions must be dismissed. *In Interest of R.H.*, 147 Wis.2d at 24, 433 N.W.2d at 17. The fourth petition, 93-JV-223-E, is not before us, and our mandate does not apply to it.

*By the Court.*—Dispositional order reversed and remanded with directions to dismiss petitions in cases no. 92-JV-223-B, 92-JV-223-C, and 92-JV-223-D.

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