

**COURT OF APPEALS
DECISION
DATED AND RELEASED**

April 9, 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

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

No. 95-3285-FT

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT I**

**In the Interest of Kristopher G.,
A Child Under the Age of Eighteen:**

State of Wisconsin,

Petitioner-Respondent,

v.

Kristopher G.,

Respondent-Appellant.

APPEAL from an order of the circuit court for Milwaukee County:
THOMAS P. DONEGAN, Judge. *Reversed and cause remanded with directions.*

WEDEMEYER, P.J.¹ Kristopher G., a minor, appeals from an order granting the State's petition to extend a dispositional order for a period of one year which would require Kristopher to remain in a residential treatment center. Kristopher claims that the trial court failed to make a mandatory finding

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

pursuant to § 48.365(2m)(a), STATS., that the agency made reasonable efforts to return Kristopher to his home. Because § 48.365(2m)(a) requires such a finding under the facts of this case, and because the record does not demonstrate that such a finding was made, this court remands this case to the trial court for further proceedings.

I. BACKGROUND

In April 1993, Kristopher was adjudged delinquent of criminal damage to property. As a result, the court ordered placement in a residential treatment center for a period of one year with concurrent probation. In August 1994, the original order was revised and Kristopher was committed to Lincoln Hills until April 1995. In February 1995, the State petitioned for an extension of the dispositional order for a one-year period, requesting that Kristopher remain at Lincoln Hills.

In April 1995, an extension hearing was held and the trial court extended the original dispositional order until April 1996. Kristopher filed a postconviction motion challenging the validity of the extension order, which was denied. He now appeals.

II. DISCUSSION

Kristopher claims that the trial court failed to make a mandatory finding pursuant to § 48.365(2m)(a), STATS., that reasonable efforts were made by the agency to return him to his home. He claims that this error should result in dismissal of the order. Although this court agrees that the trial court failed to make a finding according to the proper “reasonable efforts” standard set forth in § 48.365(2m)(a), this court concludes that the proper procedure is to remand this case to the trial court to consider this case in light of the proper standard.

Section 48.365(2m)(a), STATS., provides in pertinent part:

Any party may present evidence relevant to the issue of extension.

The judge shall make findings of fact and conclusions of law based on the evidence, including a finding as to whether reasonable efforts were made by the agency primarily responsible for providing services to the child to make it possible for the child to return to his or her home.

This statute unambiguously requires the judge to make a “finding as to whether reasonable efforts were made by the agency primarily responsible for providing services to the child to make it possible for the child to return to his or her home.” The use of the term “shall” makes this finding a mandatory one. *Karow v. Milwaukee County Civil Service Comm'n*, 82 Wis.2d 565, 570, 263 N.W.2d 214, 217 (1978). Instead of making a finding under this specific standard, however, the trial court found that “reasonable efforts to prevent removal have been made and less restrictive placement alternatives are not appropriate.”

The State argues that the mandatory finding was not applicable in this case because Kristopher was not being returned to his mother's home, but was being considered for independent living. This court is not persuaded. The statute does not define “his or her home.” Accordingly, if the juvenile is being considered for independent living rather than a return to a parent's home, “home” under such a circumstance means the juvenile's independent home.

The State also argues that the trial court's finding regarding "reasonable efforts" essentially means the same thing as the mandatory finding. Although this may be true, it does not alter the fact that the statute mandates a specific finding regarding reasonable efforts to return the juvenile home. Accordingly, this court concludes that the appropriate action is to remand this case to the trial court with instructions that the trial court consider whether the record supports a finding as mandated by the statute.²

By the Court.—Order reversed and cause remanded with directions.

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

² Kristopher argues that a remand is not the appropriate remedy. He argues that a violation of a mandatory statutory provision should result in dismissal of the order. He relies on *C.A.K. v. State*, 154 Wis.2d 612, 453 N.W.2d 897 (1990) for his argument. In *C.A.K.*, the Wisconsin supreme court dismissed a delinquency petition for failing to comply with the mandatory 20-day rule under § 48.25, STATS. *Id.* at 614, 453 N.W.2d at 897-98. This court rejects Kristopher's argument.

Contrary to *C.A.K.*, Kristopher's case does not involve the violation of a mandatory time limit. It involves the failure of the trial court to make a specific finding of fact. Accordingly, the proper procedure is to remand the case to the trial court to allow it to consider whether the specific finding can be made. *State v. McKenzie*, 139 Wis.2d 171, 407 N.W.2d 274 (Ct. App. 1987).