COURT OF APPEALS
DECISION
DATED AND FILED

December 11, 2007

David R. Schanker
Clerk of Court of Appeals

Appeal No. 2007AP1191 **Cir. Ct. No. 2006JC333**

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

IN THE INTEREST OF LYNIAH J.,
A PERSON UNDER THE AGE OF 18:

STATE OF WISCONSIN,

PETITIONER-RESPONDENT,

V.

DARNELL H.,

RESPONDENT-APPELLANT.

APPEAL from an order of the circuit court for Milwaukee County: DAVID L. BOROWSKI, Judge. *Affirmed*.

¶1 WEDEMEYER, J.[1] Darnell H. appeals from a written order that the placement of his child, Lyniah J., shall be undisclosed pursuant to WIS. STAT. § 48.355(2)(b)2 (2005-06).[2] Darnell claims he does not present an "imminent danger" to Lyniah or the foster parent, and therefore, the trial court erred in ordering that the placement of Lyniah be undisclosed. Because there was sufficient evidence for the trial court to find that Darnell was an "imminent danger" pursuant to § 48.355(2)(b)2, and because the trial court did not erroneously exercise its discretion in ordering nondisclosure, we affirm.

BACKGROUND

¶2 On March 28, 2006, Lyniah was detained from her mother, Itisha J., when she was less than a week old. A petition for protection or services was filed on April 4, 2006, stating Lyniah was in need of protection or services pursuant to WIS. STAT. §§ 48.13(10) and (10m).[3] There was little written in the petition about the father

---

[1] This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2) (2005-06).

[2] All references to the Wisconsin Statutes are to the 2005-06 version unless otherwise noted.

[3] The relevant provisions of WIS. STAT. § 48.13 provides:

> **Jurisdiction over children alleged to be in need of protection or services**. The court has exclusive original jurisdiction over a child alleged to be in need of protection or services which can be ordered by the court, and: **(10)** Whose parent … neglects, refuses or is unable for reasons other than poverty to provide necessary care, food, clothing, medical or dental care or shelter so as to seriously endanger the physical health of the child; **(10m)** Whose parent … is at substantial risk of neglecting, refusing or being unable for reasons other than poverty to provide necessary care, food, clothing, medical or dental care or shelter so as to endanger seriously the physical health of the child, based on reliable and credible information that the child's parent … has neglected, refused or been unable

(continued)

because Itisha had only indicated his name and that he was incarcerated in Muskego. Thus, there was no adjudicated father at the time of the initial petition.

¶3 At the April 26, 2006 hearing on the petition, the Bureau of Milwaukee Child Welfare (BMCW) case manager informed the trial court she had located the alleged father, Darnell. The trial court ordered genetic testing and the tests concluded that Darnell was, in fact, the biological father of Lyniah. Darnell made his initial appearance in trial court as the adjudicated father on June 1, 2006, and counsel was appointed at that time.

¶4 During a status conference a few months later, the trial court accepted the father's stipulation that the trial court takes exclusive jurisdiction over Lyniah under WIS. STAT. § 48.13(8).[4] Thereafter, the State filed an amended petition that included § 43.13(8).

¶5 At the first dispositional hearing on October 31, 2006, the State requested nondisclosure of Lyniah's placement pursuant to WIS. STAT. § 48.355(2)(b)(2). While Itisha did not challenge the undisclosed placement issue, Darnell did contest it. As a result, the trial court heard oral arguments on the issue. First, the State claimed that Darnell has been convicted of at least two felonies, specifically possession of firearm by

---

> for reasons other than poverty to provide necessary care, food, clothing, medical or dental care or shelter so as to endanger seriously the physical health of another child in the home.

[4] WISCONSIN STAT. § 48.13(8) provides:

> **Jurisdiction over children alleged to be in need of protection or services.** The court has exclusive original jurisdiction over a child alleged to be in need of protection or services which can be ordered by the court, and:
> …

(continued)

felon and robbery with use of force. Due to the violent nature of the crime that resulted in his latest conviction—he hit a woman in the head with an unknown object and then stole her purse—the State and the Guardian ad Litem argued that Darnell posed a danger to the child and the foster family, and nondisclosure was thus warranted. But Darnell asserted that he has made an effort to reform by completing elective anger management and parenting programs, and that he cannot be an "imminent danger" because he is incarcerated. Therefore, Darnell argues disclosure of placement is appropriate. Following oral arguments, the trial court adjourned to allow for written briefs on the subject.

¶6 The parties reconvened on January 12, 2007. The BMCW case manager informed the trial court that since the last hearing, Darnell was caught passing prescription medication to another inmate and, consequently, was being moved to a different prison. No further statements by the parties were made. The trial court then ordered Lyniah's placement to remain undisclosed pursuant to WIS. STAT. § 48.355(2)(b)(2) because Darnell posed an "imminent danger":

> I'm granting the State's request ... [to keep] the location, placement of the child[,] undisclosed …. I think under all the circumstances in this case, weighing the equities, weighing what is a significant criminal history, particularly from [Darnell], particularly violent criminal history, the fact that the mother has had other children in the system … [and] in looking at the best interest of the child, I'm granting the State's request.

A written order was filed on February 1, 2007, from which Darnell appeals.

> (8) Who is receiving inadequate care during the period of time a parent is … incarcerated….

DISCUSSION

¶7 Questions of statutory interpretation are reviewed *de novo*. ***Stephenson v. Universal Metrics, Inc.***, 2002 WI 30, ¶26, 251 Wis. 2d 171, 641 N.W.2d 158. However, an appellate court will sustain a discretionary act if it finds that the circuit court: (1) examined the relevant facts; (2) applied a proper standard of law; and (3) using a demonstrated rational process, reached a conclusion that a reasonable judge could reach. ***Loy v. Bunderson***, 107 Wis. 2d 400, 414-15, 320 N.W.2d 175 (1982).

A. Statutory Interpretation.

¶8 "Our ultimate goal in interpreting a statute is to give effect to the intent of the legislature. To determine the intent of the legislature, we first look at the statute's plain text." ***Stephenson***, 251 Wis. 2d 171, ¶27. Here, WIS. STAT. § 48.355(2)(b)(2) provides, in relevant part:

> If the child is placed outside the home … the name and address of the foster parent … shall be furnished to the court and the parent within 21 days of the order. If, after a hearing on the issue with due notice to the parent or guardian, the judge finds that disclosure of the identity of the foster parent … would result in *imminent danger* to the child [or] the foster parent … the judge may order the name and address of the prospective foster parents … withheld from the parent or guardian.

(Emphasis added). If the language of the statute is clear on its face, we need not look any further than the statutory text to determine the statute's meaning. ***State v. Peters***, 2003 WI 88, ¶14, 263 Wis. 2d 475, 665 N.W.2d 171 (citation omitted). "When a statute unambiguously expresses the intent of the legislature, we apply that meaning without resorting to extrinsic sources of legislative intent. Statutory language is given its

common, ordinary and accepted meaning." ***Id.*** (citations and internal quotations omitted).

¶9 We conclude that WIS. STAT. § 48.355(2)(b)(2) is not ambiguous, and therefore we look only to the "common, ordinary and accepted meaning," ***Peters***, 263 Wis. 2d 475, ¶14, of "imminent danger." The dictionary defines "imminent" as "about to occur; impending." AMERICAN HERITAGE DICTIONARY OF THE ENGLISH LANGUAGE (4th ed. 2000). "Danger" is defined as "exposure or vulnerability to harm or risk." ***Id.*** Thus, "imminent danger" means "impending exposure or vulnerability to harm or risk." Both parties actually submitted to the above statutory construction in their briefs; and, therefore, the real issues on appeal are whether there was sufficient evidence for the trial court to find that Darnell poses "imminent danger," and if so, whether the trial court erred in exercising its discretion to keep the child's placement undisclosed.

B. Exercise of Discretion.

¶10 The State presented evidence at the first dispositional hearing, through certified records, of Darnell's past criminal convictions. The State also informed the trial court during the second dispositional hearing that Darnell had allegedly committed an illegal act while incarcerated. Moreover, Darnell, has not disputed any of this evidence. Instead, Darnell argues that that evidence is insufficient to support a finding of imminent danger. We disagree.

¶11 First, Darnell has been found guilty of a minimum of three felony offenses, including possession of a firearm by a felon and robbery with use of force, and is currently incarcerated for the latter. Darnell was charged and convicted of robbery with use of force because, while stealing a purse from an elderly woman, Darnell struck

her on the head with an unknown object with enough force to cause bleeding. Furthermore, Darnell's former conviction for possession of a firearm is indicative of at least one occasion where he went out into the community, armed. The violent, dangerous character of these past acts is sufficient to show Darnell poses an actual danger; far beyond the "meager speculation" he contends that the evidence demonstrates. Second, while at Racine Correctional Institution, Darnell was allegedly caught in possession of prescription medication that was not legally prescribed to him. Although Darnell argues that there can be no "imminent," or "impending," danger while he is incarcerated, a court could find that this act shows Darnell's ability to continue illegal activity from behind bars and rationally conclude that, through a third party, Darnell is an imminent danger to Lyniah or her foster parents.

¶12 Once the trial court determines the parent poses an imminent danger to the child or foster parents, the statute provides that the judge "*may* order the name and address of the prospective foster parents … withheld from the parent or guardian." WISCONSIN STAT. § 48.355(2)(b)(2) (emphasis added). "[Placement] decisions are committed to the trial court's discretion," ***State v. Alice H.***, 2000 WI App 228, ¶18, 239 Wis. 2d 194, 619 N.W.2d 151, as indicated by the use of "may" in § 48.355(2)(b)(2). Because the trial court correctly applied § 48.355(2)(b)(2) by noting that the operative part of the statute was "imminent danger," the relevant facts support a finding of

imminent danger, and the trial court delineated the factors that influenced its decision,[5] we conclude that the trial court appropriately exercised its discretion to order nondisclosure in this case. Accordingly, we affirm the judgment of the trial court.

By the Court.—Order affirmed.

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

[5] The trial judge said: "I'm granting the State's request ... [to keep] the location, placement of the child[,] undisclosed … I think under all the circumstances in this case, weighing the equities, weighing what is a significant criminal history, particularly from [Darnell H.], particularly violent criminal history, the fact that the mother has had other children in the system … [and] in looking at the best interest of the child, I'm granting the State's request."