COURT OF APPEALS
DECISION
DATED AND RELEASED

DECEMBER 6, 1995

NOTICE

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.

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

No. 95-2038-FT
95-2039-FT
95-2040-FT
95-2041-FT

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

IN THE INTEREST OF JUSTIN H.,
A PERSON UNDER THE AGE OF 18:

STATE OF WISCONSIN,

Petitioner-Respondent,

v.

JUSTIN H.,

Respondent-Appellant.

APPEAL from an order of the circuit court for Racine County: NANCY E. WHEELER, Judge. *Affirmed*.

BROWN, J. Justin H., an admitted delinquent, appeals from a dispositional order placing him in a secured correctional facility. He argues that the least restrictive alternative would have been a residential treatment center and asserts that the record provides no valid reason for

secured placement. Because the trial court could reasonably conclude from the facts of record that Justin's behavioral problems endanger the public and that secured placement is in his and his parents' best interest, the order was not an erroneous exercise of discretion.

Justin admitted to two counts of battery. Other counts, including an additional count of battery, were read in and dismissed. The issue at disposition was placement. The State argued that Justin had been placed in a residential setting for a period far exceeding the usual and customary amount of time, but that he continued to engage in physical violence against other persons. The State further alleged that his inability to control this violent behavior in fact led to his release from the residential facility. The State argued that placement in a secured facility would impress upon Justin the consequences of his behavior and that he would also be able to get the programming necessary to modify his actions. The State asked for a one-year disposition in a secured setting.

Justin's trial counsel responded by admitting that he had never met a child with more potential for serious violence to another person. He noted that, from all reports, Justin has acted violently from early childhood. One of his fantasies has been to "shoot his mother in the head and watch her brains drip down the wall." Another fantasy was to "take his sister and cut her throat from ear to ear." He was placed in a psychiatric hospital at age ten. He has been under psychiatric care for years. Yet, counsel argued that "money"

was the reason for the recommendation to send Justin to a secured setting instead of a residential treatment center. Counsel believed that it is easier and cheaper for the government to send Justin to secured treatment than to pay for residential treatment. Counsel asserted that Justin was not going to get the help he needs in a secured setting and that Justin would merely be "two years older, two years bigger, [and will] probably learn a few more tricks of the trade." Counsel admitted that Justin "needs to be taken off the streets." However, he claimed that "corrections" is not the place for him.

The trial court acknowledged that there are some cases where a child is not afforded the necessary treatment because of monetary concerns. However, the trial court went on to explain that this is not one of those cases. Rather, this case was driven by the "serious number of charges here that are clearly … offenses against persons." The trial court noted that Justin was in residential treatment for two years which, the trial court opined, was an "unusually long period of time for the county to fund that kind of treatment." Yet, the treatment did not seem to be effective as witnessed by Justin's continued uncooperative, disruptive and violent behavior. The trial court noted that even in detention, a secured environment, these problems have continued. The trial court found that Justin presents a danger of risk of physical harm to others, was a danger to the community and that Lincoln Hills was an appropriate placement with a "therapeutic setting."

On appeal, Justin observes that our law requires placement to be the least restrictive environment that is feasible. He argues that the public has nothing to fear if Justin is again placed in a treatment facility and notes that this is what his parents desire. He points out that Justin's psychiatrist recommended a resumption of residential treatment care. He asks rhetorically: "[W]hat reason … could there conceivably have been for correctional treatment?" He seems to again claim that it is for money reasons rather than needs-based reasons that the State recommended a secured facility rather than a residential treatment center.

This court will not indulge in speculation about whether monetary concerns drive certain decisions in Racine county regarding placement in treatment centers. Rather, this court is convinced that, on the facts of *this* record, the trial court did not misuse its discretion in ordering Justin to be placed in a secured setting. Justin was in a residential treatment center for two years and he still committed violent acts against the public. While § 48.355(1), STATS., says that the disposition shall be the least restrictive, it also says that the placement decision must take into account not only the parents, the child and the family but also "the protection of the public." We see from the record that the public needs to be protected. Thus, we have one answer to Justin's rhetorical question. Protection of the public from Justin's continuing violence, where less restrictive methods have not worked, is a valid reason for placement in a secured setting.

But there is another valid answer to Justin's rhetorical question: placement in a secured setting may well be in Justin's best interests. We are troubled by Justin's apparent perception that a secured setting will not afford him the therapeutic help he needs to modify his behavior and that only a residential treatment center can perform this task. We surmise that this is the view of his counsel based on a statement in the brief that residential treatment placement would "assure the care and treatment of Justin H." We conclude from this statement that counsel believes placement in Lincoln Hills will *not* assure care and treatment of Justin.

In ***State v. Martin,*** 191 Wis.2d 647, 661, 530 N.W.2d 420, 426 (Ct. App. 1995), we took judicial notice of the program descriptions at Lincoln Hills School. We do so again here. The school has a full panoply of psychiatric and psychological services available. These programs are seriously engaged. It is the desire of the State to modify violent behavior so that children can return to their homes ready to take their place as productive members of our community. While such modification cannot be guaranteed, neither can it be said that the residential treatment center would assure it. In Justin's case, for instance, his violent, abusive behavior continued despite his lengthy stay in a residential treatment center.

It was not outside the bounds of judicial discretion for the trial court in this case to conclude that psychiatric help in a more structured and secure environment was the last available avenue. We hold that the trial court

did not misuse its discretion in finding that a secured setting was the least restrictive alternative and was in the best interests of Justin and his parents as well as the public.

By the Court. – Order affirmed.

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