

**COURT OF APPEALS
DECISION
DATED AND RELEASED**

MARCH 13, 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. 95-2876

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT II**

**In the Interest of Jason M.J.,
A Person Under the Age of 18:**

STATE OF WISCONSIN,

Petitioner-Appellant,

v.

JASON M.J.,

Respondent-Respondent.

APPEAL from orders of the circuit court for Waukesha County:
KATHRYN W. FOSTER, Judge. *Reversed and cause remanded with directions.*

ANDERSON, P.J. The State appeals from the juvenile court's orders dismissing a petition for waiver of jurisdiction and entering into a consent decree. We conclude that the State had to agree before the juvenile court could order a consent decree. Accordingly, we reverse the juvenile court's orders.

A Petition for Determination of Status – Alleged Delinquent Child was filed in the interest of Jason M.J. on June 29, 1995. It was alleged that he knowingly and unlawfully possessed, delivered and/or manufactured controlled substances and knowingly and unlawfully maintained a place which was resorted to by persons using controlled substances for the purpose of using said substances, or which was used for manufacturing, keeping or delivering controlled substances. A Petition for Waiver of Jurisdiction of an Alleged Delinquent Child was also filed, stating that Jason was seventeen and would turn eighteen on July 3, 1995, and listing various reasons why waiving juvenile court jurisdiction was appropriate.

A waiver hearing was held on September 7, 1995. The juvenile court dismissed the State's waiver petition. At a dispositional hearing in September 1995, the Waukesha County Department of Health and Human Services recommended that the court enter into a consent decree and Jason was also in favor of such a decree. The State, however, told the court that it would not enter into a consent decree. The juvenile court entered into a consent decree without the State's consent. The State appeals.

The State argues that the juvenile court had no authority to order a consent decree without the agreement of the person filing the petition, pursuant to § 48.32(1), STATS. It states that the juvenile court chose to ignore the statute. In contrast, Jason asserts that a court retains the authority to enter into a consent decree under § 48.12(2), STATS., 1993-94,¹ with or without the agreement of the

¹ Section 48.12(2), STATS., was amended by 1995 Wis. Act 27, § 2432, changing the relevant age from eighteen to seventeen. This amendment became effective January 1,

person filing the petition. He contends that under *State v. K.A.P.*, 159 Wis.2d 384, 464 N.W.2d 106 (Ct. App. 1990), § 48.12(2) is ambiguous. He states that “reasonable minds could differ as to whether the legislature intended the agreement of the person filing the petition in § 48.32, Stats., to the special and limited § 48.12(2), Stats., consent decree situation.”

Whether the juvenile court was required to obtain the State's agreement before entering into a consent decree pursuant to § 48.12(2), STATS., requires the interpretation of statutes. Statutory interpretation is a question of law that we review de novo. *K.N.K. v. Buhler*, 139 Wis.2d 190, 199, 407 N.W.2d 281, 286 (Ct. App. 1987). If a statute is clear and unambiguous, we look at the plain language of the statute in order to ascertain its meaning. *J.A.L. v. State*, 162 Wis.2d 940, 962, 471 N.W.2d 493, 502 (1991). A statute is ambiguous if it is capable of being construed in two different ways by reasonably well-informed persons. *Kollasch v. Adamany*, 104 Wis.2d 552, 561, 313 N.W.2d 47, 51-52 (1981).

Section 48.32(1), STATS., addresses consent decrees and provides in relevant part:

At any time after the filing of a petition for a proceeding relating to s. 48.12 or 48.13 and before the entry of judgment, the judge or juvenile court commissioner may suspend the proceedings and place the child under supervision in the child's own home or present placement. The court may establish terms and conditions applicable to the parent, guardian or legal

(..continued)

1996. See 1995 Wis. Act 27, § 9410. All references in the opinion to § 48.12(2) will be from the 1993-94 statutes.

custodian, and to the child, including any conditions specified in subs. (1d), (1g) and (1t). The order under this section shall be known as a consent decree and must be agreed to by the child if 12 years of age or older; the parent, guardian or legal custodian; and the person filing the petition under s. 48.25.

This statute provides that the consent decree must be agreed to by the person filing the petition, which in this case is the State.

Section 48.12(2), STATS., provides in relevant part:

If a court proceeding has been commenced under this section before a child is 18 years of age, but the child becomes 18 years of age before admitting the facts of the petition at the plea hearing or if the child denies the facts, before an adjudication, the court retains jurisdiction over the case to dismiss the action with prejudice, to waive its jurisdiction under s. 48.18, or to enter into a consent decree.

Section 48.12 provides for jurisdiction over children alleged to be delinquent.

Initially, we conclude that neither § 48.32(1), STATS., nor § 48.12(2), STATS., are ambiguous for purposes of this appeal. Section 48.32(1) clearly states that before a court orders a consent decree, the person filing the petition must agree. Section 48.12, on the other hand, is silent on this subject. Although Jason contends that § 48.12 is ambiguous under *K.A.P.*, we conclude that *K.A.P.* applies to time limits and is not relevant to the subject of the present appeal. *See K.A.P.*, 159 Wis.2d at 389, 464 N.W.2d at 108.

We now address the merits of the appeal. We agree with the State that given the clear language of § 48.32(1), STATS., the juvenile court was

without authority to enter into the consent decree without the State's agreement. We must harmonize statutory provisions whenever possible. *See County of Dane v. Racine County*, 118 Wis.2d 494, 498, 347 N.W.2d 622, 625 (Ct. App. 1984). A general rule of statutory construction where two statutes relate to the same subject matter is that the specific statute controls over the general statute. *Kramer v. City of Hayward*, 57 Wis.2d 302, 311, 203 N.W.2d 871, 876 (1973). In harmonizing the two statutory sections, we conclude that § 48.32(1) is the specific section governing consent decrees and requires that the juvenile court obtain the petitioner's approval for the consent decree. This specific language governs the more general language of § 48.12(2), STATS. Additionally, we see no policy reason for not obtaining the petitioner's consent in a situation occurring under § 48.12(2).

We remand to the juvenile court with directions to vacate the consent decree and to dismiss the case with prejudice.

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

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