COURT OF APPEALS
DECISION
DATED AND RELEASED

February 15, 1996

NOTICE

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals pursuant to § 808.10 and RULE 809.62, STATS.

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No. 95-3061-FT

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

IN THE INTEREST OF DAVID A. B.,
A PERSON UNDER THE AGE OF 18:

STATE OF WISCONSIN,

Petitioner-Respondent,

v.

DAVID A. B.,

Respondent-Appellant.

APPEAL from an order of the circuit court for Dane County: GERALD C. NICHOL, Judge. *Affirmed*.

VERGERONT, J.[1] David B., born September 7, 1979, appeals from a dispositional order that placed him under the supervision of the Dane County Department of Human Services for a period of one year, with placement in his mother's home; imposed certain other conditions; and denied David's motion to

[1] This appeal is decided by one judge pursuant to § 752.31(2)(e), STATS., and has been expedited pursuant to RULE 809.17, STATS.

dismiss three delinquency petitions. In his motion to dismiss, David contended that the court lacked competency because the dispositional hearing was not held within the mandatory time period and good cause did not exist to extend the time. On appeal, David argues: (1) the trial court lacked authority to order a *sua sponte* psychological evaluation without a hearing pursuant to § 48.295(1), STATS.; (2) the evidence was not sufficient to support the trial court's order for a psychological evaluation; and (3) the time limits imposed for holding a dispositional hearing under § 48.30(6), STATS., were not met and therefore the court lacked competency to enter a dispositional order. We resolve each of these issues against David and affirm.

A petition was filed on March 22, 1995, for a determination of delinquency that alleged that David had engaged in violent, abusive and otherwise disorderly conduct, contrary to § 947.01, STATS.[2] The petition alleged that David knocked another student at school to the floor and struck him several times in the face and head and kicked him several times while the student was on the floor. At the plea hearing on April 12, 1995, David entered a denial and a demand for a jury trial.

A second delinquency petition was filed on April 17, 1995. This petition alleged that David took property from another person by using force against that person, contrary to §§ 939.05 and 943.32(1)(a), STATS. At a plea hearing on April 20, 1995, David entered a denial and a demand for a jury trial.

A third delinquency petition was filed on April 25, 1995. This petition alleged that David caused substantial bodily harm to another with intent to cause bodily harm, contrary to § 940.19(2), STATS., (count 1), and that David knowingly and maliciously attempted to dissuade a witness from attending or giving testimony at a legal proceeding, using violence against the witness, contrary to §§ 940.42 and 940.43(1), STATS., (count 2). An order for secure temporary physical custody was entered on April 25, 1995, with a finding that David had committed a delinquent act and presented a substantial

[2] On March 29, 1993, a delinquency petition was filed alleging that David was selling marijuana in school. That petition resulted in a consent decree pursuant to which the proceedings were suspended and David was placed under supervision in his home upon certain conditions. When we refer to the "first," "second" and "third" petitions, or to "the three petitions," we are referring to the three filed in 1995.

risk of physical harm to another person. The plea hearing for this third petition was held on May 3, 1995. David entered a denial and a demand for a jury trial.

A temporary release from secure custody to a shelter home was ordered on May 10, 1995. At a plea hearing on May 19, 1995, David entered admissions to the first and second petitions and to count 1 of the third petition. Count 2 of the third petition was dismissed. The dispositional hearing was scheduled for June 6, 1995.

The Dane County Department of Human Services submitted a report for the court's consideration at the dispositional hearing. The report recommended one year of supervision by the department and placement of David in his mother's home. The report also recommended that David complete an Alternatives to Aggression program and either New Focus or Neighborhood Intervention Program—Right Track Plus, write an apology to one of the victims, and pay restitution.

The State argued at the dispositional hearing on June 6, 1995, that the three petitions demonstrated physical aggression and violence toward others that was serious enough to warrant placement in a secure correctional facility for six months rather than the community-based treatment programs for aggression that were part of the recommendation by the Dane County Department of Human Services. In arguing against that recommendation, David's counsel pointed out that David had not had treatment in the past and therefore one could not say that he was not amenable to treatment. Counsel pointed out that David had never had a psychological evaluation, never had any therapy or counseling, and never had been part of treatment programs such as Alternatives to Aggression.

The trial court stated that it wanted a psychological evaluation to be done of David. The court stated that, in its view, neither recommendation addressed the underlying problem. The court considered David's behavior in beating up other students to indicate that he had serious treatment needs that had not been addressed and that needed to be addressed. The court noted that the same problems presented in different ways appeared to be involved in

earlier incidents.[3] It also noted the references in the record to David's special learning needs.

David's attorney objected on the ground that the dispositional hearing would then not be held within the time limits if the hearing were continued for a psychological evaluation. The court responded that it would "make a good cause finding to set [the dispositional hearing] outside [the time limits]." The court's clerk stated that the continued dispositional hearing could be set for June 19. The social worker for the Dane County Department of Human Services expressed a concern that the psychological evaluation would not be completed by then, but the court responded that a particular psychologist would do it within that time. The court expressed the hope that one of the results of the psychological evaluation would be that the department's social worker would be able to refer David to some type of counseling that would address his problems. The court continued placement at the shelter, denying David's attorney's request for an overnight visit with his family. The court also directed the social worker to look at group home placements. On the same day, June 6, the court ordered that Dr. Rick Beebe conduct a psychological examination of David. The examination was conducted on June 12 and 13, and a written report was prepared and signed by Dr. Beebe on June 15, 1995.

The continued dispositional hearing took place on June 19, 1995. The Dane County Department of Human Services presented a revised recommendation. The court reviewed the psychological evaluation, the department's revised recommendation and heard from the State and from David's counsel, as well as from an employee with the NIP program.

The court ultimately accepted the Dane County Department of Human Services' revised recommendation, which provided for one year of supervision by the department with placement in his mother's home, successful completion of the Alternatives to Aggression program and the NIP—Right Track Second Chance program, twenty-four hour adult supervision, letters of apology to the school and to one of the victims, no contact with the victims,

[3] *See* note 2.

restitution and certain other conditions. The court denied David's motion to dismiss challenging the timeliness of the continued dispositional hearing.

Section 48.30(6), STATS., provides in part: "If a petition is not contested, the court shall set a date for the dispositional hearing which allows reasonable time 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(1), STATS., provides that certain time periods "shall be excluded in computing time requirements within this chapter." Under § 48.315(1)(a), one exclusion is "[a]ny period of delay resulting from ... an examination under s. 48.295."

Section 48.295(1), STATS., provides in part:

> After the filing of a petition and upon a finding by the court that reasonable cause exists to warrant an examination or an alcohol and other drug abuse assessment ... the court may order any child coming within its jurisdiction to be examined as an outpatient ... by a physician, psychiatrist or licensed psychologist ... in order that the child's physical, psychological, alcohol or other drug dependency, mental or developmental condition may be considered.... The court shall hear any objections by the child, the child's parents, guardian or legal custodian to the request for such an examination or assessment before ordering the examination or assessment.

We address first David's arguments concerning the court-ordered psychological evaluation. We begin by noting that the court's decision whether or not to order a psychological evaluation is discretionary. ***In re T.M.J.***, 110 Wis.2d 7, 20, 327 N.W.2d 198, 205 (Ct. App. 1982). We will not reverse a discretionary determination if the record shows that discretion was exercised

and we can perceive a reasonable basis for the trial court's decision. ***Prahl v. Brosamle***, 142 Wis.2d 658, 667, 420 N.W.2d 372, 376 (Ct. App. 1987).

David appears to suggest that because neither party requested a psychological examination, the trial court could not order one. However, the statute does not in any way suggest such a limitation on the court's authority to order a psychological.

David next contends that the court did not hear any objections by the child or his parents before ordering the examination as required by the statute. We disagree. David, his counsel, and his mother were present at the June 6 hearing when the court ordered a psychological evaluation. None of these parties objected when the court stated that it considered that a psychological evaluation was necessary. Indeed, David's counsel, in arguing against the State's recommendation for placement in a secure correctional facility, pointed out that no psychological evaluation had ever been done. David's counsel did object to delaying the dispositional hearing, but not on the ground that there was anything objectionable about a psychological evaluation itself. Counsel's objection was that the psychological evaluation would require a continuance of the dispositional hearing. The court did hear and did consider that objection but concluded that the issue of the time limits for holding a dispositional hearing could be dealt with by making a finding that there was good cause for continuing the hearing in order to obtain a psychological evaluation.

David also argues that the court did not make a finding that reasonable cause existed to warrant the psychological assessment and that the record does not or would not support such a finding. We disagree on both counts.

Although the court did not use the words "reasonable cause" in explaining why it decided the psychological evaluation was necessary, it did explain in detail the reason it considered one was necessary. We interpret the court's statement, "I will make a good cause finding to set it outside," to refer to the court's finding that a psychological evaluation was necessary, recognizing that the time for the psychological evaluation would then be exempt from the time limits for dispositional hearings under § 48.315(1)(a), STATS. In any event, we do not consider that the precise words "reasonable cause" are necessary in

order for a court to comply with § 48.295(1), STATS. It is sufficient if the court explains the reasons that it considers a psychological necessary, which this court did. If the court's decision is reasonable and supported by the record, then we affirm the decision. We conclude the court's decision was reasonable and supported by the record.

It was reasonable for the court to conclude that the seriously aggressive conduct demonstrated by David within a short period of time in three different circumstances indicated a need for treatment. It was also reasonable for the court to conclude that a psychological evaluation would aid the court in determining what those treatment needs were and how they could be met. David argues that the court had before it an alcohol and other drug assessment report, dated July 13, 1993, a shelter home progress report, dated June 5, 1995, and the Dane County Department of Human Services report to the court, filed June 5, 1995. But none of these contained a psychological evaluation and none answered the court's concern that the underlying causes of David's behavior were not being addressed.

David also suggests that the court should have determined that a psychological evaluation was necessary sooner. However, the Dane County Department of Human Services report to the court was not filed until June 5, 1995. It was reasonable for the court to first recognize the need for a psychological evaluation after reviewing that report and hearing in more detail about the recommendations and alternatives for David.

Because we conclude that the trial court did not erroneously exercise its discretion in ordering the psychological evaluation, the delays resulting from that examination are excluded from the computation of the time limit for holding a dispositional hearing. David entered admissions to the petitions on May 19, 1995. Since he was released from secure custody to a shelter home on May 10, 1995, and remained in the shelter home on and after May 19, 1995, § 48.30(6), STATS., requires that the dispositional hearing be held no more than thirty days from May 19. Excluding the time from June 6, the date on which the psychological evaluation was ordered, to June 15, the date on which the psychological written report was signed, the dispositional hearing had to be held by June 27, 1995. The continued dispositional hearing was held on June 19, well within that statutory time limit.

We do not intend to suggest that, in computing the permissible period of delay for a court-ordered psychological evaluation, only the time from the date of the order to the date of the completion of the written report may be considered. In ***In re Joshua M.W.***, 179 Wis.2d 335, 507 N.W.2d 141 (Ct. App. 1993), we held that in computing the period of delay caused by another permissible exception under § 48.315(1), STATS.,--§ 48.315(1)(c), disqualification of a judge--the delay includes not just the time it takes to assign a new judge, but also the time necessary to send out any statutorily-mandated notices and to rearrange the calendars of the court, the parties and counsel to accommodate the required hearing, as long as that delay is reasonable. ***Id.*** at 343-44, 507 N.W.2d at 144. We do not decide what additional time beyond the nine days (June 6 to June 15) would be reasonable in this case. That is unnecessary because the trial court very commendably set a date at the June 6 hearing for the continued hearing that was only thirteen days later and made certain that the psychological evaluation was completed before the continued hearing.

By the Court.—Order affirmed.

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