

**COURT OF APPEALS
DECISION
DATED AND FILED**

February 24, 1999

Marilyn L. Graves
Clerk, Court of Appeals
of Wisconsin

NOTICE

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

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.

**Nos. 98-2341-FT
98-2342-FT**

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT II**

**IN THE INTEREST OF DONNIE L.B., A PERSON UNDER
THE AGE OF 17:**

STATE OF WISCONSIN,

PETITIONER-RESPONDENT,

V.

DONNIE L.B.,

RESPONDENT-APPELLANT.

APPEAL from orders of the circuit court for Fond du Lac County:
HENRY B. BUSLEE, Judge. *Appeal dismissed as moot.*

NETTESHEIM, J. Donnie L.B. appeals from the restitution portion of a delinquency dispositional order directing him to pay restitution in the amount of \$2000. He contends that the juvenile court erred by assessing his ability to pay restitution by reference to an income level “typically” earned by a juvenile in a

one-year period. Donnie additionally contends that the juvenile court improperly relied on a possible extension of the dispositional order in setting restitution. Because the restitution portion of the dispositional order from which Donnie appeals has been supplanted by a later order of the juvenile court which is not before us, we deem the appellate issues moot.

On November 18, 1997, the State filed a delinquency petition charging Donnie with operating a motor vehicle without owner consent and fraudulent use of a financial transaction card.¹ Donnie was the subject of a separate delinquency petition filed on January 30, 1998, alleging operation of a motor vehicle without owner consent and eluding an officer.

On February 25, 1998, the juvenile court held a joint dispositional hearing on both petitions. Following that hearing, on February 27, 1998, the court entered two dispositional orders finding Donnie delinquent and ordering his placement at Lincoln Hills School and setting restitution in the amount of \$2000. The dispositional orders expire on February 24, 1999.

Donnie argues on appeal that the juvenile court erred in setting restitution at \$2000. Specifically, he contends that the court improperly considered the possible extension of the dispositional orders when setting restitution. In addition, he contends that the court erred by setting restitution on the basis of the earning ability of a “typical” juvenile in Fond du Lac county.

However, the circumstances under which the juvenile court based the initial restitution order no longer exist. The State has supplemented the

¹ The second charge, fraudulent use of a financial transaction card, was dismissed but read in for restitution purposes.

appellate record which reveals that Donnie's placement has since changed from Lincoln Hills to a group home.² On October 7, 1998, the juvenile court held a hearing regarding this change in placement. At this hearing, the State also requested that the court again set restitution at \$2000 and offered to present evidence in support of that request if Donnie did not stipulate to such an amount. While the record is not clear whether Donnie stipulated to the amount, he did not object to the court's granting the State's request. Neither did he request that the State proceed with its evidence.

The supplemental record further reveals that on November 19, 1998, the State filed a further petition requesting another change of placement and a revision and extension of the dispositional orders. This petition was based on Donnie's placement with his parents. The petition additionally requested an extension of the previous order to provide Donnie more time in which to pay the restitution.³

The original restitution order has since been supplanted by a later order entered under different circumstances. If Donnie is aggrieved by the present order, he is free to appeal from it. The former order is no longer in effect, and it has never been executed against Donnie. It is an elementary rule of law that an issue "is moot when 'a determination is sought which, when made, cannot have any practical effect upon an existing controversy.'" *City of Racine v. J-T Enters. of Am., Inc.*, 64 Wis.2d 691, 700, 221 N.W.2d 869, 874 (1974) (quoted source

² In our November 5, 1998 order granting the State's request to supplement the record, we noted that the subsequent proceedings in the juvenile court might render the appeal moot.

³ We note that any order resulting from the October 7 hearing is not part of the appellate record.

omitted). As a general matter, “if a question becomes moot through a change in circumstances, it will not be determined by the reviewing court.” *Id.* at 701, 221 N.W.2d at 875 (quoted source omitted). While we can decide moot issues in exceptional and compelling circumstances, *see Lenz v. L.E. Phillips Career Dev. Ctr.*, 167 Wis.2d 53, 66-67, 482 N.W.2d 60, 64 (1992), this is not such a case.

Moreover, this court recently spoke to the burgeoning caseload in the court of appeals and the lack of judicial resources to deal with it. *See State v. Stefanovic*, 215 Wis.2d 310, 319-20, 572 N.W.2d 140, 144-45 (Ct. App. 1997). In light of that unfortunate condition, it is far better that we commit our limited resources to the backlog of cases in which the rights and obligations of the litigants are actually at stake rather than to those in which our decisions will have no practical or legal effect.

By the Court.—Appeal dismissed as moot.

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

