

**COURT OF APPEALS
DECISION
DATED AND FILED**

January 22, 2003

Cornelia G. Clark
Clerk of Court of Appeals

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 WIS. STAT. § 808.10 and RULE 809.62.

**Appeal No. 02-2638-FT
STATE OF WISCONSIN**

Cir. Ct. No. 01-JV-59

**IN COURT OF APPEALS
DISTRICT II**

**IN THE INTEREST OF RODNEY C.M.,
A PERSON UNDER THE AGE OF 17:**

STATE OF WISCONSIN,

PETITIONER-RESPONDENT,

v.

RODNEY C.M.,

RESPONDENT-APPELLANT.

APPEAL from an order of the circuit court for Racine County:
ALLAN B. TORHORST, Judge. *Affirmed.*

¶1 ANDERSON, J.¹ Rodney C.M. appeals from the one-year extension of a dispositional order. He contends that the circuit court lacked

¹ This is a one-judge appeal pursuant to WIS. STAT. § 752.31(2)(e) (1999-2000). All references to the Wisconsin Statutes are to the 1999-2000 version unless otherwise noted.

jurisdiction to extend the dispositional order because the petition to extend was filed after the original order had expired. We affirm because before the expiration of the dispositional order, there was a stipulation on the record to extend the order for the period Rodney was absent from the state.

¶2 An original dispositional order was entered in this case on March 16, 2001, and was to expire on January 25, 2002. On August 8, 2001, Rodney absconded from his placement; approximately fifty-eight days later, he was returned to Racine. As a result of Rodney's absconding, a petition for a change in his placement was filed on October 22, 2001, and at a hearing on October 23, all parties stipulated to a change in Rodney's placement to a new group home. In addition, the prosecutor advised the court that the parties were in agreement that the dispositional order should be extended by the fifty-eight days that Rodney was gone. Without any objection from Rodney or his attorney, the circuit court accepted the prosecutor's statement and ordered that the minutes reflect the fifty-eight day extension of the dispositional order.

¶3 On February 18, 2002, the State filed a "Petition to Change Placement [and] Extend Dispositional Order." The petition alleged that the current dispositional order would expire on March 24, 2002, and sought a one-year extension of that order. At a hearing on March 6, 2002, the State withdrew its request to change Rodney's placement and sought only to extend his placement for one year. Rodney's counsel objected to the jurisdiction of the court to extend the dispositional order. Counsel argued that the dispositional order could not be automatically extended by the fifty-eight days Rodney was in absconding status. Counsel maintained that a dispositional order could only be extended under the terms of WIS. STAT. § 938.365, which requires the filing of a motion to extend and the conducting of a hearing before the expiration of the dispositional order.

¶4 The circuit court found that it had the jurisdiction to extend the dispositional order. The court reasoned, “My view is that Rodney’s absence from the jurisdiction and the application for a *capias* together with the Court tolling the time does, as an act of law, extend the termination date of the order under which he absconded.” It also held that at the hearing to change Rodney’s placement on October 23, 2001, the parties not only agreed to continue his placement but agreed to an extension of the dispositional order to March 24, 2002. Rodney appeals from the extension of the dispositional order.

¶5 On appeal, he does not challenge the proposition that the time he was on absconding status is tolled under the operation of WIS. STAT. § 938.315(1)(f); however, he does challenge the practice of automatically extending the dispositional order by the number of days he was in absconding status. Rodney insists that the only manner in which a dispositional order may be extended is under the provisions of WIS. STAT. § 938.365.

¶6 We do not reach the issue Rodney raises in this appeal because he stipulated to a fifty-eight day extension of the dispositional order at the October 23 hearing on the State’s petition to change his placement. Neither he nor his attorney voiced any objection to the prosecutor’s statement that, as a matter of housekeeping, the parties had agreed to a fifty-eight day extension of the order. We do not see any provision in the Juvenile Justice Code, WIS. STAT. ch. 938, which prohibits the extension of dispositional orders by stipulation. Rodney cannot challenge the jurisdiction of the circuit court to extend the dispositional order on appeal because he previously stipulated to an extension of the order. *See*

County of Racine v. Smith, 122 Wis. 2d 431, 437, 362 N.W.2d 439 (Ct. App. 1984).²

By the Court.—Order affirmed.

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

² While we do not address the legal issue we first believed this case presented, we note that in *Green County Department of Human Services v. H.N.*, 162 Wis. 2d 635, 469 N.W.2d 845 (1991), the Wisconsin Supreme Court held that the tolling provisions of WIS. STAT. § 48.315 do not automatically extend the expiration date of dispositional orders. *H.N.*, 162 Wis. 2d at 650-51. The supreme court held that a dispositional order could only be extended as provided in WIS. STAT. § 48.365. *H.N.*, 162 Wis. 2d at 650. This reasoning applies to the Juvenile Justice Code because the language of WIS. STAT. §§ 938.315 and 938.365 mirrors the language of the identical provisions in the Children’s Code.

