

**COURT OF APPEALS
DECISION
DATED AND FILED**

August 27, 2008

David R. Schanker
Clerk of Court of Appeals

NOTICE

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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. 2007AP2447

Cir. Ct. No. 2007JV43

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT II**

IN THE INTEREST OF THOR G. B., A PERSON UNDER THE AGE OF 17:

STATE OF WISCONSIN,

PETITIONER-RESPONDENT,

v.

THOR G. B.,

RESPONDENT-APPELLANT.

APPEAL from an order of the circuit court for Racine County:
GERALD P. PTACEK, Judge. *Affirmed.*

¶1 NEUBAUER, J.¹ Thor G.B. appeals from a dispositional order adjudging him delinquent based on his admission to being party to the crime of arson, contrary to WIS. STAT. § 943.02(1)(a), and ordering him to be placed in secure detention.² Thor contends that his due process rights to a fair dispositional hearing were violated when the juvenile court relied upon a report prepared by a social worker who was married to one of the investigating officers. We reject Thor's argument for two reasons. First, the juvenile court gave Thor the opportunity to address the case worker's relationship with the investigating officer and he did not do so. Second, neither the facts presented on appeal nor the controlling case law support a conclusion that this relationship resulted in bias as a matter of law or actual bias. We therefore affirm the order.

¶2 The facts underlying this appeal are as follows. On January 25, 2007, Deputy George Rainey was dispatched to the Union Grove Baptist Church/School to investigate a report of a fire. Deputy Rainey found a broken window and two rooms containing burned paper and books which had caused damage to carpeting and other surrounding items. Because Thor was identified during initial contacts with school officials, students, and parents as possibly being involved, Deputy Poelmann of the Village of Mount Pleasant Sheriff's Department met with Thor. While Thor was not present when the fire was started, he admitted knowing of his friend's plan to set the fire and had given that friend

¹ This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(e) (2005-06). All references to the Wisconsin Statutes are to the 2005-06 version unless otherwise noted.

² Thor was also charged with party to the crime of burglary, contrary to WIS. STAT. § 943.10(1)(a); theft, contrary to WIS. STAT. § 943.20(1)(1), and credit card fraud, WIS. STAT. § 943.41(5)(a). Pursuant to a plea agreement, these charges were dismissed and read in at the dispositional hearing.

advice of how and where to start the fires. Thor also admitted that he was attempting “to ride his bike to Union Grove and meet his friends so that they could figure out what to do once the police found out what happened.” Based on these admissions, the State filed a delinquency petition for Thor alleging party to the crimes of burglary and arson.

¶3 The juvenile court held a pretrial conference on January 31, 2007, at which Michelle Rainey, the case worker assigned by the Racine Department of Human Services, appeared. After addressing scheduling, Thor’s counsel raised a concern regarding Ms. Rainey’s participation in the case because she was married to one of the investigating officers and requested a different case worker “just because of any possible conflicts or perceived conflicts.” The State deferred to the department and Ms. Rainey, but did not object to a different case worker for “appearance sake” if the department decided it was necessary. After learning that Deputy Rainey was involved in the arrest, the court addressed whether there was a potential conflict of interest. The court stated:

It only becomes an issue as I see it if in fact the interests of the two parties are in opposition. In other words, she’s serving the interests of the department, which isn’t really investigatory in nature.... She’s there to recommend ... what the department perceives are the needs of Thor ultimately and what’s the best way to handle the situation.... At this point I don’t perceive his role as being identified with one party or the other to put them at odds So I don’t really see it as a conflict at the outset. If there’s something that would arise that I am not aware of ... that would be a conflict in your mind and a conflict of interest, then you can bring that up, but at this point I am not satisfied that because she’s a social worker on this case and her husband might be an investigating police officer, that that presents a conflict for her or for him.

Thor’s counsel questioned whether the bias would be subconscious and whether Ms. Rainey would have “certain perceptions about him from the outset.” The

court responded that “if you feel something is inappropriate or there appears to be a conflict, you can let us know, okay?” Thor’s counsel responded, “That’s fair.”

¶4 On February 1, 2007, the court issued an order pursuant to WIS. STAT. § 938.295 requesting a psychological evaluation of Thor, including an assessment of dangerousness. The evaluation, completed by Dr. David Thompson, was filed on February 15, 2007. Relevant to the issue on appeal, Dr. Thompson recommended, among other things, that Thor be placed in an “alternative living situation in the general Racine area” but suggested that “placement in a foster home or group living situation include careful warning to the treatment providers regarding the possibility of fire danger.” The report noted that living arrangements should include the presence of smoke and carbon monoxide detectors in his bedroom, and supervision should be “adjusted accordingly.”

¶5 On March 20, 2007, following plea negotiations, Thor entered an admission to the offense of party to the crime of arson. Ms. Rainey subsequently submitted a dispositional hearing report to the court providing a summary of Thor’s social history, including his current situation, individual and family profiles, school and education plan, and previous community services received. The report indicated the department’s recommendation that Thor be placed in a correctional facility, stating, “The Department is satisfied that a Correctional Setting is quite equipped to deal with Thor’s current treatment needs.”

¶6 At the disposition hearing on April 18, 2007, the juvenile court issued a lengthy oral decision, stating in part:

[T]hor’s conduct obviously is a danger to the public, and ... he is in need of restrictive custodial treatment based upon the dangerousness that this conduct describes and exhibits

based upon his past unfortunate life, and that he has—that placement in the juvenile—serious juvenile offender program is not appropriate based on the dangerousness that he constitutes, and therefore, I will order that he be placed outside his home for a period of one year to state corrections. The Department of Racine County Human Services will be responsible to provide aftercare services.

Thor appeals the placement portion of the dispositional order on due process grounds.

¶7 We first address Thor’s contention that “[t]he trial court erred when it refused to grant [him] a different social worker.” Thor’s argument mischaracterizes the facts of record. The transcript reveals that the matter was raised at the pretrial conference and discussed in some detail before it was agreed that defense counsel would raise the issue again if she felt something was “inappropriate or there appears to be a conflict.” Counsel never did so, and therefore, the issue was waived. *See Preuss v. Preuss*, 195 Wis. 2d 95, 105, 536 N.W.2d 101 (Ct. App. 1995) (issues not raised before the trial court are generally waived). Because the State makes no argument as to waiver, we nevertheless address Thor’s due process argument on the merits.

¶8 WISCONSIN STAT. § 938.01(2) sets forth the due process requirements for WIS. STAT. ch. 938 juvenile proceedings:

(2) It is the intent of the legislature to promote a juvenile justice system capable of dealing with the problem of juvenile delinquency, a system which will protect the community, impose accountability for violations of law and equip juvenile offenders with competencies to live responsibly and productively. To effectuate this intent, the legislature declares the following to be equally important purposes of this chapter:

....

d) To provide due process through which each juvenile offender and all other interested parties are assured fair

hearings, during which constitutional and other legal rights are recognized and enforced.

In keeping with § 938.01(2), our supreme court has recognized that the treatment of juveniles in the adjudicatory and dispositional phases of a delinquency proceeding must meet the requirements of due process and fundamental fairness. *See G.G.D. v. State*, 97 Wis. 2d 1, 8, 292 N.W.2d 853 (1980).

¶9 Thor contends that he was denied his due process right to a fair dispositional hearing because the juvenile court relied on Ms. Rainey's report even though she was married to one of the investigating officers. Thor argues that Ms. Rainey's marriage to Deputy Rainey requires a finding of bias as a matter of law. In support, Thor relies heavily on our decision in *State v. Suchocki*, 208 Wis. 2d 509, 561 N.W.2d 332 (Ct. App. 1997), *abrogated in part by State v. Tiepelman*, 2006 WI 66, 291 Wis. 2d 179, 717 N.W.2d 1.³

¶10 The issue in *Suchocki* was whether an adult defendant was denied his due process right to a fair sentencing due to prejudice on the part of his presentence investigation (PSI) writer. *Suchocki*, 208 Wis. 2d at 516. Generally, to succeed on such a claim, the defendant must demonstrate actual bias in the PSI writer and that the sentencing process was influenced by that bias. *See Tiepelman*, 291 Wis. 2d 179, ¶31. However, in *Suchocki*, we held that bias in a PSI writer will be implied as a matter of law when a marital relationship exists between the writer and the prosecuting attorney. *Suchocki*, 208 Wis. 2d at 520.

³ We note that in framing their arguments both parties cite to adult criminal case law. Because the State does not challenge Thor's application of adult criminal case law pertaining to PSI reports in the context of a juvenile proceeding, we will address Thor's argument as presented.

¶11 Our holding in *Suchocki* was based on “the conflict of interest between the prosecutor, as an agent of the state and the adversary of the defendant, and the presentence investigator, who must serve as the neutral agent of an independent judiciary.” *State v. Thexton*, 2007 WI App 11, ¶1, 298 Wis. 2d 263, 727 N.W.2d 560. In reaching our decision, we observed that “[b]ecause of the requirement that the report be objective, it is of vital importance that the author of the report be neutral and independent from either the prosecution or the defense.” *Suchocki*, 208 Wis. 2d at 518 (citations omitted).

¶12 We have previously declined to extend our holding in *Suchocki* to a situation where a defendant’s two supervising probation agents are married. *Thexton*, 298 Wis. 2d 263, ¶5. We emphasized the *Suchocki* court’s statement that it was “vital for the author of the report to be independent of *either the prosecution or the defense*,” before determining that “[t]his independence is crucial because the prosecution and the defense are the two parties to a criminal action, and the report’s author functions as an agent of the court which must deal impartially with both parties.” *Thexton*, 298 Wis. 2d 263, ¶5. The *Thexton* court concluded that *Suchocki* did not apply when the marital relationship exists between two non-party probation agents. *Thexton*, 298 Wis. 2d 263, ¶5.

¶13 Here, we consider whether bias is implied as a matter of law when a case worker in a juvenile proceeding is married to an investigating officer. Because the case worker is not a party to the proceeding and the officer is not in a clear adversarial role to the accused on behalf of the prosecution, we conclude that *Thexton* provides us with the proper guidance. We therefore decline to find bias implied as a matter of law under these facts. That is not to say that bias could never exist due to the relationship between a case worker and an investigating

officer but rather the determination of potential bias would turn on the extent of the officer's involvement and the individual facts of the case.⁴

¶14 In focusing his argument on bias as a matter of law, Thor fails to cite to any facts or adequately develop any argument to support a finding of actual bias on the part of his case worker. *See Suchocki*, 208 Wis. 2d at 516 (the defendant must demonstrate actual bias in the PSI writer). Significantly, Thor fails to identify any materially inaccurate information in the report. Instead, Thor broadly states that because the juvenile court's ultimate disposition closely tracked the recommendation set forth by Ms. Rainey in her report, that report "tainted the Dispositional process." Because Thor does not cite to any facts or develop any argument in support of an initial finding of actual bias on the part of the social worker, we do not address this argument. *See State v. Pettit*, 171 Wis. 2d 627, 646-47, 492 N.W.2d 633 (Ct. App. 1992) (appellate court may decline to address issues that are inadequately briefed).

¶15 Finally, Thor contends that the juvenile court failed to consider an alternative dispositional recommendation. Specifically, Thor cites to the juvenile court's failure to expressly address Dr. Thompson's recommendation that Thor be placed in a foster or group home. Although this argument seems to be framed in terms of the juvenile court's reliance on a biased report from his case worker, we nevertheless address the juvenile court's disposition and reject Thor's argument.

⁴ We note that our review of the record reveals nothing which would suggest that Deputy Rainey had assumed an adversarial role in relation to Thor. Thor does not make any argument or cite to any facts of record which would indicate otherwise. While Deputy Rainey was dispatched to the scene of the fire, there is no indication that he had any contact with Thor.

¶16 The appropriate disposition and placement of a juvenile is committed to the sound discretion of the circuit court. *State v. Terry T.*, 2002 WI App 81, ¶ 6, 251 Wis. 2d 462, 643 N.W.2d 175. We will sustain a circuit court’s discretionary decision if the court “logically interpreted the facts, applied the proper legal standard and used a demonstrated rational process to reach a conclusion that a reasonable judge could reach.” *Crawford County v. Masel*, 2000 WI App 172, ¶ 5, 238 Wis. 2d 380, 617 N.W.2d 188.

¶17 The juvenile court’s ultimate dispositional determination was prefaced by a lengthy discussion of Thor’s social history based on both the department’s and Dr. Thompson’s report. The court stated in relevant part:

The conclusion of the department in the report is that Thor is a high risk to reoffend considering his age at the first referral, past abuse he has been the victim of, the out-of-home placements he has experienced in his life, his past school problems and his poor peer choices, and they basically look at Dr. Thompson’s report in the social history and go through its evaluation and note the risk factors that he identified, which were four, including the history of intimidation of violence, past supervision and intervention failures, a history of self-harm and suicide attempts, and he lists others as well....

[I]t’s clear we have a young man who’s soon to become an adult, like it or not, who needs help. He needs significant help....

This is really very dangerous, very dangerous conduct. It’s conduct that needs to be addressed and it needs to be dealt with in treatment ... it needs to be dealt with in such a way that he is—Thor is in a place where he could be monitored, his conduct can be watched and we can be certain that he is not going to have access to be involved in contact with fire to sort of satisfy his fascination with it, which I see is an issue here....

A correctional facility is a secure facility, and one of the differences between it and perhaps other placements is it also is a treatment facility where it has treatment, options

for programming, people who can counsel and treat and deal with this issue that underlies all this.

Thor reads the juvenile court's decision too narrowly. While the juvenile court did not explicitly reference Dr. Thompson's recommendation, the record is clear that it considered his report. The juvenile court's reasoning and discussion of the advantages of secure detention given Thor's needs and the services available demonstrates that it had considered the suitability of alternative placements. The juvenile court's decision in this case is very thorough; the court logically interpreted the facts and used a demonstrated, rational process to reach a conclusion that a reasonable judge could reach. Thor has not established that the court had before it any inaccurate information much less that it relied on any inaccurate information. We are satisfied that the court's decision represents an appropriate exercise of discretion.

¶18 For the reasons stated above, we conclude that the juvenile court did not err in failing to find bias as a matter of law due to his case worker's marital relationship with an investigating officer and that Thor otherwise failed to demonstrate the existence of actual bias. We further conclude that the juvenile court properly exercised its discretion in arriving at Thor's dispositional placement in a secure correctional facility.

By the Court.—Order affirmed.

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

