

**COURT OF APPEALS  
DECISION  
DATED AND FILED**

**August 29, 2012**

Diane M. Fremgen  
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. 2012AP348**

**Cir. Ct. No. 2010JV113**

**STATE OF WISCONSIN**

**IN COURT OF APPEALS  
DISTRICT II**

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

**STATE OF WISCONSIN,**

**PETITIONER-RESPONDENT,**

**v.**

**NOAH L.,**

**RESPONDENT-APPELLANT.**

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APPEAL from an order of the circuit court for Walworth County:  
JAMES L. CARLSON, Judge. *Vacated and cause remanded with directions.*

¶1 REILLY, J.<sup>1</sup> Noah L. appeals from an order of the trial court adjudicating him to be delinquent. Noah L. argues the order should be vacated because the trial court improperly delayed adjudication until a dispositional hearing where it considered inadmissible evidence contrary to Wisconsin statute and principles of due process. We agree that any adjudication should have been done at the conclusion of the fact-finding hearing, and thus we vacate the order.

### **BACKGROUND**

¶2 The State filed a delinquency petition alleging that Noah L. committed disorderly conduct and unlawful texting. The allegations revolved around a “table-top” incident in which Noah L. was reported to have helped force a classmate to the ground and text messages that were targeted toward the same classmate.

¶3 The trial court held a fact-finding hearing related to the allegations. At the conclusion of the hearing, the court stated “proof is sufficient on both counts” to find violations of WIS. STAT. §§ 947.01 and 947.0125(2)(a). The trial court, however, expressly refused to adjudicate Noah L. as delinquent until after receiving a dispositional report and recommendation from the Department of Human Services (DHS). “I’m not adjudicating him delinquent. I’m waiting for the report,” the trial court stated at the end of the fact-finding hearing. The trial court added that it wanted to “find this in context of [Noah L.’s] total background behaviors.”

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<sup>1</sup> This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(e) (2009-10). All references to the Wisconsin Statutes are to the 2009-10 version unless otherwise noted.

¶4 DHS prepared the report as ordered by the court despite the absence of a delinquency determination. The report included information about Noah L.’s difficulties at school, psychiatric treatment, and homelife that were not admitted into evidence at the fact-finding hearing. The report also included unproven allegations from unknown sources.

¶5 The trial court reviewed the dispositional report from DHS and allowed the victim’s father to speak at the dispositional hearing. The court then adjudicated Noah L. to be delinquent. In doing so, the trial court explained,

I wanted to get as good a report as I could and the recommendation before I find delinquency. [A delinquency finding] is like a permanent record as opposed to a finding on a civil ordinance or whatever. It can keep somebody out of the Armed Services. It can be used against you in criminal proceeding which is good.

### STANDARD OF REVIEW

¶6 WISCONSIN STAT. § 938.31(4) requires the trial court to make “findings of fact and conclusions of law” relating to a juvenile delinquency petition as part of a fact-finding hearing. The fact-finding hearing follows the traditional rules of evidence governing civil and criminal trials. *See* WIS. STAT. § 938.299(4)(a). Only after a juvenile has been adjudicated to be delinquent does a court hold a dispositional hearing. WIS. STAT. § 938.335(1). A dispositional report is required to be prepared prior to a dispositional hearing and must include information about the juvenile’s social history and recommendations for the juvenile’s rehabilitation and education. WIS. STAT. § 938.33(1).

¶7 We apply a de novo standard of review to questions of statutory interpretation. *State v. Aufderhaar*, 2005 WI 108, ¶10, 283 Wis. 2d 336, 700

N.W.2d 4. Due process concerns likewise require de novo review without deference to the trial court. *Id.*

## DISCUSSION

¶8 Noah L. argues that the trial court’s refusal to make a delinquency finding until after considering information submitted at the dispositional hearing contravened black-letter law requiring cases to be decided solely upon admissible evidence. Noah L. argues that the trial court had two options at the close of the fact-finding hearing, either to find him delinquent or to dismiss the petition. Noah L. alleges that by waiting until the dispositional hearing to make the determination, the trial court violated WIS. STAT. § 938.31, which requires conclusions of law to be made at the fact-finding hearing.

¶9 The State asserts that the trial court made the required conclusion of law at the fact-finding hearing when it determined that proof was sufficient on both counts against Noah L. According to the State, the trial court determined that it *could* declare Noah L. to be delinquent, but wanted additional information to decide whether it *should*. The State further argues that, even if the trial court erred on the law, it reached the correct conclusion and its order should be affirmed.

¶10 We begin our discussion by noting the significance of a delinquency determination on the life of a juvenile. In addition to the social stigma that attaches, the adjudication of delinquency also has been seen as a possible impediment later in the juvenile’s life. See *Winburn v. State*, 32 Wis. 2d 152, 162, 145 N.W.2d 178 (1966). Due to the serious implications of an adjudication of delinquency, Wisconsin courts have recognized that juvenile proceedings carry certain protections, including the requirement that they “measure up to the

‘essentials of due process and fair treatment.’” *Rusecki v. State*, 56 Wis. 2d 299, 307, 201 N.W.2d 832 (1972) (quoting *Winburn*, 32 Wis. 2d at 161).

¶11 Due process requires that the trial court consider only evidence admissible pursuant to WIS. STAT. chs. 901 through 911, as is required by WIS. STAT. § 938.299(4)(a), in making its finding. A trial court would not allow a jury to delay a finding of guilt in a criminal proceeding so as to consider information presented at the sentencing hearing. The court’s good intentions in wanting to exercise caution before adjudicating Noah L. delinquent do not substitute for making a finding of delinquency or dismissing the petition at the fact-finding hearing. An alleged delinquent is entitled to an adjudication based upon the facts and proof presented at the fact-finding hearing relating to the alleged delinquent acts—not adjudicated based upon other aspects of the child’s life.

¶12 In addition to raising concerns about due process, the trial court’s delay of a delinquency determination until the dispositional hearing also goes against the plain language of the statute. WISCONSIN STAT. § 938.31(4) requires all findings of fact and conclusions of law related to a juvenile delinquency petition to be made at a fact-finding hearing. Whether a juvenile should be adjudicated as a delinquent is a conclusion of law, which should have been made at the fact-finding hearing and not at the dispositional hearing.

¶13 As the trial court did not adjudge Noah L. to be delinquent at the conclusion of the fact-finding hearing and considered improper evidence in its later determination, we vacate the delinquency order and remand for dismissal of the petition.

*By the Court.*—Order vacated and cause remanded with directions.

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

