**COURT OF APPEALS DECISION DATED AND FILED**

**December 16, 2014**

**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. 2014AP1621** **Cir. Ct. No. 2013JV724**

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

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**IN THE INTEREST OF SOREH M.,**
**A PERSON UNDER THE AGE OF 18:**

**STATE OF WISCONSIN,**

**PETITIONER-RESPONDENT,**

**V.**

**ESTER M. AND ALEXANDER M.,**

**RESPONDENTS-APPELLANTS.**

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APPEAL from an order of the circuit court for Milwaukee County: DENNIS R. CIMPL, Judge. *Affirmed.*

¶1 CURLEY, P.J.[1] Ester M. and Alexander M., parents of sixteen-year-old Soreh M., appeal the order finding Soreh M. to be a juvenile in need of

[1] This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2) (2011-12).

(continued)

protection or services ("JIPS"). On appeal, Ester M. and Alexander M., henceforth referred to as "the parents," argue that: (1) the trial court lacked competency to order conditions for them to complete before the court would consider placing Soreh M. in their home again ("conditions of return"); (2) the evidence was insufficient to support the trial court's order; and (3) the order impinges on their right to religious freedom. This court disagrees with the parents and affirms the trial court's order.

## BACKGROUND

¶2 On September 3, 2013, the State filed a child in need of protection or services ("CHIPS") action regarding Soreh M., alleging that the parents were neglecting Soreh M. and/or refusing or unable to provide necessary care, contrary to WIS. STAT. § 48.13(10). This filing followed an earlier CHIPS action regarding Soreh M. that was dismissed after pending in court for over a year.

¶3 Just over a week later, on September 11, 2013, Ester M. filed her own petition, seeking the court's involvement and a declaration that Soreh M. was a juvenile in need of protection or services. The JIPS petition and other documents in the record alleged that Soreh M. had run away from a Jewish boarding school in Chicago in 2012, refused to come home or notify anyone of her whereabouts, and said that she would "rather live on the streets or die" than return to her parents' care. The record also indicates that Soreh M. was placed with a foster family in December 2012 and began attending Nicolet High School in January 2013.

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All references to the Wisconsin Statutes are to the 2011-12 version unless otherwise noted.

¶4 Ultimately, Soreh M., her parents, and the State stipulated to jurisdiction under Ester M.'s JIPS petition and the trial court held a dispositional hearing on March 13, 2014. Beforehand, the court ordered the parties to submit proposed dispositional orders, and notably, the parents' proposed order conceded that Soreh M. should be placed outside the parental home and only opposed placement in the current foster home.

¶5 At the hearing, the court took judicial notice of the entire files in the CHIPS and JIPS cases and heard testimony from several witnesses, including Ester M., a Bureau of Milwaukee Child Welfare case manager, Soreh M.'s foster mother, and a family friend.

¶6 Ester M. testified that she had been physically abused by her husband, Alexander M., on one occasion, and did not deny that Soreh M. did not feel safe at home and was afraid to return because she feared retaliation. Ester M. agreed that family therapy was necessary, and indicated that she was willing to participate in group therapy or supervised visits to rebuild her relationship with Soreh M.

¶7 Ester M. also admitted that the parents' attempts to contact Soreh M. since she had run away had been minimal. Ester M. had not contacted the foster family to see how Soreh M. was doing in the previous sixteen months, nor had she and her husband asked for any therapy or services to help in reunification. Indeed, Ester M., wanting nothing to do with the Bureau, had asked the Bureau to stop contacting her. Ester M. also testified that she and her husband had refused to participate in family team meetings and had canceled medical appointments for Soreh M. that they felt had been made behind their backs.

¶8 Yet when asked why Soreh M. wouldn't return home, Ester M. blamed the government, as well as Soreh M.'s older sister Chaya M., who also had run away and had been placed in foster care. Ester M. objected to Soreh M.'s placement with the foster family because of a perceived lack of respect and her belief that the foster family had not facilitated communication. She complained about the lifestyle of the foster family—specifically, that it was more lavish than what she and her husband, who had twelve children, could provide, and that the foster family seemed to put fewer restrictions on Soreh M.'s behavior than the parents did. She also objected to the Nicolet High School placement on religious grounds. Despite these complaints, however, Ester M. admitted that Soreh M. was doing well in the foster home.

¶9 Bureau of Milwaukee Child Welfare family case manager Cira Verhage also testified. Verhage testified that Soreh M. should not be placed with her biological parents, but should remain in foster care because of the family dynamics, history of trauma, and Soreh M.'s happiness and success in the foster home. In addition, Verhage recommended family and individual therapy based on Soreh M.'s psychological evaluation. She also testified that the parents did not cooperate with the Bureau, nor did they consent to services or treatment for Soreh M.

¶10 Soreh M.'s foster mother, Dr. B., testified as well. Dr. B. testified that Soreh M. was afraid to return to her parents' home. Dr. B. also testified that Soreh M. indicated that "she doesn't need parenting" and didn't need a family, but that she (Dr. B.) encouraged her to talk with her parents anyway. Dr. B. also testified that Soreh M. was adjusting well in the foster home, including doing well at school, communicating with the foster family, and participating in Jewish observances.

¶11 The final witness, family friend Harriet McKinney, testified that Soreh M. had celebrated Jewish holidays with the McKinney family in the past and that she was still welcome to do so.

¶12 At the close of the testimony the trial court found, consistent with the reports of the supervising agencies, that Soreh M. should remain in her foster home. The trial court listed several conditions for the parents to meet in order for Soreh M. to return to their home, and transferred legal custody of Soreh M. to the Milwaukee County Department of Human Services because of the parents' failure to cooperate with the appropriate child welfare agencies and because of their refusal to sign consents for Soreh's medical and psychological treatment. The trial court entered the dispositional order to this effect, which the parents now appeal. Additional facts will be developed as necessary.

## ANALYSIS

¶13 On appeal, the parents argue that: (1) the trial court lacked competency to order conditions of return; (2) the evidence was insufficient to support the trial court's order; and (3) the order impinges on their right to religious freedom. This court will address each argument in turn.

*(1) The trial court had competency to order conditions of return.*

¶14 The parents' first argument is that the trial court lacked competency to order conditions of return. According to the parents, WIS. STAT. §§ 938.345 & 938.34(2)(b) allow a court to impose conditions of return only when the child is placed in the parents' home, and the trial court therefore had no authority to order conditions of return because Soreh M. was placed in a foster home. The parents also argue that there is no reason for a court to order conditions of return when the

parents are not living with the child. Specifically, the parents argue: "If the child is placed in a foster home, whether the parents complete, for example, an anger management class could have no direct bearing on the juvenile's welfare."

¶15 Whether the trial court had the statutory authority to order conditions of return is a question of law this court reviews *de novo*. *See* ***Stuligross v. Stuligross***, 2009 WI App 25, ¶9, 316 Wis. 2d 344, 763 N.W.2d 241. The goal in interpreting statutes is to ascertain the intent of the legislature. ***Town of Burke v. City of Madison***, 225 Wis. 2d 615, 619, 593 N.W.2d 822 (Ct. App. 1999). Our inquiry "'begins with the language of the statute.'" *See* ***State ex rel. Kalal v. Circuit Court for Dane Cnty.***, 2004 WI 58, ¶45, 271 Wis. 2d 633, 681 N.W.2d 110 (citation omitted). "If the statute is unambiguous on its face, generally we do not look further." *See* ***Town of Burke***, 225 Wis. 2d at 619. We give statutory language "its common, ordinary, and accepted meaning," and give "technical or specially-defined words or phrases" "their technical or special definitional meaning." *See* ***Kalal***, 271 Wis. 2d 633, ¶45. We must also keep in mind that "[c]ontext is important to meaning. So, too, is the structure of the statute in which the operative language appears." *See* ***id.***, ¶46. Therefore, we interpret statutory language "in the context in which it is used; not in isolation but as part of a whole; in relation to the language of surrounding or closely-related statutes; and reasonably, to avoid absurd or unreasonable results." *See* ***id.*** Likewise, the interpretation of the interaction between two statutes also presents a question of law that we review *de novo*. ***Town of Burke***, 225 Wis. 2d at 619.

¶16 The statutes the parents cite to place no limitations on a court's ability to order conditions of return; rather, they simply describe the different dispositional options a court has in a JIPS case. WISCONSIN STAT. § 938.345(1) provides, as relevant, that "[i]f the court finds that [a] juvenile is in need of

protection or services, the court shall enter an order including one or more of the dispositions under [WIS. STAT. §] 938.34." Section 938.34 lists different dispositional options for a court to impose, including: placing the juvenile in the parents' home under agency supervision, as described in § 938.34(2)(b), the section the parents cite; and placing the juvenile in a foster home, as described in § 938.34(3)(c), which is what the trial court did here. Neither statute contains any language prohibiting a court from ordering conditions of return when the juvenile is placed outside the parents' home.

¶17 In fact, the trial court's ability to impose conditions of return, regardless of whether the child is placed with the parents, is implied by WIS. STAT. § 938.356, which requires a court to warn parents orally and in writing of any conditions of return:

> (1) ORAL WARNING. Whenever the court orders a juvenile to be placed outside his or her home or denies a parent visitation because the juvenile has been adjudged to be delinquent or to be in need of protection or services under s. 938.34, 938.345, 938.357, 938.363, or 938.365 and whenever the court reviews a permanency plan under s. 938.38(5m), the court shall orally inform the parent or parents who appear in court of any grounds for termination of parental rights under s. 48.415 which may be applicable and of the *conditions necessary for the juvenile to be returned to the home or for the parent to be granted visitation.*
>
> (2) WRITTEN WARNING. In addition to the notice required under sub. (1), any written order which places a juvenile outside the home or denies visitation under sub. (1) shall notify the parent or parents of the information specified under sub. (1).

(Emphasis added.)

¶18 Notably, the statute describes "conditions necessary for the juvenile to be returned to the home or for the parent to be granted visitation." *See **id.*** This

very language contemplates a scenario in which the juvenile has been placed outside the parents' home and where the parents must meet certain conditions in order to reunite with the juvenile.

¶19 Similarly, WIS. STAT. § 938.355(7) authorizes a court to enter an order that applies to the juvenile's parents, "as provided under s. 938.45." And WIS. STAT. § 938.45(1m)(a), which the court finds relevant here, expressly authorizes a court to impose conditions "necessary for the juvenile's welfare" on the juvenile's parents. The statute provides that when "a juvenile has been … found to be in need of protection of services under [WIS. STAT. §] 938.13, the court may order the juvenile's parent[s] … to comply with any conditions determined by the court to be necessary for the juvenile's welfare." Section 983.45(1m)(a) goes on to explain that such an order "may include participation in mental health treatment, anger management, individual or family counseling or parent training and education." The statute puts no limitation on the court's ability to do so based on where the juvenile is placed. *See* ***id.***

¶20 Furthermore, the parents' argument that there is no reason to order conditions of return when the parents are not living with the child is illogical and contrary to the purpose of the statutory scheme. Of course placing conditions of return can directly benefit a juvenile's welfare regardless of whether the juvenile is placed in the parents' home or elsewhere. That is exactly the point of the statutory scheme—to provide parents with the assistance and services they need so that they can reunite with their children and develop healthy relationships. As the State's brief puts it, conditions of return "are for the benefit of parents who can then work to change the circumstances that led to the child's removal." *See, e.g.*, ***Steven V. v. Kelley H.***, 2004 WI 47, ¶9, 271 Wis. 2d 1, 678 N.W.2d 856 (trial court imposed

a number of conditions that mother had to satisfy before it could consider modifying its ban on visitation).

¶21 In sum, the trial court did have the authority to order conditions of return when Soreh M. was placed outside of her parents' home, and therefore, the parents' arguments to the contrary must be rejected.

*(2) Sufficient evidence supports the trial court's decision to place Soreh M. in a foster home.*

¶22 The parents' second argument is that the evidence was insufficient to support the trial court's decision to place Soreh M. in foster care. They claim that the trial court based its decision "almost exclusively" on the unproven allegations made in the CHIPS petition, and that the hearing testimony did not adequately establish that there was any concern with placing Soreh M. in her parents' home, but rather, centered almost wholly on whether Soreh M. was happy in her foster home.

¶23 "A court has wide discretion in making physical placement determinations." ***Wiederholt v. Fischer***, 169 Wis. 2d 524, 530, 485 N.W.2d 442 (Ct. App. 1992). The exercise of discretion will not be upset unless the trial court clearly misused its discretion or misapplied the law. ***Id.*** In determining whether there was sufficient evidence to support the trial court's placement decision, this court considers whether "considering all credible evidence and reasonable inferences therefrom in the light most favorable to the party against whom the motion is made, there is no credible evidence to sustain a finding in favor of such party." *See* WIS. STAT. § 805.14(1); *see also* **Stunkel v. Price Elec. Coop.**, 229 Wis. 2d 664, 668, 599 N.W.2d 919 (Ct. App. 1999). This is because it is the role of the factfinder, not this court, to weigh the testimony of the witnesses and assess

their credibility. *See* ***Morden v. Continental AG***, 2000 WI 51, ¶38, 235 Wis. 2d 325, 611 N.W.2d 659. Thus, this court must search the record for credible evidence that sustains the trial court's decision, not for evidence to support a decision that the trial court "could have reached but did not." *See* ***id.***, ¶39. "[I]f the evidence gives rise to more than one reasonable inference, we accept the particular inference reached by the [trial court]." *See* ***id.***

¶24 Contrary to what the parents argue, the record provides ample evidence to support the trial court's decision. *See also* WIS. STAT. § 938.355(2)(b)6. (in order to place a juvenile outside the home, the court must find that continued placement in the home would be contrary to the juvenile's welfare). Indeed, this court notes that it was the parents who requested that the trial court assume jurisdiction because Soreh M. had run away from boarding school and was allegedly "uncontrollable."

¶25 The court based its decision not only on the parents' own admission that their daughter was "uncontrollable," but also on numerous reports—the contents of which were not disputed at the hearing and are not disputed on appeal. These reports included court reports filed on September 25, 2013, and March 3, 2014, as well as Soreh M.'s psychological evaluation, the Wraparound Milwaukee report, the two CHIPS petitions, and the JIPS petition. While the parents note that some of these reports are not included in the record, that does not strengthen their position, as it is the appellants' duty to ensure a complete record, and this court assumes that any missing documents support the trial court's decision. *See* ***Fiumefreddo v. McLean***, 174 Wis. 2d 10, 26-27, 496 N.W.2d 226 (Ct. App. 1993). Furthermore, one document that is in the record, the JIPS court report filed March 3, 2014, very clearly supports the trial court's decision. The JIPS reports states that Soreh M. was afraid to return to her parents' home because of

"on-going verbal abuse and sometimes physical abuse administered by her father." The report further explains:

> The verbal abuse was in the form of [the father] degrading [Soreh M.], which made her feel worthless at times. [Soreh M.] further stated that if she was caught reading books other than religious material then she was whipped with a belt. Soreh also stated that her mother was abused by her father and was too afraid to intervene. Soreh further added that she fears in addition to being abused if she were to return home, she would not be allowed to attend high school or college, noting that her father believes that girls should not receive an education.

¶26 In addition, the testimony of the witnesses supports the trial court's decision. Soreh M.'s mother testified that the home environment, combined with other factors, contributed to the breakdown in relations between herself and her husband and Soreh M., and she admitted that she had been physically abused by her husband in the past. She also acknowledged that family therapy was necessary. Soreh M.'s mother further admitted that she had not contacted the foster family to check on Soreh M.'s wellbeing, and she and her husband had refused to communicate with the Bureau and refused to participate in family team meetings where services would have been formulated. Social worker Verhage testified that Soreh M. should remain in her foster home because of the family dynamics, history of trauma, and Soreh M.'s success in her foster home. Verhage also testified that the parents had not cooperated with the Bureau regarding services and consents for treatment for Soreh M. Soreh M.'s foster mother testified that Soreh M. was afraid to return to her parents' home, and that she was adjusting well in the foster home, including doing well at school, communicating with the family, and participating in Jewish observances.

¶27 In sum, because sufficient evidence supports the trial court's decision, this court must reject the parents' arguments regarding the sufficiency of the evidence.

*(3) The trial court's order does not impinge on the parents' religious freedom.*

¶28 The parents' final argument on appeal is that the trial court's order impinges on their constitutional right to religious freedom. According to the parents, this case is about parents who want to raise their child according to certain religious values and a court order that prohibits them from doing so. This court disagrees.

¶29 The trial court explained in its ruling that the parents' religious freedoms were not at issue:

> This is not a case about religion, it never has been. The State and the Court ha[ve] an obligation to, in effect, take over the parenting of a child or a juvenile when a juvenile is found to be in need of the protection of the court. So it becomes the business of the State.
>
> What this case is about is why there has been a complete failure in the relationship between this young woman [Soreh M.] and her parents…. It's not the system's fault that we're in a complete breakdown of that [familial] relationship….

¶30 This court agrees. As explained in more detail above, the record shows very clearly that this case is not about religion, but instead concerns whether Soreh's continuing to live with her biological parents is contrary to her best interest. *See* WIS. STAT. § 938.355(2)(b)6. In concluding as much, the court considered the emotional and physical abuse inflicted by the parents, domestic violence against the mother, the complete breakdown in relations between the parents and the juvenile—including the fact that Soreh M. refused to even visit her

parents out of fear of abuse—and the parents' failure to cooperate with obtaining medical and psychological services that experts found necessary. The trial court's decision was supported by sufficient evidence, was well-reasoned, and in no way impinged on the parents' religious freedom. Therefore, that order will be affirmed.

*By the Court*.—Order affirmed.

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