

**COURT OF APPEALS
DECISION
DATED AND FILED**

October 22, 2015

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. 2015AP1256-FT

Cir. Ct. No. 2014JV79B

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

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

STATE OF WISCONSIN,

PETITIONER-RESPONDENT,

V.

B. A. H.,

RESPONDENT-APPELLANT.

APPEAL from an order of the circuit court for Waupaca County:
VICKI L. CLUSSMAN, Judge. *Reversed and cause remanded with directions.*

¶1 LUNDSTEN, J.¹ B.A.H. appeals the circuit court’s order that imposed restitution on B.A.H. after the court found him not competent to proceed on juvenile delinquency allegations. Because of B.A.H.’s incompetency, the court never made a finding as to delinquency and instead found that B.A.H. was a juvenile in need of protection or services. B.A.H. argues that, under these circumstances, the circuit court lacked statutory authority to impose restitution. I agree because, as B.A.H. points out, the applicable restitution provision requires a finding that the juvenile “committed a delinquent act” resulting in damage or physical injury. *See* WIS. STAT. § 938.34(5). I reverse and remand for the circuit court to vacate the restitution order.²

Background

¶2 In August 2014, the State filed a delinquency petition against then-11-year-old B.A.H. The petition alleged that B.A.H. was involved in an incident in which B.A.H. put another child in a headlock or choke hold and stomped on that child’s arm. The State alleged that B.A.H.’s conduct violated multiple criminal statutes.

¶3 During B.A.H.’s initial appearance, B.A.H.’s attorney raised the issue of whether B.A.H. was competent to proceed. The circuit court ordered a

¹ This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(e). Pursuant to a July 21, 2015 order, the case was placed on the expedited appeals calendar and the parties have submitted memo briefs. *See* WIS. STAT. RULE 809.17. Briefing was complete on September 23, 2015. All references to the Wisconsin Statutes are to the 2013-14 version.

² B.A.H. argues in the alternative that the restitution order violated his right to due process. Because I agree with B.A.H.’s statutory argument, I do not address his due process argument. *See Miesen v. DOT*, 226 Wis. 2d 298, 309, 594 N.W.2d 821 (Ct. App. 1999) (court of appeals “should decide cases on the narrowest possible grounds and should not reach constitutional issues if we can dispose of the appeal on other grounds”).

competency evaluation. Based on the evaluation results, the circuit court determined that B.A.H. was not competent to proceed.

¶4 The record and briefing indicate that there is no dispute that this incompetency finding led to the suspension of the delinquency proceedings. The State filed a new petition alleging, instead, that B.A.H. was a juvenile in need of protection or services (JIPS) on the ground that B.A.H. was not competent to proceed with the delinquency proceedings. *See* WIS. STAT. § 938.30(5)(a), (d), and (e) (explaining procedure when a juvenile is not competent to proceed). Thus, in effect, the circuit court’s incompetency finding resulted in B.A.H.’s case being converted from a delinquency case to a JIPS case.

¶5 During the disposition phase of what was now a JIPS proceeding, the State requested restitution. B.A.H. opposed restitution, making several arguments. Among his arguments was that the applicable statutory provision addressing restitution, WIS. STAT. § 938.34(5), requires a finding that the juvenile “committed a delinquent act” before the court may impose restitution. Rejecting B.A.H.’s arguments, the circuit court imposed \$250 in restitution.³

Discussion

¶6 As indicated, the sole issue on appeal is whether the circuit court lacked authority to impose restitution on B.A.H. This issue presents a question of statutory interpretation that I decide without deference to the circuit court’s decision. *See R.W.S. v. State*, 162 Wis. 2d 862, 869, 471 N.W.2d 16 (1991). For

³ Under the applicable statutory provision, the circuit court may order no more than \$250 in restitution when the juvenile is less than 14 years of age. *See* WIS. STAT. § 938.34(5)(c).

the reasons explained below, I agree with B.A.H. that the circuit court lacked authority to impose restitution in B.A.H.'s situation.

¶7 “[S]tatutory interpretation ‘begins with the language of the statute. If the meaning of the statute is plain, [courts] ordinarily stop the inquiry.’” *State ex rel. Kalal v. Circuit Court for Dane Cty.*, 2004 WI 58, ¶45, 271 Wis. 2d 633, 681 N.W.2d 110 (quoted source omitted). In addition, courts 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.” *Id.*, ¶46. Here, the statutory interpretation question is resolved by a plain-language reading.

¶8 The question arises because of the interaction between two statutes, WIS. STAT. §§ 938.34 and 938.345. Section 938.34 lists the possible dispositions the circuit court may impose in delinquency cases. Section 938.345 lists the possible dispositions the circuit court may impose in JIPS cases. As the circuit court correctly recognized, the JIPS disposition statute, in effect, incorporates most of the *delinquency* dispositions, including the delinquency disposition of restitution as set forth in § 938.34(5)(a). To be precise, the JIPS disposition statute states that the circuit court may order any of the dispositions in the delinquency disposition statute, § 938.34, subject to certain express exceptions, and restitution is not one of those exceptions. *See* § 938.345(1). Thus, viewed in isolation, under the JIPS disposition statute, restitution under § 938.34(5)(a) is one of many possible dispositions in JIPS cases.

¶9 The circuit court relied on the above analysis in imposing restitution here. This analysis is good, as far as it goes. However, as B.A.H. argues, the fact that restitution is one possible disposition in JIPS cases does not mean that

restitution is authorized in *his* case. Rather, as B.A.H.’s briefing demonstrates, the question remains whether B.A.H. meets the requirements of the restitution provision itself. B.A.H. argues, as he did in the circuit court, that this provision requires a finding, not present here, that the juvenile committed a delinquent act. I agree.

¶10 To repeat, under the JIPS disposition statute, restitution under WIS. STAT. § 938.34(5)(a) is a possible disposition in a JIPS case. And, separate from § 938.34’s general requirement, not applicable here, that a child must be adjudged delinquent, subsection (5)(a) unambiguously authorizes restitution only “if the juvenile is found to have committed a delinquent act that resulted in [property damage or physical injury to a person].” *See* § 938.34(5)(a); *see also* **R.W.S.**, 162 Wis. 2d at 873 (the pertinent statutory language “indicates that *if* the child ‘is found to have committed a delinquent act,’ the judge may order the child to make reasonable restitution” (emphasis added)).⁴

¶11 It is undisputed that here the circuit court did not find that B.A.H. committed any delinquent act that resulted in property damage or injury to a

⁴ The restitution provision provides, more fully, as follows:

(5) RESTITUTION. (a) Subject to par. (c), if the juvenile is found to have committed a delinquent act that resulted in damage to the property of another, or actual physical injury to another excluding pain and suffering, [the court may] order the juvenile to repair the damage to property or to make reasonable restitution for the damage or injury, either in the form of cash payments or, if the victim agrees, the performance of services for the victim, or both, if the court, after taking into consideration the well-being and needs of the victim, considers it beneficial to the well-being and behavior of the juvenile.

WIS. STAT. § 938.34(5)(a).

person. Instead, as already noted, the circuit court found B.A.H. not competent to proceed, which, so long as B.A.H. remained incompetent, seemingly precluded a proceeding that could result in a finding that B.A.H. committed the requisite delinquent act. I therefore agree with B.A.H. that the circuit court lacked authority to impose restitution.

¶12 The State appears to make two arguments to the contrary, neither of which is well developed or matches up with the circuit court’s reasoning. Regardless, I do not find the State’s arguments persuasive.

¶13 The State’s first argument, as I understand it, is that WIS. STAT. §§ 938.345(1) and 938.34(5)(a) conflict by contemplating the possibility of restitution in JIPS cases—which do not necessarily involve a finding that a child committed a delinquent act—while at the same time requiring such a finding before allowing restitution in a JIPS case. The State appears to propose that this alleged conflict be resolved by disregarding the requirement that there be a finding of a delinquent act.

¶14 I see no conflict. The State does not contend or demonstrate that a JIPS proceeding can never involve a finding that a child committed a delinquent act that caused harm. And, as B.A.H.’s briefing demonstrates, we know from the broader statutory scheme that at least some JIPS cases may involve findings that children committed delinquent acts. In particular, JIPS cases include cases in which a very young juvenile—namely, one under 10 years of age—had “committed a delinquent act.” See WIS. STAT. § 938.13(12). While there may be additional examples of JIPS cases that result in such findings, the example of § 938.13(12) is sufficient to reject the State’s argument that the pertinent statutes here conflict. That is to say, even assuming that most JIPS cases do not *result* in a

finding that a child committed a delinquent act, the State fails to demonstrate that reading WIS. STAT. § 938.34(5)(a) as imposing a separate delinquent-act-finding requirement for restitution purposes in JIPS cases creates a conflict.

¶15 If the State means to argue that my plain-language reading of the statutes produces an absurd or unreasonable result, I reject that argument as well. The legislature could reasonably authorize restitution as a possible disposition in JIPS cases while at the same time limiting restitution to a subset of those cases in which it is possible to make the requisite delinquent-act finding.

¶16 The State's second argument is that the delinquent-act-finding requirement should be ignored as "redundant." The State appears to mean to argue that the requirement is redundant because that requirement already appears in lead-in language in the delinquency disposition statute. That is, the State equates the phrase "adjudges a juvenile delinquent" in the first sentence of WIS. STAT. § 938.34 with the phrase "found to have committed a delinquent act that resulted in [specified damage or injury]" in § 938.34(5)(a). The State, however, provides no support for this proposition. Plainly there is a difference between an adjudication of delinquency and a factual finding that a child's delinquent act caused harm. In the JIPS context, the statutes plainly contemplate that there will be situations in which a court may make the factual finding that a child committed a delinquent act supporting restitution but not adjudicate the child delinquent.

Conclusion

¶17 For the reasons stated above, I reverse the circuit court's restitution order and remand for the circuit court to vacate that order.

By the Court.—Order reversed and cause remanded with directions.

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

