

**COURT OF APPEALS
DECISION
DATED AND FILED**

November 1, 2016

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. 2016AP497

Cir. Ct. No. 2010JV43

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT I**

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

STATE OF WISCONSIN,

PETITIONER-RESPONDENT,

v.

F. B.,

RESPONDENT-APPELLANT.

APPEAL from an order of the circuit court for Milwaukee County:
JANE V. CARROLL, Judge. *Affirmed.*

¶1 KESSLER, J. F.B. appeals from an order of the circuit court requiring him to register as a sex offender. F.B. argues that the factors a circuit court must consider in determining whether to stay sexual offender registration, as discussed in *State v. Cesar G.*, 2004 WI 61, ¶40, 272 Wis. 2d 22, 682 N.W.2d 1, support a stay of registration. We affirm.

BACKGROUND

¶2 On March 25, 2010, F.B. was adjudicated delinquent for one count of forceful abduction of a child by detaining, contrary to WIS. STAT. § 948.30(2)(b) (2009-10).¹ The delinquency petition alleged that F.B., who was sixteen years old at the time, detained his eight-year cousin and forced the child to perform oral sex on F.B. F.B. admitted to the allegations. At the dispositional hearing, the circuit court placed F.B. in the Serious Juvenile Offender Program at the Ethan Allen School in Wales for five years. The court did not order F.B. to register as a sex offender, but stated that if the Department of Corrections requires F.B. to report for sex offender registration, F.B. would have the ability to petition the court for a permanent stay of the registration. The Dispositional Order reflected the court's decision.

¶3 On February 23, 2015, F.B. filed a motion requesting a permanent stay of his sex offender reporting requirement, stating that while his dispositional order “does not specifically require him to register as a sex offender,” “the Department of Corrections has been treating [F.B.] as though he is presently subject to registration until the date of March 25, 2030.” The circuit court held a hearing on the motion.

¶4 At the hearing, the circuit court considered a report filed by Dr. Karen Gust-Brey, which indicated that F.B. was remorseful for his actions, F.B. understood the affect of his actions on the victim, and that F.B. was at a low risk to reoffend. Dr. Gust-Brey cautioned, however, that the evaluation techniques she

¹ All references to the Wisconsin Statutes are to the 2013-14 version unless otherwise noted.

used to assess F.B. were techniques specific to juvenile offenders. At the time of F.B.'s evaluation, he was an adult.

¶5 The State informed the court that that prior to F.B.'s delinquency adjudication, there were three other allegations of sexual misconduct.² The State noted that F.B. had absconded from his placement at the Lad Lake Residential Treatment Center twice and was charged in Waukesha County with violating the sex offender registration requirement following his first flight from Lad Lake. After leaving Lad Lake the second time, F.B. fled the state and used aliases while in South Dakota and Tennessee. F.B. fled Lad Lake the second time after staff at Lad Lake caught F.B. with a cell phone. The phone showed that F.B. signed up for an X-rated dating service and applied to work as an adult film star. The State also informed the court that F.B. struggled with adjusting to his treatment facilities and engaged in fights, tried to arrange ethnic related violence, and tested positive for THC at one point.

¶6 F.B. also testified at the hearing, telling the court that he absconded from Lad Lake because he felt like he "wasn't going to go nowhere unless I leave myself" because he was a hard-worker and felt that his status as a sex offender stifled his opportunities.

¶7 The circuit court ultimately denied F.B.'s motion. This appeal follows.

² Two allegations were dismissed; F.B. had a jury trial on the other allegation 2006. He was found not guilty in 2007.

DISCUSSION

¶8 A juvenile who moves the court to stay sex offender registration must prove, by clear and convincing evidence, that based on the factors enumerated in WIS. STAT. §§ 938.34(15m)(c) and 301.45(1m)(3), and the seriousness of the offense, a stay should be granted. *Cesar G.*, 272 Wis. 2d 22, ¶¶50-51. The decision to stay is discretionary and requires consideration of several factors, none of which are individually dispositive. *See id.*, ¶¶ 42-51. We address whether the circuit court erroneously exercised its discretion in deciding whether to impose a stay pursuant to WIS. STAT. § 938.34(16). *See Cesar G.*, 272 Wis. 2d 22, ¶42. We will affirm a circuit court’s discretionary decision as long as the court “examined the relevant facts, applied a proper standard of law, and, using a demonstrated rational process, reached a conclusion that a reasonable judge could reach.” *See id.* (quotation marks and citation omitted).

¶9 “[I]n determining whether to stay such an order, a circuit court should consider the seriousness of the offense as well as the factors enumerated in WIS. STAT. [§] 938.34(15m)(c)[.]” *Cesar G.*, 272 Wis. 2d 22, ¶3. The factors listed in § 938.34(15m)(c) are:

1. The ages, at the time of the violation, of the person and of the child with whom the person had sexual contact or sexual intercourse.
2. The relationship between the person and the child with whom the person had sexual contact or sexual intercourse.
3. Whether the violation resulted in bodily harm, as defined in s. 939.22(4), to the child with whom the person had sexual contact or sexual intercourse.
4. Whether the child with whom the person had sexual contact or sexual intercourse suffered from a mental illness or mental deficiency that rendered the child temporarily or

permanently incapable of understanding or evaluating the consequences of his or her actions.

5. The probability that the person will commit other violations in the future.

6. The report of the examination conducted under par. (d).3.

7. Any other factor that the court determines may be relevant to the particular case.

See Cesar G., 272 Wis. 2d 22, ¶50.

¶10 In denying F.B.’s motion, the circuit court considered the age of the victim, who was eight years old at the time of the offense. The court noted that while there was neither bodily harm incurred by the victim, nor mental illness, the victim “was very vulnerable because of his age.” The court gave little credibility to Dr. Gust-Brey’s conclusion that F.B. was unlikely to reoffend, noting that “caution is stamped all over that report because the risk assessments are really not made to be used with adults.” The court also considered many other factors, such as F.B.’s flight from Lad Lake twice, and the facts that F.B. “pick[ed] up new charges,” “left the state to presumably avoid ... probation,” and “use[d] an alias out in the community.” The court concluded that “[a]ll of these things ... just make me very concerned about you being in the community. [The] registry simply is keeping track of where you are.” Accordingly, the circuit court considered the appropriate factors, applied the proper standard of law, and reached a conclusion that a reasonable judge could reach. *See id.*

¶11 For the foregoing reasons, we affirm.

By the Court.—Order affirmed.

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

