

**COURT OF APPEALS  
DECISION  
DATED AND FILED**

**October 5, 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. 2016AP1205-FT**

**Cir. Ct. No. 2014JV378**

**STATE OF WISCONSIN**

**IN COURT OF APPEALS  
DISTRICT II**

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**IN THE INTEREST OF D.C.M, A PERSON UNDER THE AGE OF 17:**

**STATE OF WISCONSIN,**

**PETITIONER-RESPONDENT,**

**v.**

**D.C.M.,**

**RESPONDENT-APPELLANT.**

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APPEAL from an order of the circuit court for Winnebago County:  
BARBARA H. KEY, Judge. *Reversed.*

¶1 REILLY, P.J.<sup>1</sup> D.C.M. appeals from a circuit court order lifting the stay on his sex offender registration. D.C.M. argues that the notice requirements of WIS. STAT. § 938.34(16) were not satisfied. The State agrees. We reverse the lifting of the stay.

¶2 The State filed a delinquency petition against D.C.M. on September 17, 2014, charging first-degree sexual assault of a child under WIS. STAT. § 948.02(1)(e). The allegations stem from events that took place when D.C.M.'s church group traveled from his home in Texas to a summer camp in Wisconsin. D.C.M. was accused of inappropriately touching a six-year-old girl. D.C.M. admitted to second-degree sexual assault, under WIS. STAT. § 948.02(2), and the circuit court found him delinquent and entered a one-year dispositional order. D.C.M. was placed on supervision but was allowed to live with his parents in Texas. The court stayed sex offender registration.

¶3 At a hearing on January 4, 2016, a representative from Winnebago County Human Services (the County) “[r]eported continued violations of supervision including viewing pornography.” The parties agreed to a six-month extension of the dispositional order to allow D.C.M. to complete treatment in Texas and “demonstrate an ability to put those treatment concepts in practice in daily life.” On March 4, 2016, the County sent a letter to the court requesting a review hearing to discuss early termination of the dispositional order. At a hearing on March 14, 2016, the State agreed to early termination of the dispositional order but requested that the court lift the stay on sex offender registration. The County

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<sup>1</sup> This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(e) (2013-14). All references to the Wisconsin Statutes are to the 2013-14 version unless otherwise noted.

noted that D.C.M. had already registered as a sex offender in Texas and “if he would move to a different state, he would still have to follow registry requirements” in that state. The court questioned why it should not lift the stay and also require D.C.M. to register in Wisconsin, noting that “I can’t ignore what happened here.” The court referenced D.C.M.’s addiction to adult pornography and explained that “he sexually assaulted a six year old.... I don’t think the burden is to show that there’s been any violations [of the dispositional order].” The court terminated the order but also lifted the stay on sex offender registration. D.C.M. appeals.

¶4 A court has the authority to stay a dispositional order, including stay an order requiring the juvenile to register as a sex offender. *See State v. Cesar G.*, 2004 WI 61, ¶25, 272 Wis. 2d 22, 682 N.W.2d 1. Before a stay of sex offender registration can be lifted, certain procedures codified in WIS. STAT. § 938.34(16) must be followed. The interpretation of a statute and the application of that statute to a set of facts are questions of law that we review de novo. *Reyes v. Greatway Ins. Co.*, 227 Wis. 2d 357, 364-65, 597 N.W.2d 687 (1999).

¶5 WISCONSIN STAT. § 938.34(16) provides that once an order is stayed, notice and a hearing must be provided to the juvenile before the stay can be lifted:

If the juvenile violates a condition of his or her dispositional order, the agency supervising the juvenile or the district attorney or corporation counsel in the county in which the dispositional order was entered shall notify the court and the court shall hold a hearing within 30 days after the filing of the notice to determine whether the original dispositional order should be imposed .... If a hearing is held, the court shall notify the parent, juvenile, guardian, and legal custodian, all parties bound by the original dispositional order, and the district attorney or corporation counsel in the county in which the dispositional order was entered of the time and place of the hearing at least 3 days

before the hearing. If all parties consent, the court may proceed immediately with the hearing.

Importantly, the stay cannot be lifted “unless the court finds by a preponderance of the evidence that the juvenile has violated a condition of his or her dispositional order.” *Id.*

¶16 D.C.M. asserts that the procedures found in WIS. STAT. § 938.34(16) were not followed in this case. The March 14, 2016 hearing in which the court lifted the stay was scheduled upon the County’s request for an early termination of the dispositional order as Texas was planning to discontinue providing treatment to D.C.M. The County’s letter asking for the hearing did not notify the court or D.C.M. that it was seeking to lift the stay, nor did it suggest that D.C.M. had violated the dispositional order. Instead, the request to lift the stay came during the March 14, 2016 hearing, where the State commented that D.C.M.’s supervision should be terminated after lifting the stay.

¶17 The State agrees that no written request to lift the stay was made in this case. The letter sent by the County requested early termination of the supervision order, but did not reference any violations of D.C.M.’s supervision. Further, once the oral request was made by the State at the March 14, 2016 hearing, the notice requirements of WIS. STAT. § 938.34(16) were not followed. The State did not meet its burden to prove that D.C.M. violated a condition of his dispositional order. Thus, we agree with both D.C.M. and the State that the procedures codified in § 938.34(16) were not followed and, therefore, the stay should not have been lifted.

¶18 The question remaining is what remedy is appropriate under the circumstances. D.C.M. and the State agree that remand is inappropriate as once the dispositional order expires, the court has no authority over D.C.M. *See State*

*v. Michael S.*, 2005 WI 82, ¶¶62, 68, 282 Wis. 2d 1, 698 N.W.2d 673; *Green Cty. DHS v. H.N.*, 162 Wis. 2d 635, 658, 469 N.W.2d 845 (1991). The State cannot comply with the terms of WIS. STAT. § 938.34(16) and file a motion alleging that D.C.M. violated the terms of the dispositional order as it is no longer in effect. As we agree the procedure found in § 938.34(16) for lifting the stay on sex offender registration was not followed and the dispositional order was terminated on March 14, 2016, the order lifting the stay must be vacated.<sup>2</sup> We reverse the circuit court order lifting the stay on sex offender registration.

*By the Court.*—Order reversed.

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

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<sup>2</sup> We note that D.C.M. is already registered as a juvenile sex offender in the state of Texas in accordance with the state requirements. D.C.M.'s family is also planning to move to Florida, or has already moved to Florida, and D.C.M. is required to register as a sex offender there.



