

**COURT OF APPEALS
DECISION
DATED AND FILED**

July 29, 1999

Marilyn L. Graves
Clerk, Court of Appeals
of Wisconsin

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 § 808.10 and RULE 809.62, STATS.

Nos. 99-0259 and 99-0260

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

CASE NO. 99-0259

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

DANE COUNTY DEPARTMENT OF HUMAN SERVICES,

PETITIONER-RESPONDENT,

V.

THOMAS M.,

RESPONDENT-APPELLANT.

CASE NO. 99-0260

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

DANE COUNTY DEPARTMENT OF HUMAN SERVICES,

PETITIONER-RESPONDENT,

V.

THOMAS M.,

RESPONDENT-APPELLANT.

APPEAL from an order of the circuit court for Dane County:
ROBERT R. PEKOWSKY, Judge. *Affirmed.*

ROGGENSACK, J.¹ Thomas M. appeals from an order of the circuit court extending the dispositional order previously entered in a CHIPS proceeding for Kevin M. and Steven M., his sons. The circuit court found that the children continued to require protective placement, and that the Dane County Department of Human Services had made reasonable efforts to facilitate the children's return home. We agree and conclude that the circuit court did not erroneously exercise its discretion in extending Kevin and Steven's out-of-home placements. Accordingly, we affirm.

BACKGROUND

In 1995, Thomas was convicted of reckless injury pursuant to § 948.03(3)(b), STATS., based on injuring Kevin by striking him on his ankle with a bat. The Dane County Department of Human Services filed a CHIPS petition seeking to remove Kevin and his brother, Steven, from the home. The circuit court found Steven and Kevin CHIPS and placed the children outside of the parental home.

The circuit court subsequently extended the out-of-home placements on three occasions, without objection from Thomas. In July of 1998, a social

¹ This appeal is decided by one judge pursuant to § 752.31(2)(e), STATS.

worker from the Department attempted to visit Thomas and Betty's² new apartment, to determine whether it was suitable for the children. The home visit was not completed, however, because Thomas refused to allow the social worker access to his home and ordered her to leave his property. The social worker subsequently contacted Thomas's probation officer to report the incident and told the officer that Thomas had threatened and intimidated her. Thomas's probation was revoked.

The Department then moved to extend the CHIPS dispositional order. A hearing was held in which the Department did not produce any witnesses. Instead, the Department asked the court to take judicial notice of the social worker's November 3, 1998 report filed with the court approximately two weeks before the hearing. The Department also relied upon the testimony of the witnesses called by Thomas.

The circuit court found that the children could not be returned to the home because Thomas and Betty had not met the conditions established for their return, and that the Department had made reasonable efforts to facilitate the children's return to the home. It extended the dispositional order until April 26, 1999. Thomas appeals.

DISCUSSION

Standard of Review.

Revision or extension of a CHIPS dispositional order is a discretionary decision for a circuit court. *Sallie T. v. Milwaukee County Dep't of*

² Betty is the children's mother.

Health & Human Servs., 219 Wis.2d 296, 305, 581 N.W.2d 182, 186 (1998); *R.E.H. v. State*, 101 Wis.2d 647, 653, 305 N.W.2d 162, 166 (Ct. App. 1981). We will not reverse a circuit court's discretionary decision unless it erroneously exercised its discretion. *State v. Pankow*, 144 Wis.2d 23, 47, 422 N.W.2d 913, 921 (Ct. App. 1988); *Sallie T.*, 219 Wis.2d at 305, 581 N.W.2d at 186.

Whether a Department made reasonable efforts to return a child to his/her parental home is a finding of fact, which will not be reversed, unless it is clearly erroneous. *State v. Pitsch*, 124 Wis.2d 628, 634, 369 N.W.2d 711, 714-15 (1985).

Sufficiency of Evidence.

Thomas argues that the Department failed to meet its burden of demonstrating that an extension was warranted because it failed to call any witnesses or present expert testimony. Instead, the Department relied on the social worker's report³ and testimony from witnesses called by Thomas. The Department, on the other hand, contends that the record amply supports the circuit court's ruling. We agree.

Section 48.365, STATS., governs the extension of a CHIPS dispositional order. It permits any party to present evidence and requires the court to state on the record its reasons for making the extension. Section 48.365(2m)(a) and (b). We will not overturn a circuit court's findings of fact unless there is no credible evidence in the record to support them. *Gianoli v. Pfleiderer*, 209 Wis.2d 509, 533-34, 563 N.W.2d 562, 571 (Ct. App. 1997).

³ The Department is required to file a report when a petition is made to extend a CHIPS dispositional order. Section 48.365(2g), STATS.

We conclude that there is ample evidence in the record to support the circuit court's extension of the dispositional order. First, the social worker's report of which the court took judicial notice states that alcohol and drug use continued to be a problem for both parents, as did significant mental health issues. It pointed out that Thomas and Betty have not followed the requirements of the last dispositional order. It opined that Kevin was making progress and Steven could as well, but their parental home was not sufficiently structured and safe.

Additionally, several exhibits were admitted into evidence, all of which support the circuit court's determination that the children were still in need of protection and services. For example, two transcripts from previous extension hearings were admitted as exhibits, which demonstrated that although the parents had been making some progress toward meeting the conditions for the return of their children, they had yet to meet all the conditions. Further, another exhibit contained an investigative report completed by Thomas's probation officer and statements filed by two counselors detailing the incident where Thomas refused to allow social services to complete a home visit.

Finally, both Thomas and Betty conceded that they were not ready to have the children returned. At the time of the hearing, Thomas was in jail after a probation revocation, and Betty's long history of mental illness prevented her from having the children without Thomas in the home. When asked what his position was on the extension of the dispositional order, Thomas responded:

A. Well, I see there is a need for, right now I'm not home, there is a need for an extension, but, because my wife can't get my children and my wife can't be alone, she's unable to be alone—I mean, I need to be there with my wife when the children come, you know, it's too much stress for my wife.

Q. Is it your testimony that you can't do that right now?

A. Not right now, no, I can't.

Thomas claims that the circuit court's reliance on the social worker's report was error. He argues that it was improper for the court to rely on the report because the Department did not "identify the 'report filed by the social worker' by date, caption, and/or any other unique or distinguishable characteristics." However, Thomas did not object at the hearing; therefore, we conclude that he has waived this objection and we do not address it further. *See State v. Damon*, 140 Wis.2d 297, 300, 409 N.W.2d 444, 446 (Ct. App. 1987).

We also note that although Thomas now claims the Department offered insufficient proof to extend the order, at the close of the Department's case and before proceeding with his own case in chief, Thomas, who was represented by counsel, did not move to dismiss the petition for insufficient proof. Therefore, he cannot now complain that the court made use of all the evidence produced at the hearing when it granted the petition to extend the dispositional order. *See id.*

Reasonable Efforts.

As a separate ground for reversing the extension of the dispositional order, Thomas argues that the Department did not make reasonable efforts to facilitate his children's return home as required by § 48.365(2m)(a), STATS. Section 48.365(2m)(a) provides, in pertinent part, that "the findings of fact shall include a finding as to whether reasonable efforts were made by the agency primarily responsible for providing services to the child ... to make it possible for the child to return safely to his or her home." Our determination of whether the Department made "reasonable efforts" is governed by § 48.355(2c), STATS., which lists five factors the court shall consider if applicable to the circumstances of the

parties, when evaluating whether reasonable efforts have been made. Here, the court considered those that were applicable to Thomas, Betty and their children.

For example, the social worker assigned to this case testified that she had made referrals to parenting programs located in Madison before the family moved to Marshall. The social worker also testified that she had previously directed the parents to Dane County Mental Health for counseling services, which they attended for some time. She also testified that Thomas had been able to secure his own employment. Additionally, a counselor from the Children Come First Program provided Thomas and Betty cab passes to aid with transportation, helped them find an apartment, and rented Thomas and Betty a U-Haul to help them move. The circuit court's finding that reasonable efforts had been made by the Department to make it possible for the children to return home was not clearly erroneous.

CONCLUSION

We conclude that the circuit court's extension of the dispositional order was not an erroneous exercise of discretion. We also conclude that the circuit court's finding that the Department had made reasonable efforts to make it possible for the children to return to the parental home was not clearly erroneous. Accordingly, we affirm the order of the circuit court.

By the Court.—Order affirmed.

This opinion will not be published. See RULE 809.23(1)(b)4., STATS.

