

**COURT OF APPEALS
DECISION
DATED AND FILED**

July 2, 2002

Cornelia G. Clark
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. 02-0889

Cir. Ct. No. 02-JV-49

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT III**

**IN THE INTEREST OF ERIN K.S.,
A PERSON UNDER THE AGE OF 17:**

STATE OF WISCONSIN,

PETITIONER-RESPONDENT,

v.

ERIN K.S.,

RESPONDENT-APPELLANT.

APPEAL from an order of the circuit court for Outagamie County:
DENNIS C. LUEBKE, Judge. *Affirmed.*

¶1 CANE, C.J.¹ Erin K.S., a seventeen-year-old minor (DOB 5/3/85), appeals from a nonfinal order² waiving juvenile jurisdiction over her. Erin claims that the juvenile court erred by concluding that it would be in the best interest of the public and Erin to waive juvenile court jurisdiction. Because the juvenile court reasonably exercised its discretion by concluding that a waiver to adult court was in the best interest of the public and Erin, we affirm.

BACKGROUND

¶2 The State filed a petition for waiver of juvenile jurisdiction based on seven counts of Erin's criminal misconduct including theft, delivery of a prescription drug, disorderly conduct, using the personal identification of another to obtain money and intentionally obtaining the property of another by deceiving the person with a false representation. If convicted of all offenses, the maximum penalty Erin would face in adult court would be fines totalling \$51,000 and imprisonment up to twenty-six years and nine months.

¶3 At the waiver hearing, Erin did not challenge the prosecutive merit. The focus of the waiver hearing was whether the criteria existed under WIS. STAT. § 938.15(5) to support the State's waiver petition. The State presented two witnesses. The first was Wayne Hokanson, a City of Appleton police officer who had conducted the investigation concerning the juvenile delinquency petition. Hokanson testified Erin's home environment was rather oppressive and inconsistent for a healthy child development and that there were a number of

¹ This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2). All references to the Wisconsin Statutes are to the 1999-2000 version unless otherwise noted.

² Petition for leave to appeal the nonfinal order was granted March 29, 2002.

difficulties in her home. He described Erin as a victim of a poor home environment and who lacked self-esteem and maturity level consistent with her age. It was his opinion that it would not be in Erin's best interest to be waived into adult court.

¶4 The State's second witness was Mary Depies, a social worker for Outagamie County, who had supervised Erin earlier under a consent decree concerning two counts of disorderly conduct. Depies indicated Erin was diagnosed as having serious emotional problems. However, she observed that Erin was not mentally ill and had no developmental disability. She noted that Erin had prior law enforcement contacts concerning a citation for operating a motor vehicle without a valid driver's license, a series of unlawful possession of tobacco infractions and disorderly conduct. She also observed that Erin successfully completed supervision under the consent decree, had never been previously waived into adult court, had never been found delinquent and had never injured anyone as a result of any juvenile offenses. When asked about the availability of juvenile services for Erin, Depies doubted whether specific facilities would be available because Erin was married and had a baby. Finally, Depies indicated that even though she thought the charged offenses were serious, she would not be recommending Erin's placement at Lincoln Hills if Erin remained in juvenile court.

¶5 In its waiver decision, the circuit court found prosecutive merit and then considered the factors under WIS. STAT. § 938.18(5). The court recognized that Erin had no prior delinquency adjudications, did not exhibit aggressive behavior, did not have an extensive record and that her history would normally militate in favor of retention in the juvenile system. However, the court also observed Erin's long history of emotional issues and emphasized the seriousness

of the charges. It also focused on the fact Erin was turning seventeen in less than two months and was married with a child.

¶6 The court stated:

She's going to be 17 in less than two months. She has a child. She's married. She's living an adult life-style. She will not, I believe, be amenable or potentially accessible to the treatment facilities or modalities in the juvenile system. I can't imagine her being placed in foster care with a child. I can't imagine her being accepted into a residential treatment facility or the courts intending to do so with a child being married.

Because the court believed there was a need for Erin's supervision over a long period, it placed substantial emphasis on the adult probation system having more control over Erin than under the limited time for the juvenile system because of her age. When entering an order waiving her from juvenile court into adult court, the court commented:

The potential possibility of lengthy supervision with the possibility of imposed treatment and counseling for that lengthy period of time of supervision in the adult system outweighs, I believe, whatever benefits might be achieved by treatment, counseling, and therapy within the juvenile system, even though the nature of the programming might be the same.

DISCUSSION

¶7 Erin claims the circuit court's decision to waive her into adult court was an unreasonable exercise of discretion and was not based upon a reasonable examination of the testimony and factors set forth in WIS. STAT. § 938.18(5). Additionally, she contends the court improperly focused on the non-statutory factors of marriage and childbirth, resulting in an unreasonable exercise of discretion. We are not persuaded.

¶8 Waiver of juvenile jurisdiction under WIS. STAT. § 938.18 is within the sound discretion of the circuit court. See *In re B.B.*, 166 Wis. 2d 202, 207, 479 N.W.2d 205 (Ct. App. 1991). We review the circuit court's decision for misuse of discretion. *Id.* at 207. We first look to the record to see whether discretion was in fact exercised. *In re J.A.L.*, 162 Wis. 2d 940, 961, 471 N.W.2d 493 (1991). If discretion was exercised, we will look for any reason to sustain the court's discretionary decision. *Id.* We will reverse a juvenile court's waiver determination if and only if the record does not reflect a reasonable basis for the determination or a statement of the relevant facts or reasons motivating the determination is not carefully delineated in the record. *Id.*

¶9 The paramount consideration in determining waiver is the best interests of the child. *In re C.W.*, 142 Wis. 2d 763, 767, 419 N.W.2d 327 (Ct. App. 1987). It is within the circuit court's discretion how much weight should be afforded each of the factors under WIS. STAT. § 938.18(5). *In re G.B.K.*, 126 Wis. 2d 253, 259, 376 N.W.2d 385 (Ct. App. 1985). The circuit court must state on the record its finding with respect to the criteria. *J.A.L.*, 162 Wis. 2d at 960. If the circuit court determines by clear and convincing evidence that it would be contrary to the best interests of the child or the public for the juvenile court to hear the case, it must enter an order waiving jurisdiction and referring the matter to the district attorney for appropriate proceedings in criminal court. *Id.*

¶10 WISCONSIN STAT. § 938.18 sets forth the procedure for waiving juvenile court jurisdiction for certain crimes committed by minors. The juvenile court first determines whether the case has prosecutive merit and, if so, the court considers whether to waive jurisdiction based on the following criteria: the personality and prior record of the child, the type and seriousness of the offense, and the adequacy and suitability of facilities and services available for the child's

treatment. WIS. STAT. § 938.18(5). The judge must state his or her findings on the record. WIS. STAT. § 938.18(6).

¶11 WISCONSIN STAT. § 938.18(5) provides the circuit court must consider the following criteria in making a waiver determination:

(a) The personality and prior record of the juvenile, including whether the juvenile is mentally ill or developmentally disabled

(b) The type and seriousness of the offense, including whether it was against persons or property, the extent to which it was committed in a violent, aggressive, premeditated or wilful manner, and its prosecutive merit.

(c) The adequacy and suitability of facilities, services and procedures available for treatment of the juvenile and protection of the public within the juvenile justice system

(d) The desirability of trial and disposition of the entire offense in one court if the juvenile was allegedly associated in the offense with persons who will be charged with a crime in the court of criminal jurisdiction.

¶12 Here, the court made findings regarding the applicable criteria under WIS. STAT. § 938.18(5) and enumerated those findings on the record. It considered Erin's personality, mental health and her prior record. Although Erin has emotional problems, she is not mentally ill or developmentally disabled. In fact, Depies testified that Erin tested average to above average intelligence and had a maturity level normal for her age.

¶13 The court also considered the types and seriousness of the offenses. She is charged with several different crimes: Theft of property, two counts of delivery of a prescription drug to another, obtaining the personal identification of another to obtain money, obtaining property of another by intentionally deceiving the person with false representation and disorderly conduct were correctly viewed

as serious charges. From a review of the allegations contained in the petition establishing the prosecutive merit, these acts appear premeditated, calculated and without remorse.

¶14 Contrary to Erin's argument, the court observed Erin's marriage and having a child as more reflective of an adult lifestyle. It observed how this lifestyle made it more difficult as a practical matter for Erin's placement in the juvenile system. The court was not making its waiver decision on the sole fact that Erin was married and had a child. Rather, it showed her pattern of living, which was more reflective of an adult than a juvenile.

¶15 The record reveals the court considered the third criterion when it concluded that Erin needed a longer period of supervision than the juvenile system could provide. This decision was based on Depies' testimony regarding the adequacy and suitability of facilities available for treatment in the juvenile system. She testified that she could not recommend placing Erin at Lincoln Hills, but that Erin needed a substantial period of supervision outside the juvenile system, which appeared to have not worked because of Erin's continued violations. Additionally, because of Erin's age and need for a long period of supervision, the court properly considered that probation under the adult system outweighed any possible services available in the juvenile system. Here, the court was stressing Erin's imperative need for a longer period of treatment and counseling as a way of helping her get her life on the correct path. In other words, it was concerned for her best interests and believed the adult system offered more help for her.

¶16 Accordingly, based on the evidence and the applicable law, the circuit court considered and applied the criteria under WIS. STAT. § 938.18(5) and reasonably concluded on the record that it is established by clear and convincing

evidence that waiver would be in the best interests of the juvenile and the public. Thus, we conclude that the circuit court did not erroneously exercise its discretion by waiving Erin to adult criminal court.

By the Court.—Order affirmed.

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

