COURT OF APPEALS
DECISION
DATED AND FILED

April 20, 2004

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. 03-2934 **Cir. Ct. No. 01JV001666**

STATE OF WISCONSIN **IN COURT OF APPEALS**
DISTRICT I

IN THE INTEREST OF MICHAEL S.,
A PERSON UNDER THE AGE OF 17:

STATE OF WISCONSIN,

PETITIONER-RESPONDENT,

V.

MICHAEL S., JR.,

RESPONDENT-APPELLANT.

APPEAL from an order of the circuit court for Milwaukee County: CHRISTOPHER R. FOLEY, Judge. *Affirmed*.

¶1 SCHUDSON, J.[1] Michael S., Jr., appeals from the circuit court's December 4, 2002 order extending and revising his dispositional order and

[1] This opinion is decided by one judge pursuant to WIS. STAT. § 752.31(2)(e) (2001-02). All references to the Wisconsin Statutes are to the 2001-02 version unless otherwise noted.

changing his placement to the Ethan Allen School. Michael argues that "because the juvenile court ha[d] no authority to retroactively extend the time limits, the court lost its competency to proceed when the original dispositional order expired" and, therefore, that the order must be vacated. This court concludes, however, that the circuit court complied with the statute, extending the time limit for the hearing. Accordingly, the order is affirmed.

¶2 The facts relevant to resolution of this appeal are undisputed. Although the procedural history is extensive, the critical dates and events are few:

- November 8, 2001: the juvenile court enters a dispositional order placing Michael on supervision until October 23, 2002.
- September 10, 2002: the State files a petition for extension, revision, and change of placement.
- October 2, 2002: the court sets the date of October 24, 2002 for what the parties advised would be a contested hearing.

As Michael writes in his brief to this court, at the October 2 hearing, when the October 24 date was set, "Although no one noted it at the time, the hearing was scheduled for one day after the original order expired." No one objected.

¶3 At the conclusion of the October 24 hearing, the court (Judge Michael Malmstadt) noticed that Michael's dispositional order had expired the day before. Later that day, however, the court (Judge Christopher Foley) concluded that it still had jurisdiction "to, in effect, retroactively grant the thirty days' extension," under WIS. STAT. § 938.365(6), extending the original dispositional order from what would have been its October 23 expiration date and allowing the hearing to go forward. Subsequently, Judge Foley elaborated:

> We couldn't conduct the hearing within the time left on the order in part because of the nature of … the … crowded conditions of our calendar, and in part because [defense counsel] didn't like the first psychological; so we set it over to a date that is one day beyond the original expiration, but well within the temporary thirty days' extension, that I should have formally ordered … but in effect ordered by inference and by virtue of tolling the time limits we're still within that thirty days' period … my best guess is I still have the authority to entertain this petition.

¶4 Although the parties focus on whether the juvenile court erred in retroactively granting a temporary extension for hearing, the issue more precisely is whether the juvenile court complied with WIS. STAT. § 948.365(6). *See* ***Saenz v. Murphy***, 162 Wis. 2d 54, 57 n.2, 469 N.W.2d 611 (1991) ("this court is not bound by the issues as they are framed by the parties"), *overruled on other grounds by* ***State ex rel. Anderson-El v. Cooke***, 2000 WI 40, 234 Wis. 2d 626, 610 N.W.2d 821. This issue involves a question of statutory construction, which this court reviews *de novo*. ***State v. Dawn M.***, 189 Wis. 2d 480, 484, 526 N.W.2d 275 (Ct. App. 1994).

¶5 The Juvenile Justice Code provides that all dispositional orders shall terminate at the end of one year unless the judge specifies a shorter period of time. WIS. STAT. § 938.355. A dispositional order may be extended by motion of any agency bound by that order, the district attorney or the court on its own motion. *See* WIS. STAT. § 938.365. However, no order under § 938.355 may be extended except as provided in § 938.365. WIS. STAT. § 938.365(1m).

¶6 WISCONSIN STATUTE § 948.365(6) provides:

> If a request to extend a dispositional order is made prior to the termination of the order, but the court is unable to conduct a hearing on the request prior to the termination date, the court may extend the order for a period of not more than 30 days, not including any period of delay resulting from any of the circumstances specified in s.

> 938.315(1). The court shall grant appropriate relief as provided in s. 938.315(3) with respect to any request to extend a dispositional order on which a hearing is not held within the time limit specified in this subsection. Failure to object to a hearing is not held within the time limit specified in this subsection waives that time limit.

¶7 Michael argues that "the 30-day extension must be requested prior to the order's expiration." This court cannot agree. Under the plain language of the statute no such requirement exists. The statute, on its face, requires neither that a request be filed, nor that a request be in a specific form or contain specific information. *Compare* WIS. STAT. § 938.365(6) *to* WIS. STAT. § 938.255(1) (specifying the form and content of a "petition" to initiate a CHIPS action). Only two prerequisites are required to trigger an extension. First, a request or petition for extension of the order must be made prior to the expiration of the order. *See* ***Green County Dep't Human Servs. v. H.N.***, 162 Wis. 2d 635, 646-47, 469 N.W.2d 845 (1991). Second, an inability to handle the hearing on the extension before the termination of the order must exist. ***Id.*** Once these prerequisite are satisfied, the court may grant an extension for up to thirty days.

¶8 Thus, applying the statute, the result is clear—the court maintained jurisdiction. First, the State filed the petition to extend the order forty-three days before the October 23, 2002 expiration of the dispositional order. Second, the court explicitly noted that the calendar was full and that no "quick hearing" could be held. Although neither the State nor the court used any "magic words" explicitly extending the order, their actions had the effect of doing so. Accordingly, the circuit court retained jurisdiction and competency to extend and revise the order, and change Michael's placement, one day after what otherwise would have been the expiration date of the underlying dispositional order.

By the Court.—Order affirmed.

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