

**COURT OF APPEALS
DECISION
DATED AND FILED**

July 21, 1998

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.

No. 98-0575

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT I**

**IN THE INTEREST OF MAURICE C.,
A PERSON UNDER THE AGE OF 18:**

STATE OF WISCONSIN,

PETITIONER-RESPONDENT,

v.

MAURICE C.,

RESPONDENT-APPELLANT.

APPEAL from orders of the circuit court for Milwaukee County:
DANIEL L. KONKOL, Judge. *Affirmed.*

WEDEMEYER, P.J. Maurice C. appeals from a dispositional order, which imposed a previously stayed order, because Maurice missed three appointments with his probation officer. He also appeals from an order denying his motion for postdisposition relief entered pursuant to § 809.30(2)(h), STATS. Maurice claims the trial court erred in setting the termination date of the reinstated

order for October 24, 1998, without holding a revision or extension hearing in accordance with §§ 938.355(4) and 938.365, STATS. Because the clear statutory language of § 938.34(16), STATS., states that the original dispositional order is not imposed until the stay of that dispositional order has been lifted, the trial court did not err in setting the October 24, 1998 termination date. Therefore, this court affirms.

I. BACKGROUND

On February 7, 1997, Maurice admitted to the offense of robbery, party to a crime. On May 15, 1997, the trial court entered a dispositional order placing Maurice in the Wisconsin Department of Corrections facility at Wales for a period of one year pursuant to § 938.34(4m), STATS. Upon various conditions, including that Maurice meet with a parole officer as requested, the trial court stayed the execution of this order pursuant to § 938.34(16), STATS., and placed Maurice on probation until May 15, 1998.

On September 19, 1997, the probation department filed a motion to impose the original disposition because Maurice had missed three scheduled appointments with his parole officer. After hearing argument on the motion, the trial court found, by a preponderance of the evidence, that the juvenile had violated a condition of the dispositional order. On October 24, 1997, the trial court lifted the stay and imposed the original dispositional order. The trial court set the date of Maurice's release from the correctional facility for October 24, 1998, one year from the date it imposed the originally stayed order.

Maurice filed his motion for postdisposition relief, arguing that the order entered on October 24, 1997, should expire on May 15, 1998, instead of October 24, 1998, because the original dispositional order was entered on May 15,

1997. The trial court denied the motion, ruling that “[the original] order is stayed, that means that order does not start to take effect until and unless there’s a violation of the other dispositional order.” Maurice now appeals.

II. DISCUSSION

Maurice argues that the trial court’s actions in changing the termination date from the original dispositional order from May 15 to October 24 constituted an extension/revision of a dispositional order. As a result, he claims the trial court was required to comply with the specific requirements and procedures set forth in §§ 938.355 938.363, and 938.365, STATS., which require the trial court to conduct a change of placement hearing. The trial court ruled that § 938.34(16), STATS., eliminates the need for a change of placement hearing and allows the trial court to enter two orders: one dispositional order that is stayed and does not take effect except if a condition is violated, and another order that takes effect right away. The trial court concluded that the original dispositional order is not imposed until the stay is lifted and the date the stay is lifted determines the commencement of the one-year confinement period. This court agrees with the trial court.

This case involves a question of statutory interpretation, which this court reviews *de novo*. See *State v. Michels*, 141 Wis.2d 81, 87, 414 N.W.2d 311, 313 (Ct. App. 1987). If the language of the statute is clear and unambiguous, the primary source of statutory interpretation is the statute itself. See *Robert Hanson Trucking, Inc. v. LIRC*, 126 Wis.2d 323, 332, 337 N.W.2d 151, 155 (1985). Because this court finds the language of § 938.34(16), STATS., clear and unambiguous, it is not necessary for this court to look beyond the language of the statute to ascertain legislative intent. Section 938.34(16) states in pertinent part:

STAY OF ORDER. After ordering a disposition under this section, enter an additional order staying the execution of the dispositional order contingent on the juvenile's satisfactory compliance with any conditions that are specified in the dispositional order If the juvenile violates a condition of his or her dispositional order, the agency supervising the juvenile shall notify the court and the court shall hold a hearing ... to determine whether the original dispositional order should be imposed The court may not impose the original dispositional order unless the court finds by a preponderance of the evidence that the juvenile has violated a condition of his or her dispositional order.

The clear statutory language of § 938.34(16) creates the power of juvenile courts to order the original disposition, while imposing an *additional order* staying the original order subsequent to conditions established by this *additional order*.

“All words and phrases shall be construed according to common and approved usage; but technical words and phrases and others that have a peculiar meaning in the law shall be construed according to such meaning.” Section 990.01(1), STATS. This court may look to recognized dictionaries to ascertain common and approved meanings of non-technical and technical words. *See State v. Grady*, 175 Wis.2d 553, 558, 499 N.W.2d 285, 288 (Ct. App. 1993). To “impose” an order means “[t]o apply authoritatively” or to “subject to a penalty.” OXFORD ENGLISH DICTIONARY 731 (2d ed. 1989). To “stay” an order means to “refrain from enforcing it.” BLACK’S LAW DICTIONARY 1413 (6th ed. 1990).

This court agrees with the trial court that the plain language of § 938.34(16), STATS., provides that an additional extension hearing, provided for under § 938.365, STATS., is not needed, because the original dispositional order does not take effect until the stay has been lifted. Once the original order had been stayed, the trial court “refrain[ed] from enforcing it.”

The originally stayed order provided that the juvenile be “placed in the Wisconsin Department of Corrections secure facility at Wales for a period of one year.” However, Maurice was not subject to this penalty until the trial court found by a preponderance of the evidence that he had violated a condition of his probation and lifted the stay on the original order. This occurred on October 24, 1997. Hence, the original dispositional order was imposed on that date. The termination date was set one year from the date the original dispositional order was imposed, in accordance with § 938.355, STATS. Therefore, the appropriate termination date for Maurice’s period of confinement is October 24, 1998, one year from the imposition of the original dispositional order.

Maurice argues that this interpretation runs contrary to the general principles governing extensions of dispositional orders set forth in §§ 938.355 and 938.365, STATS. This court disagrees. An extension under § 938.365 is not necessary because the one-year term provided by § 938.355 has not yet terminated according to the clear statutory language of § 938.34(16), STATS. The stay imposed nullifies the specific date noted on the dispositional order because the original dispositional order has not yet commenced. When a trial court utilizes § 938.34(16), it engages in a procedure different from the traditional extension procedures set forth in the juvenile code because this statute creates a unique situation. The fact that the statute sets forth a different procedure does not mean that the procedure runs contrary to the general provisions of the code.

Rather, § 938.34(16), STATS., creates a unique procedural set of circumstances separate from the customary procedure under the juvenile code governing extensions and revisions. The creation of this section permits the trial court to stay the imposition of the dispositional order to give the juvenile a second

chance to conform his or her behavior during a period of probation. During this period of probation, the juvenile must comply with certain conditions. Failure to comply with the conditions triggers the commencement of the original dispositional order. It would be absurd for this court to conclude that an original dispositional order that has been stayed pursuant to § 938.34(16) commences any earlier than the date the stay is lifted by the trial court. Such an interpretation would be contrary to the rules of construction and produce an unreasonable result. *See Nutter v. Milwaukee Ins. Co.*, 167 Wis.2d 449, 458, 481 N.W.2d 701, 705 (Ct. App. 1992).

By the Court.—Orders affirmed.

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

