COURT OF APPEALS
DECISION
DATED AND FILED

January 14, 1999

Marilyn L. Graves
Clerk, Court of Appeals
of Wisconsin

No. 98-2149

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

IN THE INTEREST OF DESHAWN M. D., A PERSON UNDER THE AGE OF 18:

STATE OF WISCONSIN,

PETITIONER-RESPONDENT,

V.

DESHAWN M. D.,

RESPONDENT-APPELLANT.

APPEAL from an order of the circuit court for Dane County: C. WILLIAM FOUST, Judge. *Reversed and cause remanded with directions.*

DYKMAN, P.J.[1] Deshawn M.D. appeals from a disposition order in which the trial court removed her from her mother's home and placed her under

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

the supervision of the Dane County Department of Human Services (DCDHS). She contends that the trial court failed to include in its disposition order whether DCDHS made reasonable efforts to prevent her removal from her mother's home. She further asserts that DCDHS did not make reasonable efforts to prevent her removal from her mother's home, and the department's failure to make reasonable efforts vitiated the trial court's authority to place her outside her mother's home.

We conclude that § 938.355(2)(b)6., STATS., requires that if a juvenile is placed outside the home, the trial court must include in its order whether the county department providing services to the juvenile made reasonable efforts to prevent the removal of the juvenile from his or her home. The trial court did not include this finding in its order. Accordingly, we reverse and remand with directions to make this finding. We decline to address the remaining issues because they may become moot after the trial court makes this finding.

BACKGROUND

The State filed a delinquency petition against Deshawn M.D. on December 12, 1997, alleging that she had engaged in disorderly conduct, contrary to § 947.01, STATS., during an argument with her mother. On February 26, 1998, Deshawn pleaded no contest to the petition and the court adjudged her delinquent.

A contested disposition was held, and the State asked that the court remove Deshawn from her home and place her under the supervision of DCDHS. Deshawn's trial counsel argued that the court could not remove Deshawn from her mother's home because the State had not demonstrated that DCDHS made reasonable efforts to prevent the removal. The trial court concluded that it was not reasonable to require DCDHS to show that it had made reasonable efforts to prevent an out-of-home placement when the child commits an "out-of-the-blue"

delinquent act. The court ordered that Deshawn be placed under the supervision of DCDHS for one year at the Horizon House group home. It also required that she participate in the Briarpatch CHOICES program, an alcohol and drug assessment, if requested by the social worker, alternatives to aggression counseling, individual therapy, and family therapy with her mother as recommended by her therapist and social worker.

Following disposition, Deshawn brought a motion to stay disposition pending appeal in the trial court. After holding a hearing, the trial court denied the motion. Deshawn appeals.

DISCUSSION

Deshawn claims that the trial court erred in failing to include in its order whether DCDHS made reasonable efforts to prevent the removal of Deshawn from her mother's home. Once a court adjudges a juvenile delinquent, it must enter an order which includes one or more dispositions of the case under a care and treatment plan. *See* § 938.34, STATS. Within that order, the court must make written findings of facts and conclusions of law based upon the evidence presented to the court to support the disposition order. *See* § 938.355(2), STATS. The statutory provision at issue in this case is § 938.355(2)(b)6. That section reads as follows:

> The court order shall be in writing and shall contain:
>
> ….
>
> 6. If the juvenile is placed outside the home, the court's finding as to whether a county department which provides social services or the agency primarily responsible for the provision of services under a court order has made reasonable efforts to prevent the removal of the juvenile from the home or, if applicable, that the agency primarily

> responsible for the provision of services under a court order has made reasonable efforts to make it possible for the juvenile to return to his or her home.

There is some uncertainty among the parties as to what this statute requires, which presents an issue of statutory interpretation. Because statutory interpretation is a question of law, we apply a de novo standard of review. *See* ***Hughes v. Chrysler Motors Corp.***, 197 Wis.2d 973, 978, 543 N.W.2d 148, 149 (1996). The ultimate goal of statutory interpretation is to ascertain and give effect to the intent of the legislature. ***Stockbridge School Dist. v. DPI***, 202 Wis.2d 214, 219, 550 N.W.2d 96, 98 (1996). Our first inquiry is always to the language of the statute. ***Cary v. City of Madison***, 203 Wis.2d 261, 264, 551 N.W.2d 596, 597 (Ct. App. 1996). If a statute is clear on its face, our inquiry ends, for we are prohibited from looking beyond the unambiguous language used by the legislature. ***Peter B. v. State***, 184 Wis.2d 57, 71, 516 N.W.2d 746, 752 (Ct. App. 1994). However, if the language is ambiguous, we may look to the history, scope, context, subject matter, and object of the statute to discern legislative intent. ***Lake City Corp. v. City of Mequon***, 207 Wis.2d 156, 164, 558 N.W.2d 100, 103 (1997). Statutory language is ambiguous if reasonably well-informed individuals could differ as to its meaning. ***Harnischfeger Corp. v. LIRC***, 196 Wis.2d 650, 662, 539 N.W.2d 98, 103 (1995).

After reviewing the language of the statute, we conclude that it is clear and unambiguous. Section 938.355(2)(b)6., STATS., requires that when a trial court places a juvenile outside of the home, it must include in its written order whether the county department or agency responsible for providing services to the juvenile has made reasonable efforts to prevent the removal of the juvenile from his or her home or, if applicable, has made reasonable efforts to make it possible for the juvenile to return to his or her home. In other words, the trial court must

find whether these reasonable efforts have been made. Because the statutory language is clear and unambiguous, our inquiry ends.

The trial court did not make this finding. The trial court said: "I don't think that it is reasonable to demand that the Department be able to show that it's taken reasonable steps to prevent an out-of-home placement when what you have an out-of-the-blue delinquent act …." At the hearing in which Deshawn sought to stay disposition pending appeal to the trial court, the trial court noted the following: "And it's a situation where, as we talked about at some length at the hearing, the Department wasn't in the home before the delinquent act occurred. So, it's mystifying to some degree to try to figure out how the Department could go in and prevent the need for removal."[2] Because the trial court declined to make this necessary finding in its written order, we reverse and remand with directions for the trial court to make this finding.

Deshawn also asserts that the county is required to make reasonable efforts to prevent the removal of the juvenile from his or her home, and that the trial court's authority to place a juvenile out of his or her home is vitiated by the county department's failure to make these reasonable efforts. However, because these issues may become moot with the trial court's finding as to whether the county department made reasonable efforts, we decline to address them now.

[2] The trial court considered the time before the delinquent act occurred. We interpret the statute as also focusing on the time period after the alleged delinquent act but before the dispositional hearing.

CONCLUSION

We conclude that § 938.355(2)(b)6., STATS., requires the trial court to include in its order whether the county department responsible for providing services to a juvenile made reasonable efforts to prevent the removal of the juvenile from his or her home when it places the juvenile outside of his or her home. The trial court did not make this finding. We therefore reverse and remand with directions to do so. The trial court may, if it deems it necessary, take additional testimony on this issue.

By the Court.—Order reversed and cause remanded with directions.

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