

**COURT OF APPEALS
DECISION
DATED AND FILED**

August 2, 2000

Cornelia G. Clark
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 WIS. STAT. § 808.10 and RULE 809.62.

No. 00-0820-FT

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT II**

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

STATE OF WISCONSIN,

**PETITIONER-
RESPONDENT,**

V.

RYAN C.C.,

**RESPONDENT-
APPELLANT.**

APPEAL from a judgment of the circuit court for Winnebago
County: ROBERT A. HAASE, Judge. *Affirmed.*

¶1 BROWN, P.J.¹ The juvenile court found Ryan C.C. delinquent for interfering with the custody of a parent, contrary to WIS. STAT. § 948.31(2). That statute, in pertinent part, reads as follows:

Whoever causes a child to leave, takes a child away or withholds a child for more than 12 hours from the child's parents ... without the consent of the parents, the mother or the father with legal custody, is guilty of a Class E felony.

¶2 A young woman named Misty was reported missing by her parents after she “punched out” during a break from her job at a supermarket on Sunday, July 11, 1999, at approximately 6:00 p.m. She was gone for over six weeks. An officer finally found her when he went to Ryan’s house, began talking to Ryan and his mother inside the house, and observed Misty standing in the backyard by the patio.

¶3 The State’s case against Ryan consisted of the following: Ryan and Misty were seeing each other against the wishes of Misty’s parents because the parents had discovered that Ryan and Misty had had sex. After Misty was reported missing late in the evening of July 11, an officer telephoned Ryan’s residence and talked with Ryan and his mother. Ryan told the officer that he had not seen Misty in four or five days and that she had recently called him to say that she was out of the state. On July 15, another officer went to Ryan’s residence and talked to him. Ryan said he did not know where Misty was, but that he had spoken with her on the telephone and tried to convince her to “turn herself in.”

¶4 Misty testified that she stayed with Ryan at his home from July 12 to August 16 when she was finally found by an officer. She said that Ryan would

¹ This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(1)(e) (1997-98). All references to the Wisconsin Statutes are to the 1997-98 version.

not allow her to stay at his home the first night because his mother was not there. She testified that she thereafter stayed with Ryan after she told him she had nowhere else to go. She was able to hear Ryan tell the police, both over the telephone and in person, that he did not know her whereabouts when in fact she was present.

¶5 Megan, Misty's fourteen-year-old sister, testified that she talked with Ryan on the telephone within three days of Misty's disappearance. However, she denied telling a sheriff's deputy that Ryan told her how Misty and Megan's parents were never going to find Misty. She further denied telling the deputy that Ryan told her how no one would be able to keep Ryan and Misty apart. But the deputy testified to rebut Megan's testimony. He said that Megan did tell him that Ryan had told her how the parents were not going to find Misty because Ryan was not going to allow it. He also testified that Megan told him how no one would be able to keep Ryan and Misty apart.

¶6 Ryan argues that this evidence is insufficient as a matter of law to find him guilty of interfering with child custody. He correctly observes that there is no issue as to whether he caused Misty to leave her parents or took her away. Thus, the statute can only be applicable to the facts of this case if the State has proven that he "withheld" Misty from her parents. He then points to Misty's testimony that Ryan would not let her stay with him the first night and only reluctantly agreed to let her stay thereafter because she had nowhere else to go. He argues, basically, that he was simply playing the role of the Good Samaritan in keeping a child off the streets. He observes that Misty, at all times, had the ability to leave the residence and asserts that her choice not to go back to her parents should not translate into criminal conduct on his part. Ryan contends that the

statute requires a specific intent to withhold a child from his or her parents and the evidence shows that he did not have this intent.

¶7 This court rejects Ryan's argument. First, the testimony has a lot more to it than Misty's statement that Ryan only reluctantly let her stay there. The record shows that, at least twice, Ryan lied to police about Misty's whereabouts. The record also shows that he told Megan, Misty's sister, how he would never let Misty's parents find Misty and that he and Misty would never part. The record further shows that while Misty was living at Ryan's house, she and Ryan had sexual relations. The record also shows that there was an elaborate plan to make Misty's parents think that she was in Milwaukee. Ryan's mother is married to a truck driver who goes to Milwaukee on a regular basis. The plan was for Misty to write the letters and then the mother's husband would mail them in Milwaukee. Misty would also call her parents by using a three-way-connection cell phone so that the parents would think she was calling from far away. A trier of fact could easily infer from the totality of the evidence that Ryan was a willing participant in this ruse as part of an overall desire to help Misty stay in hiding from her parents.

¶8 This court agrees with Ryan that the statute requires the State to prove that the accused intentionally set out to withhold the child from his or her parents. But we believe the record satisfies the statute. Ryan intended to prevent Misty's parents from finding her. He lied to the police about her whereabouts and participated in a ruse designed to throw her parents off the track. His stated intention to Misty's sister was to keep Misty's parents from finding her. He succeeded for nearly six weeks. It is of no moment that Misty could have left at any time. The statute does not require that he withhold the child against the child's will or, even if the child is willing, that he be the sole actor in withholding the child. It only requires that by his actions, he intends to help keep the parents

and child apart. His actions succeeded for quite some time. The juvenile court adjudged him guilty of the crime charged and the evidence supports the juvenile court's determination.

By the Court.—Judgment affirmed.

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

