

**COURT OF APPEALS
DECISION
DATED AND FILED**

November 7, 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. 00-2035

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT III**

**IN THE INTEREST OF TODD D.S.,
A PERSON UNDER THE AGE OF 18:**

STATE OF WISCONSIN,

PETITIONER-RESPONDENT,

V.

TODD D.S.,

RESPONDENT-APPELLANT.

APPEAL from an order of the circuit court for Outagamie County:
JOSEPH M. TROY, Judge. *Affirmed.*

¶1 CANE, C.J.¹ Todd D.S. (d.o.b. February 24, 1984) appeals an order² waiving juvenile court jurisdiction for charges relating to his operating a snowmobile while under the influence of an intoxicant and causing the death of another juvenile. The charges stem from an incident when Todd, while intoxicated, recklessly drove his snowmobile at a high rate of speed and lost control of the vehicle, causing it to crash into a tree. Riding with Todd as a passenger was another juvenile who fell off the snowmobile at the time of the collision and died as a result of head trauma.

¶2 Todd contends that the trial court failed to properly apply the statutory factors in determining waiver and that the court's reasoning that adult supervision would serve his best interests better than juvenile supervision was an erroneous exercise of discretion. Because the trial court properly considered the statutory factors and because there is sufficient evidence to uphold the trial court's discretionary determination to waive juvenile jurisdiction, the order is affirmed.

¶3 In a juvenile delinquency petition and request for waiver from juvenile court, the State charged Todd with causing the death of another juvenile by the operation or handling of a vehicle while under the influence of an intoxicant. The court found that waiver to adult court was appropriate for various reasons specified in its oral decision, and entered an order waiving juvenile court jurisdiction.

¹ This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(e) (1997-98). All references to the Wisconsin Statutes are to the 1997-98 version unless otherwise noted.

² Leave to appeal the nonfinal order was granted July 31, 2000.

¶4 WISCONSIN STAT. § 938.18(5) requires that the juvenile court "base its decision whether to waive jurisdiction" on the criteria specified in the statute. WISCONSIN STAT. § 938.18(6) provides that "if the court determines on the record that it is established by clear and convincing evidence that it would be contrary to the best interests of the juvenile or of the public to hear the case, the court shall enter an order waving jurisdiction." Whether to waive jurisdiction is within the juvenile court's sound discretion, and this court "will uphold a discretionary determination if the record reflects that the juvenile court exercised its discretion and there was a reasonable basis for its decision." *See B.B. v. State*, 166 Wis. 2d 202, 207, 479 N.W.2d 205 (Ct. App. 1991).

¶5 The court's discretionary determination will not be upset unless there is an erroneous exercise of discretion. *See Curtis W. v. State*, 192 Wis. 2d 719, 726, 531 N.W.2d 633 (Ct. App. 1995). It is an erroneous exercise of discretion if the trial court fails to specify the reasons supporting the discretionary determination made, or if the trial court misapplies the law, unless by searching the record, we can find reasons to support the court's exercise of discretion. *See Thorpe v. Thorpe*, 108 Wis. 2d 189, 197-98, 321 N.W.2d 237 (1982).

¶6 The paramount consideration in determining waiver is the best interests of the child. *See State v. Elmer J.K.*, 224 Wis. 2d 372, 384, 591 N.W.2d 176 (Ct. App. 1999). In making its discretionary determination, the trial court must apply the statutory factors identified, but need consider only those factors that are relevant to the specific case. *See J.A.L. v. State*, 162 Wis. 2d 940, 960, 471 N.W.2d 493 (1991). The weight to be accorded each of the relevant statutory factors in a specific case is a matter submitted to the trial court's discretion. *See id.* The trial court's determination will be affirmed as long as there is a reasonable

basis for the court's determination. *See G.B.K. v. State*, 126 Wis. 2d 253, 259, 376 N.W.2d 385 (Ct. App. 1985).

¶7 The record reflects that the trial court considered the relevant statutory factors of age, prior record, severity of the offense, and the juvenile's lifestyle. *See* WIS. STAT. § 938.18(5). The court considered Todd's prior record and noted that he was impulsive, had a low maturity level, engaged in excessive use of alcohol and would require extensive supervision.

¶8 Todd specifically challenges the trial court's determination that his best interests would be served by being treated as an adult. This court disagrees. The court reasoned that Todd would soon reach the age when he would be treated as an adult in the Wisconsin court system. Because of Todd's age, the court reasoned that the length of juvenile supervision would be inadequate and adult supervision would best meet Todd's needs. The court's determination of which supervision would be better for Todd is only further evidence of its thorough consideration of what served Todd's best interests. The court also considered the seriousness of the offense, the nature of the offense and the manner in which it was committed. The court also noted that even after this tragic accident, Todd appeared to fail to appreciate the consequences of what he did. The court specifically noted that Todd was living a lifestyle without adequate restraints.

¶9 This court concludes that Todd's age, lifestyle and the court's conclusion that he could not be reached by the resources available to the juvenile court are sufficient bases to sustain the court's exercise of discretion in waiving juvenile court jurisdiction. This court affirms the trial court's order.

By the Court.—Order affirmed.

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

